

**Paper presented to RSL's Senior Advocates & Pension Officers Forum, RSL  
National Headquarters, Canberra**

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**Introduction**

1. I am very pleased to be able to speak to you today. The assistance, co-operation and advocacy services provided to the Veterans' Review Board by RSL and other advocates is invaluable. Without you, the Board would not be able to do its business.

**Background**

2. By way of introduction, I would like to share with you my background and some of my family history, which has strong links with the military and the Department of Veterans' Affairs.
3. Both of my Grandfathers served at Gallipoli and the Western Front. My paternal Grandfather was in 1st Division Arty Train. He was discharged in 1916 after the Somme Offensive, suffering from deafness and shellshock. Shellshock is now considered the historical equivalent of PTSD, along with battle fatigue and traumatic war neurosis. Probably, if my grandfather were alive today he would have been diagnosed and treated for PTSD.
4. My maternal Grandfather served in 3rd Inf Battalion as a Corporal, and was evacuated from Gallipoli with dysentery. He was wounded on the Western Front twice, the last time with severe shrapnel wounds to his left arm and shoulder. Doctors wanted to amputate his left arm, but he refused and chose not to go ahead with the amputation, as he was a blacksmith by trade. There was not much of a future for a one armed blacksmith. It was in hospital however recovering from his wounds, that my Grandfather was captivated to by a young English Nursing Sister. She apparently saw something in him as well. They married in England in 1918, and my Grandmother came to Australia as a war bride.

5. Despite his disabilities, my Grandfather survived for 20 years after the war. However, it was the shrapnel wound that eventually caused his demise in 1939, with septicaemia from shrapnel still in his arm causing kidney failure. He left behind three children and my grandmother, who was provided a war widow's pension by the Repatriation Commission for the next 50 years, until she passed away at the age of 94.
6. My father served with the militia, prior to joining the AIF. He fought in Bougainville and PNG with the 61<sup>st</sup> Battalion. He was active in Bathurst Legacy for 35 years.
7. I was born in Bathurst and educated at the University of New South Wales. I graduated in Law and Commerce and was admitted to practice as a Solicitor in 1981. I worked for three years in private practice before joining what is now the Legal Aid Commission of NSW, where I specialised in the area of criminal law. I spent over 19 years at the Commission, including 10 years as the Director of the Criminal Law Branch.
8. In 2003, I was appointed to the position of Principal Registrar of the Commonwealth Administrative Appeals Tribunal until March of this year, when I was appointed as the Principal Member of the VRB. While at the AAT, I completed an LLM at Monash University, majoring in tribunal procedures.
9. While at University, I joined the University of New South Wales Regiment, in what was then the CMF, now Army Reserve. I spent some time as a Soldier and NCO, prior to being commissioned in the Royal Australian Infantry in 1979. Joining the University Regiment in 1976, post Vietnam, was not altogether that popular a past time with many of my fellow students and some lecturers. While I never experienced the venom many Veterans returning from Vietnam experienced, I got some taste of it.

10. I was privileged to have been trained by ARA Cadre staff, who were all Vietnam Veterans. In those days, in University Regiments aspiring Officers spent time as an NCO and Senior NCO wearing the rank and carrying out the various duties of the worn rank. I consider it to be a privilege to have spent 2 years in the Sergeants Mess of the University of New South Wales Regiment where I got a military and life education that has stood me in good stead, even now, some thirty years later.
11. The CO of the University of New South Wales Regiment at the time of my commissioning was later LT COL Sandy MacGregor MC who will be known to some from the tunnels of Cu Chi. Again, looking back, I consider it to be an honour to have been found fit to be commissioned during his time as CO.
12. I am still an active member of the ARES, still in the Infantry and with a degree of military experience that I can bring to the position of Principal Member of the Board. Having said that, I have not undertaken operational or active service, although I have trained overseas in New Zealand and in the United States of America.
13. In sharing a bit about myself with you, I trust you feel comfortable that I have a genuine interest in the Board and an understanding of the needs of Veterans and their families.

