

## **NZ NUCLEAR TEST VETERANS A BRIEF ON THEIR LEGAL HISTORY**

The news item below was written by the TIMES journalist, Canadian Albert Baggs just prior to the International Court of Human Rights, (ICHR), Strasbourg, hearing of the UK Nuclear Weapons Testing Programmes' veterans and widows and childrens claimants in 1998. The New York Attorney, Ian Anderson, acting for the claimants was also commissioned by the New Zealand Nuclear test Veterans Association (NZNTVA) to intervene in the case on their behalf.

The case would be heard by a bench of nine international judges one of whom fell sick and was replaced by a judge from the UK. Because of possible bias from an English judge Attorney Anderson immediately appealed his inclusion on the bench, but his appeal was disallowed. What is not printed in the TIMES story below is the result of the case. The case for the nuclear claimants was lost by one vote 5/4. The English judge voted against the veteran claimants.

Around the Time of the ICHR case, the New Zealand Nuclear Test Veterans' Association (NZNTVA), was involved in a series of meetings with the then Deputy Prime Minister, Rt Hon Winston Peters. Peters announced that the Operation Grapple veterans would be given "Emergency and War pension status thus providing them with the "clause of doubt" that was important in achieving nuclear related war disability pension and surviving spouses pensions. (the Mururoa service was, at that time, under investigation but those veterans also later achieved emergency status). Veterans Affairs NZ (VANZ), under a civilian manager at that time, immediately made changes to nuclear test veterans war pension conditions consistent with the newly changed emergency status. The prime change was the appointment of Professor John Probert a renowned expert in radiation to assess nuclear related war pension claims. Probert was familiar with all of the radiogenic nuclear related diseases including ALL cancers including prostate cancer and ischemic heart conditions. His reports on his accepted claims included scientific references to the research that supported his findings. For the first time since the nuclear testing programmes New Zealand nuclear test veterans and their widows were getting proper and just consideration of their war pension claims.

Peters had also announced in parliament that the New Zealand Government would make a grant of \$200,000 available to the Operation Grapple veterans to investigate the possibility of bringing a class action against the government of the UK. However he was removed from office after the "Wellington Airport Affair" and before NZNTVA could uplift that funding.

The change of administration at VANZ brought about a change of the processing of nuclear related war pensions. Any lessons learnt from John Probert were put aside.

A presumptive list based on the pro nuclear USA list of accepted conditions was introduced. It had the benefit of automatically qualifying any condition on the presumptive list for a pension. However it had the disadvantage that the American list used by VANZ listed only a shortened numbers of cancers. Prostate cancer and ischemic heart conditions did not qualify. This is in spite of another list produced for the US VA Adminsitration that showed ALL cancers as being radiogenic. (A situation that the New Zealand Attorney General argued to the International Court of Justice, The Hague, in New Zealands case to have the French testing at Mururoa Atoll stopped. Also a situation that a Nuclear Free New Zealand should uphold. It appears there is one case for NZ's civilians and a lesser case for its military veterans). Indeed it appears that VANZ is on a campaign to minimize even legitimate claims for nuclear illnesses or death, and to disallow previous pensions through any loophole be it the fault of the claimant or not, that can be found in such pensions.

The promised \$200,000 grant was upheld by the last incoming "Labour adminsitration". It was partly used to fund the Massey University, Palmerston North studies contracted by NZNTVA. The first, a Cytogenetic Analysis found that the NZ Operation Grapple veterans suffered genetic damage at the level of the Chernobyl cleanup workers. A Psychological Impact Study found that the same veterans were suffering stress and anxiety, elevated associated illnesses and compromised life styles and needed URGENT attention. However the Labour administration and the following National administrations ignored in total any of the research findings thus delaying for many years any benefits that the research could have provided. Instead they simply put the research aside until eventually through the Ministerial Advisory Group on Veterans Health, launched a concentrated attack on the research to "scientifically" render it useless. This despite the fact that Massey University had followed all the scientific protocols of publication in a specialised European scientific journal on genetics and peer review. It is interesting to note that previous research initiated by government e.g. the "Reeves Report" were absolute scientfic rubbish and would not qualify for publication or peer review; yet Government presumed to use their research as the standard to set nuclear test veterans pension issues by.

