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4 February 2004

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Chief of the Defence Force
Russell Offices
CANBERRA ACT 2600

REDRESS OF GRIEVANCE - 322067 LTCOL L COLLINS

References:

- A. Application for Redress of Grievance - LT COL L Collins dated 29 Apr. 03.
- B. Instrument of Appointment and Terms of Reference dated 14 May 03.
- C. Variation to Terms of Reference dated 1 Aug. 03.
- D. Report of CAPT M J Toohey - Investigation into a Redress of Grievance submitted by 332067 - LTCOL L Collins dated 7 Sep. 03 ("the Toohey Report").
- E. No ref Legal Report by COL R A Brown HQTC-A on the Toohey Report dated 22 Sep. 03.
- F. 2003/16531/1 B1 HQTC/OUT/2003/2101 of 15 Oct. 03.
- G. OCA/OUT/2003/1929 of 5 Dec. 03.
- H. CDF 1823/03 dated 18 Dec. 03.

1. LTCOL Collins is an army officer presently posted to HQ TC-A. By reference A he sought redress of various grievances relating to the performance of his duties as an intelligence officer. Having considered the application the commanding officer to whom the application was directed determined to appoint an investigating officer to enquire into the grievances. Reference B contains the terms of reference which were provided to the investigating officer. An

amendment to the terms of reference was later made by reference C. The investigating officer, having conducted extensive interviews and considered various documents, presented his report on 7 September 2003 – see reference D. The commanding officer sought legal advice on the report and that legal advice was provided on 22 September 2003 – see reference E. It found that the factual findings made by the investigating officer and opinions which had been expressed by him which were adverse to individuals were all supported by the evidence obtained by the investigating officer. It also advised that most of the recommendations, made by the investigating officer, could be implemented, either by the commanding officer or by more senior officers, including yourself. In reference F the commanding officer accepted the investigating officer's findings and determined to implement those recommendations which fell within his authority. Most of the recommendations could not be implemented by him and these were referred, through the chain of command, to senior officers including the Chief of Army and yourself. The Chief of Army, by reference G, has determined to implement certain recommendations within the Army, in particular, to deal with deficiencies in the career management of LTCOL Collins.

2. Having considered the recommendations which had been referred to you, you determined (*vide* reference H) that you should be provided with “an independent legal review of the [investigating officer's] report, clarifying the process

undertaken and making comment on the substantiation behind the findings". I have been asked to provide you with that advice.

General observations

3. It will be convenient, at the outset, to make some general observations about the purpose and conduct of inquiries by investigating officers appointed under the Defence (Inquiry) Regulations. The central purpose of administrative enquiries conducted within the ADF is to ascertain facts which will inform command decisions. The matter or matters enquired into must be matters "concerning the part of the Defence Force that is under the command or control of the [appointing] officer": see Reg. 70A(1). The appointing authority will determine what information is needed and will determine appropriate terms of reference. The terms of reference will establish the parameters of the enquiry. In order to ascertain the facts, it will usually be necessary for the investigating officer to interview persons who may have relevant knowledge. Findings of fact will be based upon the information supplied by such persons. There will be circumstances in which the information supplied by interviewees is contradictory. It will then be a matter for the investigating officer, if he or she is able to do so, to determine which (if any) version is correct and to report to the appointing authority on the reasons for preferring one account to another. The appointing authority may (but does not have to) empower the investigating officer to make recommendations as to appropriate command action arising from any factual findings made: see Regs. 70B and 75(1)(b).

4. The investigating officer, having made the necessary enquiries, is required to provide a written report to the appointing authority. That report must address the terms of reference and provide an account of the factual findings made and a reasoned account of why they were made: see Reg. 75 and ADFP 202, para. 6.58. If recommendations have been invited, then those recommendations should flow from (in the sense of having a logical nexus with) the findings of fact. Once the appointing authority has received the investigating officer's report, and before considering and acting on it, the appointing authority is required to obtain legal advice. See ADFP 202, para. 1.52. One of the reasons for this is in order that the appointing authority can be assured that a proper evidentiary basis for the findings of fact and any recommendations made exists. The legal advice should also address the question of whether the procedural requirements, imposed by the relevant regulations and policies, have been adhered to in the conduct of the investigation. In particular, it is necessary for the legal advice to address the question of whether procedural fairness has been accorded to any person or organisation who or which may be the subject of criticism by the investigating officer or against whom adverse factual findings have been made.

