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JOINT STANDING COMMITTEE ON FOREIGN AFFAIRS,  
DEFENCE AND TRADE

(DEFENCE SUBCOMMITTEE)

**Reference: Examination of the Defence Annual Report military justice aspects**

FRIDAY, 9 MARCH 2001

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**JOINT COMMITTEE ON FOREIGN AFFAIRS, DEFENCE AND TRADE**

**Defence Subcommittee**

**Friday, 9 March 2001**

**Members:** Senator Ferguson (*Chair*), Senators Bourne, Calvert, Chapman, Cook, Gibbs, Harradine, Hutchins, Sandy Macdonald, O'Brien, Payne and Schacht and Fran Bailey, Mr Baird, Mr Brereton, Mrs Crosio, Mr Laurie Ferguson, Mr Hawker, Mr Hollis, Mr Jull, Mrs De-Anne Kelly, Mr Lieberman, Dr Martin, Mrs Moylan, Mr Nugent, Mr O'Keefe, Mr Price, Mr Prosser, Mr Pyne, Mr Snowdon, Dr Southcott and Mr Andrew Thomson

**Subcommittee members:** Mr Hawker (*Chair*), Mr Price (*Deputy Chair*), Senators Bourne, Calvert, Ferguson, Hutchins, Sandy Macdonald and Schacht and Fran Bailey, Mrs Crosio, Mr Laurie Ferguson, Mr Hollis, Dr Martin, Mr Snowdon, and Dr Southcott

**Senators and members in attendance:** Senators Bourne, Ferguson, Gibbs and Sandy Macdonald and Mrs Crosio, Mr Hawker, Mr Hollis, Mr Price and Mr Snowdon

**Terms of reference for the inquiry:**

That the Defence Subcommittee continue its examination of the Annual Reports of the Department of Defence 1998-99, and when tabled, 1999-00 with specific reference to:

- the conduct of military justice and the alleged events in 3RAR;
- equipment fleet management and life cycle costing of equipment;
- personnel issues including Mutual Obligation Agreements upon both the unemployed and Army recruiting, changes to service conditions and superannuation;
- the use of military exercises as a means of assessing military outputs.

**WITNESSES**

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**Department of Defence .....99**



**Subcommittee met at 8.20 a.m.****VICKRIDGE, Commander Geoffrey Leonard Willot, Royal Australian Naval Reserve, Department of Defence**

**CHAIR**—I declare open this public hearing of the defence subcommittee of the Joint Standing Committee on Foreign Affairs, Defence and Trade. The hearing is the third in a series of hearings examining the annual report of the Department of Defence. This hearing will focus on the issues of equity and justice and with specific reference to alleged incidents of brutality within the third battalion of the Royal Australian Regiment. The aim of today's hearing is to have evidence regarding the adequacy of the Defence Legal Office policy, training and procedures. The manner and timeliness with which Defence dealt with the incidences at 3RAR would suggest that there might be serious inadequacies within the defence legal system and specifically the Defence Legal Office. This may include a failure of policy, procedure, resourcing or training. Today's hearing is to hear evidence regarding the defence legal system. It is designed to enable the committee to determine whether there are shortfalls in that system that may have led to the lengthy delay in the investigation of alleged incidents and whether action is needed to address these issues. If there is a requirement for a discussion to be held in camera, I will announce this and we will ask the press and public to leave the room quickly and quietly. On behalf of the subcommittee, I welcome Commander Geoff Vickridge of the Royal Australian Naval Reserve and head of the Navy legal panel at Perth.

I must advise you that proceedings here today are legal proceedings of the parliament and warrant the same respect which proceedings in the respective houses of parliament demand. Although the subcommittee does not require you to give evidence on oath, you should be aware that this does not alter the importance of the occasion. The deliberate misleading of the subcommittee may be regarded as contempt of parliament. The subcommittee prefers that all evidence is given in public, but should you at any stage wish to give evidence in private you may ask to do so and the subcommittee will give consideration to your request. If it becomes necessary to discuss any specific cases subject to investigation or legal proceedings, we will adjourn and take the evidence in camera. The subcommittee appreciates the time you have set aside to discuss the inquiry topic. Would you like to make a short opening statement before we proceed to questions?

**Cmdr Vickridge**—Thank you, Mr Chairman and members of the subcommittee, for starting so early to hear my oral submission. By way of introduction, I joined the permanent Navy in 1958 and served as a sailor for six years and an officer for 10 years. In that time I served with a total of four navies as well as the RAAF. I transferred to the reserves in 1974 to pursue a legal career and was admitted in 1982. Since that time I have practised as criminal counsel. It is a rare day that I do not appear in court. By way of background I had a look and I have undertaken around 700 trials in the past 18 years. I have served as a member of the WA naval reserve legal panel since 1984, both as a prosecutor and as defence counsel, as investigating officer on boards of inquiry as well as relieving officers in the DLO and at Stirling. In recent years I have spent up to six months of the year in uniform and I was counsel assisting the *Westralia* board of inquiry. As well I was tasked to analyse the Abadee report.

