



Australian Government

Defence Honours and Awards Appeals Tribunal

Ford and the Department of Defence [2017] DHAAT 09 (10 March 2017)

File Number(s) 2015/037

Re **Mr Robert Ford** on behalf of **Mr Andrew Forsdike**
Applicant

And **The Australian Army** on behalf of **the Department of
Defence**
Respondent

Tribunal Ms Naida Isenberg (Presiding Member)
Mr David Ashley, AM
Brigadier Mark Bornholt, AM (Retd)

Hearing Date 3 February 2017

DECISION

On 10 March 2017, the Tribunal decided to recommend to the Minister that the decision by the Chief of Army to recommend that no further action be taken to seek recognition of Lance Bombardier Andrew Forsdike's actions during the Battle for Fire Support Base Coral on 13 May 1968 be affirmed.

CATCHWORDS

DEFENCE HONOUR – *Military Medal – Mention in Despatches – Gallantry
Decorations – Vietnam – Fire Support Base Coral*

LEGISLATION

Defence Act 1903 – ss 110V(1), 110VA and 110VB(1)
Defence Force Regulations 1952 – Reg 93B Sch 3
Commonwealth of Australia Gazette No. S25 Gallantry Decorations Regulations
dated 4 February 1991

REASONS FOR DECISION

Introduction

1. The applicant, Mr Robert Ford (Mr Ford) seeks review of a decision by the Chief of Army (CA) to recommend to the Parliamentary Secretary to the Minister for Defence (the Parliamentary Secretary) that ‘no further action be taken to seek recognition’ of the actions of Lance Bombardier Andrew Forsdike (Bombardier Forsdike) during the Battle for Fire Support Base Coral (the Battle) on 13 May 1968.¹

2. On 16 May 2011, Mr Ford, who is Bombardier Forsdike’s brother, made a submission to the Tribunal’s *Inquiry into unresolved recognition for past acts of naval and military gallantry and valour* (the Valour Inquiry).² He claimed that Bombardier Forsdike’s ‘Commanding Officer submitted six nominations for actions on that night, for some reason Andrew’s and two others were not progressed’.³ Mr Ford claimed that the recommendations were made by Captain (now Colonel retired) Michael Ekman and were supported by the Battery Commander, Major Brian Murtagh and that these recommendations were passed to the Commanding Officer. He claimed that because of maladministration only one of the soldiers, Sergeant Penn, was recognised. Penn received the Mention in Despatches (MID) for his actions during the Battle. Mr Ford claims the nominations for Bombardier Forsdike and the other soldier, Gunner Robertson, were not passed to the Task Force Headquarters and that this was a clear case of maladministration. He claimed that Captain Ekman recommended a Military Medal (MM) for Bombardier Forsdike and as it is now no longer available, Mr Ford believes that Bombardier Forsdike should be awarded the Medal for Gallantry (MG).⁴

3. On 14 March 2013 the Australian Government referred Mr Ford’s submission to the CA through the Chief of the Defence Force for consideration. In May 2015 the CA reviewed Mr Ford’s submission and decided to refuse to recommend an award.⁵

4. On 22 September 2015, Mr Ford applied to the Tribunal for review of the CA’s decision.⁶ Mr Ford subsequently clarified that the honour sought is the MG.

Tribunal Jurisdiction

5. Pursuant to s110VB(1) of the *Defence Act 1903* (the Defence Act) the Tribunal has jurisdiction to review a reviewable decision if an application is properly made to the Tribunal. The term *reviewable decision* is defined in s110V(1) and includes a decision made by a person within the Department of Defence or the Minister to refuse to recommend a person for an honour or award in response to an application. Regulation 93B of the *Defence Force Regulations 1952* defines a

¹ Letter Chief of Army to Mr Ford OCA/OUT/2015/R21044531 dated 5 May 2015

² Defence Honours and Awards Appeals Tribunal, *Inquiry Into Unresolved Recognition for Past Acts of Naval and Military Gallantry and Valour* - report dated 21 January 2013

³ Letter from Mr Ford to DHAAT dated 2 May 2011

⁴ Letter from Mr Ford to the Tribunal dated 7 November 2015

⁵ Letter Chief of Army to Mr Ford OCA/OUT/2015/R21044531 dated 5 May 2015

⁶ Mr Ford’s Application for Review of Decision dated 22 September 2015

defence honour as being those awards set out in Part 1 of Schedule 3.⁷ Included in the defence honours set out in Part 1 is the MG.

6. The Tribunal was satisfied that Mr Ford's submission to the Valour Inquiry constituted an application as defined in s110V(1)(c) of the Defence Act. The Tribunal also considered that the CA's recommendation to the Parliamentary Secretary that 'no further action be taken to seek recognition' of Bombardier Forsdike's actions during the Battle constituted a refusal to recommend a gallantry award thus satisfying the requirements of s110V(1)(a) and (b) of the Defence Act. The Tribunal therefore has jurisdiction to conduct the review and was satisfied that the *reviewable decision* is the decision by the CA in 2015 to refuse to recommend a gallantry award for Bombardier Forsdike.

7. The role of the Tribunal is to determine the correct and preferable decision in relation to the application having regard to the applicable law and the relevant facts. In accordance with s110VB(1) of the Defence Act, as the matter under review is a defence honour, the Tribunal does not have the power to affirm or set aside the decision but may make recommendations regarding the decision to the Minister.

Conduct of the review

8. In accordance with its *Procedural Rules 2011*, on 19 November 2015, the Tribunal wrote to the Secretary of the Department of Defence informing him of Mr Ford's application for review and requested a report on the material questions of fact and the reasons for the decision made in relation to Bombardier Forsdike.⁸ The Tribunal invited Defence to review the original decision as Mr Ford had clarified that he was seeking the MG. The Tribunal also requested that Defence provide copies of documentation relevant to the reviewable decision and a copy of Bombardier Forsdike's service record.

9. On 15 February 2016, the Director General Personnel – Army (DGPers-A) provided a response to the Tribunal that, in the absence of maladministration or a failure in due process, the original decisions of the 'decision-makers of the time' be upheld and no further recognition be given to Lance Bombardier Forsdike.⁹ No review of the merits of the application was conducted.

10. On 24 February 2016, the Tribunal provided the Army response to Mr Ford.¹⁰ On 5 March 2016 Mr Ford provided comments on the Army response.¹¹ On 11 March 2016 the Tribunal received a letter from Bombardier Forsdike that included correspondence which he had not shared with Mr Ford or with Defence in which he made allegations that the processing of his gallantry award had been interfered with by a third party in his Regiment in 1968.¹² The Tribunal subsequently obtained

⁷ Under Section 85 of the *Defence Regulation 2016*, the *Defence Force Regulations 1952* continue to apply to an application made under those regulations before their repeal on 1 October 2016.

⁸ Letter Chair of the Tribunal to the Secretary Department of Defence DHAAT/OUT/2015/037 dated 19 November 2015

⁹ DGPERS-A/OUT/2016/R24540458 dated 15 February 2016

¹⁰ Letter Tribunal Secretariat to Mr Ford, DHAAT/OUT/2016/060 dated 24 February 2016

¹¹ Mr Ford letter to the Tribunal dated 5 March 2016

¹² Letter from Mr Forsdike to the Tribunal received on 11 March 216

Mr Forsdike's agreement to share this material with Mr Ford and Defence.¹³ When asked prior to the hearing if this allegation was pressed, Bombardier Forsdike advised the Tribunal that he did not want to get the individual involved 'as he is suffering very bad PTSD and [he didn't] want to upset him anymore'. No submissions were made at the hearing about the allegation. The Tribunal therefore disregarded the allegation.

11. In support of the application for review Mr Ford provided a statutory declaration from Gunner Malcolm Hundt who was the Number Two on Bombardier Forsdike's machine gun, and a statement from and a recording of an interview conducted by the Australian War Memorial (AWM) with Captain Ekman. Mr Ford also provided two letters from soldiers who were at the Battle claiming that these provided an insight 'from an ordinary "grunts" point of view': Richard Rowe¹⁴ and Dennis Hend.

