



Australian Government

Defence Honours and Awards Appeals Tribunal

Hawkins and the Department of Defence re: Townsend DHAAT 13 (17 August 2022)

File Number 2021/019

Re **Mr Richard Hawkins MG on behalf of
Mr Dennis Townsend**
Applicant

And **The Department of Defence**
Respondent

Tribunal Mr Stephen Skehill (Presiding Member)
Mr David Ashley AM
Major General Mark Kelly, AO, DSC (Retd)

Appearances Mr Richard Hawkins, MG – Applicant
Brigadier Mark Bornholt, AM (Retd),
Army Historical Honours and Awards Reviewing Officer,
Directorate of Honours and Awards, Department of Defence

Hearing Date 23 June 2022

DECISION

On 17 August 2022, the Tribunal decided to recommend to the Minister that:

- a. the decision of the Chief of Army, Lieutenant General Rick Burr AO, DSC, MVO to refuse to recommend Mr Dennis Townsend for the Commendation for Gallantry for his service as the Machine Gun Number Two of 9 Section 6 Platoon, B Company 2nd Battalion, The Royal Australian Regiment during a platoon ambush near the Courtenay Rubber Plantation, Phuoc Tuy Province, South Vietnam on 15 December 1970 be affirmed; but that
- b. the Minister direct that the Department of Defence should give consideration to otherwise recognising that service with the award of the Commendation for Distinguished Service.

CATCHWORDS

DEFENCE HONOUR – Commendation for Gallantry – Distinguished Service Decorations - Commendation for Distinguished Service – eligibility criteria - Vietnam – 2 RAR – Machine Gun Number Two – Courtenay Rubber Plantation

LEGISLATION

Defence Act 1903 – Part VIIC – Sections 110T, 110V(1), 110VB(1), 110VB(6)
Defence Regulation 2016 Section 35

Commendation for Gallantry

Commonwealth of Australia Gazette No. S25 dated 4 February 1991, *Gallantry Decorations Regulations*

Commonwealth of Australia Gazette No. S25 dated 4 February 1991, *Distinguished Service Decorations Regulations*

Introduction

1. The Applicant, Mr Richard Hawkins MG, seeks review of a decision of the Chief of Army, Lieutenant General Rick Burr AO DSC MVO, that Mr Dennis Townsend should not be recognised with the Commendation for Gallantry for service during a platoon ambush patrol in the Courtenay Rubber Plantation, Phuoc Tuy Province, South Vietnam on 15 December 1970.¹

Decision under review

2. In mid-2019, Mr Hawkins wrote to Lieutenant General Burr seeking recognition for the service of Mr Townsend as the Number Two on the machine gun manned by Mr Hawkins during the above engagement. In his application, Mr Hawkins stated that Mr Townsend *‘deserved to be awarded a bravery award at the time of his service and now deserves to be recognised at least with being awarded a Commendation for Gallantry.’*²

3. On 25 October 2021, Lieutenant General Burr replied to Mr Hawkins refusing the application. Lieutenant General Burr stated that, while there is no doubt that Mr Townsend was in a dangerous situation during the engagement, he (Lieutenant General Burr) could not be reasonably satisfied that Mr Townsend performed acts of gallantry.³

4. On 26 November 2021, Mr Hawkins made application to the Tribunal seeking review of Lieutenant General Burr’s decision, arguing that Mr Townsend should have received one of the three (Australian) gallantry awards awarded for service in the action.⁴

Tribunal jurisdiction

5. Pursuant to s110VB(2) of the *Defence Act 1903* 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 Defence Force to refuse to recommend a person for a defence honour in response to an application. Regulation 35 of the *Defence Regulation 2016* lists the defence honours that may be the subject of a reviewable decision. That list includes the Commendation for Gallantry. Therefore, the Tribunal has jurisdiction to review decisions in relation to this defence honour.

6. As required by s110VB(6) of the Act, the Tribunal is bound by the eligibility criteria that governed the making of the reviewable decision. In accordance with s110VB(1) of the Act, as the Applicant seeks a defence honour, the Tribunal does not have

¹ Application for review, 26 November 2021.

² Letter, Mr Hawkins to Lieutenant General Burr, undated.

³ Letter, Lieutenant General Burr to Mr Hawkins, OCA/OUT/2021/BN34633753, 25 October 2021.

⁴ Application for Tribunal review.

the power to affirm or set aside the decision, but may make any recommendations to the Minister that it considers appropriate.

Conduct of the review

7. In accordance with its Procedural Rules, on 6 December 2021 the Tribunal wrote to the Secretary of the Department of Defence informing him of Mr Hawkins' application for review.⁵ The Tribunal requested a merits-based assessment of Private Townsend's actions against the eligibility criteria for the Commendation for Gallantry and a report on the material questions of fact and reasons for the decision to refuse the original application. The Tribunal also requested that the Secretary provide copies of documentation relied upon in reaching the decision and any other relevant documents.

8. On 8 March 2022, the Director of Honours and Awards in the Department of Defence provided a submission on behalf of Defence.⁶ The Defence submission consisted of a report written by the Army Historical Honours and Awards Reviewing Officer, Brigadier Mark Bornholt AM (Retd). In conclusion, Brigadier Bornholt's report stated that he did not consider that Private Townsend's actions on 15 December 1970 met the criteria for the Commendation for Gallantry as, in his view, there is no evidence that those actions were gallant, and the applicant had *'not provided any evidence which points to actual acts of gallantry.'*⁷

9. The Defence submission was forwarded to Mr Hawkins for comment on 16 March 2022. Mr Hawkins responded on 30 March 2022 setting out his disagreement with a number of points in the Defence submission.⁸

10. At the hearing, both Mr Hawkins and Brigadier Bornholt made detailed submissions. Additionally, Mr Hawkins led evidence from Mr Townsend, and further material was provided by Mr Hawkins after the hearing.⁹

11. Both Mr Hawkins and Mr Townsend provided detail about the events in question additional to that otherwise documented in the material available to Defence prior to the hearing. The Tribunal takes this opportunity to express its gratitude to each of them for the assistance that their evidence provided, and for doing so when recounting and being questioned would have undoubtedly evoked deeply emotional memories for them.

