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21 April, 2023
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Submission to Inquiry - Mr Leslie James Ray

Part 1 – Name of Inquiry

Name of Inquiry *

Medallic recognition for service with Rifle Company Butterworth

Part 2 – About the Submitter

Title or Rank *

Mr

Given Names *

Leslie James

Surname *

Ray

Post-nominals (if applicable)

Street Number and Name *

[redacted]

Postcode *

[redacted]

Address: *

[redacted]

Primary Contact Number *

[redacted]

Secondary Contact Number

Is the Submission on behalf of an organisation? If yes, please provide details:

Part 3 – Desired outcome

Provide a summary of your submission:

a further submission requested by the Tribunal outlining significant events that proves RCB service to be warlike.

Part 4 - Your submission and Supporting Documentation

File Attached: Third-subsequent-submission-to-the-RCB-DHAAT-Inquiry.docx

Part 5 – Consent and declaration

✓ I consent to the Defence Honours and Awards Appeals Tribunal making my submission publicly available.

✓ I also consent to the Defence Honours and Awards Appeals Tribunal:

- using information contained in my submission to conduct research;
- providing a copy of my submission to a person or organisation considered by the Tribunal to be appropriate; and
- providing a copy of my submission to a person or organisation the subject of adverse comment in the submission;
- using content in my submission in its report to Government.

The Tribunal will decide which person or organisation is appropriate, and this may include:

1. persons or organisations required to assist with the inquiry; and
2. persons or organisations with an interest in the inquiry.

✓ I declare that the information I have provided is correct.

Name

leslie james ray

Date

21/04/2023

Signed by Mr Leslie James Ray
Signed on: 21 April, 2023

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Third subsequent submission to the RCB DHAAT Inquiry

Leslie James Ray

[redacted]

9 April 2023

During the recent two-day public hearing in Brisbane (4 & 5 April) the Tribunal called for any further submissions which the Chair described as 'the silver bullet', meaning any incident that proves that RCB was warlike service.

To answer the Chair, I would like to raise a few matters which I believe establishes clearly that RCB was war-like service and are supported by precedents.

1. The first matter I raised in my submission dated the 1 March 2023 which involved Defence being told by the Tribunal that they were no longer required to answer two questions (8(am) and 8(an).

   In that submission, I made the following statement, and I asked a relevant question: -

   > At question 8(am) Defence stated that the Tribunal no longer requires this question to be answered. The same response is found in their reply to question 8(an).
   >
   > …I would appreciate a response from the Tribunal as to the reasons they did not want Defence to answer those two questions.
   >
   > I can appreciate the workload the Tribunal faces at the moment, but it appears that the Tribunal have received information that is relevant to this enquiry, and it has not been tabled for all parties to properly access.
   >
   > In my case, as a personal witness of this incident, and for procedural fairness, I should be given the opportunity of reviewing this information.
   >
   > Will the Tribunal table this information?

2. The second matter is related to the first matter in that Defence decided to make a comment about those two questions when they were not obligated to do so. I believe that that statement was deceptive and misleading.

   I stated: -

   > Despite not having to answer these two questions, Defence made a statement in question 8(am) that I believe is deceptive and misleading.
   >
   > Defence quotes the History and Heritage Branch – Air Force (Attachment AC) which gives a reason for the crash of A3-18 as being the failure of a first stage compressor blade. This is a true statement that explains why A3-18 had engine trouble, but it does not explain the reason the compressor blade broke in the first place.
   >
   > Defence also refers to the inquiry conducted at Butterworth into this incident, which was conducted in April 1974 several weeks after the incident, however, Defence did not quote from this document.

In that inquiry (April 1974 at Butterworth), under Conclusions, the inquiry concluded: -

> It is most probable that the first event in the sequence which culminated in the destruction of A3-18 was the separation of a portion of one of the front row compressor blades. **Whether the blade broke as a result of impact with a foreign object, or as a consequence of a pre-existing deficiency will be the subject of further analysis by authorities in Australia.** (my emphasis)

Defence was quick to quote the first report (*History and Heritage Branch – AirForce*) but failed to quote the second, (*Proceedings of the Court of Enquiry into Aircraft Accident No 75 Squadron Mirage A3-18 Butterworth Malaysia 1 April 1974*) which I believe was done to weaken my position.

The inquiry held at Butterworth in April 1974 clearly points to a second report to be conducted in Australia by the Commonwealth Aircraft Corporation which had access to more sophisticated equipment that could determine the cause for the failure of the compressor blades.