12. As required by the *Procedural Rules 2011* the hearing was conducted in public on 3 February 2017 in Sydney. Mr Ford was invited to present his case and Bombardier Forsdike and Captain Ekman (see below) were invited to give evidence. Mr Hundt also gave evidence. Lieutenant Colonel Emmet O'Mahoney (Colonel O'Mahoney) represented Army, assisted by Major Phil Rutherford.

Bombardier Forsdike's service record

13. Bombardier Forsdike's service record includes the following information: Bombardier Forsdike joined the Australian Regular Army (ARA) on 1 June 1966 for a six-year enlistment period. After recruit training, he was allocated to the Royal Australian Artillery and joined the 12th Field Regiment as a gunner on 28 November 1966. He was promoted to Lance Bombardier on 29 February 1968 and moved to the Regiment's Headquarter Battery as a Regimental Policeman. Bombardier Forsdike deployed to Vietnam on 6 May 1968 as a Regimental Policeman in Headquarter Battery. He was promoted to Temporary Bombardier on 28 May 1968.

14. Bombardier Forsdike remained with 12th Field Regiment until his return to Australia on 11 March 1969. He was posted to 8th Medium Regiment on 5 December 1969 and was discharged from the Army on 31 May 1972 at the completion of his enlistment period. He subsequently completed a further five years in the Army Reserve.

For his service, Bombardier Forsdike was awarded the:

- Australian Active Service Medal 1945-75 with Clasp 'VIETNAM',
- Vietnam Medal,
- Australian Defence Medal,
- Vietnamese Campaign Medal,
- Infantry Combat Badge, and
- Returned from Active Service Badge.

¹³ Letter from the Tribunal to Mr Forsdike, DHAAT/OUT/2016/475 dated 18 November 2016

¹⁴ Letter from Mr Richard Rowe to Bombardier Forsdike dated 28 May 2003

15. Bombardier Forsdike has also been awarded the Order of Australia Medal for service to veterans and their families in 2000 and the Centenary Medal in 2001 for service to St Mary's Vietnam Veterans Association, Judo and the Returned and Services League. In 2010 Bombardier Forsdike was awarded a Commendation for Brave Conduct for his actions in assisting the victims of a motor vehicle accident at Vincentia, New South Wales.¹⁵

Historical Context – The Battle for Fire Support Base Coral

16. During the 'Mini-Tet' offensive mounted by the Viet Cong and North Vietnamese Forces in May 1968, the 1st Australian Task Force deployed the 1st and 3rd Battalions of the Royal Australian Regiment (1 RAR and 3 RAR) to an area 20 kilometres north of Bien Hoa city to intercept and disrupt enemy forces withdrawing from the Saigon and Bien Hoa-Long Binh base complex. Several Fire Support Bases (FSBs) were to be established to provide defended localities for the battalions and firing points for artillery and mortars. This indirect fire would then cover foot patrols sent out from the FSBs to dominate the ground. One of these was designated FSB 'Coral', situated 7 kilometres north of the town of Tan Uyen.¹⁶

17. The plan for the occupation of FSB Coral was to insert both battalions and their supporting artillery batteries on 12 and 13 May 1968. The insertion included the Task Force Headquarters reconnaissance party together with 12th Field Regiment's 'Artillery Tactical Party' commanded by the Regimental Second in Command, Major Murtagh. The insertion did not proceed as planned and by late afternoon on 12 May, Headquarters 1 RAR with its direct support battery (102 Field Battery), the mortar platoon, anti-tank platoon and pioneer platoon occupied the eastern half of the proposed base with its four rifle companies outside the perimeter in hastily prepared defended localities. 3 RAR occupied the west half of the base with its companies also outside the perimeter and to the west. The 12th Regiment's tactical party including the Command Post and protection party occupied positions adjacent to 102 Field Battery and the 1 RAR Mortar Platoon.

18. As dusk settled over the area, the two battalions and their supporting arms were scattered around the FSB in a hurried deployment intended only to last out the night. The base was not a coordinated defensive area but four roughly connected groups.¹⁷ By nightfall the Mortar Platoon who were to bear the brunt of the later attack had dug individual shell-scrapes and the artillery had commenced but not finished their shell-scrapes.¹⁸ Throughout the night the enemy probed the position and contacted outlying companies from the battalions. The official history records that at about 3.30am on 13 May, the enemy launched heavy and accurate mortar, rocket propelled grenade and recoilless-rifle fire on FSB Coral concentrated on 102 Field Battery and the 1 RAR Mortar Platoon. The main force of the attack, which consisted

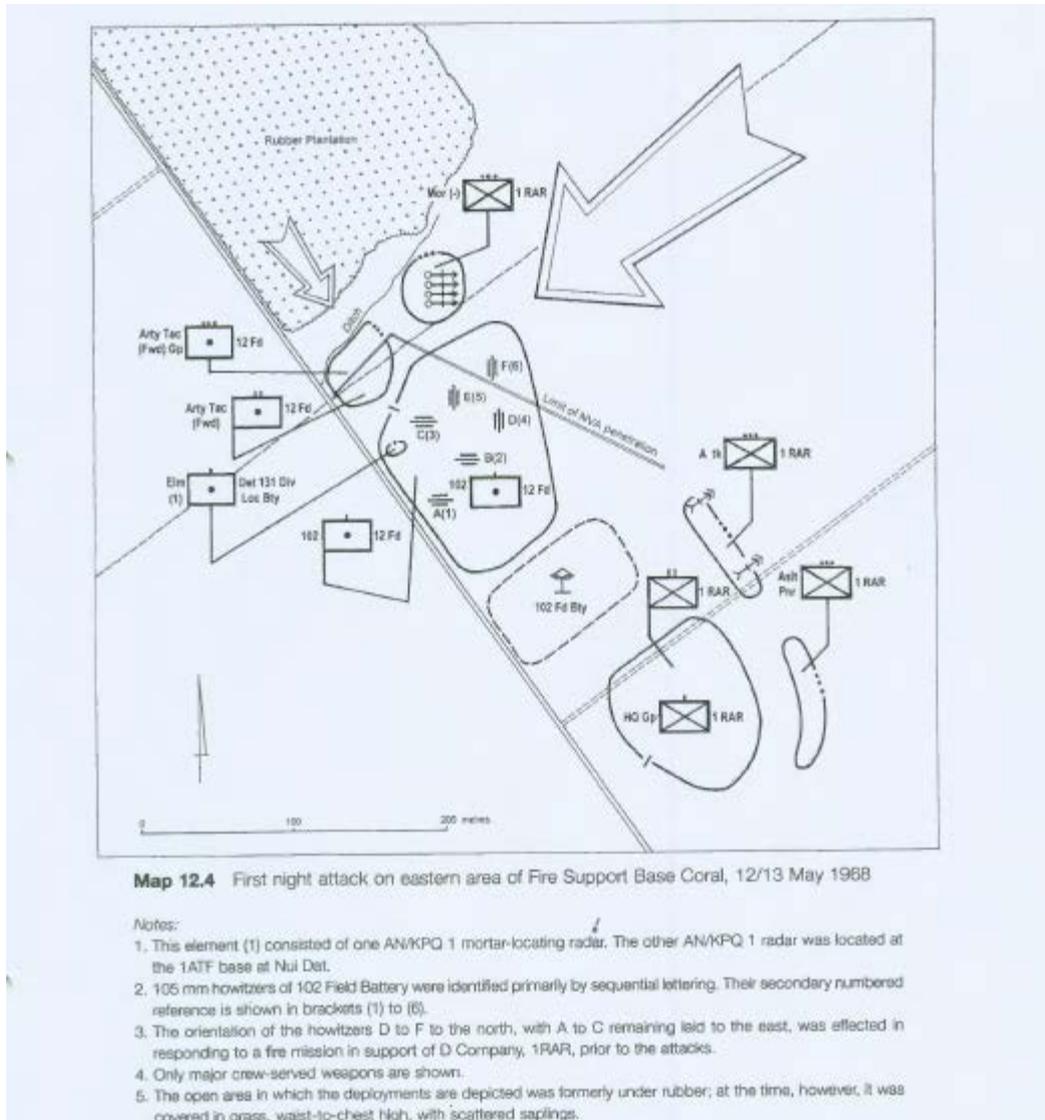
¹⁵ Website, *Its an Honour*, www.itsanhonour.gov.au/honours/honour_roll/search, accessed 5 September 2016

