



Australian Government

Defence Honours and Awards Appeals Tribunal

Hawkins and the Department of Defence [2017] DHAAT 20 (30 November 2017)

File Number(s) 2017/08

Re **Mr Richard Hawkins**
Applicant

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

Tribunal Brigadier Mark Bornholt, AM (Retd)
Brigadier K.J. O'Brien, CSC (Retd)
Mr David Ashley, AM

Hearing Date 19 October 2017

DECISION

On 30 November 2017 the Tribunal decided to recommend to the Minister that:

- a. the decision by the Director General Personnel – Army not to recommend Mr Richard Hawkins for the Medal for Gallantry for his actions during a platoon ambush patrol in South Vietnam on 15 December 1970 be set aside;
- b. the Minister recommend to the Governor-General that Mr Richard Hawkins be awarded the Medal for Gallantry for leadership and gallantry in action in hazardous circumstances as the machine-gunner of 9 Section, 6 Platoon, B Company, 2nd Battalion, the Royal Australian Regiment during a platoon ambush patrol near the Courtenay Rubber Plantation, Phuoc Tuy Province, South Vietnam on 15 December 1970; and
- c. Mr Hawkins be asked to return his Mention in Despatches.

CATCHWORDS

DEFENCE HONOUR – *Mention in Despatches* – *Medal for Gallantry* - 2 RAR - *Gallantry Decorations* – Vietnam

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. On 25 October 2014, the Tribunal received a request from Mr Richard Hawkins seeking a review of his eligibility for the Military Medal (MM).¹ On 16 December 1971 Mr Hawkins was awarded the Mention in Despatches (MID) for his actions during a platoon ambush patrol in the Courtenay Rubber Plantation, Phuoc Tuy Province, South Vietnam on 15 December 1970. Mr Hawkins claimed that he should have received the MM as that was what had been recommended by his Platoon Commander, Second Lieutenant Peter Gibson, MC (Mr Gibson).

2. On 6 November 2015 the Director General Personnel – Army (DGPers-A) having reviewed the claim by Mr Hawkins, submitted to the Tribunal that the decision to award Mr Hawkins the MID ‘be upheld’.² Following consideration of the matter by the Tribunal in December 2016, a recommendation was made to the Minister for Defence Personnel (the Minister) that the original decision to not upgrade Mr Hawkins’ MID be set aside and substituted with a recommendation that he receive the Medal for Gallantry (MG).³ On 26 May 2017 the Minister informed Mr Hawkins that he could not accept the Tribunal’s recommendations as both he (Mr Hawkins) and Mr Gibson had raised concerns regarding certain findings in the decision report.⁴ The Minister advised that his decision allowed Mr Hawkins to have the matter considered afresh and for him to make further submissions.

3. On 8 June 2017 Mr Hawkins made a fresh application to the Chief of Army (CA), this time for the MG. Mr Hawkins stated that:

‘some of the criticisms of the action recorded in the DHATribunal report are disputed ... and reflect badly on Peter Gibson’s leadership during the incident’⁵

4. Mr Hawkins’ second application was refused by the DGPers-A on 5 July 2017.⁶ She stated that:

‘As the recommendation to not award you a Medal for Gallantry was a decision of the Minister for Defence Personnel, it would be inappropriate for Army to override that decision.’⁷

5. On 11 July 2017 Mr Hawkins made application to the Tribunal seeking review of the DGPers-A decision.⁸ In his application he stated that he disagreed with several statements in the original Army report and a number of the findings in the Tribunal’s

¹ Application for Review of Decision by Mr Hawkins dated 25 October 2014.

² DGPERS-A/OUT/2015/R23840408 to the Tribunal dated 6 November 2015.

³ DHAAT/OUT/2017/011 to Mr Hawkins dated 12 January 2017.

⁴ The Hon Dan Tehan MP letter to Mr Hawkins dated 26 May 2017.

⁵ Letter from Mr Hawkins to Chief of Army dated 8 June 2017.

⁶ DGPERS-A/OUT/2017/R30442887 to Mr Hawkins dated 5 July 2017.

⁷ Ibid.

⁸ Application for Review of Decision by Mr Hawkins dated 11 July 2017.

decision report of 21 December 2016. In particular Mr Hawkins objected to comments in the report regarding ‘tactical mistakes’.⁹

Tribunal Jurisdiction

6. 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 defence honour as being those awards set out in Part 1 of Schedule 3.¹⁰ Included in the defence honours set out in Part 1 is the MG.

7. The Tribunal was satisfied that Mr Hawkins’ letter to the CA on 8 June 2017 constituted an application as defined in s110V(1)(c) of the Defence Act. The Tribunal considered this to be a new application as the award Mr Hawkins was now seeking was the MG. The Tribunal also considered that the DGPers-A decision that it would be inappropriate to override the decision of the Minister constituted a refusal to recommend Mr Hawkins for the MG therefore satisfying the requirements of s110V(1)(a) and (b) of the Defence Act. Accordingly, the Tribunal has jurisdiction to conduct the review and was satisfied that the *reviewable decision* is the decision by the DGPers-A dated 5 July 2017 to refuse to recommend Mr Hawkins for the MG.

8. On receipt of Mr Hawkins’ application for review, a newly-constituted Tribunal (the Tribunal) was appointed.¹¹ The decision report of the previous Tribunal was not made available to the Tribunal.

9. 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

10. The Tribunal noted that its *Procedural Rules 2011* do not mandate that it seek a report from the Secretary of the Department of Defence regarding Mr Hawkins’ application for review.¹² The Tribunal decided that the reasons for the DGPers-A to not recommend Mr Hawkins for the MG were clear and did not require further amplification.¹³ Accordingly the Tribunal decided to rely on the material previously provided on behalf of the Secretary, which included a report of 6 November 2015 (the Army Report).¹⁴ The Tribunal informed Defence, Army and Mr Hawkins that it would proceed to consider the application *de novo* and invited them to provide any

⁹ Ibid. Letter attached to Application dated 11 July 2017.

¹⁰ 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.

¹¹ DHAAT/OUT/2017/386 letter of appointment Bornholt, O’Brien, Ashley dated 15 August 2017.

¹² DHAAT Procedural Rules 2011, *Defence Act 1903*, Part 2, Division 2.1, Rule 7 (1).

¹³ DGPERS-A/OUT/2017/R30442887 to Mr Hawkins dated 5 July 2017.

¹⁴ Review of Recognition for Private Hawkins – Attachment 1 to DGPERS-A/OUT/2015/R23840408 dated 6 November 2015.

further material or evidence they wished to have considered that had not been provided to the previous Tribunal.

11. The Tribunal noted that in accordance with its *Procedural Rules 2011* the hearing into this matter would need to be conducted in public and accordingly, Mr Hawkins was invited to provide evidence at a hearing held in Brisbane on 19 October 2017. Mr Gibson was also invited to provide evidence at the hearing.

12. The Respondent was represented at the hearing by Lieutenant Colonel O'Mahoney of Army Headquarters.

Mr Hawkins' Service Record and Decoration

13. The Army report indicates that Mr Hawkins was conscripted under the *National Service Act 1964* and entered the Australian Army on 22 April 1969. He was allocated to the Royal Australian Infantry Corps and after initial training was posted to the 2nd Battalion, the Royal Australian Regiment (2 RAR) as a rifleman. Mr Hawkins deployed to South Vietnam with 2 RAR on 15 May 1970 as a Machine Gunner in 9 Section, 6 Platoon, B Company.