Why did Defence choose to answer a question it was not obligated to answer and why did they not refer to this second report?

Further, why hasn't the second report (from Commonwealth Aircraft Corporation) been tabled?

These matters 1 and 2 are relevant for two reasons.

The first is that if A3-18 was bought down by hostile ground fire then that establishes that Australian military forces were attacked by the enemies of Malaysia, and that would be the 'silver bullet' the Tribunal is seeking.

However, if the information received conclusively proves that the incident was due to *'a pre-existing deficiency'* then that closes that part of the enquiry, and the Tribunal is then left dealing with other matters, such as the objective danger test, which I raised in previous submissions.

Establishing that there was an objective danger is also a silver bullet that proves RCB was war-like service.

3. The third matter I raised in previous submissions which involved the apprehension of a suspected CT in the BC Bar outside of the entrance to the Butterworth Air Base. This matter has not been addressed either to me personally or during any of the hearings.

However, it was raised in the hearings of last week that only about 10% of the end of tour reports from company commanders exist, and those that do exist do not record any significant incidences.

My question is this: - Does the end of tour report exist for Charlie Company 5/7 RAR who served at Butterworth between March- June 1974 under the command of Major Brian Green?

If such a report exists, it would detail the A3-18 incident, the BC Bar incident, and the patrol conducted by 8 platoon in Johore in 1974, all of which detail incidences that indicate that our tour was not normal garrison or peacetime service but warlike service.

Again, another 'silver bullet' if it can be proven.

That proof lies in documents under the control of Defence, who had responsibility for their safe storage.

4. The fourth matter concerns the deployment on a permanent rotating basis for 19 years of a full company of Australian infantry raised to A1 standard and equipped with front line ammunition.

   The relieving company would arrive in the morning and the returning company would depart that afternoon, thus ensuring that at no time was the base undefended.

   This was the same for Vietnam.

   The deployment was for 365 days a year, for 19 years.

   Each company comprised approximately 120 men, and in some cases companies were composite companies, meaning that the numbers were made up of other arms drawn from neighbouring units and trained as infantry.

   If this was garrison or peacetime duty, or if Defence was to be believed, training, then sending a platoon of infantry would suffice, and their fitness levels would have not been relevant.

   My question is this: - If this wasn't war service, and only garrison or peacetime service, why was the company there for 365 days a year, for 19 years, and why was the company made up of 120 men and why were they A1 fit?

5. The fifth matter concerns the cost of deploying these troops to Butterworth.

   My military records show that in January 1975 I applied for a transfer from the 5/7 battalion (Sydney) to the 6 Battalion (Brisbane).

   My transfer was approved subject to me signing on for a further six years. The reason they wanted me to sign on for a further six years was due to the cost of transferring me to Brisbane, and the return of service would have compensated Defence for this expense.

   The RCB review Group have documented examples of soldiers who were due for their discharge shortly after completing their RCB tour, in one case a month after returning home.

If RCB was garrison or peacetime service, or training as Defence stubbornly insist on, then why did Defence send some troops for training or duty when they knew that they would not get any return of service from those troops?

I refer back to sending national servicemen to Vietnam. If they elected to serve their two years only, most had time to be trained to A1 standard and serve their year in Vietnam and were immediately discharged upon returning to Australia.

Return of service was irrelevant as they were on warlike service.

If it was too expensive to send me to Brisbane for a further 8 months, then why did Defence send some troops to Butterworth when they had selected to take their discharge shortly after returning? (bear in mind that the procedure for discharge starts about six months before discharge).

Further, why did the government willingly incur the expense of having a full company of soldiers, 365 days a year for 19 years, trained to A1 standard, when the army was lacking basic equipment and funding?

An example of that lack of basic equipment was the replacement of the M60 machine gun with the 7.62mm Bren gun, a gun my father carried in World War 2.

