

Ombudsman not authorised to consider terms and conditions of service of armed forces

Legislation	Ombudsmen Act 1975
Ombudsman	Mel Smith
Case number(s)	W56587 (previously unpublished)
Date	2007

Complaint about Government decisions regarding exposure of Viet Nam veterans to Agent Orange—Ombudsman declines to intervene—one reason being that s/he is not authorised to investigate any matter concerning the terms and conditions of service of a member of the defence forces

Complainant believed the Crown failed to follow due process as described in the defence medical Policy Manual (and ignored threats to health of servicemen and women from the toxic environment of Viet Nam) because it failed to take action to investigate, examine or test veterans in relation to exposure to Agent Orange.

However, after making initial inquiries into the complaint, the Ombudsman concluded that an investigation under the Ombudsmen Act would not achieve anything more than what had already resulted from the Joint Working Group on Concerns of Vietnam Veterans.

The Working Group recommended a package of measures to address the health needs of Vietnam veterans and their families which had been agreed to in a Memorandum of Understanding between government and veteran representatives. The Ombudsman concluded that no further remedy could be achieved through an Ombudsman's investigation and that the Working Group was the appropriate forum to determine the issues involved.

In addition, the Ombudsman has no jurisdiction to investigate government decisions regarding participation in, or the conduct of, overseas conflicts. Such decisions to engage in military conflict are made by Ministers and section 13(8) of the Ombudsmen Act provides that an

Ombudsman is not authorised to investigate any matter concerning the terms and conditions of service of a member of the defence forces.

The Ombudsman also referred to section 17(2) of the OA which confers a discretion not to investigate a complaint of which the complainant has known about for more than 12 months. The Ombudsman noted that this section recognises the difficulty of conducting an investigation into events that happened a long time ago, given the likely unavailability of witnesses as well as the fading of memories. In the case of this complaint, several decades have passed since the events in question occurred and with this considerable passage of time, it is unlikely that any investigation that an Ombudsman might otherwise conduct could lead to him forming any firm conclusions about any matters that might fall within his jurisdiction.

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