⁵ Letter, Tribunal to Secretary, DHAAT/OUT/2021/019.

⁶ Directorate of Honours and Awards letter to the Tribunal DH&A OUT/2022/0011 dated 8 March 2022.

⁷ Defence Submission – Actions of Private Dennis Townsend.

⁸ Letter, Mr Hawkins to the Tribunal, dated 18 March 2022.

⁹ Email, Mr Hawkins to the Tribunal Secretariat, dated 27 June 2022.

Private Townsend's service

12. Private Townsend was called up for National Service in 1969 and completed recruit training before being posted to the 2nd Battalion, The Royal Australian Regiment (2 RAR) to complete his Infantry Corps training. He deployed to Vietnam on 15 May 1970, as part of the 2nd Battalion, the Royal Australian Regiment (ANZAC) (2 RAR), where he served as the Number Two Machine Gunner in 9 Section, 6 Platoon B Company. He left Vietnam with the strength of his Battalion on 1 June 1971. This service would attract award of the:

- a. Australian Active Service Medal 1945-75 with Clasp 'VIETNAM';
- b. Vietnam Medal;
- c. Australian Defence Medal;
- d. Anniversary of National Service 1951-1972 Medal; and
- e. the Republic of Vietnam Campaign Medal.

Background to this review

13. On 16 December 1971 Mr Hawkins was awarded the Mention in Despatches (MID) for his actions during the engagement that is the subject of this review. On 25 October 2014, the Tribunal received a request from Mr Hawkins seeking a review of his eligibility for the Military Medal (MM).¹⁰ 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.

14. Following consideration of the matter by the Tribunal, in December 2016 a recommendation was made to the Minister for Defence Personnel that Defence's decision to not upgrade Mr Hawkins' MID be set aside and substituted with a recommendation that he receive the Medal for Gallantry (MG). On 26 May 2017 the Minister informed Mr Hawkins that he could not accept the Tribunal's recommendations as, following the review and receipt of the Tribunal's final decision, both he (Mr Hawkins) and Mr Gibson had raised concerns regarding certain findings in the decision report. The Minister advised that his decision allowed Mr Hawkins to have the matter considered afresh and for him to make further submissions.

15. On 8 June 2017 Mr Hawkins made a fresh application to the Chief of Army (CA), this time for the MG. Mr Hawkins' second application was refused by the Director-General Personnel – Army (DGPers-A) on 5 July 2017. On 11 July 2017 Mr Hawkins made application to the Tribunal seeking review of the DGPers-A's decision. 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 decision report of 21 December 2016.

¹⁰ Application for Review of Decision by Mr Hawkins dated 25 October 2014.

16. The matter proceeded to hearing on 19 October 2017. On 30 November 2017 the Tribunal recommended that the decision by the DGPers-A be set aside and that Mr Hawkins be recommended for the Medal for Gallantry. This recommendation was subsequently accepted.

17. As a consequence of the Tribunal's exhaustive previous examination of the Hawkins matter, and the fact that Mr Hawkins was in close proximity to Mr Townsend throughout the engagement, we have drawn heavily on the Tribunal's second report in preparing the below narrative.

Background to the Action on 15 December 1970

18. 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.¹¹ 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.¹² 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.¹³ This latter 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 – however, despite the pursuit, the group fled.

19. 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

20. 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.¹⁴ This was later amended in the Summary of Contact/Incidents to ten enemy killed.¹⁵

¹¹ Army Report to 2016 Tribunal.

¹² Oral Evidence Mr Gibson 19 October 2017.

¹³ Ibid.

¹⁴ Contact Incident Report 152110 December 1970 – 2 RAR Operations Log, AWM RCDIG1029990.

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

21. **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.¹⁶ 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:

'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.'

22. **The Official History.** The action is recorded in the official history *Fighting to the Finish: The Australian Army and the Vietnam War 1968-1975*.¹⁷ The record is sourced from the Contact Report, the Summary of Contact/Incidents, the publication *Second to None*, p.106 and the Regimental history - *Duty First*, p.272.¹⁸ 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'.¹⁹ 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

¹⁶ Ibid.

¹⁷ Ashley Ekins with Ian McNeill, *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.

¹⁸ Ibid. Endnote 70 to page 480, p. 1003

¹⁹ Ibid. Endnote 72 to page 480, p. 1003

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 ...'

23. 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 were considered by the 2017 Tribunal to be immaterial.

Summary of the Action from the 2017 Tribunal Report

24. The action on 15 December 1970 is largely not in dispute and is clearly articulated in the comprehensive Tribunal report of *Hawkins and Department of Defence* [2017] dated 30 November 2017. For completeness, a summary of the action from that report is repeated below:

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.

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 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.

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.

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.

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.

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.

Mr Hawkins' Application to the Chief of Army

25. As noted above, following the award of the Medal of Gallantry to Mr Hawkins in 2017 after the Tribunal recommendation to the Minister, in mid-2019 Mr Hawkins applied to the Chief of Army seeking the award of a Commendation for Gallantry to Mr Townsend for his actions in the above engagement.

