

UNDER

THE INQUIRIES ACT 2013

IN THE MATTER

A GOVERNMENT INQUIRY INTO OPERATION
BURNHAM AND RELATED MATTERS

Brief of Evidence of Karl Baxter Cummins

Solicitor acting:

JENNY CATRAN

Crown Law

PO Box 2858

Wellington 6140

Tel: 04 472 1719

jenny.catran@crownlaw.govt.nz

Counsel acting:

PAUL RADICH QC

Clifton Chambers

PO Box 10731

Wellington 6140

Tel: 04 974 5951

paul.radich@cliftonchambers.co.nz

1. I am Colonel Karl Baxter Cummins. I am the Assistant Chief, Defence Human Resources for the New Zealand Defence Force (NZDF).
2. I enlisted in the New Zealand Army in 1989 as a soldier. I completed Officer training at the Officer Cadet School in 1992, graduating into the Royal New Zealand Corps of Signals. In 1996 I was selected for service with the New Zealand Special Air Service (NZSAS). I served with that unit between 1997 and 2012, fulfilling Troop and Squadron Command roles, as well as staff roles. I was the Commanding Officer of the NZSAS from 2012 to 2013. I have seen operational service in Bougainville, Kuwait, the Solomon Islands and Afghanistan.
3. Between April and November 2011 I was the Deputy Director of Special Operations (DDSO). Between 2014 and 2017 I worked at the Ministry of Justice in the senior leadership team, supporting the District Courts, Specialist Courts, and Tribunals. I began my current role with the NZDF in 2018.
4. I have a Masters in Management from the University of Canberra (2005), and a Masters in Business Administration from the University of Auckland (2019).

Operation Burnham

5. I was the DDSO on 22 August 2010 when the operation in Tirgiran, now commonly referred to as Operation Burnham (the **Operation**), was conducted.
6. Although this was one of many NZSAS operations in Afghanistan, I remember it specifically because of its location and because it arose out of a need to support the security situation of coalition troops, including the New Zealand Provincial Reconstruction Team. It also stands out in my mind because one of the members of the NZSAS sustained a serious injury.
7. I kept abreast of most things that happened in Afghanistan. Although I was not in day-to-day contact with the Senior National Officer (SNO) in Afghanistan, the way that

then Colonel Peter Kelly - the then Director of Special Operations (DSO) - was, I did receive some emails from the SNO, and I was regularly briefed by Peter Kelly.

8. Looking at the emails from that time, I can see that within hours of the Operation, Lieutenant Colonel Rian McKinstry, the SNO, sent me a copy of the Operation Summary. I refer to the Bundle at p 1. The Operation Summary stated that some insurgents had been engaged; that one member of the NZSAS assault force was injured and had to be evacuated; and that there had been no civilian casualties.
9. I remember becoming aware of the allegations of civilian deaths and destruction of property in the days after the Operation. Having deployed to Afghanistan earlier that year, I was not surprised to hear that there were allegations of this nature. I was familiar with the insurgents' use of "information operations" in counterinsurgency warfare; it was not unusual for insurgents to spread misinformation, including exaggerated battle damage assessments, in an effort to turn the local population against the coalition.
10. In that context, it was difficult to believe the allegations. I had more trust in what I had read in the Operation Summary, received from Rian McKinstry, than in the open source reporting about civilian casualties. After all, I knew the people involved, and I know the level of consideration with which these kinds of operations are planned and conducted.
11. Nevertheless, because the Operation had occurred at night in a volatile battlefield and because we knew that communications had been complex, we all felt a great deal of pressure in the days following the Operation. The last thing we wanted was for civilians to have died during the Operation. We were in Afghanistan to gain the trust of the local population, and to retain their support, not to cause them any harm. We went to Afghanistan with that mindset.
12. As a separate, but related, matter, public confidence in the NZSAS is an issue that I think about a lot. If we, the NZSAS, were to do something wrong, the public may lose faith in the Government, prompting the Government to lose faith in the Chief of

Defence Force (CDF), who in turn may lose confidence in us. In my mind, maintaining that trust and confidence is imperative. That is why acting with the utmost integrity is central to everything that members of the NZSAS do.

13. I recall hearing that, a few days after the Operation, Rian viewed some footage from the AH64s and AC-130 which had recorded their engagements during the Operation. I was aware that the footage indicated that the gun sight on one of the AH64s had not been slaved properly, resulting in rounds inadvertently impacting on or near a building.
14. Although our goal was to protect the local population and although civilian casualties - whatever the cause - are truly upsetting to all involved, there was some relief to learn that, if there had been civilian casualties, it was due to an equipment malfunction which was beyond the control of the ground forces.
15. On 31 August 2010, at 1:05pm, I received a copy of the 29 August 2010 ISAF press release. I refer to the Bundle at pp 49 and 50. The press release says:

The [joint assessment] team determined that several rounds from coalition helicopters fell short, missing the intended target and instead striking two buildings, which may have resulted in civilian casualties.

...

The team discovered the accidental short rounds during an examination of the air weapons team video. The assessment determined a gun site malfunction was the cause of errant rounds.
16. Rian McKinstry's last email to me as SNO, before Lieutenant Colonel Chris Parsons took over, was on 6 September 2010, at 1:32am. I refer to the Bundle at pp 57 and 59. Rian's email attached an exchange from the International Security Assistance Force, which advised that TF 81 had "no case to answer" but that the "air spt [support] aspect of that op[eration]" was "part of an ongoing investigation".
17. On 8 September 2010, at 7:12am, Peter Kelly and I received an email from Chris Parsons, who had just taken over as the SNO in Afghanistan. I refer to the Bundle at p 77. In that email, Chris Parsons advised us that he had sighted the IAT report; that

it categorically cleared both ground and air troops of any allegations; and that, based on a review of the evidence, there was no way civilian casualties could have occurred.