¹⁶ Website, Australian War Memorial, Coral and Balmoral, Battle of Fire Support Bases, <https://www.awm.gov.au/encyclopedia/coral/>, accessed 31 August 2016

¹⁷ Ian McNeill and Ashley Ekins, *On the Offensive, The Australian Army and the Vietnam War 1967-1968*, Australian War Memorial. p.360

¹⁸ Ibid p.363 - note that a 'shell-scrape' is an individual hole dug for hasty defence to a depth of approximately 45cm and the length of a man. It is designed to provide individual protection and allow the soldier to get below ground level to survive artillery and direct fire.

of several enemy companies came from the north-east through the Mortar Platoon and then on to 102 Field Battery. They succeeded in capturing one of the guns but were driven off by a counter attack aided by extensive air support.¹⁹ A map showing the dispositions and limits of the enemy penetration is shown below.²⁰



19. By dawn on 13 May 1968, the FSB was secure with the loss of nine soldiers killed in action and 28 wounded.²¹ Attacks against FSB Coral and its sister base 'Balmoral' continued for several more days with the engagements exceeding in both intensity and duration the battle of Long Tan, formerly the largest action by Australian soldiers in Vietnam.²²

¹⁹ Ibid. p.368

²⁰ Ibid. p.366

²¹ Ibid. p.370

²² Ibid. p.349

20. Bombardier Forsdike was a member of the Regimental Police Section (RPS) which was a part of Headquarter Battery of the 12th Field Regiment during the Battle. The RPS was tasked to protect the Regimental Command Post. Bombardier Forsdike was a machine gunner at the time of the Battle. At the time of the deployment his Battery was commanded by the Regimental Second in Command Major Murtagh, the Adjutant was Captain Ekman, and Bombardier Forsdike claimed his RPS was commanded by Sergeant Lament.

Eligibility criteria for the MG

21. Until February 1975, when the Government introduced the Australian honours and awards system, Australian service personnel received honours and awards under the Imperial system. The two systems – the Imperial and the Australian - then operated in parallel until October 1992 when the Government announced that Australia would no longer make recommendations for Imperial awards.²³ As the Tribunal is unable to make recommendations relating to Imperial honours, it may only review eligibility for contemporary gallantry awards for Bombardier Forsdike.

22. The Star of Gallantry, the Medal for Gallantry and the Commendation for Gallantry were established as Gallantry Decorations by Letters Patent on 15 January 1991 for the purpose of:

‘according recognition to members of the Defence Force and certain other persons who perform acts of gallantry in action.’²⁴

23. The honours are governed by Regulations set out in the Schedule:

...

Conditions for award of the decorations

3. (1) *The Star of Gallantry shall be awarded only for acts of great heroism or conspicuous gallantry in action in circumstances of great peril.*

(2) *The Medal for Gallantry shall be awarded only for acts of gallantry in action in hazardous circumstances.*

(3) *The Commendation for Gallantry may be awarded for other acts of gallantry in action which are considered worthy of recognition.*

4. *Each decoration may be awarded posthumously.*

...

Making of awards

7. *Awards of a decoration shall be made by the Governor-General on the recommendation of the Minister.*

...

²³ Prime Minister of Australia Media Release 111/92 dated 5 October 1992

²⁴ *Commonwealth of Australia Gazette No. S25 – Victoria Cross Regulations* - dated 4 February 1991

Accounts of Bombardier Forsdike's actions during the Battle

24. ***Bombardier Forsdike's own Account – 1987.*** On 17 August 1987 Bombardier Forsdike wrote a detailed account of his part in the Battle. During the hearing, he stated that at the time he wrote the account, veterans from 1 RAR were trying to get a citation for the Battle and as a part of that he had taken a lot of memorabilia to the AWM where he, and others, were interviewed.²⁵ He said that as a result, he wrote the letter to the Curator of Weapons. The letter and attachments are retained in the AWM as Private Record 87/219.²⁶ The Curator subsequently sought Bombardier Forsdike's agreement to pass the letter to the Official Historian for use in the combat volume of the official history of Australia's involvement in Vietnam.²⁷ Relevant excerpts from Bombardier Forsdike's written account include:

...1000pm 12 May - Gunner Kurtz and myself went about five feet in front of the machine gun post to have a leak, we were fired on by figures between us and the 3rd Battalion mortars – note the mortar crew of approx. 18 men walked past my M60 pit at about 5.10pm they told me where they would be, about 100 feet to the north of the M60 they gave me there (sic) position and told me that the M60 was not to fire east of the small track we were on – the shots fired at Kurtz and myself had green tracers in them and were fired from the centre of the track ...

... 1.25am 13 May – VC got up from all around us they had crawled up to within 4 feet of the M60 and we did not even know they were there they fired wildly holding there (sic) AK47's up in the air and spraying bullets everywhere we shot those who stood up they were screaming and yelling ...

... 1.30am – in the end we fired at the VC on the track and we possibly hit the two mortar men ...

... 1.50am – Command post rang to ask us what was going on, I crawled back to C. Post and was going to tell Major Murtagh what had happened ... Captain Ekman was running everything, Captain Ekman told me 'Bombardier I cannot help you I am to (sic) busy, do the best you can ...

... 2.00am – I crawled back to the machine gun. 2.10am grenade goes off behind M60 gunner Vic Page hit in spine he tells me he's hit but said it was not bad.

...2.15am – M60 jammed solid we tried to clear it – no use.

... 2.25am – Gnr Sawtell sat up in shell scrape a copped a bullet point blank in the heart ...

... 2.30am – Ammo was low, no grenades, the VC were all around us out of the 7 men around the M60, I had lost 1 dead and one wounded there was

²⁵ Oral Evidence Bombardier Forsdike hearing 3 February 2017

²⁶ AWM Private Record 87/219 – Letter from Mr Forsdike dated 17 August 1987

²⁷ Curator of Weapons at the AWM letter to Mr Forsdike dated 5 November 1987

nothing I could do without the M60 ... SGT Lament was shot and he shot threw (sic) taking Gnr Bourke with him leaving our rear exposed.

2.33am – I decided we were in big trouble there were about 50 VC around us so I decided to take the other five men back to the gun position about 70 feet behind us – while moving back our RSM and BSM ... fired on us hitting Gnr Hundt ... the VC also opened up on Mal hitting him also ... then Gnr Scott was hit in the head he died instantly a grenade went off and that was the last I remember ... when I woke up there was VC everywhere ...

3.10am -Finally got bearings, saw movement back at the M60 crawled back and saw someone dragging Gnr Page back towards the C.P. I found out later it was Captain Ekman ...

3.20am – I crawled back to 102 Bty they challenged me and were very surprised to hear me they thought we were all dead.

25. During the hearing Bombardier Forsdike stated that he drew the content for this letter from a field notebook that was given to him after the war by the RSM, which he had returned to the RSM. He also indicated that the information came from various books however when pressed on the fact that the books post-dated the letter he stated that he could not recall whether or not he used the books.

26. ***Bombardier Forsdike’s evidence at the hearing.*** Bombardier Forsdike provided an account of his actions at the Battle supported by a sketch map.

27. Bombardier Forsdike said that he was a RP and that he and the other RPs were ‘used as the infantry for the Regimental Headquarters’.²⁸ He said that the RPs were commanded by Sergeant Lament and that their job was to provide local protection to the Command Post. He said that his job was ‘solely to operate the machine gun because he’d done all the courses on it’. He said that ‘the group of about 24 were individually sited by Sergeant Major Partridge, the Regimental Sergeant Major (RSM) to cover likely enemy approaches’. He stated that the group comprised two sections; one commanded by Sergeant Penn and the other, of which he was part, was commanded by Sergeant Lament. He said that his group reported to the Headquarters, nominally to Major Murtagh through the Adjutant, Captain Ekman who was co-located with the RSM.