14. Mr Hawkins remained in B Company for the duration of his tour of duty and returned to Australia with the Battalion on 23 March 1971. He completed his national service obligations and was discharged from the Army on 21 April 1971.

15. **The MID Nomination.** The Commanding Officer 2 RAR nominated Mr Hawkins for the MID on 1 February 1971. It was recommended by the Commander 1st Australian Task Force on 10 February 1971.¹⁵ The nomination was submitted as priority 18 of 35 for the MID by the Commander Australian Forces Vietnam in his list of Periodical (Operational) Honours and Awards for the period January – June 1971.¹⁶ The citation for the award states:

'...on 15th December, 1970, Private Hawkins was the machine gunner of an ambush patrol in the vicinity of the Courtenay Rubber Estate, Phuoc Tuy Province. At 2100 hours the machine-gun group heard the movement of a group of approximately 20 enemy approaching the ambush position. The ambush was initiated when the machine gun group fired claymore mines and Private Hawkins fired a long burst of accurate fire. During the ensuing fire-fight, which lasted 45 minutes, Private Hawkins continued to engage, with short bursts, enemy movement in the contact area. His accuracy of fire caused heavy casualties to the enemy; it was later established that 10 enemy dead lay in an area from 15 metres to 120 metres from Private Hawkins' position and most of these were attributed to his effective fire. His calm response and reactions under the heavy enemy return fire, which wounded two Australians,

¹⁵ Australian Military Forces Recommendation for Honours or Awards – 1735350 Private R.K Hawkins 2 RAR/NZ(ANZAC) Bn.

¹⁶ Commander Australian Forces Vietnam Periodical (Operational) Honours and Awards for the period January – June 1971, dated July 1971, Annex B, Recommendations for the MID.

*were a steady influence on the remainder of his patrol and reflect great credit on himself, his Regiment and the Australian Army.'*¹⁷

16. Mr Hawkins' MID was gazetted on 16 December 1971.¹⁸

Background to the Action on 15 December 1970

17. On 14 December 1970 B Company 2 RAR under the command of Major G.D. Hoffman was deployed to Night Defensive Position (NDP) GARTH between Courtenay Hill and the De Courtenay Rubber Plantation to set up a firm base from which to conduct patrolling activities.¹⁹ On 15 December the Company had two platoons deployed, each divided into half platoon patrols and tasked to conduct ambushes of tracks and buildings known to have been used by the enemy.²⁰ 6 Platoon had divided into two patrols with one half platoon commanded by the Platoon Sergeant with two machine-gun groups, ambushing to the south west of NDP GARTH; and the other half platoon commanded by the Platoon Commander and with one machine-gun group, ambushing further to the west in the vicinity of the Courtenay Rubber Plantation.²¹ This ambush patrol planned to interdict likely enemy approaches to a small building to the west of NDP GARTH. During the establishment of the ambush approximately 10 individuals were sighted 200-300 metres west of the ambush site and the Platoon Commander despatched a section to pursue them and identify if they were enemy or civilians – despite the pursuit, the group fled.

18. The ambush was established as planned and at approximately 2110 hours, movement was heard by the platoon to their west and shortly thereafter, the platoon was subjected to a deliberate assault by a numerically superior enemy group from the west. The enemy initiated the contact with grenades and rifle fire.

Official Records of the Action

19. The initial Contact Report is very brief, and the Dust-off Request identifies that the contact resulted in nine enemy killed and two Australians wounded.²² This is later amended in the Summary of Contact/Incidents to ten enemy killed.²³

20. **The Summary of Contact/Incidents.** The Summary of Contact/Incidents was compiled sometime after the action in January 1971 but contains a reasonably detailed description of the action.²⁴ The summary indicates that the contact was initiated by the machine-gun and that the enemy of '15 plus' were main force troops. The summary states that there was 'no visibility at the time of the contact'. The narrative of the action states:

¹⁷ Australian Military Forces Recommendation for Honours or Awards – 1735350 Private R.K. Hawkins 2 RAR/NZ(ANZAC) Bn.

¹⁸ *Commonwealth of Australia Gazette* No.117, p.7596 dated 16 December 1971.

¹⁹ Army Report p.7

²⁰ Oral Evidence Mr Gibson 19 October 2017.

²¹ Ibid.

²² Contact Incident Report 152110 December 1970 – 2 RAR Operations Log, AWM RCDIG1029990.

²³ Appendix 7 to Annex C 2 RAR/NZ(ANZAC) Bn After Action Report dated 16 Jan 71, *Summary of Contact/Incidents* – 15 Dec 70.

²⁴ Ibid.

'Patrol was in ambush in an area of clear rubber, covering an approach to a house known to contain VC suppliers. When the position was being established, a group of at least 10 men were seen to the west approaching our position about 300 metres away through the rubber. They saw the patrol and ran. They were not carrying weapons and were not engaged but followed up. Group disappeared into the treeline to the north. At approximately 2030 hours two torches were flashed twice in the general area where the earlier group had been seen. This was answered by a lantern placed outside the window of the house. During the next 40 minutes, occasional noises were heard from the direction of the torches, twigs snapping etc, which suggested that there was somebody moving slowly and quietly towards our position. The ambush was sprung when whispering was heard directly in front of the MG post about 15 metres away. The enemy threw a grenade into the ambush site and opened fire with AK47s at the same time the ambush was initiated. The enemy moved from the western flank to the south and continued the fire fight on the southern flank. They were moving towards the south-eastern corner of the perimeter when APCs moving to effect Dustoff, were heard approaching. The enemy then broke contact and withdrew to the south.'

21. **The Official History.** The action is recorded in the official history *Fighting to the Finish: The Australian Army and the Vietnam War 1968-1975*.²⁵ The record is sourced from the Contact Report, the Summary of Contact/Incidents, the publications *Second to None*, p.106 and the Regimental history - *Duty First*, p.272.²⁶ The official history notes that the ambush was reported in the Australian media on 17 December 1970 and that the various accounts relied upon 'give varying estimates of the duration of the firefight'.²⁷ The official history states:

'On the evening of 15 December, a group of over 15 Viet Cong attacked 6 Platoon, B Company 2RAR/NZ, in a night ambush position in the Courtenay rubber plantation. The enemy moved stealthily to within 15 meters of the platoon position before throwing a grenade and opening fire with AK47s. The platoon immediately sprang their ambush with claymores and machine-gun fire. The enemy returned fire with an RPG and AK47's for 45 minutes before withdrawing, leaving ten of their dead behind. Two Australian soldiers were wounded in the fierce firefight. Corporal Kenneth Johnston, commanding the machine-gun group, received a shrapnel wound to the foot but continued to direct the fire of his group throughout the engagement. He was later awarded a Military Medal for this and a previous action four months earlier. Machine-gunner Private Richard Hawkins was also mentioned in despatches for his calm and accurate shooting under heavy enemy fire. Platoon Commander Second Lieutenant Peter Gibson was awarded the Military Cross for his leadership and control. The platoon had turned the enemy's attack into the most successful ambush in four months, with the largest number of enemy killed ...'

²⁵ Ashley Ekins with Ian McNeil, *Fighting to the Finish: The Australian Army and the Vietnam War 1968-1975*, Allen and Unwin in association with the Australian War Memorial, 2012, p.480

²⁶ Ibid. Endnote 70 to page 480, p. 1003

²⁷ Ibid. Endnote 72 to page 480, p. 1003

22. The various Battalion and Task Force operations and radio logs and diaries are generally consistent with the accounts in the official reports and where they vary, the differences are in the view of the Tribunal immaterial.