6. The sixth matter I raised in a previous submission which was the duty of HMAS Canberra during the First Gulf War.

I made the following statement in that submission: -

> The initial deployment of the *Canberra* was to enforce United Nations sanctions against Iraq for which they were correctly awarded the ASM as enforcing sanctions is deemed non-warlike, however, for approximately seven days during that deployment the *Canberra* was re-tasked to provide anti-air escort services for the USS Caron. On one of those days, the *Caron* fired on targets in Baghdad. After seven days, the *Canberra* resumed its sanctions enforcement task.
>
> In June 2009 a review determined that the services rendered by the *Canberra* during those seven days were war-like, and consequently the service rendered by the *Canberra* was recognised by an upgrading to the AASM.
>
> ... Enforcing UN Sanctions involved armed military personal boarding ships where there was a possibility of causalities (but not expected), and rules of engagement which were defensive in nature. It was a police action as there was no enemy and the *Canberra's* role were to enforce the law and to stand between opposing parties.
>
> However, providing anti-air escort services for a ship that fired on the enemy is not a police action, but a clear military objective. There were expectations of causalities, there was an active enemy present, and the rules of engagement clearly provided 'shoot to kill' authority. The *Canberra's* task was to provide security for the *Caron* so it could engage in combat operations with the enemy. No attack eventuated.
>
> Now compare the *Canberra's* seven-day warlike task with the nineteen-year task of RCB.
>
> RCB were there to provide a quick reaction force to counter any attack by the enemy.

This view is supported by the former Labor Defence Minister, the Hon Stephen Smith MP, who stated:[1]

> In 1973 an Australian infantry company was established as Rifle Company Butterworth in Malaysia. This provided a protective and quick-reaction force to assist our regional partners during a resurgence of the Communist Insurgency.

The Rules of Engagement for RCB restricted deadly force to within the wire, therefore, had the enemy broken through the wire, RCB was tasked *'to seek out and close with the enemy, to kill or capture him, to seize and hold ground and to repel any attack, day, or night, regardless of weather or terrain.'*[2]

This responsibility was in place 24/7, 365 days a year for 19 years.

Hence the reason why RCB was required to be A1 fit, fully trained in infantry tactics, and equipped with front line ammunition.

RCB's quick-reaction force had a clearly defined military objective and was authorised to use deadly force to achieve its aims. It did not wear blue helmets, and it did not stand between belligerents. It was not a peacekeeping force.

RCB's role was to provide security for the Australian assets at Butterworth which allowed the Malaysian military forces to concentrate on combat operations with the enemy.

In relation to RCB, it was the purpose of the mission and not the appearance of the mission (i.e. the training lie) that determined warlike activity.

As Defence Minister Smith stated, our mission was to assist Malaysia while they fought an active enemy, just as the *HMAS Canberra* did for the *USS Caron*, and that role has been set by precedent as warlike.

Why was the service of *HMAS Canberra* over a period of seven days upgraded to war service when a similar service performed by RCB over 19 years has not been upgraded?

7. The Tribunal took a considerable amount of time to define the legal definitions of warlike and non-warlike and my feeling is that the Tribunal has reached the conclusion that warlike means being shot at whereas non-warlike means being prepared to be shot at. I'm happy to be corrected on this.

However, in the decision to upgrade service at Ubon to warlike, the Tribunal said: -

> The question then remains as to whether or not this was 'warlike' or 'non-warlike'. Did the squadron face an objective danger? Did they 'incur' danger? Even though no danger eventuated in the sense that there were no actual combat engagements, they were armed for combat and had been told by those who knew more of the situation

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[1] The defence minister addressed the Council for Security Cooperation in the Asia Pacific at Curtain University on the 10 November 2011.

[2] Army Standing Instruction (Personnel), Part 11, Chapter 4 – Infantry Combat Badge.

> that danger did exist and they must hold themselves in readiness to meet it, not at some indeterminable time in the future, but at five minutes notice.

I refer back to my previous submissions in which I was given personal orders from my section commander, my platoon sergeant and platoon commander and my company commander ordering me to hold myself ready to meet dangers that were clearly warlike.

Recent deployments to Diego Garcia, Ubon, Namibia, Somalia (Navy), Middle East, Cambodia, and Rwanda in addition to the HMAS Canberra during the first Gulf War and RAAF members of Detachment S deployed to Vietnam in 1975 have been upgraded to active service and the following conditions applied to these deployments:

a. no shots were ever fired,
b. no casualties occurred apart from NB casualties,
c. each had an intelligence threat assessment,
d. some had ROE (Diego Garcia had none – the rest had ROE for self-defence),
e. most had no patrol areas (Ubon had patrolling outside of the wire),
f. the closest distance from known enemy was usually outside of the wire (Diego Garcia was 1,680 kms),
g. most had the expectation of casualties and medical facilities (Diego Garcia had no expectation of casualties),
h. weapons issued were small arms (except Somalia and Middle East, but were not as extensive as RCB),
i. most were within range of enemy weapons (most except for Diego Garcia 1,680 kms away and Ubon Thailand, a country bordering Vietnam),
j. no allied and enemy casualties within 100kms (apart from Middle East),
k. their primary task was to protect Australian assets (Diego Garcia and Ubon), to supervise the return of refugees, provide logistic support train Iraqi forces, provide communication support and medical services.
l. In the case of the RAAF members of Detachment S deployed to Vietnam in 1975, their service was upgraded to active service after an investigation[3], however, members of that detachment applied to the DHAAT for the Vietnam Medal but were refused because Australia was a part of the cease fire effective 11 January 1973, and consequently eligibility for the VM ceased on that date. The DHAAT decision stated in part: -

> What the official records show is that the service rendered by the RAAF personnel of Detachment S was humanitarian relief and even though the environment in which they rendered service was 'warlike' their service was not 'assisting the forces of the Republic of Vietnam to repel aggression.
>
> … the Tribunal cannot find any support for the conclusion that the service rendered by the RAAF personnel was that of an armed combatant assisting the armed forces of South Vietnam to repel its aggressors. The evidence is to the contrary. As mentioned above, the official

[3]Inquiry into the eligibility of Royal Australian Air Force Personnel, serving in Vietnam between 29 March and 29 April 1975, for the Vietnam Medal. 11 November 2009.

> records show that Australian Defence Force personnel ceased assisting the armed forces of South Vietnam in repelling its aggressors as of 11 January 1973.[4]

In each of the above deployments the upgrading recognised the true nature of the mission, which was to assist against a known enemy.

RCB's role was always to assist the Malaysians to counter the communists threat by providing a quick reaction force (QRF) to counter any incursion to the Butterworth Airforce Base. QRF was authorised to use deadly force to achieve it aims.

Clearly, RCB was assisting the forces of Malaysia to repel aggression. This was never publicised due to political sensibilities, both in Australia and Malaysia.

The Whitlam government made the election promise to bring all of the troops home, and sending troops into harms way would have broken that election pledge, and the Malaysian government didn't want to declare another emergency as it would have driven out foreign investment.

As it turned out, it was foreign investment that built the roads, bridges and dams that created the economic stimulus that raised the living standard of the average Malay and drove out the support for the Communists. This was recognised by China in 1980 when it cut funding to the communists in Malaysia.

This has been confirmed by various historians, the former Defence Minister, The Hon. Stephen Smith, the Top-Secret documents, and Secret documents that the RCB Review Group were able to find (but Defence could not) and the testimonies of numerous RCB veterans of all ranks from privates to lieutenant colonels.

The fact that no major incidences occurred in any of the other deployments mentioned above did not prevent proper recognition being granted (eventually). What it does show is the inability of Defence to get it right in the first place.

8. The Rules of Engagement specifically state that on opening fire that RCB were to wound and not kill.

   This was just a legal statement to protect the government that sent RCB, and nothing turns on this.

   The purpose of armed conflict is to remove the ability of an enemy to wage war, and it is a known fact that a wounded enemy combatant ties up more resources that a corpse, which is the reason that soldiers are issued with full metal jacketed ammunition, which are designed to be less lethal as they can pass through a human body and continue to possibly hit other human bodies.

   On the other hand, police services use hollow point rounds which are not designed to pass through a person (in order to protect others) but are more lethal to the target.

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[4] Ibid para 51.

Soldiers are trained to 'aim for the centre of seen mass', which is often lethal, but in a stressful situation, such as combat, accuracy reduces and a near miss will also result in a wounding.

Shooting to wound orders are only a distraction from the real purpose of RCB, which was to assist our partner (Malaysia) in its fight against a communist uprising.

The Tribunal, chaired by Prof Dennis Pearce AO, in relation to the RAN ships stationed off Somalia stated that the use of ROE as the sole criteria for determining the level and classification of honours and awards was flawed.

Likewise, in determining the warlike status of RCB, ROE cannot be used as the sole criteria to determine warlike service.

The services provided by RCB was greater than most of the above deployments that were later upgraded to warlike service. A close reading of the matrix provided by the Review Group titled *Comparison of Operational Service Entitlements and Awards – RCB (As at 31 Dec 17)*, and the additional two examples I have supplied, highlights this fact.