28. Bombardier Forsdike described the group as a mix of ‘inexperienced National Serviceman and some regulars’. He stated that initially there were three soldiers assigned to him and then another four were added. He stated that he ‘only met some of these men on the day, ... had not seen them prior to the insertion into Coral and had not trained with them.’ He did however confirm that he was ‘doing the job he was trained for and expected to do at Coral’.

29. Bombardier Forsdike described the deployment of his men and the approaches they were given to protect. He then described the enemy attack and his actions. He stated that the attack ‘was not expected, as they were not told that there was likely to

²⁸ Oral Evidence by Bombardier Forsdike at hearing 3 February 2017

be a threat in the area'. He described seeing '40 figures' approaching and then an intense barrage of rocket and indirect fire as 'all hell broke loose' before the 40 figures again stood up in close proximity to his position. He said '[his section] opened fire and [he] was thankful they did as after a few rounds the machine gun jammed'. He described how grenade and rifle fire killed two of his men as the enemy tried to envelop the position and that at this time, he was also superficially wounded by grenade fragments. He stated that the enemy were able to 'get behind them' as Sergeant Lament was wounded in the face and together with Gunner Bourke they 'went back'.

30. Bombardier Forsdike said that the enemy 'had three goes at us and in the end, most of the guys [in his section] had run out of ammunition'. He said that he then ran across to the Command Post to see Major Murtagh 'to see what he wanted to me to do'. On arrival, he could only find the Adjutant, Captain Ekman. He said he saw Murtagh who was 'really sick'. He said he told the Adjutant what was happening and he was told 'I can't help you; just do the best you can'. Bombardier Forsdike said he then 'went back to my Number Two on the gun, Gunner Hundt' and said 'look we're out of here, we'll go back about 20 feet to decent holes in the ground, we are going first'. He told Gunner P, who was 'a very brave man', to follow them. Bombardier Forsdike said that at that time he had assumed that Gunner P, although wounded, would have been able to follow but he 'didn't know he had been hit in the spine and we left him behind – it's something that haunts me to this day'.

31. He stated that he and Gunner Hundt started moving, abandoning most of their equipment and the failed machine gun. He described Hundt being wounded during this move. He said that shortly after this he [Bombardier Forsdike] was knocked unconscious by an explosion. When he awoke he didn't know where he was and estimated that he had been knocked out for about 20 minutes. He said that he subsequently learnt that whilst he was unconscious, Captain Ekman had recovered the failed machine gun and had dragged Gunner P back to the Command Post. He said that he learned that an armourer had discovered that the bolt in the machine gun had been swapped with a machine gun from 102 Field Battery and as a result, neither would be able to fire on automatic. Once the bolts were swapped back and Bombardier Forsdike had regained consciousness, he returned to his position with the gun, which by then was in working condition again and with more ammunition, to wait out the night.

32. He said that at some time before dawn he 'heard Australians talking to his front' and Richard Rowe, a soldier from Support Company 1 RAR, approached as enemy machine gun fire was brought to bear in their vicinity. Bombardier Forsdike said that he and others fired on the enemy machine gun and Rowe and 16 soldiers came into the defensive position.

33. Bombardier Forsdike described the battlefield clearance which occurred the next morning supported by Armoured Personnel Carriers. Bombardier Forsdike stated that during the clearance the Commanding Officer, Lieutenant Colonel Kelly (Colonel Kelly) visited the area and asked him at that time to write out everything that had occurred. He said he wrote on a 'piece of paper' what happened when he went back to the Command Post, what Sergeant Lament did, what the officer who shot Hundt did, and what the RSM did with the grenades. He said it took about 15 minutes

to write and that he handed the piece of paper to Colonel Kelly, but he did not know what happened to the report after that.

34. **Captain Ekman.** During the hearing, Captain Ekman said that he was responsible for the local defence of the Command Post and that, for the task, he had at his disposal two sections commanded by Sergeant Penn and Sergeant Lament, respectively. He said that Sergeant Lament:

having suffered a very minor facial wound, evacuated himself to an area behind 102 Battery without asking or telling me – I didn't know he had gone, first thing I knew was when Forsdike appeared in the Command Post and asked me what he should do, and I told him to take over the right section

35. Captain Ekman said that Bombardier Forsdike returned to him 2-3 times to seek advice. Captain Ekman described his part in recovering Gunner P and the disabled machine gun whilst Bombardier Forsdike was unconscious.

36. **Gunner Hundt.** Gunner Hundt, the Number Two on Bombardier Forsdike's machine gun, wrote, relevantly, in a Statutory Declaration dated 5 July 1994:²⁹

...Bdr Forsdike lost two men killed and three men wounded. Bdr Forsdike had to make a decision under heavy fire whether to stay in our shallow and hastily prepared pits or move back to the deeper pits of the gun battery ... he decided to move back ... a mortar round exploded between us, he was knocked unconscious ...

37. During the hearing, Gunner Hundt said that when they arrived at FSB Coral they 'were busy digging in the Command Post and then were allocated areas for their individual weapon pits and arcs of fire.'³⁰ He said that during the attack, if Bombardier Forsdike had not made the decision to leave their pits, he thought 'they would be over-run'.

38. He described being in the same shell-scape as Bombardier Forsdike:

which was only about a foot deep with Andy [Forsdike] lying on top of me and we were copping rockets, mortars, rifle fire and charge bags like grenades being thrown at us and with enemy just everywhere

39. Gunner Hundt said that he could not recall an order being given once the decision to leave was made, but as they were both in the same pit, they 'just got up and went'. He said that in relation to the others in the section he thought 'Andy asked one of them who had been wounded if he was all right and he, I think it was Gunner P said he was OK'. Gunner Hundt said that he 'wasn't sure whether Andy had summed these other guys up or not – I can't recall that bit'.

40. Gunner Hundt said that he only took his rifle with him and left everything else behind including the machine gun, which was not functioning, and the M79 grenade

²⁹ Statutory Declaration by Malcolm Hundt dated 5 July 1994

³⁰ Oral Evidence Gunner Hundt hearing 3 February 2017

launcher as they had exhausted the three rounds they were given for this weapon. He said he also left behind his webbing and other equipment. Gunner Hundt described being wounded several times during the withdrawal, including by his own colleagues.

41. **Mr Rowe** wrote:

... if it wasn't for you [Bombardier Forsdike], Mal and Terry I know I wouldn't be around today. If hadn't been for you guys retaking your gun after it had been over-run, my platoon would have been history ...

42. **Mr Hend** wrote:

... as for our first night at Coral both Sgt Penn and you [Bombardier Forsdike] made my job in the middle of the thinly stretched line easy, I could see the heavy fighting coming from Sgt Penn and you running back to the Command post telling the bosses what was going on ... you put the fear of Christ up me I thought we were done for ... I remember you opening up with the M60 ... and the way you were firing it I thought you would have a cook off ...

43. ***The Official History of Australia's Involvement in Southeast Asian Conflicts from 1948-1975 (the Official History)***. The relevant volume of the Official History was published in 2003 and contains a chapter on the Battle. It includes several mentions of Bombardier Forsdike's actions.³¹ The comments appear to be drawn from Bombardier Forsdike's 1987 letter to the Curator which is summarised at paragraph 23 above.

44. ***The Battle of Coral by Lex McAulay 1988***.³² McAulay's account also appears to draw heavily upon Bombardier Forsdike's letter to the Curator.

45. ***A Gunner's Tale by Elizabeth Stewart 2008***. Stewart wrote an article on the Battle for the AWM's *Wartime* magazine in 2008.³³ The article also draws heavily upon Bombardier Forsdike's 1987 letter.

Evidence in relation to the recommendation of Bombardier Forsdike for recognition

46. ***Captain Ekman*** On 30 April 2011 Captain Ekman made a submission to the Valour Inquiry wherein he forwarded three 'nominations for bravery awards' which he claimed were 'passed over in 1968 due to the way the awards system worked during the Vietnam war'.³⁴ He stated that he wrote the nominations on 13 May 1968 and the original citations were forwarded to the Commanding Officer of 12th Field Regiment. One of the citations was for Bombardier Forsdike, whose actions he claimed were instrumental in saving the artillery Command Post on 13 May 1968. Captain Ekman stated that the citations were 'copies' of the original documents,

³¹ McNeill and Ekins, *On the Offensive*, Chapter 12.