Mr Hawkins' Submissions

23. **Mr Hawkins' Original Submission.** In his submission of 25 October 2014, Mr Hawkins indicated that he disagreed with the citation for his MID which 'described the incident as an ambush'.²⁸ He claimed that whilst the platoon may have been in an ambush position, his 'opinion is that [they] were attacked on that night by a much larger force'. He stated that the enemy 'knew [his] exact location' and that 'their tactics were to take out the machine gun as quickly as possible'.

24. Mr Hawkins stated that 'the citation says [they] initiated the ambush'. He claimed this was incorrect 'because the enemy in fact took the first action ... throwing hand grenades and firing RPGs'. He claimed that if the platoon had initiated the ambush 'the result could have been much less effective'. He stated that the first enemy grenade landed right behind him almost at his feet where it exploded.

25. Mr Hawkins said that:

'A firefight followed in which my section commander and section 2IC were both wounded. One had his foot shattered by bullets and the other was shot through the upper body.'

'The enemy continued to attack my machine gun position from very close range with AK47s and other weapons [I estimate some were as close as 5 meters from me at times] for around 45 minutes. During this time the heavy enemy fire was directed at me and the rubber tree I was beside was absolutely riddled with bullets and rubber sap was splattered everywhere.'

26. In the conclusion to his submission Mr Hawkins said that his Platoon Commander had stated:

'Without the calm, steady reaction of myself and my No.2 machine gunner under heavy enemy fire, after casualties had been sustained around us, it was highly likely that our small and outnumbered patrol would have been over-run. The implications of that would have been disastrous.'

27. Mr Hawkins claimed that:

'my Platoon Commander, who I have recently discussed this matter with is sure that he recommended me for a Military Medal and that it must have been downgraded at Battalion level by the Battalion Commander'

28. Mr Hawkins made a number of assertions about the potential for his recommended award being downgraded including the quota policy, his rank of Private and the fact that he was a National Serviceman. He also expressed his disappointment

²⁸ Submission for Review into the Granting of a Military Award for Private Hawkins 25 October 2014

that the Battalion Commander, Platoon Commander and Section Commander were all decorated ‘on the strength of [his] so called success on that night’. He stated:

‘I fail to see how a person who almost singlehandedly, personally, and was directly responsible for repelling the number of enemy attacking that night and possibly/probably saving the lives of all in our patrol could receive the lowest award that was given out on that occasion.

It is well documented that the machine gun was responsible for the outcome on that night.’

29. The result that Mr Hawkins said he wanted from the review was that he be awarded the MM that was recommended by the Platoon Commander.

30. On 2 December 2015 Mr Hawkins wrote to the Tribunal after he had received the Army Report.²⁹ He refuted many of the details in the report including that the enemy were not observed moving towards the ambush, that the enemy initiated the contact, that the Commanding Officer may not have been as well informed about the action as had been suggested and repeating his initial submission that:

‘it is clear that Ken Johnstone (sic CPL Johnston the Section Commander) was wounded in the first seconds of the event ... and he took no further part’

31. **Oral Evidence.** During the hearing Mr Hawkins, assisted by Mr Gibson continued to press his contentions, in particular he emphasised that the patrol was attacked by the enemy who had a numerical superiority and appeared to be focussed on destroying the machine-gun. He stated that the only two junior non-commissioned officers were both wounded in the initial engagement leaving him in a situation which required him to demonstrate leadership as well as effectively operate the only machine-gun in the patrol.

Eye Witness Accounts of the Action

32. **Private Alan Baglin.** Mr Baglin was a member of the platoon and provided an account of the action which included a rough diagram of personal locations in the ambush site.³⁰ He stated that the people involved included 9 Section and three people from 7 Section with the platoon headquarters – a total of 12 soldiers. The diagram depicts four distinct groups; the gun group commanded by Corporal Johnston and including Private Hawkins on the gun and Private Townsend as his No. 2; the headquarters including Second Lieutenant Gibson, Private Smith the radio operator and a medical orderly whose name is not known; another group commanded by the Section 2IC, Lance Corporal Poulton and including three other riflemen - Privates Baglin himself and Privates Muir and Farquhar; and a fourth group of two – Privates Webster and Pattle. The diagram depicts the patrol being deployed in all round defence and oriented to the west - the direction the enemy were expected to approach from.

²⁹ Mr Hawkins Letter to the Tribunal dated 2 December 2015.

³⁰ Statement by 3179806 Private A Baglin.

33. Mr Baglin stated that:

'The start of the contact was initiated by a large explosion (grenade?) gunfire and flares. At that point Bruce Poulton was talking to Peter Gibson ... Bruce Poulton was then shot in the shoulder/arm and yelled 'I have been hit' ...

Throughout this I could hear many explosions and gun fire coming from Richard Hawkins', Dennis Townsend's and Ken Johnson's position. I then heard Ken Johnson yell out 'I have been hit medic medic'

After what seemed an eternity, things died down and the APCs arrived ...'

34. In relation to Mr Hawkins' actions, Mr Baglin stated:

'I was thankful we had such competent people on the gun (Richard Hawkins and the No2 Dennis Townsend). In particular, Richard Hawkins showed great courage and level headedness under fire and things could have been much different if someone else in this position had not shown the same amount of coolness and courage'

35. **Private Dennis Pattle.** Mr Pattle was a member of the platoon and provided a statutory declaration on 3 July 2016 which included his account of the action.³¹ He stated that the platoon was sited in groups of three in a triangular formation with the gun group on the western apex, his group on the southern apex and the platoon headquarters in the middle. He said that:

'... around 8pm it became obvious that there was significant enemy movement towards our positions primarily from the west ... about 9.15pm the enemy launched a major assault on Hawkins's position. They opened fire with automatic weapons and threw at least two grenades. The enemy fire was very intense, appeared to be close and mainly directed at the gun group.

Given the volume of fire and previous wide spread enemy movements, I knew we were under attack from a numerically superior force. I heard and saw Hawkins's gun open fire at or about the same time as the enemy assaulted ... Johnson and another soldier were immediately severely wounded by shrapnel and enemy fire.

...someone called on me to fire illumination rounds from the M79 ... I moved closer to Hawkins position and fired at least two illumination flares. I remember Hawkins also firing controlled bursts taking advantage of the illumination...

I informed the gun group ... that the enemy was shifting further to the south trying to outflank their position. Hawkins was the one who acknowledged this information and acted on it ...

³¹ Statutory Declaration by Mr D. Pattle declared on 6 July 2016.

...it was obvious that the enemy was sparing no effort to destroy the gun group and, then develop a more focussed attack on the rest of our more lightly defended positions.

it was Hawkins's calm and methodical actions/reactions, and Peter Gibson's leadership, that ultimately prevented the enemy from overrunning our positions.

... we were in contact with the enemy for about 40-50 minutes ... from what I heard and otherwise witnessed that night ... I believe Hawkins also assumed a leadership role because Johnson had been badly wounded ...'

36. Mr Pattle concluded his account by suggesting that 'a confluence of circumstances' had transpired against proper recognition of Private Hawkins and that there had been a failure to 'properly identify the crucial role played by Hawkins (and his assistant machine gunner Townsend) in preventing our position from being overrun by a very aggressive larger force'. He stated that the 'full truth and extent of Hawkins's singular actions on the night of December 15, 1970 have never been officially acknowledged' and:

'This error needs to be reversed by awarding him a decoration more consistent with the great courage, personal initiative, focussed aggression and deadly determination he displayed that night. At the time of the attack he was also forced to assume overall operational responsibility for the gun group ...

... despite being the focus of a determined enemy attack, in an exposed position, I have absolutely no doubt that Hawkins broke the enemy's momentum during their initial assault and enable us to maintain the tactical advantage.'