At Note 2 I referenced the standing instructions for the issuing of the Infantry Combat Badge. Those instructions state that the role of infantry is

> '*to seek out and close with the enemy, to kill or capture him, to seize and hold ground and to repel any attack, day, or night, regardless of weather or terrain'.*

It specifically mentions killing or capturing the enemy, not wounding him.

9. There have been several deployments over the years that were initially awarded non-warlike service, but after investigation were upgraded to warlike service.

   Deployments such as Diego Garcia, Ubon, Namibia, Somalia (Navy), Middle East, Cambodia, Rwanda, HMAS Canberra, and RAAF members of Detachment S employed to Vietnam in 1975 have had their deployments upgraded to warlike service due to common factors between deployments.

   Those deployments constitute precedents that should assist the Tribunal in its decision to award warlike service to RCB, and the Tribunal are bound to follow those precedents.[5]

   My understanding is that if there are compelling reasons not to follow the precedent then the onus rests with Defence to prove those reasons, not RCB veterans.

[5] Lockrey and the Department of Defence [2022] DHAAT 10 (18 July 2022). One of the recommendations was that this precedent be applied to all future claims of similar nature.

Conclusion

The nine points in summary: -

1. A3-18 incident.
2. The second report into A3-18 conducted in Australia.
3. The arrest of a suspected CT outside of the air base by RCB.
4. The continuous nature of the deployment and the relevant standards of fitness, skills, and numbers.
5. The cost of the deployment.
6. The definition of war-like service as established by HMAS Canberra.
7. Definitions of warlike and non-warlike.
8. ROE.
9. Binding precedents.

If any of these points can be confirmed as correct then that would satisfy the definition of 'a silver bullet' as required by the Tribunal.

But consider this –

if the A3-18 incident and the missing report show that it was just an accident,

if the CT arrested was just an inquisitive civilian with no links to the CT organisation,

if the Government thought that having 120 men, not all infantry, permanently based at Butterworth was a good idea for PR purposes,

if the cost of that continuous deployment for 19 years straight was irrelevant,

if sailors on the *Canberra* with fingers on triggers for a week were considered on war service but soldiers at RCB with fingers on triggers for 19 years was only training or garrison duty,

if the missing end of tour reports suddenly appear and show no incidents,

if patrolling with front line ammunition, looking out for a known enemy, and the right to shoot that enemy is considered garrison duty or training,

if ROE are mandated and applied rigorously,

and if the previous decisions awarding warlike service cannot be used as precedent,

then the Tribunal is left with only one fact to consider, and that is the objective danger test.

The objective danger test has been proven by all who have submitted to this enquiry, and that proof exists in the orders each man was given, before, during, and after his deployment. My statements and the quote from the Ubon decision attest to this fact.

Those orders have been confirmed from the mountains of documents presented to the enquiry, and as such form another 'silver bullet' to establish that RCB was warlike service.

For these reasons I contend that RCB service was warlike, and that it was the fault of successive governments and Defence in the past in not declaring RCB to be warlike service. The rationale for that fault was understandable at the time, but 50 years have now passed and neither of the reasons are no longer politically sensitive.

That error can be rectified by a decision of the Tribunal to recognise RCB service, over a period of 1970-1989, to be warlike service, and to grant both medallic and repatriation benefits to those veterans.

Sincerely Yours,

Leslie James Ray

I require the following questions to be answered: -

1. In my case, as a personal witness of this incident (A3-18), and for procedural fairness, I should be given the opportunity of reviewing this information. Will the Tribunal table this information? (The reason the Tribunal gave Defence for not answering questions 8(am) & 8(an)).
2. Why did Defence choose to answer a question it was not obligated to answer and why did they not refer to this second report?
   Further, why hasn't the second report (from Commonwealth Aircraft Corporation) been tabled?
3. Does the end of tour report exist for Charlie Company 5/7 RAR who served at Butterworth between March- June 1974 under the command of Major Brian Green?
4. If this wasn't war service, and only garrison or peacetime service, why was RCB there for 365 days a year, and why was the company made up of 120 men and why were they A1 fit?
5. If it was too expensive to send me to Brisbane for a further 8 months, then why did Defence send troops to Butterworth when they had selected to take their discharge shortly after returning?
6. Why was the service of HMAS Canberra over a period of seven days upgraded to war service when a similar service performed by RCB over 19 years has not been upgraded?
7. Will the Tribunal use precedent to determine if RCB service was warlike?
8. Will the Tribunal accept Prof Dennis Pearce AO decision not to use ROE as the sole determinant to establish warlike service?