The problems in the area of military discipline are why I am here. I must place a caveat in respect of any of the permanent ADF lawyers that I mention because I have no personal problems with any of them. It is the system that put them there. Frankly, I find them ineffectual

and inexperienced, and that is where it all starts. It really starts, I suppose, with recruiting, which is done without having a legal practitioner on the selection board. We have been trying to push this for some time—when I say ‘we’ that is the heads of panel, all of whom are reserves around Australia in the six states and the ACT.

Non-legal practitioners select lawyers. It just does not make any sense particularly as they go around to each of the capitals. I am in Perth. I know most of the lawyers in Perth and, if I do not know them, I know whom to ask about certain people joining. The upshot of it is, in many instances, that frankly we recruit the wrong people because the Navy in particular—that is really all I can speak for—recruit them as naval officers first and then they are lawyers second. I will leave it at that. The answer is simple, of course, and that is to have RAN or preferably RANR lawyers from that city sitting on the selection board.

Turning to the second area of military lawyers that needs attention, and that is the lack of specialisation. For instance, I have been a legal practitioner for 18 years. I have never been into the family court and I know nothing about tax law. I have specialised and I specialised fairly early. Usually you have one or two years in general practice and then you start to specialise. For the most part, what happens in the naval legal system is that people come into it and they are expected to cover the three major areas: operations and international law, military discipline and military administrative law. No civilian employer would expect any lawyer to embark on a career that mixes three major areas of law, but we do.

Another matter that I understand the committee has been appraised of is the problem of senior officers who are junior lawyers. I would like to cover that in a bit more detail. The situation comes about in two ways. The first is that a serving officer gains a law degree and is admitted as a practitioner. The Navy, unfortunately, has little regard for the experience as a lawyer and concentrates on the person’s experience as a naval officer. It reverts to this Holy Grail which is that you are a naval officer first and then whatever else you are. The previous Director General, for instance, came into law relatively late in his naval career. Prior to his appointment as the senior ADF lawyer, to the best of my knowledge, he had had one legal job before he became the senior ADF lawyer and that legal job was largely administrative as the Director of Naval Legal Services. He is a friend of mine and again I do not cast aspersions at the individuals. It is the system that allowed somebody to become the senior ADF lawyer with such little experience. I am not suggesting, for instance, that he made any errors of judgment or anything like that. It is just the fact that he really had had only one legal job.

The most difficult and legally challenging position in the Navy is the Fleet Legal Officer who is the adviser to the Maritime Commander. The present incumbent was admitted as a lawyer as a very senior lieutenant commander, and he had one legal job before he became the Fleet Legal Officer. Again, he is an outstanding fellow and a lovely man but he has so little legal experience. His primary role is to advise the Maritime Commander on legal issues. So not only do these people lack the experience to cope with many of the situations but also they fill billets which places them in a situation where they command military lawyers with substantially more experience than their superior officers. It does not take much to guess what the effect on morale is to the more junior officers but more experienced lawyers. These senior officers also, of course, block promotion; they are taking billets which some of the bright young things would expect to move into. These junior officers are people who commenced a legal career at a fairly early age. Normally they are admitted at around the age of 23 years. Some of them join the

services straight away but some have civilian experience. Such a situation, of course, just does not happen in civilian firms and would not happen.

An example of the sort of thing that happens is that the former Fleet Legal Officer, for instance, could not see what was wrong with court martialling a man who had not even been charged. It is against the provisions of the Defence Force Discipline Act apart from common sense and really it was only my threat of going to get an injunction from the Federal Court and the opinion of a QC that stopped it. The legal branch is unique in that it will accept officers from any other branch provided that they have a law degree. I understand the Air Force does not tolerate that situation. It is a problem.

Next aspect concerns senior officers who serve periods of time out of branch. This is on a similar basis. I ask the question: what legal firm would allow a junior solicitor to work in a non-legal job for a substantial number of years and then after that period appoint that person as head of one of the three departments in the firm? We did and, in fact, I understand that the particular person was out of branch for nearly 10 years. You just do not do that. What legal firm would take a lawyer and for at least four years assign him to non-legal duties and then appoint him as the senior lawyer in the firm? We have done that, and that is the present incumbent. Again, I have no axe to grind with Commodore Smith, absolutely not, but for at least four years he has not been practising as a lawyer. What you are finding is these huge gaps, and they are substantial gaps. As far as I know, all heads of panel—again, I only speak for them but there are many in their panels—have been engaged continuously in their legal career since the age of 23, since the time they were admitted. Captain Callaghan, for instance, has over 36 years of experience as a lawyer; Commander Dixon in Tasmania around 30 years; Captain Hume, over 30 years. I am the ‘Johnny come lately’ with 18 because I was in the permanent Navy for 16 years. Continuity of career is important in civilian firms. Why not in the service? It just does not make sense.