37. **Private Alan Farquhar.** Mr Farquhar was a member of the platoon and provided a statutory declaration on 24 June 2016 which included his account of the action.³² He stated that:

'I was approximately 5 meters to the right of the machine gun group. At about 9pm that night a large enemy force attacked us pinning us in a crossfire. They were in a strong position to overrun us. I believe that if it were not for the calm steel nerve of Private Hawkins machine gunner and his extremely accurate shooting we most surely would have been overrun and killed ...'

38. **Private Dennis Townsend.** Mr Townsend was the No. 2 on the machine-gun, he provided a statement on 30 July 2016.³³ He said that:

'... it was my job to lay out all the ammunition for the machine gun and to hook up more rounds as needed ... Hawkins and myself was convinced the enemy was approaching us ... I had the plunger for the mines in my hand ready to explode the claymores ... I whispered to Hawkins be ready I'm going

³² Statutory Declaration by Mr A. Farquhar declared on 24 June 2016.

³³ Statement by Private D Townsend by e-mail dated 10.04pm 30 July 2016 to the Tribunal.

to push the plunger ... well at this instant all hell broke out at virtually the same time as I detonated the claymores a grenade landed about a meter behind our feet. Hawkins had that M60 singing I was blasting away with my SLR and hooking more rounds up for the gun.

The amount of fire that was coming back at us was incredible. For the first few minutes we were not aware that CPL Johnson had been hit from shrapnel from the grenade ...

I remember Lt Gibson screaming out to get that gun going Hawkins ... we just kept firing for maybe thirty minutes or more ...'

Second Lieutenant Gibson's Account of the Action and Evidence

39. On 16 September 2015 Mr Gibson provided a statutory declaration in support of Mr Hawkins' claim for the MM.³⁴ He stated that:

'... at 9.10pm, the enemy initiated a major firefight with grenades and AK47 fire. Our response was immediate as ordered and an engagement of approximately 45 minutes ensued, with the enemy shifting positions and firing from both the western and southern flanks.

In the immediate enemy action, Corporal Johnston and Lance Corporal Poulton were seriously wounded by shrapnel and gunfire. In the absence now of any NCO in charge of his group, Private Hawkins continued to engage the enemy as they moved around and attacked from our flanks. His bursts of fire were calm, methodical and accurately directed ...

... until the arrival of the APCs, Private Hawkins continued to engage the enemy and his calm, accurate and steady action prevented the enemy from inflicting further casualties and overrunning our position.

This action resulted in ten enemy known to be dead, most of whom were located 10-25 metres from Private Hawkins' position ...

Subsequently, among other recommendations for honours and awards from this action, I recommended that Private Hawkins be awarded the Military Medal ... the success of this action and the survival of the patrol were in large part due to the actions of Private Hawkins for whom the award of a Military Medal was fully justified.'

40. On 24 August 2016 Mr Gibson wrote to the Tribunal to clarify a number of matters.³⁵ In relation to the accuracy of Mr Hawkins' MID citation he stated that 'it is inaccurate in a number of critical respects' and that it 'does not appropriately reflect the circumstances in the field or, more importantly, the key role played by Mr Hawkins throughout the engagement'. In relation to the 'serious wounding of the

³⁴ Statutory Declaration by Mr P. Gibson declared on 16 September 2015.

³⁵ Letter from Mr Gibson to the Tribunal dated 24 August 2016.

machine gun group commander, Corporal Johnston and the only other non-commissioned officer in the patrol, Lance Corporal Poulton, he stated:

'The significant fact here is that Private Hawkins was now without the direct support of the gun group/section commander Corporal Johnston and was required to respond to changing fire directions from the enemy who were now attempting to out-flank and attack our position from the south and south-west.'

'For approximately 45 minutes the fire-fight continued with the enemy probing our flanks. Private Hawkins continued to provide the mainstay of our response, with calm, effective and accurate fire, under heavy enemy attack.'

41. Mr Gibson highlighted in his letter that once the contact commenced they were 'fighting a fierce defensive battle against a numerically superior force' and that Mr Hawkins was 'the sole machine gunner in our small patrol, which had now lost its two NCOs ...'.

42. **Level of Award and Revised Citation.** Mr Gibson stated in his letter that Mr Hawkins' 'actions on the night of 15 December 1970, were conspicuous in their gallantry under heavy fire' and that the 'circumstances were extremely hazardous'. He said that:

'I believe his actions merited the award to him of a Military Medal then and now justify the upgrading of his Mention in Despatches to the Medal for Gallantry.'

43. Mr Gibson attached to his letter a redrafted citation for the Medal for Gallantry for Mr Hawkins.³⁶ The relevant extracts of this citation which relate to Mr Hawkins' actions state:

'... the patrol came under attack at 2110 hours when the enemy launched grenades and heavy AK47 fire targeting principally the machine gun group of which Private Hawkins formed part. The gun group and other members of the patrol immediately fired claymore mines and returned fire, with Private Hawkins now leading the gun group after his section commander was seriously wounded in the initial engagement.'

'Private Hawkins continued to engage, with short bursts, enemy movement to the front and flank of his position, notwithstanding heavy and targeted return fire. The ensuing firefight, which lasted 45 minutes, only ceased when the enemy withdrew on the approach of the armoured personnel carriers ... ten enemy were subsequently found dead in an area from 15 metres to 120 metres in front of Private Hawkins' position, most of them attributable to his effective fire. He assumed leadership of his section and his calm and measured responses, under great pressure and heavy fire, were a steadying influence on the rest of the patrol and enabled it to defeat a larger force on the battlefield ...'

³⁶ Ibid.

44. **Oral Evidence.** During the hearing Mr Gibson was able to portray to the Tribunal the dispositions of the patrol and clarify that they were in an area ambush aiming to interdict enemy approaches to a small hut in the rubber plantation adjacent to thick jungle.³⁷ He said that claymore mines and the machine gun were sited to cover the most likely approach from the west and other pits and claymore mines were sited to provide limited depth to the small patrol. He said that he had given orders to the effect that the patrol was not to open fire until the last possible moment to ensure maximum enemy casualties.

45. Mr Gibson continued to press his written submissions regarding the critical role that Mr Hawkins played as the sole machine-gunner and the leadership example he provided when the only two junior non-commissioned officers were wounded. He said that it was this leadership role which was crucial to the survival of the patrol during the engagement and that this had not been included in the citation for Mr Hawkins' MID. He said that he would have included this in his recommendation for the MM. He said that he did not know why it was not included in the final citation which was signed by the Commanding Officer. He said that:

'the only thing that saved us was Hawkins'

Other Evidence relevant to Mr Hawkins' Actions

46. **Vietnamese Cross of Gallantry with Gold Star.** The Army report included the citation for the Vietnamese Cross of Gallantry with Gold Star which was awarded to Mr Hawkins on 22 May 1971.³⁸ The citation for the award states:

'Private Hawkins was an outstanding machine gunner in "B" Company 2nd Battalion, the Royal Australian Regiment. On 15 December 1970 he had distinguished himself in a night ambush patrol near the Courtenay Rubber Plantation in Phuoc-Tuy Province. Private Hawkins opened fire accurately at the enemy group though heavy enemy fire was directed at him. He still stayed calm and continued to fire until the enemy retreated leaving 10 dead in an area from 15 metres to 120 metres from his machine gun position.'