5. Subject to the legal advice, it is then a matter for the appointing authority to determine whether or not he or she accepts any or all of the factual findings or recommendations and then to determine what (if any) action to take. If the

appointing authority determines that action is appropriate and it is within the power of the appointing authority to take it, then he or she will do so. If the appointing authority lacks power to take action, he or she is required to refer the matter to an appropriate person within the ADF who has that power. That person may or may not consider it appropriate to take the recommended action. What is important, however, is that, because the enquiry relates to matters arising within the Defence Force, remedial action can only be taken by those with power to do so within the ADF. See generally ADFP 202 paras. 1.51-1.58.

6. As already noted, the inquiry was instituted pursuant to reference B. The appointing officer purported to act pursuant to Reg. 70A of the Defence (Inquiry) Regulations. The investigating officer was appointed to investigate and report into LTCOL Collins' application for redress of grievance "concerning, but not limited to, allegations of abuse of power and an abrogation of duty of care by the Defence authorities toward that officer, unchecked spreading of malicious rumours by those same authorities and consequential adverse effects on the career prospects of LTCOL Collins combined with associated procedural unfairness and denial of natural justice". This formulation is, no doubt, an attempt to summarise the substance of LTCOL Collins' complaints. The investigating officer's attention is then drawn to a series of specific matters arising from LTCOL Collins' application. Amongst these are matters which, on their face, plainly do not concern the part of the Defence

Force which was under the appointing officer's command. It will be sufficient, for present purposes, to quote some examples. The investigating officer was tasked to investigate whether:

- "a. the Director of the Defence Intelligence Organisation (DDIO) or any other member of the Defence Intelligence Community misused their authority to deflect organisational criticism emanating from LTCOL Collins back upon the latter officer;
- b. the intelligence stakeholders mentioned above were so affected by that criticism that their subsequent actions were adversely effected;
- c. an investigation subsequently convened by the Inspector-General of Intelligence and Security and still extant, is being pursued with appropriate vigour and timeliness having regard to LTCOL Collins' situation;
- ...
- f. the complainant's standing in the intelligence community specifically and the Defence community in general, suffered as a result of his being publicly named as being shown on an AFP Search Warrant and the ensuing media publicity;
- ..."

7. In my opinion the appointing authority exceeded his powers under Reg. 70A by requiring the investigating officer to investigate matters which were not matters concerning HQ TC-A. It may also be observed that the use of terms such as "Defence Intelligence Community" and "standing in the intelligence community" were extremely vague and ill defined and apt to lead the investigating officer into areas falling outside the proper scope of an investigation conducted under the Defence (Inquiry) Regulations. In the event, as will be seen, this is what occurred.

8. It is against this background that I turn to the investigating officer's report in the present matter. It has a number of unfortunate features, some of which are referred to in the legal advice tendered to the appointing authority. In addition, and of more concern for present purposes, is the overall structure of the report. Most of it comprises a selective summary of evidence taken from those who were interviewed by the investigating officer. The summaries are loosely linked to the terms of reference. Immediately thereafter there appears a series of factual findings. Some of those findings can be traced back to some of the evidence earlier summarized. Other findings relate to matters that are not mentioned in any of the summaries. In no case is it possible, through footnote references or otherwise, to link particular findings to a particular evidentiary source or sources. Immediately thereafter there follow a series of recommendations. They are not linked to any particular finding or findings of fact and, in some instances, it is difficult to appreciate how it might be thought that the recommendation flows logically from any particular factual finding. In some instances, the recommendations encourage action which is not within the power of any member of the ADF to take.