³² Lex McAulay – *The Battle of Coral*, Hutchinson Australia, 1988

³³ *A Gunner's Tale*, Elizabeth Stewart, *Wartime* 43, 2008

³⁴ Submission 72 to the Valour Inquiry – Colonel Mick Ekman (Retd) dated 30 April 2011

although he conceded they were reconstructions. The ‘citation’ for Bombardier Forsdike states:

L/Bdr Forsdike was 2/1c of the right forward section of the 12 Fd Regt RHQ elements, during the NVA attack on Fire Support Base Coral, on May 13th 1968, very early in the engagement he had to assume command due to the wounding and evacuation of his section commander.

Although only 19 years of age and in his first action, he was able to maintain control of his section, and contact with the flanking unit (1 RAR Mortar Platoon) until that unit was over run, and withdrew into 102 Fd Bty position.

His section suffered 2 KIA and 3 WIA, however he was able to calmly reorganize and adjust his men to hold the line until the enemy withdrew. His bravery and resilience stopped the RHQ position from being overrun by the NVA.

47. In relation to the nomination process he stated that ‘very shortly after the Battle and having removed the casualties, Colonel Kelly and the Task Force Commander had arrived and were walking around’. Captain Ekman said that Colonel Kelly asked him to write up accounts of people who had ‘done exceptionally well during the Battle’.³⁵ He said that he wrote ‘notes on Sergeant Penn, Bombardier Forsdike and Gunner Robertson in his field service notebook’ and passed these to Colonel Kelly by hand. He stated that he may have discussed the recommendations with Major Murtagh ‘weeks later’, possibly when they returned to Nui Dat but he wasn’t sure. In response to a question relating to the date that Sergeant Penn’s nomination was signed by the Nominating Officer – 1 June 1968, Captain Ekman confirmed that he did not discuss awards with anyone between the day he wrote the recommendations and 1 June 1968.

48. Captain Ekman stated that he did not recommend levels of award but he considered that ‘the other two young fellows should get an MM’ and that ‘Penn was incredible, so good, he should have received a much higher decoration’. He stated that in relation to priorities between Forsdike and Robertson he considered Bombardier Forsdike’s actions to be of a higher standard ‘because of his leadership’ and he:

very quickly learnt how to take control – he was only a kid but after an hour or so he fell into running the show on the left-hand side

49. **Major Murtagh** On 25 September 2011, Major (subsequently Lieutenant Colonel) Murtagh made a submission to the Valour Inquiry stating that three soldiers, Sergeant Penn, Bombardier Forsdike and Gunner Robertson were recommended for bravery awards by Captain Ekman ‘and as far as can be ascertained, these citations

³⁵ Oral Evidence Colonel Ekman hearing 3 February 2017

were forwarded by the Commanding Officer to higher authority'.³⁶ He stated in his submission that:

Michael Ekman's citation clearly shows the bravery of LBdr Forsdike who although only 19 and 3 months demonstrated a devotion to duty and a maturity far beyond his years. A copy of a Statutory Declaration by Malcolm Hundt adds further support to the awarding of a bravery honour such as the MM.

50. No further evidence was available in relation to the progress of the recommendation.

The Applicant's Submissions

51. Mr Ford's submission to the Valour Inquiry was in support of Bombardier Forsdike's 'nomination by others for recognition of his bravery and actions during the attack on FSB Coral on 13 May 1968'.³⁷ Mr Ford claimed that 'evidence of my brother's bravery and leadership during that eventful night has been well documented by official historians, articles, interviews by the AWM staff of personnel directly involved ... books ... and other media'. He submitted that:

Originally Andrew's CO submitted 6 nomination for actions on that night. For some reason, Andrew's and two others were not progressed. I sincerely hope that you are able to correct this situation and allow my brother the recognition that his actions, that the recorded proof, the belief of his fellow ex-comrades and I as his brother and confidante know is his due.

52. Having received the response to his submission from the CA, Mr Ford provided a further letter in support his application for review.³⁸ There he asserted that the reasons and conclusion in the CA response were flawed and that maladministration had occurred as there was a failure to record the nomination of Bombardier Forsdike or any 'moderation' by the chain of command, and there is no record of the nomination being processed. Mr Ford implied that the conclusion that the CA had drawn - that the nomination was not submitted - calls into question the integrity of Captain Ekman who has stated that he did submit the nomination. Mr Ford stated:

... in the absence of documentation how can it be inappropriate to question the Commanding Officer's question, when it is not known whether he received the recommendation or in fact made any decision ...; and

... in the absence of any documentation at the time and the obvious ignoring of the eye witness accounts at Ref B and Ref C [Ekman and Murtagh submissions] how can the CA conclude that '...could not locate any evidence that the actions were not appropriately considered...'

³⁶ Submission 140 to the Valour Inquiry – Lieutenant Colonel Brian Murtagh (Retd) dated 25 September 2011

³⁷ Submission 29 to the Valour Inquiry – Mr Robert Ford dated 2 May 2011

³⁸ Letter from Mr Ford to the Tribunal dated 22 September 2015

53. On 7 November 2015 Mr Ford wrote to the Tribunal and stated that the honour he was seeking for Bombardier Forsdike was ‘the MM which was the honour that Captain Ekman, Major Murtagh and the Commanding Officer had originally recommended’.³⁹ He stated that he had evaluated the citations of five Vietnam MM recipients and concluded that, ‘given the age and responsibilities of Bombardier Forsdike’ he considered that ‘the MM is appropriate’. He acknowledged that the MM was no longer awarded and that the MG is the equivalent award. Mr Ford indicated that there is precedent for the award of contemporary gallantry and distinguished service awards as evidenced by the fact that contemporary awards were made as part of the Vietnam End of War List in 1998 and as a result of Inquires since.

54. Mr Ford submitted that in the absence of proof that no recommendation was made and with the support of the two submissions made to the Valour Inquiry (Ekman and Murtagh), which state that recommendations were, in fact, submitted; maladministration had occurred and accordingly, the Tribunal should reverse the CA decision and recommend that an appropriate award be made to Bombardier Forsdike.

55. Mr Ford again wrote to the Tribunal on 5 March 2016.⁴⁰ In restating his view that there was a clear case of maladministration he submitted that the failure by Army to comprehensively investigate was, in itself, maladministration. He submitted that the successful outcome of one of the three nominations [Sergeant Penn] ‘did not of itself support the conclusion that the other two recommendations were rejected’. He submitted that perhaps the records were lost or not retained or there may have been ‘interference in the process by a third party’. As mentioned above, this contention was not pressed at the hearing.

56. In his oral submissions, Mr Ford continued to press his claim that maladministration had caused his brother not to be recognised and relied on his submissions of 22 September 2015.⁴¹ He stated that ‘in the post battle period (the three or so days after the battle) I believe the original recommendations were lost’.⁴² He claimed that ‘the recommendations should have been read and something should have been done about them’.

57. Mr Ford said that after researching the various accounts of maladministration he concluded that Captain Ekman genuinely wanted Bombardier Forsdike to receive an award as well as Sergeant Penn.

The Army Submissions

58. When the CA reviewed Mr Ford’s submission and decided to refuse to recommend an award he stated that:

... it can be reasonably concluded that the recommendation was either struck out at the Headquarters or was not submitted at all ... at the time it was within

³⁹ Letter from Mr Ford to DHAAT dated 7 November 2015

⁴⁰ Letter from Mr Ford to the Tribunal dated 5 March 2016

⁴¹ Letter from Mr Ford to the Tribunal dated 22 September 2015 p. i-vi

⁴² Opening submission by Mr Ford – Hearing 3 February 2017

*the scope of the policy and is not considered maladministration or a failure in due process ...*⁴³

59. The CA's letter to Mr Ford indicated that in assessing his submission, Army had applied the methodology adopted by the Tribunal for the Valour Inquiry.⁴⁴ That is, when determining whether a retrospective award should be considered, an assessment was undertaken to determine whether due process had been followed in accordance with the policies and processes in place at the time of the conflict and recommendation. This included determining whether there was maladministration, and whether new compelling and authoritative evidence was presented that was not available to the decision-maker at the time of the original decision to nominate the individual for an award or decoration. If due process was followed, there was no maladministration, and if there is no new authoritative and compelling evidence, then the original decision stands.

