Record: 1

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Authors: Nick McKenzie

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Roberts-Smith leak claim 'untrue'

Nick McKenzie

Serious allegations made by a lawyer for war hero Ben Roberts-Smith that a war crimes inquiry was leaking against him have been found to be false and backed by "no evidence whatsoever."

An exhaustive investigation has found no factual foundation in claims made by Sydney defamation specialist Mark O'Brien that an official working for a war crimes inquiry had engaged in grave and potentially unlawful misconduct. Before they were debunked, Mr O'Brien's leak claims, first lodged with the military inspector in 2018, were aired in Federal Court proceedings and in a national newspaper.

The claims had the potential to derail the nation's most important military investigation, an Inspector-General of the Australian Defence Force inquiry into allegations that Australian special forces soldiers engaged in war crimes in Afghanistan.

But as the military inquiry has revealed in a detailed report, Mr O'Brien's allegations were untrue. Mr O'Brien alleged that a lawyer "working for the [war crimes] inquiry" had leaked sensitive information from the inquiry to an acquaintance of Mr Roberts-Smith.

He alleged that the lawyer had said to Mr Roberts-Smith's acquaintance, a Queensland doctor called Mark David, that, "if you know anyone looking to go into business with BRS [Ben-Roberts Smith] then tell them to be careful, I am working on a case against him". In his official complaint to the military Inspector-General, Mr O'Brien attacked the war crimes inquiry lawyer's comments as "disturbing."

"The comments made by the lawyer are defamatory, embarrassing, demonstrates bias against our client and, again, raises a serious concern about the integrity of the inquiry. It is a highly unsatisfactory that our client has been the subject of defamatory gossip by members of the inquiry's staff," Mr O'Brien wrote.

But his complaint unravelled when the Inspector-General sought more information from Mr O'Brien and interviewed multiple witnesses.

Dr David told investigators that he was "adamant" he had never spoken to any war crimes inquiry lawyer. He also denied he had been told by anybody not to go into business with Mr Roberts-Smith. Most significantly, the investigation into Mr O'Brien's complaint found that the war crimes inquiry lawyer in question did not actually exist.

"There is no evidence that any lawyer or other person working for or associated with the inquiry has made any statement of the kind referred to in the complaint adverse to which could conceivably be defamatory of Mr Roberts-Smith," the Inspector-General found.

It appears that Mr O'Brien made his complaint after Dr David decided not to go into business with Mr Roberts-Smith.

When interviewed by the Inspector-General, all the parties identified by Mr O'Brien as being involved in the alleged leak denied making the comments that Mr O'Brien had attributed to them.

"Ultimately, there is no evidence whatsoever that any lawyer or other person working for or associated with the inquiry made any statement to the effect alleged, or anything like it," the leak inquiry found.

The military inquiry said the unreliable nature of Mr O'Brien's complaint should not reflect on Mr Roberts-Smith's credibility because it was "unclear to what if any extent the terms of the complaint are directly attributable to Mr Roberts-Smith". The "inaccuracies and inconsistencies in the complaint" did not reflect adversely on Mr Roberts-Smith's credit, the report states.