

EXHIBIT LIST

MFI 2 – AFFIDAVIT OF AIR MARSHAL MARK DONALD BINSKIN

EXHIBIT A

PRE-TRIAL DIRECTIONS HEARING VIA TELECONFERENCE

MONDAY 29 AUGUST 2011

COL P.J. MORRISON, Judge Advocate

ACCUSED: Army LTCOL M

MP1 2.
to.

EXHIBIT A.

to.

**IN THE MATTER OF AN APPLICATION FOR
PROTECTIVE ORDERS IN THE TRIAL OF LTCOL M**

**AFFIDAVIT OF AIR MARSHAL MARK DONALD BINSKIN
VICE CHIEF OF THE DEFENCE FORCE
IN SUPPORT OF AN APPLICATION FOR PROTECTIVE ORDERS**

Filed on behalf of the Commonwealth by:

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D.
[Signature]

On the 23rd day of August 2011, I, Mark Donald Binskin, of Russell Offices, Canberra, in the Australian Capital Territory, make oath and say:

1. I hold the position of Vice Chief of the Defence Force (VCDF). I was appointed to that position on 4 July 2011. In that role I am responsible for developing, delivering and enabling the ADF's joint capability in order to protect and advance Australia's national and strategic interests.
2. This includes:
 - a. providing advice to Government concerning the operational deployment of the ADF to enhance our national strategic interests and our alliance relationships, to strengthen regional security and to successfully conduct joint military exercises and operations;
 - b. identifying, developing and providing current and future joint capability to enable our armed forces to defend Australia and its national interests; and
 - c. providing critical advice to Government on the operational capability of the ADF to assist in the formulation of Australia's national security posture and decision-making.
3. Prior to my appointment as VCDF, I held a range of command appointments and postings including the following:
 - 3.1. I served as the Chief of Air Force from July 2008 to July 2011. Prior to that I was Air Commander Australia from August 2007 to July 2008, where I commanded all Air Force operational elements. During this entire period I have been responsible for the Air Force's role in continuous ADF operations in multiple theatres, ranging from disaster relief and humanitarian assistance through to armed conflict.
 - 3.2. In the period 2004 to 2005 I was the Commander of the Air Combat Group (F/A-18 and F-111 aircraft and Forward Air Control capabilities).
 - 3.3. During the period November 2003 to February 2004 I served as the first dedicated non-United States Military Director of the United States Central Air Force Combined Air and Space Operations Centre in the Middle East where I was responsible for the conduct of concurrent Coalition air operations in support of Operation Iraqi Freedom and Operation Enduring Freedom (in Iraq and Afghanistan respectively). In this capacity I was regularly required to employ aircraft from a number of nations in combat operations supporting various other nations' forces across two disparate areas of operations.
 - 3.4. In early 2003 I served as Chief of Staff at Headquarters Australian Theatre (the precursor to Joint Operations Command), which was responsible for commanding all ADF operations; in particular ADF Operations Bastille and Falconer in Iraq.
 - 3.5. In the period 1998 to 1999 I was the Commanding Officer Number 77 Squadron RAAF (F/A-18 aircraft and Forward Air Control capability).

4. Through my service in the ADF I have obtained extensive experience in, and understanding of the threats faced by ADF personnel in conducting military operations, in terms of both potential danger to ADF personnel and risks to mission.

B.
[Signature]

PART A: ABOUT THIS AFFIDAVIT

A1 Purpose of this affidavit

5. I understand that the Director of Military Prosecutions has indicated that she will seek to withdraw charges against LTCOL M at a court hearing in late August 2011, which I refer to as the 'mention'. I anticipate that at the mention, absent appropriate protective orders, identifying information will be disclosed in relation to LTCOL M. I understand that sensitive or classified information will not otherwise be disclosed at the mention.
6. The purpose of this affidavit is to explain why, in my view, it is necessary in the interests of the security and defence of Australia that identifying information in relation to LTCOL M be protected from public disclosure at the mention.
7. I have only included in this affidavit information which is unclassified. As noted throughout this affidavit, there is further classified information to which I have had regard when reaching the conclusions I have described. If necessary, I would be prepared to swear a further confidential affidavit to address such matters.

A2 Affidavit based on deponent's knowledge

8. This affidavit is based upon my personal knowledge and beliefs. Where statements in this affidavit are based on my belief as to certain matters (rather than a personal knowledge of those matters), I have been informed of the relevant background to those matters and I am satisfied that there is a sound basis for my belief.

A3 Assessment of risk

9. In this affidavit, I describe various risks to Australia's defence and security. These risks are not capable of precise quantification but are rather matters of professional military judgement and assessment having regard to a large number of potential variables.
10. Where I have made assessments of risk in this affidavit I have had regard to both the likelihood of a particular outcome and the gravity of the consequences of that outcome.
11. In some cases, the likelihood of a particular outcome may not be high. However, in circumstances where the potential risks include the loss of life, the reduction in our military effectiveness and the weakening of Australia's national security efforts more generally, I consider that any material increase in the likelihood of that occurring should be avoided wherever possible.