60. The letter indicated that Mr Ford's submission was one of a number received by Army in relation to individual actions at the Battle. The letter identified that Mr Ford sought recognition for Bombardier Forsdike on the basis that a nomination was 'raised by the Commanding Officer but not progressed'.

61. The CA stated that a search of official records was unsuccessful in locating any recommendation and therefore:

... it can be reasonably concluded that the recommendation was either struck out at the Headquarters or not submitted at all ...

62. The CA indicated that Army did not dispute that a recommendation may have been made but the policy at the time allowed for downgrading or striking out of awards without consultation with the recommending officer and that this action was within the scope of the policy of the time. The CA did not consider that this action could be considered to be maladministration or a failure in due process, and concluded that he would not recommend further action be taken to seek recognition for Bombardier Forsdike.

63. On 19 November 2015, the Tribunal invited Defence to review the original decision as Mr Ford had clarified that he was seeking the MG and had supplied additional material in support of his submission.⁴⁵ The Defence report, provided on 15 February 2016, concluded that:

*... there was no maladministration in the raising or processing of the recommendation for Lance Bombardier Forsdike. In accordance with Army's review guidelines Army recommends to the Tribunal that in the absence of maladministration or a failure in due process, the original decisions of the decision-makers of the time be upheld and no further recognition be given to Lance Bombardier Forsdike ...*⁴⁶

⁴³ Letter Chief of Army to Mr Ford OCA/OUT/2015/R21044531 dated 5 May 2015

⁴⁴ Letter Chief of Army to Mr Ford OCA/OUT/2015/R21044531 dated 5 May 2015

⁴⁵ Letter Chair of the Tribunal to the Secretary Department of Defence DHAAT/OUT/2015/037 dated 19 November 2015

⁴⁶ DGPERS-A/OUT/2016/R24540458 dated 15 February 2016

64. At the hearing the Army representative, Colonel O'Mahoney stated that it was 'not the Army's intention to diminish the actions or service of Bombardier Forsdike'.⁴⁷ Army maintained its view that there was no maladministration and that Colonel Kelly, the Commanding Officer in 1968 – 'had the primacy, authority and discretion to decide whether or not to proceed with a nomination for Bombardier Forsdike', and that 'up until the point where a decision is taken to make a nomination, discussions and recommendations are valid and taken into account, but we don't know whether or not Colonel Kelly made a decision to make a nomination or not'.

65. Drawing on Sergeant Penn's nomination form, Colonel O'Mahoney stated that at each level subsequent to the nomination, a recommending officer in the chain of command has the discretion to stop the nomination, or to change the level or support the award. He submitted that 'in relation to maladministration, the preliminary recommendations are important, but the nomination actually starts at the point where the Commanding Officer signs the nomination'. He said that from the Army's perspective, 'we are very comfortable that this is not maladministration'. He said that 'something we gave weight to was the nomination for Sergeant Penn' which proved that 'the system was working' and we think that 'it is reasonable to conclude that the administration was done at the conclusion of the battle in relation to honours and awards'.

CONSIDERATION

66. The Tribunal is required to review decisions 'on the merits', that is, to undertake an independent review of the evidence. The facts, law and policy aspects of the decision are all considered afresh and a new decision made.⁴⁸ The Tribunal reviews the decision, and not the reasons for the decision. In doing so, there is no legal onus of proof, and there is no presumption that the original decision was correct.⁴⁹ The Tribunal is bound to make what it regards as the 'correct and preferable' decision and must reach a decision that is legally and factually correct.

67. In considering any application for review the Tribunal is bound by the relevant eligibility criteria: s 110VB(6) of the *Defence Act 1903*.

68. **Bombardier Forsdike's Standing at the Battle.** There is no dispute that Bombardier Forsdike deployed with 12th Field Regiment to Vietnam on 6 May 1968 and during his deployment he was employed as a RP in Headquarter Battery. There is also no dispute that on 12 May 1968 he was a junior non-commissioned officer with the rank of Lance Bombardier and was allocated to the Headquarter Battery as a machine gunner to provide local protection to the Regimental Command Post. The Tribunal was reasonably satisfied that although he was not part of an established group such as a platoon, he was by virtue of his rank able to be used in a junior leadership position and it was therefore appropriate that he was seen as a group leader, subordinate to a section commanded by a senior non-commissioned officer, Sergeant

⁴⁷ Lieutenant Colonel O'Mahoney – submission at hearing on 3 February 2017

⁴⁸ Pearson, Linda, "Merit Review Tribunals", in Creyke, Robin and McMillan, John, *Administrative Law – the Essentials*, AIAL 2002, p. 68

⁴⁹ *McDonald v Director-General of Social Security* (1984) 1 FCR 354

Lament. It appears from the evidence that Bombardier Forsdike's group was a loose collection of soldiers based upon the RPs.

Was Bombardier Forsdike nominated for recognition?

69. The main basis of Mr Ford's submissions was that Bombardier Forsdike had been recommended for recognition of his bravery on 13 May 1968 by his immediate superior Captain Ekman, that this recommendation was supported by the Battery Commander, Major Murtagh and was sent, with two others, Penn and Robertson, to the Commanding Officer, Colonel Kelly shortly after the Battle. He contended that for some reason only Penn's progressed and the recommendation for Bombardier Forsdike's (and also Robertson) was not processed or was possibly even lost, and that in his view, this constitutes maladministration.

70. The Tribunal noted that the Army submission indicates that a search of records and files failed to find any evidence of a nomination for Bombardier Forsdike at all. The Tribunal noted that the *Pamphlet on Military Honours and Awards* (WO 12922) dated July 1960 provides descriptions and guidance on the eligibility criteria (conditions) for Imperial awards that were available during the Vietnam War.⁵⁰ This guidance did not require that records of non-recommendation or refusal be retained or that non-approvals be advised to Nominating Officers.

71. Captain Ekman's evidence was that he wrote the accounts of the actions of Penn, Bombardier Forsdike and Robertson a few days after the Battle and gave them to Colonel Kelly. The Tribunal also noted that Major Murtagh corroborated this evidence in his submission to the Valour Inquiry and also stated that 'as far as can be ascertained, these citations were forwarded by the Commanding Officer to higher authority'.⁵¹ The Tribunal was unable to test Major Murtagh's evidence, as he had since passed away. The Tribunal however was reasonably satisfied that Bombardier Forsdike's actions were written up by Captain Ekman and his name was put forward to the Commanding Officer 'for recognition'. Captain Ekman's evidence, however, was that he did not specify the level of award and that he simply wrote the accounts of the actions at the time. Consequently the Tribunal cannot be reasonably satisfied that Bombardier Forsdike was formally nominated for a specific award.

72. On the basis of Captain Ekman's oral evidence that he had handed the accounts of each individual's actions to the Commanding Officer, the Tribunal was reasonably satisfied that the Commanding Officer was aware of what Bombardier Forsdike had done during the Battle. The Tribunal also noted Bombardier Forsdike's oral evidence that on the day after the Battle he had provided a written report of the action to his Commanding Officer.

73. Noting that there was, at that time, no requirement for Recommending Officers in the chain of command to retain records of non-recommendation or refusal, the Tribunal considered that it was open for the Commanding Officer to have decided that Captain Ekman's account was not of sufficient merit to support recognition and had therefore not directed that a formal nomination be drafted. In reaching this

⁵⁰ Pamphlet on Military Honours and Awards 1960 WO Code No 12922 – War Office (MS3) July 1960

⁵¹ Submission 140 to the Valour Inquiry – Lieutenant Colonel Brian Murtagh (Retd) dated 25 September 2011

conclusion the Tribunal observed that there was a significant difference between Captain Ekman's account of Sergeant Penn's actions⁵² and the final formal citation.⁵³ The Tribunal considered that, on balance, this suggested that once Colonel Kelly had reviewed the brief description provided by Captain Ekman, he had directed the level and content of the subsequent Penn nomination. Further, the Tribunal observed that the *Pamphlet on Military Honours and Awards* refers to a quota system to be applied at the time: 1 in 250 for decorations and 1 in 150 for MID every six months.