26. In his application, Mr Hawkins made the following submissions in respect of Mr Townsend's actions:

'Private Townsend was responsible for setting up the claymores, laying out belts of ammunition for the machine gun as well as his general duties and manning the machine gun etc.

As we were in an ambush position, all pits were on full alert. Later that night at around 2000, Private Townsend who was on gun piquet alerted the patrol to a light flashing in the vicinity of where the previously spotted suspected enemy disappeared into the jungle. So he was the first to see the light and at around the same time lights were reportedly seen at the window of the nearby house by others in the patrol. These lights were obviously signals that the ambush was still in position. As the moon had not yet come up, it was pitch black in the rubber that night. We all stood to thinking our ambush may be sprung sometime. We became aware that someone was approaching our position when we could first hear leaves rustling and twigs breaking very close to our position and very faint whispering was heard. The time taken from when the lights were first spotted until the enemy initiated an attack on us was over an hour for them to move around 2-300 meters. We knew then that the enemy was not just unknowingly walking in to our ambush but were going to attack us. Dennis Townsend who had control of the Claymore detonator, although certain the Claymores were being turned to face us, which was a thing the enemy sometimes did, showed steel nerve to not set the Claymores off. Had he panicked and sprung the ambush too early, the final very successful result could have been very much different.

The enemy lobbed a grenade into the position they thought the Gun Group was in and the grenade landed right behind us. So close we heard it land. They could not have known exactly where we were but I suspect they had counted the rows of trees to estimate our position. At that moment Townsend detonated the claymores and the enemy opened up with AK47's and our Machine Gun and Townsend with his SLR fired in the direction of the enemy.

We could aim in the direction of their muzzle flashes and the same for them. The enemy was only about a row of rubber trees away. Our Section Commander was severely wounded in the foot as he had been hit with shrapnel. This must have been shrapnel from the grenades the enemy fired at the start of the engagement. Townsend and I must have been lucky enough for the shrapnel to go above us. As no HE artillery was fired in support of us during the firefight, the grenades were the only source of shrapnel. The wounded section commander was in extreme pain and in shock and was obviously delirious and feinting during the fierce, intense, and prolonged attack which lasted around 45 minutes. He was randomly firing into the air and at times trying to sit up. While Townsend's main task was to keep the belts of ammunition up to the Machine Gun, he also spent time wrestling the wounded Section Commander to the ground putting himself in extreme danger doing so.

The incoming fire was so intense that the rubber tree we were behind was completely riddled with bullet holes and rubber sap had sprayed all over us so Townsend could well have saved the wounded Section Commander from further wounding and possibly death.

During the encounter Townsend efforts were extremely important as we carried around 800 rounds or 8 belts of ammunition for the M60 Machine Gun and at the end of the encounter we had almost expended our ammunition. He was responsible for ensuring the belts of ammunition were always readily available and while

attempting to also fire on the enemy, in very obvious danger and also concerned for the wounded Section Commander, he performed above and beyond and he never let me or the rest of the Patrol down.

*My opinion is that Townsend performed well above what was expected of him during the firefight as well as trying to calm the wounded Section Commander and save him from further injury and deserved to be awarded a bravery award then and now deserves to be recognized at least with being awarded a Commendation for Gallantry.*²⁰

27. In his submission of 25 October 2014 Mr Hawkins claimed that, whilst the platoon may have been in an ambush position, his ‘opinion [was] 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’. Mr Hawkins stated that ‘*the enemy in fact took the first action ... throwing hand grenades and firing RPGs*’. He further stated that the first enemy grenade landed right behind him almost at his feet where it exploded. He said:

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

28. He concluded that submission by indicating his Platoon Commander (Second Lieutenant Gibson) 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.’

Evidence from the Previous Tribunal Report

Eye Witness Accounts of the Action

29. **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.²¹ 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 Number Two; 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

²⁰ Mr Townsend’s statement to the Tribunal.

²¹ Statement by 3179806 Private A Baglin.

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.

30. 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 ...'

31. In relation to Mr Hawkins' (and Mr Townsend's) actions, Mr Baglin stated:

'I was thankful we had such competent people on the gun (Richard Hawkins and the No 2 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. Some people may say he was only doing his job, but I know he did it brilliantly on that night and I am grateful to him, Dennis and Ken and everybody involved.'

32. **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.²² 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. I

²² Statutory Declaration by Mr D. Pattle declared on 6 July 2016.

vaguely recall our claymore mines detonating further to the west in front of Hawkins's position. 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 ...

...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 ...'

33. 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.'

34. **Second Lieutenant Peter Gibson.** On 16 September 2015 Mr Gibson provided a statutory declaration in support of Mr Hawkins' claim for the MM.²³ 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 and Private Hawkins was ably assisted in this by his GPMG M60 No 2, Private Dennis Townsend...

... until the arrival of the APCs, Private Hawkins continued to engage the enemy and his calm, accurate and steadying 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.'

35. On 24 August 2016 Mr Gibson wrote to the Tribunal to clarify a number of matters.²⁴ In relation to the accuracy of Mr Hawkins' MID citation he stated that:

'Contrary to the timings outlined in the citation, the sounds of surreptitious enemy approach were heard within our position from shortly after 2000 hours...from around 2030 hours I ordered the commander of the gun group to hold fire until at the latest possible moment. But the enemy retained an initial tactical advantage, as demonstrated by their initiation of a major fire-fight at approximately 2110 hours. This initial attack on our position was directed specifically at the machine gun position of Mr Hawkins, with grenades and sustained AK-47 fire. This resulted in the serious wounding of the machine gun group commander, Corporal K N Johnston and the only other NCO in the patrol, Lance Corporal A B Poulton.