18. I had no reason to second-guess Chris Parsons' email.
19. I did not perceive Chris Parsons' email as being inconsistent with Rian McKinstry's emails or with the 29 August 2010 ISAF press release. As I understood it, the ISAF press release was inconclusive; although the assessment team determined that several rounds fell short, it did not determine whether civilian casualties had ensued. Similarly, Rian McKinstry's email of 6 September 2010 indicated that the investigation into the actions of the coalition air support was *ongoing*. In my mind, Chris Parsons had now seen ISAF's *concluded* report.
20. I know Chris well and have the utmost trust in him; honesty and integrity are of fundamental importance to him and he would have understood the gravity of the situation. I know that he would do nothing other than report accurately what he had learned.

20 April 2011 press release

21. On 20 April 2011, One News began, at 6pm, with a report into an operation in Afghanistan. I refer to the Bundle, at p 173, for a transcript of that story.
22. The headline was *SAS' deadly Afghan counter attack revealed*. The report said that the Government had made an "astonishing admission": that, following the death of Lieutenant Tim O'Donnell in early August 2010, NZSAS troops had launched a "counter attack" to "hunt down" Taliban insurgents believed to be responsible for his death. The phrase "revenge killing" was also used.
23. The One News report then cuts to pre-recorded footage of the then Minister of Defence, The Hon. Dr Wayne Mapp (**the Minister**), in which he acknowledges the NZSAS's participation in that operation.

24. The news reporter identifies that there were "claims that civilians died in the Kiwi counterattack", before the report cuts back to the pre-recorded footage of the Minister saying that the allegations had "been investigated and proven to be false".
25. I refer to the Bundle at p 181. This is an email sent to me, at 6:09pm, in which the Strategic Communications Manager of the Defence Communications Group (**Defence Communications**) at NZDF, identifies that the story has broken and says:
- At this initial stage there is little that we can add ... But Phil B will give our "nothing further to comment" line, if required.
26. Defence Communications brought this to my attention because, as the DDSO, the role of DSO had been deputised to me. Peter Kelly, who had been the DSO, was seconded to Christchurch in March 2011 to lead the New Zealand Army's response to the Christchurch Earthquake, and the new DSO had not yet started.
27. As far as I am aware, the NZDF did not have any notice that this story would run.
28. Our immediate reaction, as the 6:09pm email suggests, was to say nothing. In general, the NZDF does not comment on operational matters as it can bring about harm to troops and to operations.
29. On reflection, however, we were troubled that the language of "counter attack", "revenge killing", and "hunting down" of insurgents, mischaracterised the Operation as a retaliatory one.
30. Moreover, the way in which the pre-recorded footage of the Minister had been spliced into the story, gave the sense that he had acknowledged the NZSAS's involvement within that context.
31. Although I do not recall specifically, I believe I would have had a discussion with then Vice Chief of Defence Force (**VCDF**), Rear Admiral Jack Steer, and - separately or at the same time - with Defence Communications. The reason for VCDF's involvement is that


the then CDF was in Gallipoli at the time.

32. We would have discussed whether to respond at all and, if so, how to respond and on what basis (i.e. what information the NZDF held about the Operation).
33. It was decided that, although the NZDF does not usually comment on operational matters, some clarification was required to counter One News' assertion that the Operation was retaliatory.
34. I do not recall who drafted the press release but it was likely to have been someone from Defence Communications, with my input.
35. At 8:33pm I sent the proposed press release to Jack Steer. I refer to the Bundle, at page 183. The draft press release clarifies that:
 - the Operation comprised NZSAS forces, together with Afghan National Security Forces and other coalition elements;
 - the purpose of the Operation was to improve the security of the Afghan people; and
 - Nine, not twelve, insurgents were killed.
36. In the email of 8:33pm, I advise Jack Steer that "I have verified the facts". I don't recall but my sense is that, in verifying the facts, I would have either called someone like Chris Parsons, or I would have gone back to the source emails, including Chris's email of 8 September 2010, and the CDF's Notes to the Minister. I refer to the Bundle at pages 23, 77, 163, and 167.
37. The information contained in the draft press release is entirely consistent with the 10 December 2010 Note to the Minister, which is in the Bundle at p 163. In particular, that Note states that the purpose of the Operation was to disrupt the insurgents' ability to target coalition forces in Bamyan; that the Operation was conducted by a combined taskforce; that up to nine insurgents were killed during the Operation; that

allegations of civilian casualties were investigated by a joint Afghan and ISAF assessment team; and that the investigation concluded that the allegations were baseless.

38. I believed that the draft press release was accurate on the basis of Chris Parsons' email and the 10 December 2010 Note to the Minister. As I have said before, there was no reason, and indeed no basis, for me to question the veracity of Chris's email or of CDF's advice to the Minister. I never would have allowed for a press release to go out, knowing that it was based on incorrect information.
39. I realise now that the press release refers, both in the heading and in the body of the text, to the Operation having taken place in Bamyan province. That is incorrect. The Operation took place in Baghlan province. The reference to Bamyan province was a mistake that, unfortunately, was not discerned by anyone before it was released.
40. As you can see from the email of 8:33pm, once VCDF had approved the content of the press release, my intention was to provide it to the Minister's Office. VCDF's response at 8:37pm was to "send it over" (see the Bundle at p 183). At 8:47pm I sent it to the Minister's Office; see the Bundle at p 185. NZDF issued the press release at 9:41pm; I refer to the Bundle at p 187.


Karl Baxter Cummins


Date