9. My principal concern is to advise you as to the legal efficacy of the findings of fact which underpin the recommendations which have been referred to you for action and your legal authority to act on those recommendations. There are some issues which, it is proposed, will be dealt with within the Army. I have in mind, in particular, issues relating to career management of LTCOL Collins.

There can be no doubt that there have been shortcomings in his career management since his return from East Timor. Regardless of the reasons, remedial action needs to be taken and the Chief of Army has indicated his intention to have these problems rectified. You have not been called on to take any action in this regard. I will, therefore, concentrate on the recommendations which have been directed to you for consideration and the factual findings that may be thought to relate to them. The findings will be referred to by the number of the paragraph in which they appear in reference D.

Findings

10. **Finding 130.** The investigating officer found "... that LTCOL Collins, arguably the Army's most skilled intelligence analyst, engaged in organisational, albeit constructive and accurate criticism of defence and associated intelligence organisations, with particular emphasis on DIO and DFAT but in so doing at times exceeded his remit of restraining his assessments to operational and tactical areas".

11. The evidence suggests that LTCOL Collins harboured serious doubts about the accuracy of DIO and DFAT assessments of intelligence matters involving Indonesia. When he received assessments with which he disagreed, he adopted a practice of voicing that disagreement through emails which were widely distributed through the intelligence community. Those emails were not in evidence. Even had they been, it is difficult to understand how the investigating

officer would have been able to form the judgment that LTCOL Collins' criticisms were "constructive and accurate". The finding is not qualified in any way. This may suggest that the investigating officer considered that LTCOL Collins' criticisms were invariably "constructive and accurate" (as to which see below at paras. 37 and 38). However it is construed the "constructive and accurate criticism" finding at best reflects the opinion of some interlocutors. I can find no objective basis for the finding in the material considered by the investigating officer.

12. **Finding 131.** The investigating officer found that "this criticism was resented by the Director of DIO, the Director of SIP Division and the Assistant Secretary - Defence Security, who formed a strong dislike for LTCOL Collins, accused the officer of encroaching onto the strategic area of intelligence assessment and ultimately caused his details to be passed, in tandem with Defence Security Branch (DSB), to the AFP resulting in him being unnecessarily named on an AFP search warrant". As can be seen finding 131 is, in fact, a series of findings.

13. I can find no evidence that the three named office holders had a strong dislike for LTCOL Collins or that they caused his details to be passed to the AFP. LTCOL Collins' name did appear on a search warrant obtained by the AFP in the course of an investigation into the leaking of sensitive defence intelligence information. The warrant was not executed on premises owned or occupied by

LTCOL Collins. It cannot, however, be concluded that, simply because the warrant was not so executed, his name was unnecessarily included on it. The investigation was in the hands of the AFP. The warrant would not have been issued unless a judicial officer had been persuaded on adequate material that the warrant should issue. In the absence of any reference to the detail of the police investigation and the material placed before the magistrate it is difficult to understand how this conclusion could be reached. It is entirely possible, for example, that the AFP was seeking to obtain documentary evidence which it was thought, on reasonable grounds, may have innocently been in LTCOL Collins' possession and did not proceed to search his premises because the material was found elsewhere.

14. **Finding 132.** The investigating officer found "that the Director of DIO became so frustrated with the activities of LTCOL Collins during INTERFET that he caused the flow of intelligence to East Timor to be suspended for approximately twenty four hours and that further, he wrote to the INTERFET Commander in a an (sic) attempt to muzzle LTCOL Collins".

15. I can detect no record of this allegation having been put to the Director of DIO. Insofar as the evidence deals with the issue of the suspension of the flow of intelligence it suggests that this occurred on two occasions. The first was caused by a technical problem and the second suspension was effected pending the completion by LTCOL Collins of a routine security clearance.