²³ Statutory Declaration by Mr P. Gibson declared on 16 September 2015.

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

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. '

36. 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 ...'.

37. **Private Dennis Townsend.** In his statement of 30 July 2016,²⁵ Mr Townsend said that:

'I was with Private Hawkins on the night of that contact on the 15th December. I was the number two on the machine gun all through our tour of Vietnam. On the evening of the 15th December we were setting up an ambush position on a small track in the rubber plantation. It was my job to position the claymore mines on the edge of the track in front of us. I had five Claymores this night I positioned three mines in a sweeping area facing up and across the track and away from our position. The other two I put facing down the track just in case some of the enemy got past the first three...Anyway we settled in for the night Pt Hawkins was positioned behind the machine gun I was laying on his left side. It was my job to lay out all of the ammunition for the machine gun and to hook up more rounds as needed. Cpl Johnson was lying to my left. this particular night I was really expecting something to happen as we had spotted the enemy early in the day. And we were sure they had seen us. After three or four hours I was convinced, I heard noises approaching our position on several occasions. I whispered to Cpl Johnson did you hear anything he said no there is nothing there. Again, I ask Cpl Johnson again this time he actually stood up to listen, when he laid down beside me he told me don't be silly you idiot there is no-one out there. Pt Hawkins and myself was convinced the enemy was approaching us I kept whispering to him to get ready they are definitely creeping closer to us. I had the plunger for the mines in my hand ready to explode the claymores I had to decide how close to let them come before I push the plunger. Well at this moment 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

²⁵ Statement by Private D Townsend by e-mail dated 10.04pm 30 July 2016 to the Tribunal.

SLR and hooking up more rounds 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. That caused us another problem he was in such pain he was passing out then coming to and sitting up firing his gun straight up in the air and screaming you can't kill me you bastards. How we never got hit while wrestling on the ground I will never know. At one stage I was wrestling with him trying to hold him down on the ground and I rolled on to the belts of ammunition feeding in the gun and it stopped. I remember Lt Gibson screaming out get that gun going Hawkins. we just kept firing for maybe thirty minutes or more. Later the armoured personnel carriers arrived a small plane was circling above dropping flares. Later we had to drag the dead bodies in to our position. I had to set up more claymores for the rest of the night. When the APC left, we settled in for the rest of the night. I still can't comprehend how two of us with five claymores one M60 and a SLR held off twenty or thirty Viet Cong. We did not realize till day light that Hawkins and myself backs of our shirts was completely white from sap from the rubber trees we were under. That is what happened on the night of 15th December so long ago. But it never leaves you my son was born six weeks prior to this contact on the 30th of October. For some reason god let us live that night. I was observing his actions all night he was incredible not only that night but all his tour he was a great soldier. I initiated the contact when I exploded the claymores. I was not aware that Pte Hawkins took on extra responsibility after Corporal Johnston was wounded. I was not aware Pt Hawkins was recommended for a medal till many years later. He was definitely deserving of such an award.'

Other Citations for the Action

38. Both Lieutenant 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 1970.²⁶ 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 his group during the remainder of the 45 minute engagement. As a result

²⁶ Australian Military Forces Recommendation for Honours or Awards – 3451766 Corporal K. Johnston, 2 RAR/NZ(ANZAC) Bn.

of his control the gun group were responsible for most of the 10 enemy killed ...

39. Mr Gibson received the Military Cross for his command during the action on 15 December 1970.²⁷ 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.

40. Additionally, Mr Hawkins received the Vietnamese Cross of Gallantry with Gold Star which was awarded on 22 May 1971 for his actions on 15 December 1970.²⁸ 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.'

The Nomination Process in 1971

41. The 2017 Tribunal noted that Mr Gibson and Mr Hawkins both claimed that the nomination process in 1971 was flawed. 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. Mr Townsend, in his oral evidence to this review, indicated that he was unaware that Messrs Johnston, Gibson or Hawkins had been nominated for any award relating to that ambush until many years

²⁷ Australian Military Forces Recommendation for Honours or Awards – Second Lieutenant P. Gibson, 2 RAR/NZ(ANZAC) Bn.

²⁸ Review of Recognition for Private Hawkins – Attachment 1 to DGPERS A/OUT/2015/R23840408 dated 6 November 2015, Annex C.

later, although he had previously stated that Mr Hawkins was certainly deserving of such an award.

42. 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 previously gave evidence that his own contact report had been sent by radio to the Company and from there to the Battalion.

43. Mr Gibson also told the 2017 Tribunal 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 2017 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*.²⁹

44. The 2017 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.

45. What is clear from the evidence available to the 2017 Tribunal is that Mr Townsend was not nominated at any time or subsequently for recognition. This point was emphasised by Brigadier Bornholt during his oral evidence at the hearing of the present matter.

Initiation of the Contact

46. The Tribunal notes that Mr Hawkins and Mr Townsend placed great emphasis on whether the contact was initiated by the enemy or by the platoon. This question of who initiated the contact was also considered in the previous review. The Tribunal notes that this is 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?

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

²⁹ Oral Evidence by Lieutenant Hughes, 7 RAR on 12 September 2017 in the matter of *Reid and the Department of Defence*.