74. The Tribunal also noted Bombardier Forsdike's evidence that he provided Colonel Kelly with an account about aspects of the Battle which he perceived to be problematic: 'what happened when he went back to the Command Post, what was done by Sergeant Lament, about Hundt being shot, and what the RSM did with the grenades'. Given the topics which Bombardier Forsdike said he included in the 'report', the Tribunal considered that this could have been viewed by Colonel Kelly as unhelpful if he wished to use the information to support citations for recognition. Whether or not Colonel Kelly formed this view or made a deliberate decision to only nominate Penn after receiving the brief notes from Captain Ekman, or if he was conscious of the quota, will in all likelihood never be known as he has since passed away.

75. The Tribunal also noted that in making the decision not to recommend further action in 2015, the CA indicated that Army did not dispute that a recommendation may have been made and stated that 'it can be reasonably concluded that the recommendation was either struck out at the Headquarters or not submitted by Colonel Kelly at all'.

76. The Tribunal finds that, on the balance, Bombardier Forsdike was not formally nominated for a gallantry award for his actions during the Battle and that this was a decision open to the Commanding Officer at the time to make.

77. The Tribunal noted that Army, in its review, decided to refuse to recommend a gallantry award for Bombardier Forsdike because 'there was no maladministration in the raising or processing of the recommendation', and there was no new evidence.⁵⁴ The Tribunal considered that the 1987 letter from Bombardier Forsdike which provided a detailed account of the action could be considered to be 'new evidence' which was not available to the Commanding Officer at the time of the Battle and this perhaps should have prompted further review by Army.

78. In any case, the Tribunal was satisfied that whether or not Bombardier Forsdike was nominated for an award, or whether the process used at the time could be considered to be maladministration, is largely irrelevant as the Tribunal is bound by legislation to conduct a merits review of Bombardier Forsdike's actions. Accordingly, the Tribunal turned to an assessment of the merits of his actions against the eligibility criteria for gallantry decorations.

The Merits Review: is Bombardier Forsdike eligible for a Gallantry Award?

⁵² Submission 72 to the Valour Inquiry – COL Mick Ekman (Retd) dated 30 April 2011

⁵³ Army Form W3121 – Bombardier Penn citation and approval of the MID dated 23 May 1968

⁵⁴ DGPERS-A/OUT/2016/R24540458 dated 15 February 2016

79. In relation to the eligibility criteria for claimed honour, Mr Ford submitted that:

'at 19 years of age, one month country and in charge of five or six people he stayed at his post despite being over-run, despite his primary weapon jamming, he lost two people dead and others wounded and stayed at his post until the conflict was over and then assisted in the clean up the next day – the proof of his behaviour was evidenced by the fact he was promoted a week or so later by his CO and a week later made an acting sergeant despite being the youngest trooper in the Task Force at the time'.⁵⁵

80. Colonel O'Mahoney was invited at the hearing to cross-examine Bombardier Forsdike and the other witnesses about his [Forsdike's] actions as well as to make submissions as to the merits of the application with respect to the eligibility criteria for a gallantry award, but declined to do so. He said Army 'acknowledged the brave conduct of Bombardier Forsdike and the leadership which he has shown, however recognising that we are looking at this through a different lens and with the benefit of information that was perhaps not available in 1968, the outcome is not unreasonable'. This approach did not assist the Tribunal.

81. Colonel O'Mahoney also noted that Bombardier Forsdike was promoted two weeks after the Battle and that his actions and his leadership demonstrated at the Battle were possibly taken into account when the decision to promote him was made as he had demonstrated leadership during the Battle. Although there was no evidence one way or the other, it is arguable that recognition of Bombardier Forsdike's actions accelerated his promotion. However, while the promotion may have been as a consequence of perceived good work undertaken by Bombardier Forsdike in the Battle, it is not a substitute for medallic recognition.

Evidence and Findings from the Accounts of the Action

82. The Tribunal noted that the Official History, the publication *The Battle of Coral* by McAulay and the article *A Gunner's Tale* by Stewart in *Wartime* all draw heavily upon Bombardier Forsdike's own account of his actions on 12/13 May 1968 as set out in his letter to the Curator of Weapons at the AWM in 1987.⁵⁶ Whilst the Tribunal was satisfied that Bombardier Forsdike's account was reasonably accurate, it is the account of the individual who is the subject of the application and the Tribunal preferred independent reports of the actions.

83. On the basis of Bombardier Forsdike's written account and his oral evidence, the Tribunal was reasonably satisfied that in the early hours of 13 May 1968, Bombardier Forsdike, who was also responsible for and carried an M60 machine gun, controlled a small group of seven men tasked to protect an approach to the Command Post at FSB Coral. The immediate area was assaulted by a superior force and Bombardier Forsdike personally reported to the Command Post that his area was under great threat. He was given little direction and returned to his position where he

⁵⁵ Ibid.

⁵⁶ AWM Private Record 87/219 – Letter from Mr Forsdike dated 17 August 1987

observed that his section commander, Sergeant Lament had been wounded and had withdrawn. Faced with a desperate situation involving casualties, low on ammunition and with the machine gun immobilised, Bombardier Forsdike attempted to gather the remnants of his team and moved towards the headquarters position, under heavy fire. He was knocked unconscious following an explosion and awoke sometime later.

84. The Tribunal accepted that at the time of the Battle, Bombardier Forsdike was 19 years of age and had been a junior non-commissioned officer for approximately three months. The Tribunal did not consider this age/rank match to be unusual during the Vietnam War with most unit commanders using the Lance Corporal/Lance Bombardier rank as means of providing experience to young soldiers with demonstrated leadership potential, without the need to formally train them in a leadership role. Similarly, the Tribunal noted Mr Ford's claim that at the time of the action Bombardier Forsdike 'was the youngest trooper in the Task Force' but considered it was most unlikely to be accurate and, in any event, was not supported by evidence. The Tribunal also noted that despite being a Lance Bombardier, his service record indicates that he was not trained for the rank as he did not attend and complete his promotion qualification courses until 1969.⁵⁷ As previously stated, this was not an unusual circumstance.

85. The Tribunal noted that gallantry decorations accord recognition for individuals 'who perform acts of gallantry in action'. The Tribunal was satisfied that Bombardier Forsdike's actions were undeniably 'in action'; however, the Regulations do not define 'gallantry'.

86. The Macquarie dictionary⁵⁸ defines "gallantry" as:

dashing courage; heroic bravery

and in turn, it defines "courage": as

braveness, bravery, courageousness, fortitude, game, gameness, gaminess, grit, grittiness, hardihood, intestinal fortitude, moral courage, pluck, pluckiness, prowess, stomach, valiance, valiancy, valiantness, valorousness, valour

and "bravery" as

brave spirit or conduct; courage, valour

87. The Tribunal does not consider that 'dashing' has a place in the context of defence honours.

88. The Oxford English dictionary defines gallantry as "courageous behaviour, especially in battle"⁵⁹

⁵⁷ Service Record – AB83 – Army Qualification Examinations – Page 6 Subject A,B, C for BDR 'Now Complete 15 August 1969' – RO Arty 3124/38/6

⁵⁸ *The Macquarie Dictionary* online accessed 13 February 2017

89. The Tribunal found the dictionary definitions circuitous and therefore to be largely unhelpful and turned to consider, in the absence of definition in the Regulations, if a workable definition from another like jurisdiction might be of assistance.