47. **Other Citations for the Action.** Both Mr Gibson and Corporal Johnston were decorated as a result of the action. Corporal Johnston received the MM for two separate actions, the first of which occurred in August 1970.³⁹ The paragraph of the citation which relates to the 15 December action states:

'... Corporal Johnston was commanding the machine gun group of an ambush patrol in the vicinity of the Courtenay Rubber Estate, Phuoc Tuy Province. At 2100 hours the gun group heard approximately 20 enemy approaching their ambush position. Corporal Johnston allowed the enemy to approach within 15 metres before initiating the contact. In the first return of fire by the enemy he was wounded in the foot. Despite the pain and shock, he directed the fire of

³⁷ Oral Evidence Mr Gibson 19 October 2017.

³⁸ Review of Recognition for Private Hawkins – Attachment 1 to DGPERS-A/OUT/2015/R23840408 dated 6 November 2015, Annex C.

³⁹ Australian Military Forces Recommendation for Honours or Awards – 3451766 Corporal K. Johnston, 2 RAR/NZ(ANZAC) Bn.

his group during the remainder of the 45 minute engagement. As a result of his control the gun group were responsible for most of the 10 enemy killed ...'

48. Mr Gibson received the Military Cross for his command during the action on 15 December 1970.⁴⁰ The citation states:

'Second Lieutenant Gibson was commanding a patrol of 17 men which had established an ambush near the Courtenay Rubber Estate, Phuoc Tuy Province. At 2100 hours a group of approximately 20 enemy approached the ambush and were engaged with claymores and fire from the one general purpose machine gun carried by the patrol. A fire-fight which lasted 45 minutes, ensued between the enemy group and the patrol. During this time Lieutenant Gibson calmly and effectively directed the fire of the patrol despite the fact that the enemy returned fire in the direction of his voice. Finally the enemy fled leaving 10 dead on the battlefield. The patrol suffered two lightly wounded casualties.'

The success of this action can be attributed to the excellent siting of the ambush and the calm control displayed by Lieutenant Gibson.

49. The Tribunal noted that these two citations and Mr Hawkins' citation for the MID were all signed on the same day – 1 February 1971, by Lieutenant Colonel Church, the Battalion's Commanding Officer.

Knowledge of Private Hawkins' Actions by the Commanding Officer and Chain of Command

50. **The Commanding Officer.** In Mr Gibson's letter of 24 August 2016, he submitted that the Army's assertion that 'it can be reasonably concluded that LTCOL Church was well informed of Mr Hawkins' actions ...' was 'wrong'. He stated that:

'Colonel Church spoke with me very briefly at the scene of the engagement on the morning of 16 December 1970. He never spoke to me again about this matter, even when writing an inaccurate account of it in his 1995 book.'

51. **The Company Commander.** The Officer Commanding B Company at the time of the action was Major Graham Hoffman. He provided a statement to the Tribunal on 6 July 2016.⁴¹ Major Hoffman stated that:

'I cannot recall playing any part in making any recommendation for an award for Private Hawkins ...'

I moved to the site of the ambush and discussed the action with the patrol commander 2LT Gibson ...'

⁴⁰ Australian Military Forces Recommendation for Honours or Awards – Second Lieutenant P. Gibson, 2 RAR/NZ(ANZAC) Bn.

⁴¹ Statement by Major G. Hoffman by e-mail dated 12.42am 6 July 2016 to the Tribunal.

... no consideration was given to awards until an instruction was received from Battalion Headquarters requesting submissions ... sometime between late February and early April.

...I cannot recall discussing any award with any member of the Company, but am now aware that Peter Gibson believes he did discuss such matter with me. I cannot recall.

... the first I was aware of the award of a MID to Richard Hawkins and a Military Medal to Ken Johnston was on reading of same in the newspaper late 1971.'

52. During the hearing Mr Gibson stated that he could not recall how he had made the recommendation for the award for the MM for Mr Hawkins and whether or not it was in writing or verbally.⁴² He said that he could not recall being asked or consulted in the drafting of citations for any of his soldiers and that the actual citation 'was not my words'. He also said that he could not recall being consulted in the drafting of the Summary of Contact/Incident but the information contained therein must have come from him. Mr Gibson said that if he had been consulted or shown a draft of the citation at the time, he would have altered it to include the leadership example that Mr Hawkins had provided as well as his skill on the machine-gun.

The Defence Submission

53. On 6 November 2015, the DGPers-A having reviewed the claim by Mr Hawkins, recommended to the Tribunal that the decision to award Mr Hawkins the MID 'be upheld'.⁴³ He said that Mr Hawkins' submission did not contain any evidence or claims that the nomination failed to be raised, processed or considered in accordance with the policy of the time. He stated that he was satisfied that there was no maladministration or failure in due process and that Mr Hawkins had received the award which had been recommended by his Commanding Officer.

54. Attached to the letter from the DGPers-A was a report of the research done by the Army History Unit into Mr Hawkins' service in Vietnam (the Army Report). The Army Report did not have the benefit of the witness accounts previously mentioned and was based upon war diaries, radio logs and published historical accounts. The author made several assumptions and reached conclusions which were subsequently refuted by Mr Hawkins who in some instances was offended by the findings.

55. The Tribunal considered that there is nothing to be gained from repeating the report or Mr Hawkins' comments in relation to it, suffice to say that no merits review was conducted by Army of Mr Hawkins' actions.

56. The Army Report does provide relevant evidence in relation to the quota in place for the period in question. The report states that the quota would have allowed for the award of 27 honours and 46 MIDs and according to the Australian War

⁴² Oral Evidence Mr Gibson 19 October 2017

⁴³ DGPERS-A/OUT/2015/R23840408 to the Tribunal dated 6 November 2015

Memorial records, 15 honours and 34 MIDs were approved between January and June 1971.

57. During the hearing the Respondent reiterated that Army did not support retrospective recognition and gave considerable weight to the chain of command decisions of 1971. The Respondent also stated that the evidence suggested that the nomination for Mr Hawkins had been appropriately processed at the time.⁴⁴ The Respondent asked the Tribunal to note that of the approximately forty thousand soldiers who deployed to Vietnam only 423 were awarded the MID and this, in the view of the Respondent highlighted that the award was significant. The Respondent conceded that there was no dispute that the accurate application of fire by Mr Hawkins caused heavy enemy casualties and that his conduct provided a steadying influence upon the rest of the platoon during the engagement. The Respondent stated that this was consistent with the citation for the award and it was appropriate therefore that he received the MID for his actions. The Respondent conceded that Mr Hawkins' calm response and steadying influence could also be considered to be qualities of leadership.

58. Mr Gibson challenged the Respondent's view regarding the appropriateness of the MID pointing out that the award was given to many of the 423 individuals for service, not gallantry and that Private Hawkins' actions could not be reasonably compared to many of these people.

Tribunal Consideration

59. **General.** The Tribunal is required to review decisions 'on the merits' and this requires an examination of the merits of the matter in dispute rather than the lawfulness of the decision under review.⁴⁵ The merits review necessitates consideration of the evidence and accordingly, the Tribunal conducts an independent review, with values, expertise, methods and procedures of its own, and not those of the original decision-maker. In making its decision, the Tribunal considers afresh the relevant facts, law and policy.⁴⁶ 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 decision was correct.⁴⁷ The Tribunal is bound to make what it regards as the 'correct and preferable' decision.

60. **The Reviewable Decision.** The Tribunal noted that the new application by Mr Hawkins to the CA provided Army with another opportunity to conduct a merits review of his actions but such review was not done. The Tribunal considered that Army's decision to determine that it would not override the decision of the Minister, was a decision open to it to make.⁴⁸

61. **The Nomination Process in 1971.** The Tribunal notes that Mr Gibson and Mr Hawkins both claimed that the nomination process in 1971 was flawed. Mr

⁴⁴ Oral Submission – Lieutenant Colonel O'Mahoney 19 October 2017.

