

**Senate Foreign Affairs, Defence and Trade
References Committee**

SUBMISSION COVER SHEET

Inquiry Title: Effectiveness of Australia's Military Justice System

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Ms Jayne Fitzpatrick

13 February 2004

The Secretary
Senate Foreign Affairs, Defence and Trade References Committee
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To the Committee

I have written my submission as objectively as possible under the circumstances. I have not included any supporting documents, however I have all of my correspondence and I am willing to supply this to you if necessary.

Background

On 21 July 2000 my partner(Keith) hanged himself in our married quarter, he didn't succeed in killing himself, I was able to get him down and into hospital. During the next six months he was hospitalised twice and was diagnosed with depression and war related Post Traumatic Stress Disorder. He never returned to work, Operations WO at an Army Reserve Unit. He is now discharged and receives TPI from the Department of Veterans Affairs.

We became aware that an investigation had taken place and that the RSM had been telling anyone who would listen that Keith was the thief. He contacted the RMO, who was our family doctor, and Keith's psychiatrist, telling them that it was an open and shut case against Keith and wanted to know when he could stand trial and go to jail. The RSM had also informed the entire Sergeants Mess that Keith had stolen the money and pointed to his previous suicide attempt as an admission of his guilt in this matter.

These defamatory statements came to light on the 28 March and over the next ten days I watched Keith sink into a deep depression which resulted in another attempt to take his life. He was again hospitalised for six weeks.

I rang the Defence Equity Hotline and was advised to go straight to the CO with my concerns. I made an appointment and organised my thoughts in the form of a letter that I gave to the CO. He read the letter and said that he would reply before Easter after investigating the matter. I did not realise that I had supplied two pieces of information that cleared Keith of any wrong doing. However, the CO withheld this information from SIB and carried on supporting his RSM. I never received a reply to my original complaint.

I have since written to the Minister of Defence, The Defence Force Ombudsman and the Chief of the Defence Force.

Prior to Keith's discharge he wrote to the much vaunted Army Fair Go Hotline. As a serving member his complaint should have been investigated in its own right. This was Keith's only way to redress the defamatory remarks and threats made against him. Unfortunately the reply came back that his complaint had been addressed by my letter to the minister and no further action would be taken on his behalf.

It has been a frustrating experience. The central issue has been the slanderous remarks made about Keith, however the army has failed to grasp this. Statements have been supplied stating who said what, when it was said and where it was said. All have been ignored or treated with disdain, one comment was that "intemperate comments from whatever source are unhelpful...".

Unprofessional behaviour

In view of the fact that the CO was aware of Keith's innocence in this matter yet he allowed the slander to continue and participate in it himself is disgraceful.

Over the ensuing years we have been subjected to intimidation and bullying through

- isolation
- verbal abuse
- phone calls demanding I bring Keith to the unit for questioning
- hindering discharge and removal procedures
- banning us from the Sgts Mess

When I refused to drop the complaint against the RSM, I was told that Keith would be court martialled or handed over to state or federal police, these comments I understood to be threats. Please be aware that Keith has never been formally cautioned or questioned over this matter.

Lies and misinformation have also been used to confuse issues. For example the CO told me he would have the investigation dropped and Keiths documents released so he could be discharged. SIB knew nothing of this, it was not within the CO discretion to do these things. Quite often issues came down to my word against a member of the battalion, unfortunately the army always sided with its members. So we ended up in a situation where they could act with impunity from verbally abusing my children to blocking the supermarket isle with their shopping trolley and of course continuing to defame Keith.

I have always believed that Keith was a scapegoat in this matter and who better than someone in a psychiatric hospital who can't be questioned and is incapable of defending himself. The withholding of information by the CO lends credibility to this theory. As a civilian I was told that I could not access any information about the initial investigation, nor would the army release information to Keith because he was in psychiatric care. An impossible situation to deal with. I managed to find my way through the system to get a legal officer, believing that in this way I would be able to access information and he would assist me in stopping the intimidation and bullying

tactics that I was being subjected to. My last conversation with him was that the CO was upset about the amount of animosity between us, I hung up on him in total frustration.

My final letters went to the Chief of the ADF. For a man that the Australian public regards as a hero, his comments were to say the least disappointing “.. I am not in a position to make judgements about what is or is not defamatory. Such decisions are the preserve of the judicial system”. With all the resources at his disposal I would have thought it possible for him to find out and let me know the decisions of the judicial system, military or civilian.

Fixing the system

Investigation procedures

- The initial investigation was not thorough enough. A lack of training of the investigators perhaps or a presumption of guilt before innocence.
- Civilian complaints through the Minister or complaints to the Defence Force Ombudsman should be handled by an investigator appointed from outside the unit, preferably a civilian. It was an absurd situation to have the CO investigating the RSM on behalf of the Minister, when the RSM is the keeper of Service Law and advises the CO in matters relating to Service Law. A well known convention throughout the military and one the Minister should have been aware of.
- Internal unit investigations achieve little where the complaint is against a senior member of the unit. My complaints expanded to include the CO and Chief Clerk in regard to their inappropriate behaviour. It became a farcical situation when the CO was investigating himself and the RSM was calling members to his office to write their statements about his behaviour. Internal unit investigations should be used only when dealing with specific military issues that are not legislated for in civilian law.
- Throughout the four investigations into this matter, no civilian who supplied statements were interviewed by any investigators. I had a conversation with SIB in October 2002 where it was revealed that the CO had withheld information that would have removed all doubt as to his guilt in this matter. An independent investigation may lend credibility and allow for a two way passage of information more readily than the closed door policy of the military justice system.

A change in culture – RSM is not an acronym for God

There is no doubt that the Sgts Mess closed ranks around the RSM, only two brave souls were able to tell the truth, the rest had amnesia!! These are the people that we rely on to defend our way of life, but their fear of reprisal is so great that they forgo

their self respect to defend bullies and the tactics they use. The group that caused my family so much pain, was known around the unit as the 'gang of four'. Three of them have been posted to different units (RSM now blanket folder and CO posting cut short) and one has discharged from the army. Whether my complaints had anything to do with this, I don't know and there in lies the problem. If the ADF will not tolerate inappropriate behaviour then they have to show their members what happens to people who behave in an unacceptable manner. Every bully who is uncovered needs to be exposed not just those in high profile battalions ie 3RAR or ADFA.

In my opinion the Defence Equity Hotline and the Fair Go Hotline have been set up as a public relations exercise, they seem to do very little for members. Keith was told that his statement was the only one they had received (August 2002). Most complaints are anonymous and therefore not acted upon. These hotlines are both controlled by the ADF and if the ADF doesn't want to acknowledge the problem or set up investigations that are credible than nothing will change. The fear of reprisal for speaking out or not being believed is too great.

The military justice system is a relic of past attitudes that in todays world are no longer relevant. I believe that respect is a two way street, and no matter what rank the member holds, each should be treated in a fair and reasonable manner within the military justice system, where intimidation and fear prevail it becomes a bastard of a system.

In closing, I thank you for your efforts to change such a justice system.

Yours faithfully
Jayne Fitzpatrick