Turning now to military discipline specifically. I query the competency of permanent lawyers to deal with military discipline—not their competency to deal with operational and international law or with military administration law. It is purely the military discipline law.

**CHAIR**—Can you just clarify that: you are saying that in other areas they are okay?

**Cmdr Vickridge**—I do not make comment in other areas; I do not feel qualified to do so; but I can certainly say it in the area of discipline law. I still remember being disciplined myself as a young sailor in the Navy. I have had a bit of experience there too.

**Mr PRICE**—Not sufficiently.

**Cmdr Vickridge**—Probably not. Until about 1996, the only input that permanent lawyers in the Navy had in military discipline was of an administrative nature only. They did not prosecute and they did not defend. Frankly, everything ran fairly smoothly. I do not recall any great problems that we had because we were used to dealing—I can prosecute one day and I can defend the next. I do not have a problem with that. I suppose it is a collegiate atmosphere because we are spread out all over Australia. But I dealt with people from the Sydney bar and the Melbourne bar where there is a separation between barristers and solicitors, but generally

we were all counsel and things, I thought, ran fairly smoothly. It is since their greater involvement and participation that I think problems have occurred.

I understand the argument that was put to the Defence Force Remuneration Tribunal was that permanent lawyers would take over prosecutions and this would make the specialist pay that they were seeking revenue neutral. This was the genesis of the prosecution cell. First, it is headed by a man who has been out of branch for two years—same problem again. He has been a logistics officer for two years in a guided missile frigate. He has little, if any, trial experience, yet he is the senior ADF prosecutor. Again, I have known Commander Richard Hawke for many years and I have no personal axe to grind with him. It is the system that has put him in that situation. I understand that his three staff members have as little trial experience as their leader. Even worse, the prosecution cell does not have a mentor to learn from. There is no apprenticeship; there is no pupillage—however you want to characterise it.

Last year I defended in a magistrates hearing and a permanent lawyer prosecuted. It was his second trial and the first one he had done was three years prior to that. He probably has not done one since. I do not understand why we are putting people in this sort of situation. Again, I have known Lieutenant Commander Burnett for many years. He is a lovely fellow and very competent I am sure in other areas but he just does not have trial experience. Just by way of example and I think my statistics are correct, we average about 105 trials a year. That means you are going to have about 26 trials per year per prosecutor or about half the number undertaken by the average civilian lawyer. I would average around four or five trials a month, depending on the length of the trial, and it is a rare day that I am not in court making submissions of some kind—it may not be a trial. So I have the experience even other than trials; I am always appearing in criminal trials. I have had to put off—sorry, I do not mean to sound ungrateful—matters for today until next week. Frankly, many of the permanent lawyers do not have the experience either to effectively use the Defence Force Discipline Act. They do not even know their own act because they are not using it every day. I have a copy of the Criminal Code of Western Australia that is with me all day every day. The Sentencing Act, Misuse of Drugs Act, Road Traffic Act—all these things I am in and out of every single day. It is not the case with permanent lawyers and the Defence Force Discipline Act.

I read the director-general's opening statement last Friday and I am concerned that, once again, the apparent quick fix is to send somebody overseas. That is nonsense frankly. The idea I understand is to look at other military discipline systems. This is on top of the Burchett military audit and numerous investigations and surveys undertaken over recent years. All we seem to be doing is filling out surveys. Frankly, it has got to the point where I throw them in the bin now because nothing ever seems to happen or change anyway.

I would challenge the DLO to point out any changes arising out of overseas travel and the like. We have expertise here in Australia. Heads of panel have been making recommendations through the heads of panel meetings that we have had. I have looked back on the minutes for the last two, and nothing that we have recommended and that has been apparently accepted by the permanent lawyers present at the time—it has not always been the current incumbents—has changed, absolutely nothing. Yet they have said, 'Yes, good idea. We will implement it.' It has got to the point of total frustration, as I will read shortly.



I believe that two or more of the experienced heads of panel who are familiar with the Navy and familiar with the legal system in Australia would be in a far better position to assist the director-general implement a military discipline system which runs a lot more smoothly. Two areas are evident. The first is to remove permanent lawyers from military discipline other than for administration; in other words, the pre 1996 situation—it was around about that time. Secondly, the implementation of a military director of prosecutions along the same lines as the Judge Advocate General and the DJAGs, one for each of the three services. Lastly, I believe the committee should be aware that most reserve lawyers refer to the DLO as the sheltered workshop in terms of military discipline in any event. I am sad to say that the regard that the reserve lawyers generally have—I do not speak for all of them clearly but certainly the heads of panel—is nothing sort of scandalous. I will read, if I may, an email dated 1 March. For obvious reasons I will not reveal the author, but a very senior man who is writing to another head of panel:

I understand and share your concern. The essential problem is that there are 300 ADF lawyers, 200 of whom are reservists and on the whole outstanding lawyers. But the ADF legal system is administered by the 100 permanent lawyers who are, on the whole, incompetent at even administration, let alone law. I despair quite frankly. Any initiative we take gets stifled at DLO. Even to communicate with them, despite email, is a nightmare. Heads of panel should get together as soon as possible.