⁴⁵ *Council of Australian Tribunals Practice Manual* dated 7 April 2006 p.1.3.1.2.

⁴⁶ Pearson, Linda, "Merit Review Tribunals", in Creyke, Robin and McMillan, John, *Administrative Law – the Essentials*, AIAL 2002, p. 68.

⁴⁷ *McDonald v Director-General of Social Security* (1984) 1 FCR 354.

⁴⁸ DGPERS-A/OUT/2017/R30442887 to Mr Hawkins dated 5 July 2017.

Gibson says that he nominated Mr Hawkins for the MM, however his Company Commander stated that he could not recall being involved in any nomination. Mr Gibson also asserted that the Commanding Officer had only limited understanding of the details of the engagement as he only briefly discussed the action with him the morning afterwards.

62. During his oral evidence Mr Gibson said that he could not recall submitting a written nomination for Private Hawkins but had discussed the contact with the Company Commander and the Commanding Officer. The Tribunal notes that a nomination for an award in 1971 required that the Nominating Officer be identified on the nomination form.⁴⁹ In this case the Commanding Officer, Lieutenant Colonel Church had signed as the Nominating Officer. The Tribunal was therefore satisfied that the nomination commenced with the signature of the Nominating Officer and any discussions prior to that signature were not relevant to the decision by the Commanding Officer to nominate the individual for recognition and the level of award. The Tribunal noted that Mr Gibson conceded this during his closing submission.

63. The Tribunal notes that the nomination forms for the three individuals cited in relation to the action (Gibson, Johnston, Hawkins) were all signed by the Commanding Officer on 1 February 1971, some six weeks after the action. This appears to corroborate the Company Commander's evidence that he was asked for submissions for awards for the tour in early 1971 as part of a process to establish periodical awards for the final six months of the battalion's tour.

64. Similarly, the Summary of Contact/Incident appears to have been written at least four weeks after the action as it is appended to a monthly report and dated 17 January 1971. Mr Gibson gave evidence that his own contact report had been sent by radio to the Company and from there to the Battalion.

65. Mr Gibson said that he was not aware who had written the Summary of Contact/Incident and that he had not been involved in the drafting or consulted on the content. The Tribunal was aware that it appeared to be normal practice for formal contact reports to be drafted by clerks at the Battalion Headquarters based upon radio transmissions. Evidence of this practice was provided to the Tribunal in *Reid and the Department of Defence*.⁵⁰

66. The Tribunal was therefore satisfied that on the balance of probabilities, awards for the Battalion's tour of duty were compiled collectively as periodical awards in February 1971 and that the source of these awards was in all likelihood the re-drafted contact reports, the content of which may have been inaccurate or altered as a result of redrafting and in the case of Mr Hawkins, the reports and citation were not verified by his immediate chain of command.

67. **Quotas and Comparisons.** The Tribunal noted the assertions by Mr Hawkins about the potential for his recommended award being downgraded as the result of the quota policy or the fact that his rank was Private and that he was a National

⁴⁹ Pamphlet on Military Honours and Awards 1960 WO Code 12922 – War Office (MS3) July 1960.

⁵⁰ Oral Evidence by Lieutenant Hughes, 7 RAR on 12 September 2017 in the matter of *Reid and the Department of Defence*.

Serviceman. The Tribunal noted that there was no evidence submitted to support this assertion and that the Army Report suggests that the quota for the period in question was not fully subscribed. Relying on the Army Report, the Tribunal was reasonably satisfied that it is a matter of fact that the level of Mr Hawkins' award was not impacted by the overall quota; although whether the quota was pre-empted or considered when the individual award level was decided by the Commanding Officer is not known. Accordingly, the Tribunal dismissed the assertion regarding the impact of the quota.

68. The Tribunal also noted that Mr Hawkins submitted that he was disappointed that he had received 'the lowest award that was given out' and that the Battalion Commander, Platoon Commander and Section Commander were all decorated 'on the strength of [his] so called success on that night'. The Tribunal did not accept that comparisons were a valid method of establishing the benchmark for a particular award and noted that the Battalion Commander and Section Commander's recognition were for other actions/reasons and not exclusively this contact for which Mr Hawkins had been recognised. Additionally, each matter is unique – involving different circumstances and occurring when exposed to different levels of threat and complexity. For this reason, the Tribunal rejected Mr Hawkins' claims regarding comparisons as the Tribunal is required to determine matters based on individual eligibility as determined by the conditions for the award or decoration as declared in the Instruments, Regulations and Determinations for each particular honour. Eligibility is determined in each matter according to its own facts.

69. **Initiation of the Contact.** The Tribunal noted that Mr Gibson and Mr Hawkins placed great emphasis on whether the contact was initiated by the enemy or by the platoon. The Tribunal also considered that this was a significant issue as it would point towards the intentions of the enemy – were they conducting a deliberate assault to destroy the Australian patrol, or were they simply moving towards the hut and subsequently would be ambushed thus placing the advantage with the ambusher?

70. The Tribunal noted that the handwritten Contact Report attached to the Battalion Operations log for 15 December 1970 indicates that:

Callsign 23 initiated with claymores, M60, enemy engaged with RPG and AK47⁵¹

71. The Summary of Contact/Incident states:

... the ambush was sprung when whispering was heard directly in front of the MG post about 15 metres away. The enemy threw a grenade into the AP location, and opened fire with AK47s at the same time as the ambush was initiated ...⁵²

72. The Tribunal also noted that the citation for Corporal Johnston's award stated that:

⁵¹ Contact Report 2110 hours – 2 RAR/NZ (ANZAC) Bn Operations Log for 15 December 1970.

⁵² Appendix 7 to Annex C 2 RAR/NZ(ANZAC) Bn After Action Report dated 16 Jan 71, *Summary of Contact/Incidents* – 15 Dec 70.

*... Corporal Johnston allowed the enemy to approach within 15 metres before initiating the contact ...*⁵³

73. The Tribunal noted that the various official histories and accounts of the engagement draw on the Summary of Contact/Incident as the source of the description of the action. As previously discussed, this document may well have been altered in the redrafting process and appear to include a number of minor inconsistencies and inaccuracies. The evidence of eye witnesses including Mr Gibson, Mr Hawkins, Mr Townsend and Mr Pattle all suggest strongly that the contact was actually initiated by the enemy.

74. The Tribunal noted that the official history states:

*On the evening of 15 December, a group of over 15 Viet Cong **attacked** 6 Platoon ... in a night ambush position in the Courtenay rubber plantation. The enemy moved stealthily to within 15 meters of the platoon position before throwing a grenade and opening fire with AK47s. The platoon immediately sprang their ambush with claymores and machine-gun fire*⁵⁴ (emphasis added)

75. Having considered the material before it, the Tribunal preferred the eye witness evidence and particularly that of Mr Townsend who said:

*I had the plunger for the mines in my hand ready to explode the claymores ... I whispered to Hawkins be ready I'm going to push the plunger ... well at this instant all hell broke out at virtually the same time as I detonated the claymores a grenade landed about a meter behind our feet...*⁵⁵

76. The Tribunal also noted Mr Gibson's evidence that he had directed his platoon not to open fire 'until the last moment to get as many as possible into the ambush' and that he was aware of their approach as Corporal Johnston reported movement in the rubber plantation to the west that was 'slow and methodical' and that he could hear whispering.