Callsign 23 initiated with claymores, M60, enemy engaged with RPG and AK47³⁰

48. 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 ...³¹

49. The Tribunal also notes that the citation for Corporal Johnston's award stated that:

... Corporal Johnston allowed the enemy to approach within 15 metres before initiating the contact ...³²

50. The Tribunal notes 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 some of the eye witnesses at the previous review, including Mr Gibson and Mr Pattle, would suggest that the contact was initiated by the enemy.

51. The Tribunal notes that the official history states:

*On the evening of 15 December, a group of over 15 Viet Cong **attacked**³³ 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 fire³⁴*

52. The Tribunal also notes Mr Gibson's evidence at the previous hearing 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.

³⁰ Contact Report 2110 hours – 2 RAR/NZ (ANZAC) Bn Operations Log for 15 December 1970.

³¹ Appendix 7 to Annex C 2 RAR/NZ(ANZAC) Bn After Action Report dated 16 Jan 71, *Summary of Contact/Incidents* – 15 Dec 70.

³² Australian Military Forces Recommendation for Honours or Awards – 3451766 Corporal K. Johnston, 2 RAR/NZ(ANZAC) Bn.

³³ Emphasis added by Tribunal.

³⁴ Ashley Ekins with Ian McNeill, *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.

53. Having considered the material before it, the Tribunal prefers the eye witness evidence and particularly that of Mr Townsend who said, in 2016:

*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...*³⁵

54. Accordingly, while the 2017 Tribunal found 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 evidence from Mr Townsend above and the oral evidence from both he and Mr Hawkins at the present hearing would suggest that the initiation of the contact/ambush was almost simultaneous. That said, the Tribunal is of the view that, at the time the engagement commenced, the enemy had infiltrated to such close proximity to the ambush site that they were able to seize the initiative in the early stages of the engagement by throwing grenades and firing aggressively and held both a numerical and firepower advantage. It was clear that they were launching a deliberate attack on the half platoon's ambush position, in all likelihood aware that they had a numerical superiority with the aim of destroying the patrol or inflicting maximum damage.

55. There is clearly a contradiction in the description of the events that night from the Summary of Contact, the Official History, the award citations and the vivid personal accounts provided by the eye witnesses, especially Mr Hawkins and Mr Townsend during their oral evidence at the hearing. What is clear however, is that it was pitch black in the ambush site and the muzzle flashes of the machine gun attracted heavy enemy fire in its direction. It is also evident that following his early wounding in the ambush the Section Commander was unable to contribute to the firefight in any meaningful way during the rest of the engagement. Mr Townsend indicated in his oral evidence that each participant in the ambush was required to write a short post contact report after the action. To his knowledge these reports have not been seen since then and in his view they would have added a great degree of clarity to the events that occurred that night.

Other Evidence relevant to Mr Townsend's Actions

56. During the hearing of the present matter Mr Hawkins continued to press his contentions and 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 in the patrol 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

³⁵ Statement by Private D Townsend by e-mail dated 10.04pm 30 July 2016 to the Tribunal.

while ably assisted by Mr Townsend who also had to contend with the wounded Section Commander.

57. Mr Hawkins and Mr Townsend in their evidence stated that the patrol occupied the ambush site late so they were lying on the ground and did not have time to prepare shell scrapes, which added to their exposure to enemy fire once the engagement commenced. They also emphasised that it was pitch dark throughout the engagement, so visibility was zero, and they and the enemy could only see muzzle flashes from the respective weapons during the firefight. They also made the point that the machine gun, by virtue of its signature and volume of fire, attracted most, if not all of the enemy's attention and hostile fire.

58. In their evidence both Mr Hawkins and Mr Townsend disputed the wording of Corporal Johnston's Military Medal citation as they recall that he was unable to contribute to the engagement in any meaningful way following his wounding in the foot in the initial grenade attack by the enemy onto their position. Mr Hawkins also emphasised that Mr Townsend was in as much danger as he was because the Machine Gun group was certainly the focus of attention of the enemy's attack.

59. Mr Hawkins and Mr Townsend both said that Mr Townsend was trying to restrain Corporal Johnston who was clearly delirious as result of the pain he was suffering from the shrapnel wound to his foot and was attempting to stand up, fire his weapon into the air and scream out at the attacking enemy force. They said that these actions attracted more enemy fire and Mr Townsend had to raise himself head and shoulders above the ground to pull Corporal Johnston back to the ground, placing himself in extreme danger while physically trying to save Corporal Johnston from injuring himself further. They said this occurred on at least four or five occasions throughout the firefight, as Corporal Johnston was lapsing in and out of consciousness and would repeat the same actions when he regained consciousness. Mr Hawkins in his evidence said he could still not understand how Mr Townsend did not get hit while wrestling Corporal Johnston to the ground.

60. Mr Townsend also described how he continued to feed ammunition to the gun while having to wrestle the wounded Corporal Johnston to the ground, as well as directing the fire of Mr Hawkins on the machine gun to new targets to the left and right as the enemy attempted to outflank the ambush position.

61. Mr Hawkins and Mr Townsend were both unsure if anyone else in the platoon position was able to fire at the enemy as they would have been firing over the Machine Gun Group and, from their recollection, the Machine Gun was doing most of the firing and attracting most if not all of the enemy's attention as a result. Enemy fire however went over the entire ambush site so all participants were in similar if not equal danger.