He would probably be horrified if he knew that I was reading this into the transcript. I have hopefully been selective so that nobody can determine who he is. I have a great admiration for this man and this was his view on 1 March on another matter entirely. He certainly did not realise it was going to end up here.

That is generally an overview of where I am coming from. The military discipline system can be fixed. Please no more surveys; please no more overseas travel; please no more Canadians who came in here for two years. I believe there was a survey on the Defence Legal Office, which has got 35 lawyers. Why would you need a survey for 35 lawyers? I function in an area where there are 65 practitioners. There are mistakes made—I do not for one minute suggest that it is a perfect system—but we do not seem to make the horrendous mistakes that are made within military discipline. Largely, I believe it stems from just purely and simply the inexperience—and they never will get the experience. The prosecution cell has to be stopped. I foresee that as being a great problem in years to come. I retire next year, so it is not something I am going to have to deal with—hopefully not in the interim but certainly not in the long run. I just cannot see it working at all.

From my experience, I think the DLO has been responsible for what happened with 3RAR. Some of the things are just dreadful. I will just touch on them briefly and then stop. I went with Major Russell Pearce who is a reserve Army fellow from Brisbane. He is in the Criminal Justice Commission. Unfortunately, he has not able to get away from Penang to come here, which I am sad about because I would have liked him to have given you evidence from a different perspective. We each had a client. They were co-accused, Major Pearce's man and mine. We went to Victoria Barracks in July last year and I said to the prosecutor—

**Mr PRICE**—Is this 3RAR we are talking about?

**Cmdr Vickridge**—Yes, this is 3RAR specifically now. There are two items that I will touch on and then I will stop. I said to the prosecutor that we will plead not guilty to aiding and

abetting because there is no evidence and we will plead guilty to a simple assault, not assault occasioning bodily harm because there was no evidence of bodily harm. We started on the Monday morning. I expected to catch the 10 past seven flight home that night, because we would make the submission to the Defence Force Magistrate and that would be the end of it. Legal argument went on for a week, because the prosecutor said that lately he was being lent on by DLO to make sure that these matters went ahead. This was the intervention—I should say inadvertent.

**CHAIR**—We are not going to get into matters of prejudice?

**Cmdr Vickridge**—No, the trial is over.

**CHAIR**—Okay, thanks.

**Cmdr Vickridge**—This was the one where General Cosgrove sent the letter to the CO saying, ‘You will not deal with it.’ In fairness to General Cosgrove, I have to say he was given bad legal advice by a permanent legal officer—Army, I am pleased to say, this time not Navy. That was a week of legal argument and then it was sent back for rehearing. That was July.

Justice in my view demands that something be done fairly swiftly. It was not. The co-accused were split. The DLO appointed a Queen’s Counsel to go to the commander officer’s table. It is very rare that you even get lawyers to go to the commanding officers table. It is quick and dirty justice; it is summary justice; it is the CO’s table. They are matters such as the fellow whose uniform is dirty or he is two hours late back from leave—those sorts of fairly simple matters that you would expect to be dealt with by the CO. To have a QC there, who apparently walked in with a trolley full of books, is absolutely ludicrous. Who was responsible for sending a QC there? Clearly, it was get a prosecution at any cost.

Fortunately, I am pleased to say, Major Pearce defended the submissions and went on to succeed, and the fellows’ charges were dismissed. Why split us in the first place? We did have co-accused. I went back in December to Holsworthy, and the prosecutor said that he could not get any clear direction from the DLO. He said, ‘would your fellow plead guilty if we drop the aid and abet and we drop the bodily harm and plead a simple assault,’ which is what we had been saying back in July. That is exactly what happened, and I think the matter was all over and done with and done with in about an hour and a half. That just gives you some idea and some background for my submission. I do not have anything further to say.

**CHAIR**—Thank you, commander. That is fairly comprehensive. You mentioned I think 200 out of the 300—

**Cmdr Vickridge**—I am not sure that figure is accurate. I read from the email that it was 200 out of the 300. Frankly, I have no idea how many reserve lawyers we have in the ADF or how many permanent lawyers. I do not know the numbers.

**CHAIR**—Would one way of directing some of your concerns be that reservists take over all the legal office responsibilities?

**Cmdr Vickridge**—No, Mr Chairman. I have to say that I think that the majority of reserve legal officers do not have the experience in operational and international law, nor would you expect them to because it is largely a military hands-on type of law.