16. The communication between the Director of DIO and the Commander of INTERFET was, apparently, an attempt to have LTCOL Collins prevented from continuing with his practice of using widely distributed emails to criticise intelligence assessments with which he disagreed. I say “apparently” because the communication was not in evidence. A characterisation of this action as “an attempt to muzzle”, whilst colourful, does little to further the purpose for which the enquiry was established. “Muzzling” suggests complete silencing. You did not understand that this was the purpose of the Director’s approach to you. Your evidence suggests that he was seeking to have LTCOL Collins constrained within what he saw as the proper limits of his duties. See Transcript of your evidence at pp. 8-10 and the Director’s evidence (Transcript at p. 9).
17. **Finding 133.** The investigating officer found “that the Director of DIO, by his refusal to attend a meeting between IGIS, LTCOL Collins and a scribe, indirectly caused LTCOL Collins to take part in [a] meeting without legal representation and therefore placed LTCOL Collins at a disadvantage in presenting his point of view regarding intelligence deficiencies”.
18. The circumstances in which the meeting took place without LTCOL Collins’ legal representative being present are set out in paras. 76-81 of reference D. As is apparent from the evidence there summarised (see especially at para. 79), it was agreed, following discussions, that the meeting would be informal and

LTCOL Collins' legal officer agreed that it was unnecessary for him (the legal officer) to attend. LTCOL Collins was, and is, an articulate person. If he felt no disadvantage at participating in the meeting without the assistance of a legal officer, it is difficult to understand the contrary finding by the investigating officer. In any event, finding 133 should not be construed as implying any justified criticism of the Director of DIO.

19. **Finding 134.** The investigating officer found that the Director of DIO had a dislike of LTCOL Collins which inhibited the Director from "reacting in an objective manner to LTCOL Collins' criticisms of DIO".

20. There is no direct evidence in the record of interview between the Investigating Officer and the Director to support this conclusion. It would appear to have arisen from an impression formed by the investigating officer in the course of his dealings with the Director. One is left to speculate about the matter because no attempt is made to explain the reasons why the impression was formed.

21. **Finding 135.** The investigating officer found "that a pro-Jakarta lobby exists in DIO, which distorts intelligence estimates to the extent those estimates are heavily driven by Government policy which overlooks (or attributes the blame to other factions), atrocities and terrorist activities committed by the TNI - in other words DIO reports what the government wants to hear".

22. This is a very general and pejorative finding. It is non-specific. It does not, for example, identify who it is who constitutes the so called "pro-Jakarta lobby". The allegation was put to the Director of DIO and his response was that it had nothing to do with the inquiry and that he was limited on what he could say: see Transcript at pp. 8-9. The Director was correct in his assessment: the finding was not responsive to any term of reference.
23. **Finding 136.** The investigating officer found that an abridged report of an inquiry conducted by the Inspector General of Intelligence and Security failed adequately to address LTCOL Collins' concerns "regarding a plan to (sic) with the Indonesians to keep everyone else out of East Timor and the conduct of the Merv Jenkins Inquiry". This criticism is supposedly explained in a synopsis which is annexure A to reference D.
24. I can find nothing in the synopsis which identifies any specific matters raised by LTCOL Collins which were not addressed by the Inspector General. In any event the investigating officer was not tasked to conduct a review of the adequacy of the Inspector General's report. Insofar as his terms of reference touched on the work of the Inspector General, it asked for no more than a finding as to whether the investigation was "being pursued with appropriate vigor and timeliness ...".

25. Finding 139. The investigating officer found that "LTCOL Collins was not, and still has not been, informed of the results of an investigation into him by Defence and Australian Federal Police; his initial notification of the event being a telephone call from his wife five days after execution of the warrant when she saw media reports of the investigation which named the complainant".
26. The various findings which are made under this head appear to flow from material which is summarized in paras. 51-69 of reference D. It is by no means clear from this summary that LTCOL Collins was ever the subject of an investigation. The fact that his name appeared on a warrant obtained by the AFP does not necessarily point to this conclusion. Indeed, the investigating officer himself appears to have concluded that this was not the case: see finding 145. It is also unclear what "the event" to which the investigating officer adverts was. The telephone call from his wife, after the execution of the warrant on CAPT Fernandez' premises and the associated disclosure of the names appearing on the warrant would suggest that the event to which reference is made is the disclosure of LTCOL Collins' name as being one of those names appearing on the warrant. If, as would appear to be the case, no investigation was conducted into the conduct of LTCOL Collins, there were no "results" about which he could be informed.
27. Findings 140 and 141. The investigating officer found that LTCOL Collins' standing in the intelligence community had been greatly diminished following

the naming of him in the search warrant “to the point of him being ostracised and/or held up as a laughing stock in some quarters”. It was also found that LTCOL Collins’ standing in the intelligence community was prejudiced by his association with CAPT Fernandez.