Defence Submissions

62. In refusing Mr Hawkins' application, Lieutenant General Burr stated that there was no dispute that the evidence indicates Mr Townsend did his job as the Number Two on the machine gun with great skill and in extremely hazardous circumstances. Noting Mr Hawkins' description of what he did during the action, Lieutenant General Burr offered the view that Mr Townsend *'was bravely doing what was expected of him and what he was trained to do as part of his role and responsibility'* but that he could not be reasonably satisfied that Mr Townsend performed acts of gallantry during the engagement. He did however state that Mr Townsend did his job which enabled Mr Hawkins to excel in his and allowed him to perform gallantly.³⁶

63. In its report to the Tribunal, written by Brigadier Bornholt, Defence offered the following findings of fact in relation to Mr Townsend's actions:

- a. Mr Townsend was the Number Two on the only machine-gun 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 platoon, and in particular the machine-gun, was under heavy and intense fire throughout the engagement;
- d. Private Hawkins, the machine gunner, assumed a leadership position and continued to operate the weapon effectively under hazardous conditions; and
- e. multiple enemy dead were found proximate to the machine-gun position after the contact.³⁷

64. Brigadier Bornholt went on to state that the evidence suggests that Mr Townsend, like all of his colleagues, was acting bravely and in accordance with his infantry training and that there is no evidence that Mr Townsend demonstrated a special and additional element of courage, fearlessness, daring or heroism. In his view, the evidence suggests that Mr Townsend was doing what was expected of him as part of his role as the Number Two on the machine gun.

65. While acknowledging Mr Hawkins' submissions about Mr Townsend's actions, Brigadier Bornholt stated that there is no dispute that the evidence indicates that Mr Townsend did his job as the Number Two on the machine gun with great skill and in extremely hazardous circumstances. However, in Brigadier Bornholt's view, Mr Townsend was bravely doing only what was expected of him and what he was trained to do as part of his role and responsibility.

³⁶ Letter, Lieutenant General Burr to Mr Hawkins, OCA/OUT/2021/BN34633753, 25 October 2021.

³⁷ Defence Submission – Actions of Private Dennis Townsend.

66. Brigadier Bornholt also offered the opinion that the applicant's own submissions did not point to acts of gallantry but rather doing what was expected – laying out and preparing ammunition and setting up claymore mines. Brigadier Bornholt also stated that the applicant's opinion regarding protection of the Section Commander was speculative and not supported by evidence.

67. At the hearing Brigadier Bornholt confirmed Defence's position on this matter and, while acknowledging the response from the applicant and his oral testimony at the hearing, said that nothing had caused him to adjust the findings and recommendations in Defence's written submission that Mr Townsend "*did not perform acts of gallantry during the incident in question, he did what he was trained to do and he did it well*".

68. Brigadier Bornholt noted that the platoon commander of this ambush, Mr Gibson, was not called to provide evidence at the hearing and had not contributed to this review. Further, he stated that Mr Gibson's evidence had been "*absolutely instrumental in the Hawkins matter*" and, whilst his comments were available to the Tribunal in the previous documents, Brigadier Bornholt found it informative that Mr Gibson did not nominate Mr Townsend at any time or subsequently for recognition. He also highlighted that Mr Gibson's previous evidence portrayed Mr Townsend's performance on that night during the firefight as providing "*able support*" to Mr Hawkins.

69. Brigadier Bornholt also argued that the Summary of Contacts report, Official History and Award citations are the tangible pieces of evidence available to the Tribunal and that, without Mr Gibson present, the Tribunal could not possibly corroborate the oral evidence provided by Mr Hawkins and Mr Townsend some 50 years after the event which took place on a pitch-black night. Further, he claimed there were contradictions in the description of events from the Official History, Corporal Johnston's Military Medal citation and the Battalion's Summary of Contacts, and the evidence and descriptions provided by Mr Hawkins and Mr Townsend. He suggested that the Tribunal could not possibly accept these explanations without corroboration from Mr Gibson. [In this regard however, the Tribunal noted that the documents cited by Defence were written by individuals who were not at the ambush, while the two eye-witnesses presenting evidence were co-located in the ambush site and provided corroboration to their respective evidence, whereas Mr Gibson was a distance away from them in the ambush site and due to the poor visibility would have been unable to observe much of what had occurred as well.]

70. Brigadier Bornholt also asked the Tribunal to note the comments of the Chief of Army, as the professional head of the Army, that Mr Townsend does not satisfy the eligibility criteria for a Commendation for Gallantry and to give appropriate weight to that opinion when making its decision.

Mr Hawkins' responses to Defence's position

71. In response to the Defence Report and Brigadier Bornholt's oral submissions, Mr Hawkins pressed the submission that the Machine Gun Group (of himself and Mr Townsend) were in far greater danger than the remainder of the patrol, noting that the

enemy's initial attack on the ambush site was focussed on the Group. He said that it was obvious that the enemy had observed them occupying their position and had virtually counted the rows of rubber trees to pinpoint their exact location in order to focus their attack on the position.