B.
[Signature]

PART B: SENSITIVE IDENTITIES

12. For the reasons explained below, I believe that the public disclosure of identifying information in relation to LTCOL M would give rise to a real risk of serious prejudice to defence and security.

B1 Role of special forces personnel

13. Australia's special forces personnel are engaged within Special Operations Command (SOCOMD). SOCOMD draws upon personnel from all three services.
14. SOCOMD provides special operations capability to assist the Australian Government in protecting Australia's national interests both domestically and internationally. These are unique and highly specialised capabilities which permit the Australian Government to handle a broad range of domestic and off shore national security issues.
15. At the heart of these capabilities is the careful selection and advanced training of a small number of ADF personnel. The investment in creating and sustaining this special capability is high and the flexibility and effect of those capabilities is such that it could not readily be replicated in any other way.
16. For these reasons, the ADF is particularly concerned to maintain the confidentiality of SOCOMD personnel, capabilities and operations in a way which does not apply to conventional military forces and operations.

a. Special Operations Task Group activities in Afghanistan

17. SOCOMD provides the personnel which comprise the Special Operations Task Group (SOTG) in Afghanistan, Task Force 66. The SOTG consists of approximately 300 ADF personnel drawn primarily from SOCOMD's Special Air Service Regiment (SASR) and the 1st and 2nd Commando Regiments.
18. The SOTG forms a vital part of Australia's engagement in Afghanistan. In particular:
- 18.1. The SOTG contributes to the security of the Uruzgan province of Afghanistan by carrying out military operations that target the Taliban insurgent network including its leadership base and activities such as the manufacture of improvised explosive devices. The activities of the SOTG reduce the threat of insurgency against ISAF and Afghan forces and allow them to provide essential government services to Uruzgan province.
- 18.2. The SOTG also undertakes significant provincial security development and engagement with civilians to develop the relationships, conditions and local confidence that will lead to Afghans rejecting the Taliban insurgency.
19. As such, the ongoing strength of the SOTG is critical to Australia's capacity to operate as a member of the coalition force (which includes many of Australia's longstanding key allies) in Afghanistan. If anything were to diminish Australia's capacity to contribute to the multilateral operation in Afghanistan, including by

limiting Australia's ability to carry out its military responsibilities there, it would potentially have a prejudicial affect on Australia's relationship with key allies and thereby prejudice Australia's security and defence more generally.

b. Special forces activities more generally

20. In addition to the work of the SOTG, special forces provide critical support to the Australian government in a range of other national security activities which are vital to the Australian Government's protection of our national security. The very nature of these activities is highly sensitive and, therefore, I do not describe them in this unclassified affidavit.

B2 Protection of the identities of special forces personnel

21. The ADF goes to considerable lengths to ensure that the identities of special forces personnel remain confidential. Such personnel have consistently been afforded 'protected identity status' under relevant ADF procedures and directives. In accordance with these requirements, the identities of SOTG personnel are protected from disclosure to the public, unless specifically authorised.
22. Special forces personnel are instructed to take precautions to minimise the scope for disclosure of their identities, addresses and so forth. They are instructed to protect the fact of their involvement with special forces from disclosure where possible.
23. In my view, protected identity status for special forces personnel, including LTCOL M, is necessary in order to:
- a. minimise the risk of harm to them and their families;
 - b. minimise the risk that they will be exploited to obtain sensitive information; and
 - c. maximise scarce operational resources.
24. I consider each of these matters in turn below.

B3 Risk of harm to special forces personnel and their families

25. I consider that special forces personnel and their families are likely to be particularly attractive targets for attacks and exploitation. There are a number of reasons for this:
- 25.1. It is well known that special forces personnel play a key role in Australia's whole-of-Government response to target violent extremism. While the specific nature of their activities is kept confidential, the fact of them having a significant role in these areas is not.
- 25.2. In recent conflicts, particularly in Afghanistan and Iraq, special forces personnel have been responsible for the capture or killing of a significant number of high level extremists. As a result, sympathisers of those extremists are likely to seek to target special forces personnel in particular for retribution.