**CHAIR**—Coming back to your comments about the fleet legal officer and the lack of legal experience, how much experience would they need in other areas to take on that position?

**Cmdr Vickridge**—They would certainly need to be skilled in operations and international law if they are advising the Maritime Commander. Again, it is not an area of my expertise at all. I am loathe to speak about it, but my understanding is certainly there would be that, military administration law to a lesser extent and the military discipline law could be handed over. I do not see a problem with that at all.

**Mrs CROSIO**—Where are you going to get that experience?

**Cmdr Vickridge**—Which sort of experience?

**Mrs CROSIO**—Just having the ability, following through the question.

**Cmdr Vickridge**—Experience in operation and international law, they can only get that by going to specific billets. For instance, I gained an enormous amount of experience with one board of inquiry—it was *Westralia*—because it went for four months.

**Mrs CROSIO**—But you are almost saying they have to get the experience first and then come in; we cannot take them in if they do not have the experience; so it is—

**Cmdr Vickridge**—I would not want to take anybody into the military that had just graduated. They are not going to get the experience in military discipline within the military. Perhaps with ops and international law if that is what they are slated for, then it is an on-the-job training and a lot of it is of necessity. You can have as many courts as you like, and then you get East Timor and all of a sudden people get a lot of experience in ops and international law. Military administrative law is really almost a backwater. You pick that up from just time in the job. I would simply say that, with military discipline, you really need people who have the experience. I know, for instance, that one naval officer was sent off to the bar in Sydney to do a year's reading with a barrister there. That is not the answer. As it turned out, he resigned after he had had his year's pupillage in any event and we lost him.

**Mrs CROSIO**—He probably got a better job.

**Cmdr Vickridge**—He got a better job, and that has happened on numerous occasions when we have sent people off on extended courses or for extensive periods to gain experience.

**Mrs CROSIO**—Sorry, Mr Chairman, can I just ask this one question. Listening to what you had to say here before us, if we had some magic wand and we said that we are going to appoint you as a benevolent dictator for 12 months, what would you do as the first step to rectifying some of the concerns you have expressed here this morning?

**Cmdr Vickridge**—I would stop the people coming in as senior officers. I think there has to be cut-off in rank somewhere along the line. I certainly would not bring in a commander who has just got a law degree. A lot of it is because they have come to Canberra where they can go to the ANU. I certainly would not bring in senior officers. I think if you made it at the lieutenant level there can be a change of branch but after that forget it. So there is one area that you can stop straight away.

The second area I suppose is the recruiting. We really need to be more selective in our recruiting. The only way you are going to do that is to have some naval lawyer, whether permanent or reserve, on the selection panel.

**CHAIR**—How many on these panels?

**Cmdr Vickridge**—There are usually three: a psychologist, a senior officer who is president of the panel and then there is one other. The president is usually a commander or a captain, and the one other is usually of lieutenant commander rank or that sort of thing.

**Mrs CROSIO**—To get that level of a panel, what have they gone through up to then?

**Cmdr Vickridge**—The panel or the people?

**Mrs CROSIO**—No, the people to get to the level where the panel is actually sitting down to talk to them.

**Cmdr Vickridge**—They have filled out various forms, certainly the medical is always done beforehand and they undergo a series of psychological tests. If all that measures up then they are put before the panel. I keep coming back to military discipline. I cannot talk about the other areas because I am just not experienced enough in them. I have a general knowledge of them and I have sat in as the deputy director of military admin law for a period. I do not know I was any the wiser after a month sitting in there relieving somebody. It is the military administration. I do not think you need experienced criminal lawyers in there who are used to dealing with trials, who are used to dealing with charges and who are used to dealing with legislation every day of a similar ilk, whether it be the Criminal Code of Western Australia or the Victorian Crimes Act. It does not matter what it is. If you are going to put somebody in the area of criminal law or military discipline, then I do not think you recruit people at age 23. I think you recruit later on.

**Mrs CROSIO**—Apart from changing the composition of the panel, would you suggest a better calibre of applicant and how do we do that? Do you feel there is perhaps not enough being offered to get the talent?

**Cmdr Vickridge**—Curiously, we have some exceedingly good young people in. I can think of several. We have been very lucky to get them in the Navy. I just hope we keep them in the Navy. That is going to be the big problem. But, again, one of the people I can think of has gone to the prosecution cell. He is an outstanding ops and international lawyer. Why are we putting him in the prosecution cell? Again, this is lack of specialisation. It is a meshed problem. It is difficult to just pull out one bit and deal with it in isolation. I do not know whether I have answered your question or not.

**Mrs CROSIO**—It has probably posed another five.

**CHAIR**—Commander, you are talking about the need for the experience and the specialisation, but is there not a risk that if you become so specialised in this area it may be that legally everything will be right but it may have a detrimental effect to other aspects of the defence forces?