77. Accordingly, having considered the evidence, the Tribunal finds that the engagement was initiated by the enemy who deliberately attacked the platoon position and fired upon them as they were about to respond. The Tribunal was therefore of the view that at the time the engagement was commenced, the enemy held both a numerical and firepower advantage and had the initiative – they were launching a deliberate attack, in all likelihood aware that they had a numerical superiority and with the aim of destroying the patrol or inflicting maximum damage upon it.

⁵³ Australian Military Forces Recommendation for Honours or Awards – 3451766 Corporal K. Johnston, 2 RAR/NZ(ANZAC) Bn.

⁵⁴ Ashley Ekins with Ian McNeil, *Fighting to the Finish: The Australian Army and the Vietnam War 1968-1975*, Allen and Unwin in association with the Australian War Memorial, 2012, p.480.

⁵⁵ Statement by Private D Townsend by e-mail dated 10.04pm 30 July 2016 to the Tribunal.

78. **The Merits Review.** Notwithstanding that the Summary of Contact/Incident may have contained inaccuracies and that the engagement was initiated by the enemy, none of this obviates the veracity of Mr Hawkins' nomination for and receipt of the MID. The Tribunal also considered that whether the nomination process could be considered to amount to maladministration or not was largely irrelevant as the Tribunal is bound by legislation to conduct a merits review of Mr Hawkins' actions. Accordingly, the Tribunal turned to an assessment of the merits of the actions against the eligibility criteria for gallantry decorations.

Gallantry Assessment

79. In conducting the merits review the Tribunal reviewed the applicant's claims and submissions and the evidence. The Tribunal decided that it would first review Mr Hawkins' actions to determine whether or not he had performed an act of gallantry and if this were the case, it would then proceed to consider his actions in relation to the eligibility criteria for the claimed honour – the MG.

80. **Contemporary Gallantry Awards.** Australian service personnel received honours and awards under the Imperial system until February 1975 when the Government introduced the Australian 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.⁵⁶ The eligibility criteria for gallantry awards in the Australian system are governed by Regulations.

81. **Gallantry Decorations.** The Star of Gallantry, the MG 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.'*⁵⁷

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.*

...

Making of awards

⁵⁶ Prime Minister of Australia Media Release 111/92 dated 5 October 1992.

⁵⁷ *Commonwealth of Australia Gazette No. S25 – Gallantry Decorations Regulations* - dated 4 February 1991.

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

...

82. **What is Gallantry?** The Tribunal noted that all the gallantry decorations accord recognition for individuals ‘who perform acts of gallantry in action’. Whilst ‘in action’ is a relatively straight forward concept, ‘gallantry’ is an abstract term, which is not defined in the Regulations. Various dictionary definitions such as ‘dashing courage; heroic bravery’⁵⁸; and ‘courageous behaviour, especially in battle’⁵⁹, are largely circuitous and unhelpful. Some countries have attempted to differentiate between ‘bravery’ and ‘gallantry’; defining the later as recognition of military personnel who carry out acts which put their lives at risk while involved in operational service; whilst ‘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 Again this is largely unhelpful in defining gallantry in the context of the Australian Honours and Awards system.

83. The Tribunal considered that there is an expectation that soldiers in battle conducting themselves in accordance with their training, will be acting bravely. The Tribunal considered that gallantry requires a higher standard of conduct than bravery and usually a special and additional element of courage, fearlessness, daring or heroism will have been demonstrated. What amounts to an ‘act of gallantry’, necessarily varies according to the individual circumstances of each action, and depending on many factors, including the level of threat, the person’s training, role and responsibility, the risk to the individual and/or the group, and the consequences of undertaking, or not undertaking, the particular act.

84. 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.

Evidence and Findings from the Accounts of the Action

85. **Summary of the Action.** Relying on Mr Hawkins’ written and oral evidence, the evidence of his Platoon Commander, eye witness accounts, war diaries and the Summary of Contact/Incident, the Tribunal was satisfied that at 2110 hours on the evening of 15 December 1970, Mr Hawkins, the sole machine-gunner in a half platoon ambush, was involved in a contact with a numerically superior enemy force in the Courtenay Rubber Plantation. At the time of the contact it was dark and all involved were in extremely close proximity.

86. The platoon was at half strength commanded by the Platoon Commander whilst the other half, commanded by the Platoon Sergeant was in a separate location also patrolling. The platoon had only two junior non-commissioned officers, Corporal

⁵⁸ The Macquarie Dictionary on-line accessed 20 October 2017.

⁵⁹ The Oxford Dictionary on-line accessed 20 October 2017.

⁶⁰ <http://medals.nzdf.mil.nz/category/d/index.html>.

Johnston and Lance Corporal Poulton. Corporal Johnston was located near the machine-gun manned by Mr Hawkins with the Number Two, Mr Townsend and was intending to control the fire of the gun during the ambush. His second-in-command, Lance Corporal Poulton was located with the rifle group. The Platoon Commander had laid out the half platoon in an ambush posture with the only machine-gun sited to fire onto the most likely enemy approach from the west. The machine-gun was supported by a bank of claymore mines also covering the western approach and other claymores were positioned to the south and east providing all round protection. Not long after the ambush was set, an enemy force of at least fifteen soldiers launched a deliberate assault on the ambush site with grenades and small arms with the bulk of the attack focussed on the machine-gun. During the initial exchange of fire, Corporal Johnston was wounded in the foot by shrapnel from a grenade and Lance Corporal Poulton suffered a gunshot wound. Both junior non-commissioned officers were immobilised placing Mr Hawkins into a leadership role which was recognised by his colleagues.

87. The enemy pressed their attack directly at the gun group for a considerable period of time before attempting to outflank it to the south. The exchange of fire continued for approximately 45 minutes with the bulk of the platoon's fire being applied by the machine-gun which Private Hawkins fired continuously in controlled bursts to his front and flank. The Platoon Commander attributed 70% of the fire on the enemy had been brought to bear by the machine-gun as most of the other members of the patrol were either masked by their colleagues or tending to the wounded.⁶¹

88. Most significantly, the evidence confirms that it was pitch black and there was no moon - accordingly the majority of fire from both sides was directed at muzzle flashes. The Platoon Commander stated that even with the introduction of limited hand-held illumination and later aerial illumination, the visibility and ability to identify targets was severely restricted. Mr Hawkins was required to carefully manage and control his fire to ensure it was applied accurately whilst conserving ammunition. He and the Platoon Commander understood the gravity of the situation and without the junior non-commissioned officers, it was in the view of the Platoon Commander, essential that Mr Hawkins provide a leadership example through his application of fire and calm control of the situation.

89. After approximately 45 minutes of engagement during which time the enemy attempted to outflank the machine gun, they withdrew when APCs were heard moving towards the position to evacuate the Australian wounded. The intensity of the firefight is best summarised by Mr Hawkins who stated in his oral evidence that he thought 'the engagement lasted for only about ten minutes' – such was the concentration he had on the application of his fire.

90. Ten enemy dead were left behind directly in front of the machine-gun position – most of them attributed by the Platoon Commander to the effective fire of the machine-gun.

⁶¹ Oral Evidence Mr Gibson 19 October 2017.

91. **Findings of Fact in Relation to Mr Hawkins' Actions.** Having reviewed the evidence, the Tribunal was reasonably satisfied that the following facts are established relating to Mr Hawkins' actions on 15 December 1970:

- a. Mr Hawkins was the sole machine-gunner in a half platoon ambush position on the night of 15 December 1970;
- b. his Section Commander and second-in-command were both wounded and immobilised in the first exchanges of fire after the enemy launched an attack against the position;
- c. the enemy initially had numerical superiority;
- d. the platoon, and in particular the machine-gun was under heavy and intense fire throughout the engagement; and
- e. multiple enemy dead were found proximate to the machine-gun position after the contact.