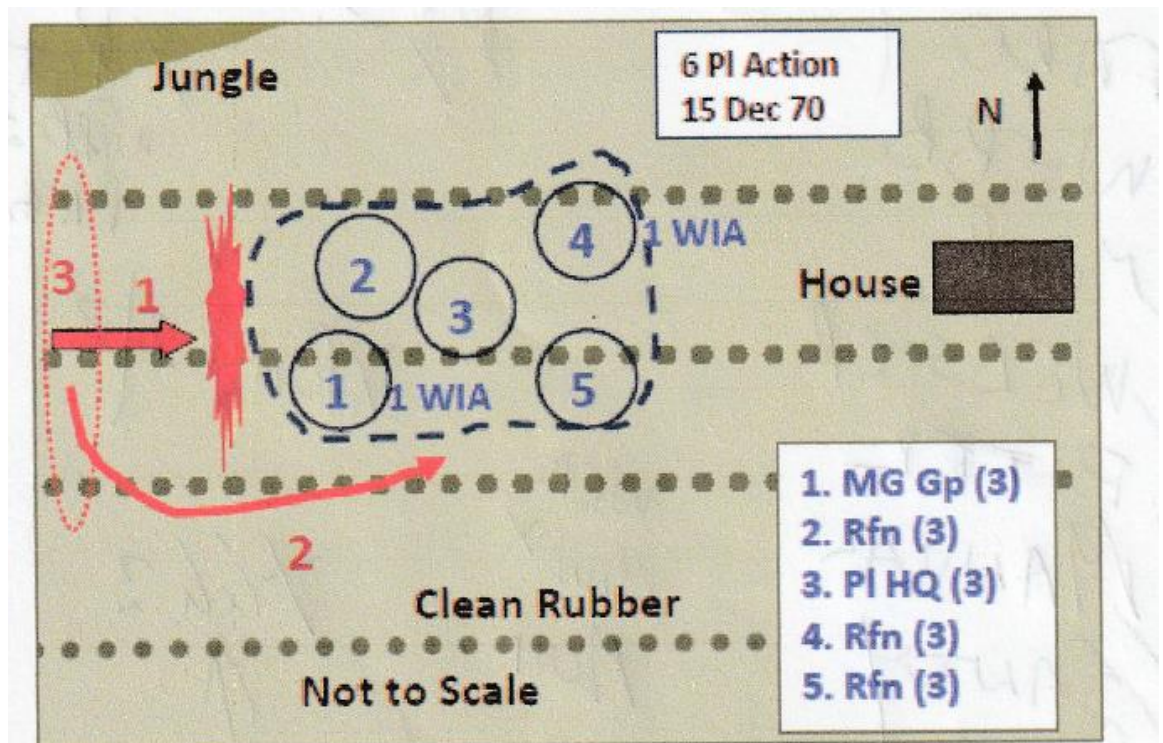
72. In response to Brigadier Bornholt's assertion that Mr Hawkins' opinion regarding the protection of the Section Commander was speculative in nature, Mr Hawkins pressed the position that he was an eye-witness to that event and saw Mr Townsend wrestle the wounded Section Commander to try to keep him on the ground. [The Tribunal noted that his oral evidence in this regard was corroborated by Mr Townsend, notwithstanding Brigadier Bornholt's view that only Mr Gibson could corroborate Mr Hawkins' recollection of the events.]

73. Following the hearing, Mr Hawkins introduced further evidence, in the form of an extract and sketch map from the second edition of *A Duty Done*³⁸ which states and shows:

On 14 December, B Company (Maj GD Hoffman) relieved Support Company at NDP Garth and was quickly in contact with the enemy. At about midday on 15 December a recce patrol from 5 Platoon [2LT RS Heyde] engaged a group of enemy, wounding at least two with one subsequently dying (found in a grave three days later. Documents identified 274 VC Regt.

Despite the area being a well-known focal point for enemy movements, especially by supply units, half platoon night ambushes were deployed. One such patrol from 6 Platoon (2Lt PN Gibson) with only 15 men and one MG deployed some 3km from NDP Garth on the night of 15 December and was covering the approaches to a house. Movement and lights were seen over about an hour and then at 9pm, some 20 enemy were heard moving slowly toward the patrol's position (1). When the enemy were 15 metres from the patrol it opened fire with grenades and small arms fire wounding two men, the Section Commander {Cpl KN Johnston) who was with the MG Group [1] and the Section 2iC who was with the right rear rifle group (4) (Lcpl AB Poulton). The Machine Gunner [Pte RK Hawkins] immediately engaged the enemy with very accurate MG fire and continued to do so throughout the heavy exchange of fire during the next 45 minutes under the control of the Patrol Commander who was fired at every time he gave an order. The enemy were outflanking the Patrol (2) but withdrew when APCs arrived on the scene, called by the Patrol Commander to evacuate the wounded. Ten enemy dead were subsequently found all from a logistics resupply group (3). Incredibly, the Patrol, now down to only 13 men, was ordered to remain in position overnight - and what a very long night that must have been!

³⁸ Fred Fairhead, *A duty done : a summary of operations by the Royal Australian Regiment in the Vietnam war 1965-1972*, The Royal Australian Regiment Association, 2nd edition, p.173.



74. In his submission, Mr Hawkins argued that the account and diagram illustrated why the remainder of the patrol except the number 5 pit was unable to bring effective fire to bear on the enemy as they attacked the gun group and then shifted their attack to the south. He also pointed to a number of statements and comments from the 2017 Tribunal's report which in his view illustrated that the machine gun group was exposed to far greater danger.

The Australian Gallantry Decorations

75. 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.³⁹ This means that only contemporary decorations may now be considered.

76. The eligibility criteria for gallantry awards in the Australian system are governed by *Gallantry Decorations Regulations*.⁴⁰ Those Regulations, published in the *Commonwealth of Australia Gazette* No S25 dated 4 February 1991, create the Star of Gallantry, the Medal for Gallantry, and the Commendation for Gallantry, which provide recognition for members of the Defence Force and certain other persons who perform acts of gallantry in action.

³⁹ Prime Minister of Australia Media Release 111/92 dated 5 October 1992.

⁴⁰ *Commonwealth of Australia Gazette* No. S25 – *Gallantry Decorations Regulations* - dated 4 February 1991.

77. Regulation 3 states that:

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

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

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

...

78. Noting the Regulations do not define gallantry and that Defence has elaborated no policy or guidance to assist in defining the concept, the Tribunal has developed a position which it has used for several years to assist in this regard.