**Cmdr Vickridge**—I do not think so because you pick up—I had my experience with the RAN quite separately and then became a lawyer. For instance, I look at Captain Callaghan who has specialised but who curiously enough is a trial lawyer. I suppose I have emphasised a criminal trial lawyer; I should not do that. It really is as a trial lawyer, as counsel. Captain Callaghan has not practised in criminal law but, by the same token, he has practised as a barrister for 30-odd years.

**CHAIR**—You are saying that people are being moved across at a higher rank late in life; you are saying you had your experience in Navy—I do not know what rank you had started—

**Cmdr Vickridge**—Lieutenant.

**CHAIR**—Are you saying it is the person coming in at too high a rank that is the problem? I am just trying to get the feel of what you are saying.

**Cmdr Vickridge**—If I could use the example of Commodore Earley, and again I stress he is a very intelligent man and very competent naval officer. He has since retired although I understand he is now the—

**CHAIR**—He is working for Burchett.

**Cmdr Vickridge**—Yes. If I remember correctly, he became a lawyer at the rank of captain. What do you do with somebody who is a captain?

**Mr PRICE**—Captain in the Navy.

**Cmdr Vickridge**—Sorry, yes, colonel equivalent. I think I am correct in saying this about Commodore Earley but he became the Director of Naval Legal Services— this was before we had the DLO. That was his first legal position. Then he went away and did two or three other jobs and came back as the DG of the DLO. He is the senior ADF lawyer and his only experience really to that stage had been in a largely administrative position. That is the difficulty.

**CHAIR**—But he must have been fairly competent to get to the rank of captain—not as a lawyer but in other?

**Cmdr Vickridge**—That is the difficulty. The assessment is as a naval officer and not as a naval lawyer.

**Mrs CROSIO**—How would you take that situation and get him the experience? He has reached captain and he has then qualified in law. Where do you pluck him from and take him to?

**Cmdr Vickridge**—I just do not think you bring people in at that rank into the legal system. He would probably have been in his early 40s when he was admitted as a lawyer. There is nothing wrong with that if all you are going to be is a lawyer and you get your experience as a lawyer, but he did not. He was sent off to non-branch jobs.

**CHAIR**—Are you then saying that he has to forfeit his rank?

**Cmdr Vickridge**—I simply say the Air Force does not do it at all and maybe the Navy should be looking at it. They are the problems that we have. You have legally inexperienced people in senior positions.

**Mr PRICE**—I have a couple of questions, if I could. The prosecution cell, I have forgotten the maths of it, how many lawyers do we have in it? We have 200 permanent lawyers—

**Cmdr Vickridge**—Look—

**Mr PRICE**—Anyway choose a figure. How big would the prosecution cell be?

**Cmdr Vickridge**—There are only four.

**Mr PRICE**—As I understand it, you transit through the cell. So if you are there for two years—

**Cmdr Vickridge**—For two years and then you are out.

**Mr PRICE**—So in a sense you are denying experience of the limited trial pool to a whole raft of other people in there. There is a question I suppose about whether the four gives you enough experience to then base a whole career on it—does it?

**Cmdr Vickridge**—No. If you do it on average, that means in two years they will have conducted 50 trials.

**Mr PRICE**—And then incrementally the trials they are likely to do for the rest of their career are very few?

**Cmdr Vickridge**—If any. I was saying to somebody when I came in this morning that I did not feel as though I was competent—maybe it is because I am slow—as a legal practitioner until I had had five years experience and in that time I had probably undertaken 200-odd trials.

**Mr PRICE**—Just a couple of other bits of your evidence: you mentioned Commodore Earley who we now all know as working with the Burchett audit. If the Defence Legal Office appears to be a problem, it just seems to me there is a bit of difficulty for Burchett, is there not, with

Commodore Earley being on the team and being in command probably—not probably, this is hypothetical, I want to stress to you.

**CHAIR**—We do not want to hop into people individually.

**Mr PRICE**—I am trying to hop into a character. Commander, let me put it in words of simple English. I believe there is a problem with the Defence Legal Office and I speak for myself only. But I am just saying it does seem to me to create a bit of difficulty for Mr Burchett in the audit.

**Cmdr Vickridge**—Given that as I understood the problems occurred during—I stress again that I have been a friend of Commodore Earley and his wife and I hope I still am. Our wives share a common name and also he is a Geoffrey and I am a Geoffrey—both spelt the same way. We have known each other for a long time. But I could not understand why, if the problems occurred during his tenure as DG, he is assisting Burchett for a military audit? I would have thought that there was a conflict there but I would not want to get into that area. That is a private opinion that is now made public.

**Mr PRICE**—We will drop that.

**CHAIR**—Now on the public record.

**Cmdr Vickridge**—Yes.

**Mr PRICE**—Commodore Smith indicated that there was this review of the ADF legal system and you referred to his opening remarks made to the committee. Am I right in thinking it appears to be a sort of own motion review with no terms of reference and no deadlines; is that correct?