90. New Zealand differentiates between ‘gallantry’ and ‘bravery’. Four gallantry awards (the Victoria Cross for New Zealand, the New Zealand Gallantry Star, the New Zealand Gallantry Decoration, and the New Zealand Gallantry Medal) recognise military personnel who carry out acts which put their lives at risk while involved in warlike or non-warlike operational service (including peacekeeping operations). The four bravery awards (the New Zealand Cross, the New Zealand Bravery Star, the New Zealand Bravery Decoration, and the New Zealand Bravery Medal) recognise personnel who put their lives at risk while saving or attempting to save the life of another person and may also be awarded to military personnel in operational situations (including peacekeeping) where a gallantry award is not considered appropriate. ‘Gallantry’ is defined there as enduring great danger during warlike or non-warlike operational service, including peacekeeping, usually in the presence of the enemy, in an admirable and commendable manner, whereas ‘bravery’ is defined as saving or attempting to save the life of another person in the course of which they place their own life at risk.⁶⁰ It appears that the intent is to differentiate between saving the life of another person, and other acts of ‘gallantry’.

91. What amounts to gallantry will vary according to the circumstances of each case. The Tribunal considered that the concept of gallantry is greater than collective or individual acts of bravery and above and beyond what was expected of an individual or group who were bravely doing what they were trained to do or expected to do as part of a role, rank or responsibility.

92. The Tribunal turned to a review of the accounts of Bombardier Forsdike’s actions to establish whether his actions could be classified as an ‘act of gallantry’.

93. The Tribunal reviewed Bombardier Forsdike’s written account of the Battle and noted that attached to the letter was a chronological account of the actions with timings.⁶¹ This account provides confirmation that the section commander – Sergeant Lament was wounded at 2.30am and at that time Bombardier Forsdike ‘decided to move the men still OK back to the pits of 102 Bty’. He records that at 2.50am an explosion occurred which, Bombardier Forsdike said at the hearing, rendered him ‘unconscious for about twenty minutes’. On the basis of this evidence the Tribunal was reasonably satisfied that Bombardier Forsdike was in an acting command position from 2.30am to 2.50am and during this period he made a decision to move the able-bodied survivors (‘the men still OK’) back to the Command Post, and did so under fire.

⁵⁹ Oxford Living Dictionaries, Gallantry, accessed 13 February 2017

⁶⁰ <http://medals.nzdf.mil.nz/category/d/>, accessed 13 February 2017

⁶¹ AWM Private Record 87/219 – Attachment to the letter from Mr Forsdike dated 17 August 1987 – Folio #100

94. The Tribunal noted that the actions described by Bombardier Forsdike occurred in a very small area. He described the distance and proximity of the enemy and that the move back to the Command Post was a distance of '70 feet'. The Tribunal gave this geographical context significant weight as the actions were in a confined area where it is likely to have been reasonably straightforward to reach out to all around him and to take control. From the evidence, there was an overwhelming sense of desperation and a need to get under cover.

95. The Tribunal gave significant weight to the evidence of Captain Ekman who witnessed Bombardier Forsdike's actions. In the reconstructed draft citation, he wrote of Bombardier Forsdike having assumed command due to the wounding and evacuation of his section commander; that this was Bombardier Forsdike's first action; that he was aged only 19; that he was able to maintain control of his section; and that he was able to 'calmly reorganise and adjust his men to hold the line until the enemy withdrew'. He wrote that Bombardier Forsdike's 'bravery and resilience' stopped the RHQ position from being overrun by the NVA'. However, the Tribunal noted that the reconstructed citation was relatively brief and had been re-created some years after the action.

96. The Tribunal was not satisfied that the reconstructed citation adequately portrayed an 'act of gallantry'. The Tribunal also noted that Sergeant Penn, who Captain Ekman said was nominated at the same time as Bombardier Forsdike and for ostensibly similar reasons, received the MID, for which he had been nominated. The Tribunal noted that the citation for Sergeant Penn was significantly more detailed than that provided by Captain Ekman for Bombardier Forsdike. It referred, for example, to Sergeant Penn's additional responsibilities in relation to a listening post; his management of that post; his reporting of NVA activity; and, notwithstanding his being wounded by grenade fragments and rifle fire (to the face, torso and arm) on three separate occasions during the Battle, continued to command his section, adjusting positions as required and reporting his actions. Captain Ekman referred to Sergeant Penn's bravery and calm manner as being 'inspirational' to both his soldiers and his superiors. In the Tribunal's view, the Penn citation is comprehensive and accurately describes specific individual acts of gallantry, including great personal risk.⁶² By comparison, the Forsdike draft does not.

97. Further, as regards the statement in the citation that Bombardier Forsdike 'was able to maintain control of his section, and contact with the flanking unit and calmly reorganize and adjust his men to hold the line until the enemy withdrew', the Tribunal, having reviewed Bombardier Forsdike's evidence, considered that this statement was not entirely accurate and may have slightly embellished the description of the action. There was no evidence that Bombardier Forsdike was, at any point, in control of his section or made contact with the flanking unit other than to allow a patrol from 1 RAR to pass through. Equally, the assertion that he 'held the line' is not supported by the evidence which was that he in fact withdrew once he assessed the situation as dire.

⁶² Recommendation for Honours and Awards – Form AF-W3121 dated 23 May 1968

98. The Tribunal agreed with Captain Ekman's view that Bombardier Forsdike 'demonstrated leadership' but noted that he required guidance and took direction from the Adjutant in taking command in the absence of Sergeant Lament. The Tribunal also noted that leadership is not a factor in the eligibility criteria for gallantry awards.

99. The Tribunal gave limited weight to Major Murtagh's description as he was not an actual witness to the action and whilst his submission identified maturity and devotion to duty, the Tribunal was not satisfied that there was a description of gallantry.

100. The Tribunal gave some weight to Gunner Hundt's evidence but considered it to be an account of Bombardier Forsdike doing his job for which he was trained, that is, that he took the decision, when the team was threatened, to relocate to an alternate position. The Tribunal considered Gunner Hundt's account did not describe specific acts of gallantry. Gunner Hundt's evidence did not describe acts of gallantry, describing the action in very general terms. The Tribunal accorded Mr Rowe's evidence no weight as the context could not be verified.

101. To be eligible for a gallantry award Bombardier Forsdike's actions would need to demonstrate that he had performed 'acts of gallantry in action'. The Tribunal finds that the witness accounts point to Bombardier Forsdike doing what a junior non-commissioned officer in command of a small group in action should have done in that he demonstrated sound leadership in circumstances of significant risk. Whilst he was undoubtedly under threat and did his job to the best of his ability, the Tribunal finds that the various descriptions of his actions on 12/13 May 1968 do not identify specific acts of gallantry. The Tribunal was of the view that Bombardier Forsdike's actions and those of his colleagues were taken primarily out of an understandable desperation to survive.

102. The Tribunal took the view that Bombardier Forsdike's actions were those which were necessary to save his own life and that of Gunner Hundt. He was doing the job for which he was trained. The concept of gallantry is greater than that and, in the Tribunal's view, there needs to be acts which can be considered to be above and beyond what was expected of a person in his role. In Bombardier Forsdike's situation it could be reasonably expected that he would take a leadership role in the event his team was placed in a dire situation.

103. In coming to this view the Tribunal did not consider that, while his actions may have been brave, as was conceded by Defence, there was a special element of courage, fearlessness, daring or heroism as might be expected to be associated with gallantry.

104. For the above reasons the Tribunal does not consider that the decisions and actions of Bombardier Forsdike during the twenty minutes he was in command and under fire could be considered to be gallant – he did what would be expected of a junior non-commissioned officer – he took command and made a decision. Whether the decision was sound or not is not relevant from a gallantry perspective.

Conclusion in relation to the Merits Review

105. The Tribunal finds that Bombardier Forsdike's actions on 12/13 May 1968 at FSB Coral were undeniably brave but do not meet the threshold for a gallantry award. This finding does not in any way diminish the contribution Bombardier Forsdike made to his Regiment during his service in Vietnam.

TRIBUNAL DECISION

106. The Tribunal decided to recommend to the Minister that the decision by the Chief of Army to recommend that no further action be taken to seek recognition of Lance Bombardier Andrew Forsdike's actions during the Battle for Fire Support Base Coral on 13 May 1968 be affirmed.