28. There is some evidence, particularly that of LTCOL Collins and CAPT Fernandez, which would tend to support these findings although, it must be cautioned, the extent of the diminution of his standing is a matter of subjective impression and the number of people who hold this perception within the “intelligence community” is not disclosed by the evidence. I can find no evidence that LTCOL Collins has been ostracised by anybody.
29. **Finding 141.** The investigating officer has found that LTCOL Collins was not nominated for any honour or award by any Chief of Staff whilst he was serving with INTERFET despite your view that he rendered distinguished service.
30. The evidence supports the findings contained under this head.
31. **Finding 144.** The investigating officer found that “there are systemic issues in the Defence intelligence community arising from [his] investigation of this ROG”. He provides a “synopsis” of these issues in annexure B to reference D. They are said to be issues “arising directly from the incident complained of”. It is by no means clear what that “incident” was. LTCOL Collins’ ROG, the

terms of reference and the report refer to a range of incidents. The issues identified in annexure B, insofar as they are identified, seem to have this much in common: They arise from the fact that many members of the intelligence community are said to come from "policy" backgrounds as distinct from purely intelligence backgrounds. The observations are extremely general in nature and, to the extent that the "Defence intelligence community" that is referred to involves persons and organisations outside the ADF, these deal with matters extending beyond the competence of an investigating officer appointed under the Defence (Inquiry) Regulations.

32. Finding 145. This is a most serious finding. It is "that the Defence Security Branch (DSB), (activated, on the balance of probabilities) by malice, at the material time failed to inform LTCOL Collins as soon as practicable after the execution of the AFP search warrant of the fact that he was not, and never had been under investigation, causing a lack of closure which remains extant almost three years after the event".

33. There is no direct evidence of malice on the part of the Defence Security Branch or any officer of it; nor, in my view, was there any proper evidentiary foundation which would support such an inference. Nor was such an allegation or any facts which would support such an allegation put to any officer of the Defence Security Branch in the course of the inquiry. There are the further difficulties that the warrant was never executed on premises occupied by

LTCOL Collins and the inquiry was under the control of the AFP rather than the Defence Security Branch.

34. **Finding 146.** The investigating officer found “that the incident could have been prevented by the Assistant Secretary-Defence Secretary, Mr Jason Browne, advising LTCOL Collins, in a timely manner, of the complainant’s complete lack of involvement in the security investigation, thereby bringing about an early closure”.

35. This finding is unintelligible because it does not identify “the incident” to which reference is made. If “the incident” is the public disclosure that LTCOL Collins’ name appeared on the search warrant obtained by the AFP, what I have said above in respect of finding 139 applies with equal force to this finding. This allegation was not, in any event, ever put to Mr Browne.

Recommendations

36. I turn now to the recommendations which have been referred to you for consideration and possible action. These recommendations appear in para. 5 of reference F. It will be convenient to refer to them by the letters appearing adjacent to them in that paragraph.

37. **Recommendation a.** It is recommended that “DIO become more receptive to constructive criticism of its product, rather than being hypersensitive and

absorbed with discrediting and 'shooting the messenger', notwithstanding that the 'messenger's' assessments, although invariably accurate, may have strayed into strategic rather than operational and tactical areas".