**Cmdr Vickridge**—I do not know. I am not privy to that. The first time I was aware that it was being contemplated that DDL go overseas and have a look at other systems was two days ago when I happened to receive from Commodore Smith a copy of his opening statement and I just shook my head. I have seen it happen so often. Bearing in mind that the present incumbents are only going to be there for a limited time, they go and get this experience of other areas and then retire or get posted out of the position, and that is the last we ever hear of it. Because of the short-term nature of their tenure—and that also is a problem—we generally do not get the benefit of those surveys, reviews, reports, audits, overseas trips, et cetera.

**Mr PRICE**—At the last hearing we were advised that there has been a new change, which is that the military police are now under a unified command and in one battalion. Personally I think it looks to be a very worthwhile change. What is the command structure for naval police; is that a unified command?

**Cmdr Vickridge**—No. You can distinguish, if you like, between naval police coxswains and naval police coxswains who are investigators, and probably those who are qualified as investigators are as near to the Army MPs as you can get. But naval police coxswains for instance go to sea and they are always recognised as the senior sailor on board a ship. Their duties also include the numbers on board for victualling purposes and a whole raft of duties.

They steer the ship when it goes in and out of harbour and at action stations they will be on the wheel. So they are quite separate and different altogether from the MPs.

**Mr PRICE**—They have a different role. What is the structure for the service police in the RAAF? They do not steer the planes, do they?

**Cmdr Vickridge**—No. I am going back a long way, but there used to be service police and I understood they were much more akin to the military police. But, again, I do not profess to know a lot about them.

**Mr PRICE**—You served periods of part time and now reserve service in the Navy but surely—I am not reflecting on you, commander—you might have been due for a promotion?

**Cmdr Vickridge**—I do not know that I want to raise that. I should have been promoted on 1 July last year, but that is an entirely separate matter. I do not think I want to go into that—it has nothing to do with the DLO.

**CHAIR**—Commander, I have a question. If you take the situation of, say, the fleet legal officer where you really have to have knowledge in both operations law and in military discipline, how are going to get the experience in both those ways if you go down the path you are suggesting?

**Cmdr Vickridge**—You come in as a lieutenant, for a start. You might get a posting as the assistant fleet legal officer for a start so at least you get a taste of what is going on. You might get a posting to what used to be DOIL—I do not know what the nomenclature is now—which is the Directorate of Operations and International Law here at the DLO, so you might spend a couple of years there. You go through and you build up your experience over a period of time.

If I could put it this way, we do not send seamen officers to sea when they join the Navy at whatever rank and we do not make them commanding officers of ships straight away. We send them on a series of postings that allows them to build up their experience. I fail to see why fleet legal officers should not do the same. There are junior officers' billets along the way. It might include, for instance, an overseas posting somewhere along the line. They gradually build up the experience to the point where they have built up the operations and international law experience. As I said, military administration law is a bit of a backwater there. But, on the discipline side, they don't need to be concerned with it other than from an administrative point of view. So it is primarily the ops and international law.

**CHAIR**—But they still have to have some fairly close knowledge of it, would they not?

**Cmdr Vickridge**—Not really because it is the administrative side. It is the setting up of a court martial. You do not need to know discipline law as such if you are in that position. The first court martial I ever did in 1984 was when a ship ran aground, and the fleet legal officer came over to ensure that the administration of the court martial was going to run smoothly. I prosecuted. He played no part in either the prosecution or defence. In fact, he was very neutral and he certainly required us—I say 'us' meaning defence and myself—to give him a bit of an overview on what was happening so that he could report back to the admiral. But he played no part in the actual court martial itself.



**CHAIR**—Are you saying he was competent enough to be able to handle his role?

**Cmdr Vickridge**—Absolutely.

**CHAIR**—If that is the case, you were critical of the fleet legal officer—I do not know whether it was the current one or a recent one.

**Cmdr Vickridge**—I am not critical of the fleet legal officer; I am critical of the system that has put him there with such little experience. I take no umbrage against any of the incumbents.

**Mrs CROSIO**—But, Commander, what you have been telling us is a chicken and the egg situation, what is going to come first? Do we train them in law and then put them in to get experience in the services; or do we train them in the services and take them out and get them experienced in law; and how do we combine both well?

**Cmdr Vickridge**—I think you have to go back and say, ‘what area of law?’ Ops and international law you will only get within the service and you bring them as young practitioners and put them in suitable billets and they will gain that experience.

**Mrs CROSIO**—So should we then change the select board—instead of having three members—and say, ‘This is the criteria which we want you to be directed to’?