79. **What is Gallantry?** 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' and 'courageous behaviour, especially in battle' are largely circuitous and unhelpful. Some countries have attempted to differentiate between 'bravery' and 'gallantry', defining the latter 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. Again, this is largely unhelpful in defining gallantry in the context of the Australian Honours and Awards system.

80. The Tribunal considers that there is an expectation that all soldiers in battle conducting themselves in accordance with their training, will be acting bravely. The Tribunal considers 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 depends 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.

81. The Tribunal considers 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.

Mr Townsend's eligibility for a gallantry award

82. There is no dispute that Mr Townsend was 'in action' – the enemy launched an attack against the defensive position, outnumbered the half platoon, and pressed the attack for approximately 45 minutes.

83. Having reviewed the submissions and eye witness accounts, the Tribunal makes the following observations in relation to Mr Townsend actions on 15 December 1970:

- a. Mr Townsend was the Number 2 to the sole machine-gunner in a half platoon ambush position on the night of 15 December 1970;
- b. he initiated the claymore mines and maintained the supply of ammunition to the GPMG M60 Machine Gun during the firefight with the enemy;
- c. 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;
- d. the enemy initially had numerical superiority;
- e. the platoon, and in particular the machine-gun, was under heavy and intense fire throughout the engagement;
- f. Mr Hawkins, the Machine Gunner, assumed a leadership role and continued to operate the weapon effectively under hazardous conditions;
- g. Mr Townsend identified targets and directed the Machine Gunner onto those targets;
- h. Mr Townsend fired his own personal weapon (SLR) throughout the firefight;
- i. he also provided first aid to the wounded Section Commander and physically restrained him on at least four to five occasions as the Section Commander was in a delirious state due to the pain from his wounds and attempted to stand up during the fire fight; and
- j. multiple enemy dead were found proximate to the machine-gun position after the contact.

84. The Tribunal carefully considered Mr Hawkins' proposition that, by conducting his duties as the Number Two on the M60 machine gun during the firefight, Mr Townsend was conducting himself outside of his training as a competent infantry soldier and Number Two on the machine gun in a rifle section. The Tribunal concluded however that his actions in that capacity during the firefight were those expected of a trained infantry soldier

employed in that role and that, while there is no doubt that Mr Townsend was acting bravely during this ambush and the subsequent firefight that ensued, those actions did not meet the eligibility criteria for a gallantry award.

85. The Tribunal also noted that, in addition to doing what he was trained to do and what was expected of him, Mr Townsend had also placed himself in danger by raising himself above the ground in an effort to physically restrain the wounded Section Commander and thereby prevent further injury to him. While the Tribunal considered that these actions were commendable, it concluded that these additional actions were not so commendable as to meet the eligibility criteria for a gallantry award. While what he did in this regard was undoubtedly brave, the Tribunal was not convinced that his actions reflected “a higher standard of conduct than bravery” or “a special and additional element of courage, fearlessness, daring or heroism”.

86. Accordingly, the Tribunal concluded that the decision under review should be affirmed.

87. At the same time however, the Tribunal believes that Mr Townsend’s actions in seeking to protect the Section Commander extended beyond the skills in which he was trained and what would ordinarily be expected of him and thus warrant further consideration.

88. The Tribunal understands that the Number Two in a Machine Gun Group, whose task is adjusting fire, feeding the gun and setting up and firing claymores, is not taught or expected to do that duty *and* at the same time to render assistance to a wounded and distressed Section Commander in the manner described. It could thus be the case that the support provided by Mr Townsend to the wounded Section Commander should be assessed as warranting recognition in that moving to restrain him on at least four or five occasions by raising his head and shoulders above the ground to do so increased the risk of being fired upon by the attacking enemy force (or by his fellow soldiers in the ambush position). He could have ignored Corporal Johnston and would still have been regarded as “doing his job”.

89. The Distinguished Service Cross, the Distinguished Service Medal and the Commendation for Distinguished Service were established for the purpose of:

‘... according recognition to members of the Defence Force and certain other persons for distinguished command and leadership in action or distinguished leadership in action or distinguished performance of their duties in warlike operations.’

90. The relevant Regulations provide that:

3. (1) The Distinguished Service Cross shall be awarded only for distinguished command and leadership in warlike operations;

(2) The Distinguished Service Medal shall be awarded only for distinguished leadership in warlike operations;

(3) The Commendation for Distinguished Service may be awarded for distinguished performance of duties in warlike operations.⁴¹

91. Having regard to its conclusion that Mr Townsend's service should be subject to further consideration and given the above hierarchy of distinguished command and leadership, distinguished leadership, and distinguished performance of duties in warlike operations, the Tribunal considers that it would be appropriate if Mr Townsend were now to be considered against the eligibility criteria for the Commendation for Distinguished Service.

TRIBUNAL DECISION

92. The Tribunal therefore decided to recommend to the Minister that:

- a. the decision of the Chief of Army, Lieutenant General Rick Burr AO, DSC, MVO to refuse to recommend Mr Dennis Townsend for the Commendation for Gallantry for his service as the Machine Gun Number Two of 9 Section 6 Platoon, B Company 2nd Battalion, The Royal Australian Regiment during a platoon ambush near the Courtenay Rubber Plantation, Phuoc Tuy Province South Vietnam, on 15 December 1970 be affirmed; but that
- b. the Minister direct that the Department of Defence should give consideration to otherwise recognising that service with the award of the Commendation for Distinguished Service.

⁴¹ Commonwealth of Australia Gazette No. S25 dated 4 February 1991, *Distinguished Service Decorations Regulations*.