- 25.3. As special forces personnel are known to be a vital part of Australia's counter terrorism apparatus, they are likely to be targeted as a means of directly undermining the effectiveness of our counter terrorism activities.
26. Within Australia, examples of such harms are, fortunately, limited to date. However, in my view this is more a result of the steps taken to protect our personnel and their families than a lack of threat. In saying this I note the following general experiences in this area.
- 26.1. The identities of SOTG personnel killed in Afghanistan are generally made known to the public. (Usually this is done by the ADF, with the family's consent, in order to prevent them being the subject of ongoing approaches by the media.) The families of 3 of those deceased have been harassed and intimidated by phone calls from extremist sympathisers in which the deceased were abused and the family threatened with violence. In one case a letter of this kind was hand-delivered to the family at the funeral itself.
- 26.2. Within Australia, convicted and suspected terrorists have targeted Holsworthy Barracks. This is a base which is publicly known to house the 2nd Commando Regiment (although the presence of those personnel is not known to have been a motivation for the targeting).
27. I am conscious that in the present case a number of SOTG members were involved in an incident during the clearance of an Afghani compound which resulted in the deaths of Afghan civilians, including children. This has been the subject of widespread media reporting. In those circumstances I consider that the risks to the safety of special forces members (described in paragraph 25 above) are markedly increased for those individuals and their families. That is, any potential retributive action which may be sought to be taken by extremist sympathisers is more likely to be specifically targeted at the SOTG members involved in the incident if they or their families are able to be identified.
28. This increased risk would, in my view, be further heightened in the case of LTCOL M. This is because he is not only associated with the incident in general terms, but he has been publicly accused of being criminally responsible for directing SOTG elements to clear the compound in which the incident occurred. It is unlikely in my view that an extremist would make a significant differentiation between a person who was convicted of such a criminal act and a person who was only accused of it.

B4 Risk of compromise of sensitive information

29. By virtue of their position, special forces personnel have an understanding of and access to a range of sensitive information. This makes them a target for a range of threat elements which may wish to obtain such information. The means by which this targeting could be carried out is varied.
30. As this affidavit is unclassified, I do not here provide details of:
- a. the nature of the sensitive information to which special forces personnel have access;

- b. the specific threat elements which may seek to access such information; or
 - c. the means by which they may target special forces personnel.
31. However, these considerations are such that, were special forces' identities to be revealed, I consider there would be a real risk that sensitive capabilities and information may be disclosed to the prejudice of Australia's defence and security.
32. For so long as the identities of such personnel remain protected, it is more difficult for threat elements to effectively target them.

B5 Loss of ongoing capability

33. Special forces personnel comprise a select pool with the necessary skills and experience to be engaged in a range of high risk operations. They are carefully selected through a rigorous 12 to 18 month selection and training cycle. Less than half of the candidates, sometimes considerably less, are successful. The costs and resources associated with this training is very significant.
34. Additionally, special forces personnel who have performed those duties for some time acquire a skill set and experience which is not able to be replicated simply by conducting further recruiting or training.
35. Special forces personnel also perform confidential functions for the Australian Government. It is not appropriate for me to describe what those functions are in an unclassified affidavit. However, it suffices to say that if the identities of those special forces personnel were to be publicly disclosed, they would no longer be able to perform many of these important functions.

B6 Disclosures of special forces identities in particular circumstances

36. Notwithstanding their protected identity status, the names of particular special forces members are occasionally publicly disclosed. In some cases this will be against the wishes of the members and SOCOMD. In those cases, steps have been taken within SOCOMD to ensure the safety of those members and their families.
37. In exceptional circumstances a conscious choice is made to publicly disclose the identities of special forces members in recognition of significant awards. A recent example is that of Trooper Donaldson and Corporal Roberts-Smith upon the awarding to them of the Victoria Cross. Despite the exceptional and significant nature of those awards, the decision to publicly release their names was not made lightly. It was made by senior leadership with the specific agreement of the members and following close considerations of the potential consequences of such disclosure. Significant care has been taken to consider and ensure the ongoing safety of those members and their families notwithstanding the public disclosure of their identities.
38. I am also aware that a documentary has recently aired on the SBS television channel featuring the 'selection course' for the SAS. Before the ADF agreed to SBS filming this documentary, it required a number of measures to be put in place to ensure, amongst other things, that identities of special forces personnel were not publicly disclosed. For example, throughout the filming of the documentary:

- a. the faces of current SAS members who ran the selection course were obscured from the camera using a variety of means; and
 - b. the names of SAS members were not disclosed.
39. Certain personnel outside of SOCOMD who were involved in the conduct of the selection course, such as fitness trainers, were not afforded the protections described above. This was also the case with respect to senior SAS personnel who have specifically designated public identities.
40. The identities of the successful participants in the selection course were also protected from disclosure. Those participants which the documentary focussed on (who, for example, were interviewed and whose 'stories' were followed throughout the documentary) were confined to those persons who were ultimately unsuccessful in their attempts to join the SAS.

B7 Need for protective orders in relation to identities

41. The risks described above are applicable to the protection of the identity of each special forces member. In my view, these risks are significantly compounded by the potential for widespread identification of LTCOL M in this case. Without appropriate protective orders, LTCOL M may be publicly named in direct association with the particular targeting operation which is the subject of these proceedings.
42. The public disclosure of the name, or general identifying background details, of LTCOL M would plainly equip threat elements with the ability to selectively locate and target him.

Sworn by the above named deponent at
 Canberra in the Australian Capital
 Territory on the 23rd day of August 2011

Before me:

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A Barrister and Solicitor of the Supreme
 Court of the Australian Capital Territory