### **My views of the Board**

14. It is now 6 weeks since I have started at the Board. I am still very much the new kid on the block with much to learn. Being appointed as the Principal Member is a privilege, an honour and a challenge. I have to get to know a whole new group of stakeholders. One of the most pressing tasks will be to successfully undertake an appointment / reappointment process for all current Board members whose terms expire on the 30<sup>th</sup> of September.

15. Hence, you will be aware of recent advertisements calling for expressions of interest for Board members. For the next few weeks, at least, this will be my priority task: undertaking a merit based selection process, prior to preparing a report to the Minister for consideration by Government.

16. I thought you might be interested in some of my first impressions about the Board:

- It is a generally well run organization with committed staff and members. I am grateful to my predecessors for the state in which the VRB has been passed to me.
- The Board faces a decreasing workload in the future as a result of demographics, with the numbers of World War 2 veterans declining rapidly and MRCA cases not replacing VEA matters in the same numbers. The decreasing workload will require careful resource management by the Board. We cannot expect the Board to be resourced at the current levels if the workload decreases significantly. As against that, the complexity of matters is increasing. This creates a particular tension in terms of resources.
- In light of the decreasing workload, the Board will need to become more efficient in the manner in which it deals with matters. I am concerned that the number of current cases before the Board, which are over two years of age since lodgement, is currently 192 matters (nationally); or 6.3 % of the workload. Quite frankly, in my view, unless there are very exceptional reasons, no matter should get to the stage where two years have passed without it being listed for hearing. To get reduce thee level of these type of cases and prevent a reoccurrence will require an element of case management by the Board that has not perhaps been undertaken in the past. How the Board goes about implementing a more active case management regime will require careful thought and extensive consultation.

- However the Board goes about managing its cases in a more active way, it will involve you as advocates taking on a greater degree of professional responsibility for the matters you are involved with.
- As a solicitor, I am bound by a set of professional rules. Central to these rules is the fact that as a practitioner, I am an officer of the Court first and foremost. Where my duty to a client conflicts with my duties to the court, the duties to the Court override those to the client.
- The Advocacy Rules apply to all legal practitioners who are engaged in advocacy, whether they are a solicitor or a barrister and deal with the efficient administration of justice.
- As a practitioner I am required to take on only work that I can efficiently undertake and so ensure compliance with any timetables made by the Court. Advocacy Rule 15A states:

*A practitioner must seek to ensure that work which the practitioner is retained to do in relation to a case is done so as to:*

*(a) confine the case to identified issues which are genuinely in dispute;*

*(b) have the case ready to be heard as soon as practicable;*

*(c) present the identified issues in dispute clearly and succinctly ;*

*(d) limit evidence, including cross-examination, to that which is reasonably necessary to advance and protect the client's interests which are at stake in the case; and*

*(e) occupy as short a time in court as is reasonably necessary to advance and protect the client's interests which are at stake in the case.*

17. There are other rules which may be summarised as follows:

- A duty of frankness and candour to the court;
- A duty to not mislead the court or allow a client to give false evidence or mislead the court;
- Avoidance of personal bias;
- Not act as the “mouth piece” of the client;
- A duty to advise of any case law which both supports and detracts from the clients case;
- Duty to behave on a proper manner before the court.

18. In my observation, lay advocates appearing before the Board tend to act in a manner that is generally consistent with what I have outlined above, some more so than others.

19. An adherence to such behaviours is of course generally in accordance with the TIP code of Ethics. The question I ask however, is, should the Code of Ethics be revised to take account of the specific and more onerous responsibilities of advocates appearing before the Board and the Administrative Appeals Tribunal.

20. I will leave that issue for you to debate amongst yourselves.

21. In raising this with you, I want to emphasise that both I and other Board Members have an interest and commitment to advocate training. We are happy to participate in training if invited to do so and will work with the TIP training scheme personnel.

22. In closing, can I thank John Hodges for inviting me here to speak.

I congratulate your willingness to maintain and increase your knowledge and skills by participating in activities such as this.