38. This recommendation appears to be related to finding 130. "The messenger" is, presumably, LTCOL Collins. If this be right, the recommendation passes beyond the express finding by suggesting that LTCOL Collins' assessments were "invariably accurate". As already noted, there was, in my opinion, no evidentiary basis for the formation of the view that LTCOL Collins' criticisms were "constructive and accurate". A fortiori, there is no basis in the evidence for the suggestion that they were invariably so.
39. This recommendation, in common with recommendations b, c and d, purports to be responsive to the invitation to the investigating officer to make recommendations "as to whether the incident could have been prevented". As has already been noted, it is not clear, in either the terms of reference or the investigating officer's report, what "incident" is being alluded to. It seems most likely, in the context of the report, that "the incident" referred to is the public disclosure that LTCOL Collins' name appeared on the search warrant obtained by the AFP. If this be right this recommendation does not flow logically from the finding and, more importantly, the investigating officer was not empowered to make it. Even if the DIO were to become more responsive to criticism, this

could not in any meaningful sense have prevented the disclosure of LTCOL Collins' name or, indeed, its inclusion, by the AFP, on a warrant.

40. Recommendation b. It is recommended that "DIO reform its recruiting practices with the object of employing career professional intelligence analysts rather than uniformed or civilian officers with no intelligence background, thereby allowing professionals such as LTCOL Collins to concentrate on their core duties rather than attempting to remedy a defective product and becoming increasingly frustrated".
41. This recommendation appears to be related to finding 144. The imprecision and generality of that finding has already been commented upon. It is an inadequate foundation for the recommendation.
42. In any event, the investigating officer was not empowered to make any such recommendation.
43. Recommendation c. This recommendation is to the effect "that Defence intelligence agencies show more objectivity in their assessments rather than attempting to report what those agencies think DFAT and the Government of the day want to hear".

44. I cannot find any finding of fact which would support this recommendation. Again, the recommendation deals with a matter about which the investigating officer was not empowered to deal.
45. Recommendation d. The investigating officer recommended that "DIO's product [be] randomly audited by a committee of recently retired and suitably cleared Defence Force officers of a minimum of two star prior service experience".
46. This recommendation attracts the same comments as does recommendation c.
47. Recommendation e. It is recommended that you "consider awarding a retrospective Commendation to LTCOL Collins for his efforts during INTERFET, or in lieu, writing a testimonial letter along the above lines". This recommendation flows from part of finding 141. It is open to you, should you be so minded, to act on it. You are not obliged to do so.
48. Recommendation f. It is recommended that the "Head, Defence Security Authority write to LTCOL Collins expressing regret for the long interval taken to bring this matter to a closure and advise him that he is not and never was, the subject of a security investigation in the strict sense of the term and, having communicated with the AFP, expand on special agent Jakiwczyk's lack of

malice combined with his investigation methodology in naming LTCOL Collins on the search warrant”.

49. I have some difficulty understanding what is comprehended by this recommendation. In particular, I do not understand what would be involved in expanding on a police officer’s lack of malice combined with his investigational methodology. I assume that the matter which has taken a long time to bring to closure is the matter of LTCOL Collins’ involvement, if any, in the investigation, by the AFP, into the leaking of sensitive security documents.
50. The investigating officer (reference D at para. 55) has noted the willingness of the present head of the Defence Security Authority to write to LTCOL Collins and explain, insofar as she is able, the circumstances of the investigation. Whether she would choose to go further and express regret is a matter for her. You are not in a position to know whether or not such an expression is appropriate in the circumstances.
51. **Recommendation h.** It is recommended that early Ministerial approval be sought for the release of the contents of reference D to LTCOL Collins. Regulations 63 and 78 of the Defence (Inquiry) Regulations together provide that the Minister may authorise the disclosure of an investigating officer’s report to a complainant or more widely. Disclosure may occur in whole or in part. It may be made conditional. It is a matter for the Minister. LTCOL Collins may

ask the Minister to authorise disclosure of the report to him. No action by you is required. Should an application be made to the Minister and should your advice be sought as to how the Minister should respond, you may consider it appropriate to advise against disclosure given the legal irregularities which have been identified in this advice and the tenor of some of the findings and recommendations.