**Cmdr Vickridge**—That then goes on into the area of specialisation and what I am saying with military discipline. I think you have to separate the two. You have to look at military discipline in an entirely different fashion. The difficulty is that we have a Defence Force Discipline Act and we have a system that requires justice of the highest order. I am not suggesting that we do not with ops and international law but again I cannot speak with expertise on that. But if parliament demands that you have this judicial system which is of the highest order, then you are going to need practitioners who are of the highest order. You are not going to get that within the military because they just cannot get the experience. They cannot get the experience full stop in the military to be adequate prosecutors and defence counsel.

**Mrs CROSIO**—Are you suggesting then that perhaps reserve lawyers should be used more?

**Cmdr Vickridge**—Sorry, I am not aware whether you were in right at the start but I said that pre-1996 that is exactly what happened and we did not seem to have the problems that we have today.

**Mrs CROSIO**—Just following on a couple of other points and then I will finish, Mr Chairman. What areas of training do you believe the DLO should be considering for permanent legal officers then? I am just trying to get it all together.

**Cmdr Vickridge**—If they concentrated on those two areas, which is ops and international law—as I understand the situation, they do exceedingly well at ops and international law, and I think Timor has shown that—and military admin law because it is the type of law that they can get experience in every day. It is military discipline that they cannot because there are not enough trials. There is not enough exposure to the system. That is why I am differentiating and that is why I am cutting out military discipline as a separate area altogether.

**Mrs CROSIO**—Thank you.

**Mr PRICE**—Can I just make the point that those people with that lack of experience of trials are the ones that presumably are supposed to be sending out directives about how to handle matters and what should and should not be done; am I correct in that?

**Cmdr Vickridge**—They cannot send them out or, if they do, it is sometimes the wrong advice.

**Mr PRICE**—Just looking at the director of military prosecutions, in your opening statement I think you were making the point that that should not be a permanent officer and should be a totally independent office like the Judge Advocate General. Is that correct?

**Cmdr Vickridge**—Absolutely. Because, again, if you have a permanent officer you have to change his postings for his career. Therefore, he is in the change of chain of command. Reserves tend not to be to the same degree.

**Mr SNOWDON**—I am sorry I was late. Can I just ask a couple of questions and then I would like leave to table a letter that I received from Jack Rush. The purpose of this letter from Jack to me is to outline a couple of processes, one of which you were involved in defending Private O'Hallaran—

**Cmdr Vickridge**—I was Lusk but Pearce was defending O'Hallaran, yes.

**Mr SNOWDON**—The question of the Defence Force Magistrate making a decision which was then determined a nullity by subsequent—

**Cmdr Vickridge**—That is correct.

**Mr SNOWDON**—This letter just outlines that process. Jack Rush says that it is his view that the defence force legal office were exemplary in their work dealing with the 3RAR.

**Cmdr Vickridge**—I do not know how Jack comes to that conclusion given that he made one appearance before the Commanding Officer of 3RAR.

**Mr PRICE**—He was the QC.

**Cmdr Vickridge**—He was the QC and he was under the direction of the Defence Legal Office. Pearce and I were totally independent of that.

**Mr SNOWDON**—He is not a reserve officer, is he?

**Cmdr Vickridge**—He is a reserve officer; he is a lieutenant commander. I do not know that he has done a lot of work with the Navy. In fact, that was the first time I had heard his name as being in the naval reserve. I know most of the members who have appeared regularly over a number of years.

**Mr SNOWDON**—But he is a QC with 23 years in his practice.

**Cmdr Vickridge**—Look, I do not for one minute suggest that he is not a better legal practitioner than I am. There are many; they abound. But I do not think he has a lot of experience with the service and I do not think he knows—he has not gone and sat in the DLO and worked in there. I had certainly never heard of him before. He is on Captain Teasdale's panel and I think he is one of those who are brought in from time to time. But he only appeared before the CO with Major Pearce and he appeared as the prosecutor. But I simply go back and say, 'why would you use a QC at the CO's table?'

**Mr SNOWDON**—Thank you. I seek leave to table a letter from Jack Rush QC.

**CHAIR**—I think we will have that as an exhibit.

Resolved (on motion by **Mr Snowdon**, seconded by **Senator Ferguson**):

That the letter from Mr Rush QC be incorporated into the Defence Subcommittee's records as an exhibit to its examination of the defence annual report, military justice reports.

**CHAIR**—There being no further questions, Commander Vickridge, I thank you very much for your attendance today and for coming all this way. If there are any matters that we might need additional information on, the secretary will write to you. You will be sent a copy of the transcript of your evidence and you can make any corrections of grammar and fact. Again, thank you very much for coming all this way and for giving us benefit of your experience.

**Cmdr Vickridge**—Thank you, sir.

Resolved (on motion by **Mr Price**, seconded by **Senator Bourne**):

That this committee authorises publication of the proof transcript of the evidence given before it at public hearing this day.

**Subcommittee adjourned at 9.15 a.m.**