Mr Hawkins' Eligibility for a Gallantry Award

92. To be eligible for an Australian gallantry award, Mr Hawkins' actions would need to demonstrate that he had performed 'acts of gallantry in action'.

93. **Was Mr Hawkins in Action?** There is no dispute that Mr Hawkins was 'in action' – the enemy launched an attack against the defensive position, outnumbered the half platoon, and pressed the attack for approximately 45 minutes.

94. **Did Mr Hawkins Perform Acts of Gallantry?** Having reviewed the submissions and eye witness accounts, the Tribunal made the following observations relating to Mr Hawkins' actions on 15 December 1970:

- a. Mr Hawkins assumed a leadership position after the two junior non-commissioned officers were wounded in the initial exchange of fire;
- b. the half platoon was under great pressure and with the wounding of the two junior non-commissioned officers, and with only one machine-gun available to the commander, there was a real risk that the force would be over whelmed by the numerically superior enemy;
- c. Mr Hawkins was in great danger as he was the sole machine-gunner and the attack appeared to be focussed on destruction of his weapon;
- d. this was the first significant engagement for both the Platoon Commander and Mr Hawkins, previous encounters being 'fleeting' and this was the first time that their actions included casualties;
- e. the environment was challenging with complete darkness causing confusion and disorientation;

- f. in the view of the Tribunal, Mr Hawkins consciously accepted the danger he faced in the interests of the others in his platoon;
- g. the handling of his weapon and the control he demonstrated in his application of fire was commensurate with what was expected of him as a machine-gunner but was executed at an exemplary level; and
- h. Mr Hawkins' leadership was an example to others and inspired them to stand their ground and respond aggressively to the enemy.

95. **Finding in Relation to Gallantry.** Having considered the facts and made observations regarding Mr Hawkins' actions, the Tribunal was satisfied that he assumed a leadership role in his section during an enemy attack on his position whilst retaining his responsibility as the sole machine-gunner for the half platoon. In these dual roles he calmly and methodically operated his weapon to inflict maximum damage upon the enemy and hold their attack at bay, whilst providing inspiration and example to the rest of his section and platoon. His conscious acceptance of danger was in the interests of his fellow soldiers and was done at a time when there was a real risk that the platoon could be overwhelmed. The Tribunal finds therefore that Mr Hawkins performed acts of gallantry in action on 15 December 1970 as the machine-gunner and in a leadership role when his platoon was attacked by a numerically superior force near the Courtenay Rubber Plantation.

96. **Did the Chain of Command Know of Mr Hawkins' Gallantry?** The Tribunal considered that the evidence suggests that all nominations for awards for the Battalion were compiled as periodic awards in February 1971 and were drawn from records which had been drafted multiple times and included subtle differences which were not subsequently questioned. It also appeared that the actual nominations were not the subject of consultation with witnesses (particularly those in the immediate chain of command); and accordingly, errors and omissions were possible and in the case of Mr Hawkins, probable. The Tribunal concluded that in all likelihood, the Commanding Officer and Company Commander were not well aware of the details of the engagement and whilst they may have been aware of Mr Hawkins' actions as a machine-gunner leading to his MID nomination, it appears they were not aware that he assumed a leadership role under fire in addition to his primary duty. The Tribunal considered that if this had been known, the level of award for Mr Hawkins may have been higher.

The Appropriate Honour

97. Having found that Mr Hawkins was gallant and in action, the Tribunal turned to an assessment of his actions against the eligibility criteria for the Australian gallantry award which he now seeks – the MG. The Tribunal noted that the MG 'shall be awarded only for acts of gallantry in action in hazardous circumstances'.

98. **Was Mr Hawkins in Hazardous Circumstances?** The Regulations do not define hazardous circumstances however the definition has been considered previously by the Tribunal in *Soldier J and the Department of Defence*.⁶² In that case

⁶² DHAAT 27/2014 *Soldier J and the Department of Defence* dated 4 July 2014, p.53

the Tribunal concluded that the term was intended to take into account the particular circumstances of a soldier in action and required that the hazardous circumstances be relevant to a combat situation. The Tribunal found at [55] that *Soldier J* had been exposed to circumstances that were ‘dangerous but not hazardous’ and that he had not been exposed to danger that was greater than that to which the rest of the platoon had been exposed. Whilst such a finding was open to be made, this Tribunal considered that such an approach highlights the difficulty in attempting to separate danger and hazard. The Tribunal considered that it could never be an absolute requirement that a soldier must be exposed to greater danger than those around him in order to satisfy or meet a benchmark. However, the Tribunal acknowledges that greater danger is likely to be a feature of the actions of a recipient of the MG.

99. The Tribunal considered that in this particular situation, hazardous circumstances would more appropriately recognise a combination of the threat to the individual during his actions, and the risk to the group if the particular cited action was not conducted.

100. Accordingly, the Tribunal considered that Mr Hawkins was in extreme danger personally as the enemy pressed their attack directly against him and his weapon. Whilst it could be argued that as a result he was in greater danger than the rest of the platoon the reality was that those close to him, for example the Number Two on the gun, were exposed to the same degree of danger as were the remainder of the platoon due to their proximity in the ambush site.⁶³ This highlights the difficulty in separating degrees of danger.

101. The Tribunal considered that Mr Hawkins was personally threatened because he continued to fire his weapon throughout the engagement, thus drawing the enemy’s fire and focus. He consciously accepted this threat and chose to continue to apply his fire. The risk to the group if he had not continued to fire his weapon and provide example and inspiration to the others was that the gun group and the remainder of the patrol may well have been over-run or suffered significant casualties.

102. Accordingly, the Tribunal is satisfied that Mr Hawkins’ actions were conducted in hazardous circumstances as he was threatened personally and in great danger and the risk to the group if he had not provided example and acted as he had was extreme.

103. The Tribunal finds that Mr Hawkins’ circumstances were hazardous as required by the Regulations and having found that he had performed acts of gallantry in action, he therefore meets all of the eligibility criteria for the MG.

Finding in Relation to Private Hawkins’ Eligibility for a Gallantry Award

104. For the reasons stated above the Tribunal finds that Mr Hawkins meets the eligibility criteria to be awarded the Medal for Gallantry for leadership and gallantry in action in hazardous circumstances as the machine-gunner of 9 Section, 6 Platoon, B Company, 2nd Battalion, the Royal Australian Regiment during a platoon ambush patrol on 15 December 1970 near the Courtenay Rubber Plantation in South Vietnam.

⁶³ Mr Gibson Oral Evidence 19 October 2017 regarding the approximate distance between groups.

TRIBUNAL DECISION

105. The Tribunal decided to recommend to the Minister that:
- a. the decision by the Director General Personnel – Army not to recommend Mr Richard Hawkins for the Medal for Gallantry for his actions during a platoon ambush patrol in South Vietnam on 15 December 1970 be set aside;
 - b. the Minister recommend to the Governor-General that Mr Richard Hawkins be awarded the Medal for Gallantry for leadership and gallantry in action in hazardous circumstances as the machine-gunner of 9 Section, 6 Platoon, B Company, 2nd Battalion, the Royal Australian Regiment during a platoon ambush patrol near the Courtenay Rubber Plantation, Phuoc Tuy Province, South Vietnam on 15 December 1970; and
 - c. Mr Hawkins be asked to return his Mention in Despatches.