

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

**SUBMISSION COVER SHEET**

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**Inquiry Title:** Effectiveness of Australia's Military Justice System

**Submission No:** P60

**Date Received:** 17 June

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16 June 2004

The Secretary  
Effectiveness of Australia's Military Justice System - References Committee  
Senate Standing Committee on Foreign Affairs, Defence and Trade  
Parliament House  
**CANBERRA ACT 2600**

by email: Email: [fadt.sen@aph.gov.au](mailto:fadt.sen@aph.gov.au)

1. My name is Peter Benson. I am a civilian legal officer in the Directorate of Administrative Law in The Defence Legal Service. I make this private submission to correct errors and misleading statements in the evidence of LTCOL G. Clark to the Committee on 9 June 2004.

2. First, I will address the following extract<sup>1</sup> from the evidence of LTCOL Clark, in which every statement, except the fact that I exist, is incorrect:

There is a Mr Benson – I have never met him; I have spoken to him once or twice on the phone – who appointed his next-door neighbour to sit on the Big Wall board of inquiry.

3. I have never appointed anyone to a Board of Inquiry. CDRE Heron has never been my next-door neighbour. I have never spoken to LTCOL Clark on the telephone, although I have spent several (clearly less than memorable) extended periods of time in his company on social occasions at the home of mutual friends.

4. LTCOL Clark claims to have a knowledge of the *Defence (Inquiry) Regulations 1985*, under which Boards of Inquiry are appointed. He therefore knows, or ought to know, that Boards of Inquiry can only be appointed by the Chief of the Defence Force (sometimes in conjunction with the Secretary) or one of the Service Chiefs (Chief of Navy, Chief of Army, or Chief of Air Force), or their delegate<sup>2</sup>. This function cannot be delegated to a civilian<sup>3</sup>. His thinking that I, a civilian legal officer, might be able to appoint someone to a Board of Inquiry, is fundamentally misconceived. CDRE Heron was, in fact, appointed first by the Deputy Chief of Army, and subsequently re-appointed by the Chief of Army.

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<sup>1</sup> Senate Foreign Affairs, Defence and Trade References Committee Effectiveness of Australia's Military Justice System transcript 9 Jun 04 ('Transcript') p 85

<sup>2</sup> Defence (Inquiry) Regulations 1985 Reg 23(1)

<sup>3</sup> *ibid* Reg 24

7. LTCOL Clark was and is aware of the background of CDRE Heron. He was present at one of the early hearing days when CDRE Heron made this statement<sup>4</sup>:

CDRE HERON: ... I too raised the matter of specialist expertise in rock climbing, mountain climbing, with the officer<sup>5</sup> I spoke to who asked me if I was interested in doing this job and being a member of this Board of Inquiry and I made it quite plain that I had absolutely none and we discussed the other aspects of qualification to be a member of a Board of Inquiry such as this, the broader military background, the relevant management experience, and command experience at a more junior level in the Navy and then at a senior level in staff appointments. I am no stranger to risk management situations where there is a high level of risk. I was a Naval aviator who held positions right up to and including the Director of Naval Aviation Policy.

In my retirement I have done a number of missions with humanitarian aid organisations in some very interesting parts of the world<sup>6</sup> and physical risk management has been a very important part of my related tasks. So against that background I think I do bring a relevant expertise to this Board but I do not, as you suggested, and I confirm, I do not have the specialist expertise in the environment that was the background to this accident

LTCOL CLARK: Sir, thank you for that.

9. At the time that the BIG WALL BOI was being set up, I was contacted by an officer from the Office of the Chief of Army, who informed me that they were having great difficulty in identifying suitable persons for appointment to the Board. They had approached many people, none of whom had been available within an acceptable timeframe for service of the anticipated length. I had worked in the administrative law area of TDLS for some years, and they believed that I might know of someone who would be suitable and willing to serve. I think I suggested three or four people, the last of whom was CDRE Heron. I was not involved in his appointment at all, except that I may have drafted or settled the actual instruments of appointment. I was involved in the drafting of many documents relating to the BIG WALL inquiries, and I do not remember whether I had anything to do with these specific ones.

**PETER BENSON**

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<sup>4</sup> BIG WALL BOI transcript 29 Jul 02 p 48

<sup>5</sup> from the Office of the Chief of Army, I believe

<sup>6</sup> including, I believe, Kampuchea, Rwanda, the former Republic of Jugoslavija, and Tajikistan