52. **Recommendation i.** It is recommended that LTCOL Collins return to an Intelligence Corps posting "commensurate with his seniority and experience, at the earliest opportunity".
53. LTCOL Collins has not sought redress in this form. Given that the Chief of Army has set in train a review of LTCOL Collins' career management and that it would be rare for you to intervene in career management, you may consider it appropriate not to take any action in respect of this recommendation.
54. **Recommendation I.** It is recommended that "the Defence Security Agency (sic) put in place a mechanism to ensure that person(s) named in security investigations and ultimately cleared of any involvement, be informed of their status in writing and in a timely manner".
55. This recommendation is one of a number which respond to the invitation to the investigating officer to advise how the Defence Force should respond to LTCOL

Collins' application for redress of grievance. However, the recommendation looks to the future and can have no bearing on LTCOL Collins' interests. There are further difficulties with the recommendation. For reasons already given, the conduct of the Defence Security Authority could not properly be the subject of an inquiry, instituted under the Defence (Inquiry) Regulations. Further, as I understand the position, you would have no authority, acting alone, to give directions to the Defence Security Authority (even if you are otherwise minded to accept that the recommendation had merit) to implement the proposed arrangements. It may also be that there are sound operational reasons why such arrangements would not be appropriate.

56. Recommendation n. The investigating officer has recommended that "the entire intelligence-gathering process, embracing ALL agencies (subject to national security caveats) be referred to the Senate, Foreign Affairs and Trade Committee, to ensure objectivity, professionalism and the timely provision of assessments to Governments, without fear or favour".

57. The investigating officer does not, in his report, attempt to link this recommendation (which appears in para. 151) to any of the matters about which he was specifically invited, in Reference B, to make recommendations. In my view the investigating officer had no power to make the recommendation. It does not arise out of any issue which was properly the subject of his inquiry. Nor was it a matter in relation to which he was empowered to make

recommendations. It may be added that, as I understand Parliamentary arrangements, it is a matter for the Houses of Parliament to determine what matters are referred to Parliamentary committees for their consideration. It would not be within your power (or that of anyone else in the ADF) to refer a matter for consideration by a Senate committee.

58. **Recommendation q.** It is recommended that "the introduction of electronic rendition of PARS be expedited".

59. This is one of the recommendations which flows from the finding that LTCOL Collins' career management suffered by reason of the fact that reports on his performance were not raised for three consecutive years. I understand that action is already in train to introduce electronic rendition of PARS. If this be right, and you are satisfied with the progress of the implementation process, no action would be called for on this recommendation.

60. **Recommendation r.** It is recommended that "DOCM-A implement a system to ensure that individual dossiers placed before PAC members are complete in every detail".

61. This recommendation flows from the fact that the PACs which dealt with cohorts of which LTCOL Collins was a member, had incomplete records relating to his professional standing and qualification for promotion. I have

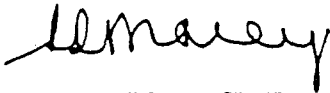
been advised that this recommendation is currently being acted upon. If this is correct and you are satisfied that the necessary action is in train, no action by you would be called for.

62. I should add a general comment about the recommendations which have been referred to you. Many of them are recommendations about how the DIO, the Defence Security Authority and some other agencies should conduct their affairs. These recommendations have been referred up the chain of command because, at each level below yours, the officer concerned has lacked any legal capacity to direct that the agencies should conduct their affairs in the manner proposed. As I understand the position the DDIO and the Head of the Defence Security Authority report to you and the Secretary of the Department of Defence through the Deputy Secretary, Intelligence and Security: see s.9A of the *Defence Act*. Thus, assuming for the moment that you might be minded to accept and act on a recommendation which relates to one of these bodies, you could only do so with the concurrence of and in conjunction with the Secretary.

Conclusion

63. For the reasons given I consider that the inquiry process into LTCOL Collins' ROG has miscarried insofar as it has purported to deal with matters which did not fall under the command and control of the appointing authority, insofar as it has led to an investigation of bodies external to the ADF and insofar as it has led to recommendations for action by you which you could not, lawfully, take. Of

the recommendations referred to you for consideration only recommendations e, i, q and r raise matters which require your consideration. Whether or not you choose to act on them is a matter for you.



R R S TRACEY
Colonel
Consultant to DALs