In the 2000's with the Massey University Cyto-genetic Analysis being internationally and scientifically accepted as valid and providing a strong argument for the question of 'causation' of ionizing radiation genetic damage the legal issues for the UK, NZ and Fiji veterans' were taken on by the London firm "Rosenblatt Solicitors." However in English law such cases as the nuclear one for compensation, they are subjected to "The law of Limitation". In short this requires any claimant to lodge his/her claim within three years of learning the cause of the ill health. This of course was

impossible. The testing was carried out in the 1950's and the Massey University research was not available until the mid 2000's. indeed some UK vets/widows had tried previously to bring a case but the lawyers that they consulted were not confident of a positive result and above all the cost of bringing such a case was prohibitive.

The Limitation and other factors were tested in the High Court in London under Justice Stubbs. Stubbs dismissed the use of the Limitation act and found that the nuclear claimants could proceed to trial to have their case fully heard.

The Ministry of Defence immediately lodged an appeal on that decision through the UK appeal Court which upheld the Appeal, which meant 'Limitation' could still be used in the upcoming court case.

Rosenblatt's then appealed to the Supreme court to have the finding of the Appeal Court overturned. **It is interesting to note that the same British judge who found against the veterans at the IVHR case in 1998 was now a lord and had been appointed to the bench of 7 judges on the Supreme Court to hear the case against the Appeal Courts finding. The veterans knew immediately that before the case even started that they would be one vote down.** The Lord, who previously as a judge in 1998 voted against the veterans case again. The court found 4 votes to 3 for the MoD.

Isn't it strange that three learned ladies and lords of the Supreme Court can be so narrowly divided on a decision. It does in fact suggest that the veterans do in fact have a strong case.

The Supreme Court did however order that both parties, the MoD and Rosenblatt's should meet with the Court Managing Judges. Possibly a case could be argued that the veterans' could never achieve justice if the Limitation Act is applied to every UK court hearing that they have and that it should be waived.

Failing that, and with the new evidence that has come to light in the intervening years possibly the case could after over a decade, be taken back to the International Court of Human Rights. Who knows.

I hope that apart from being informative that this item will dispel the belief that nuclear test veterans are often confronted with. that is the belief that the lost court actions to date have meant that we have lost our legal battle. The truth is that those legal decisions applied only to the matter of the use of the Limitation Act. The actual case of damage from ionizing radiation at the nuclear test sites has resulted in death and ill health and should the claimants receive compensation has never been heard in a court of law yet. The law is indeed an ass.

Roy Sefton QSM

Chair NZNTVA

— Original Message —

**From:** [roy sefton](#)

**To:** [roy sefton](#)

**Sent:** Friday, September 07, 2012 12:24 AM

**Subject:** Emailing: British Atomic Veterans Illnesses

## Under A Cold War Cloud

British servicemen who witnessed post-WWII atomic tests over the Pacific blame the bomb—and the government—for a constellation of illnesses  
by Albert C. Baggs /STRASBOURG  
Time Magazine  
March 30, 1998 Vol. 151 NO. 13

**On April 28, 1958, British officers ordered Roy Dunstan and other soldiers then stationed in the Pacific on remote Christmas Island to line up on the beach. Their inescapable mission: to witness the explosion of a 3-megaton nuclear bomb. “Bloody hell!” Dunstan, then a 21-year-old soldier, wrote in his diary that same day. “A seething, red-hot, yellow-orange mass, like the birth of another sun, followed by two shock waves. The ball grew and grew, sending up a huge jagged-edged column, the top of which formed into a gigantic mushroom cloud, which bellowed towards us, obliterating the sky. Someone near by said: ‘Christ, what have they done?’ It then rained down on us and most of us got soaked. Then it was back to our tents, get changed, back to work.”**

For many servicemen during the 1950s and ‘60s, the unthinkable—the detonation of atomic bombs—did become workaday. During those decades, more than 20,000 British men—not to mention countless Pacific Islanders and Australians—witnessed dozens of nuclear tests, all conducted in the name of cold war deterrence. Between 1957 and 1962, the U.S. and British military detonated 31 devices over Christmas Island (now known as Kiribati) alone. The British government claims that in all instances, the explosions took place at a safe remove. But many veterans say that in

the days immediately after the blasts they went to military doctors suffering from rashes, gastrointestinal ailments, hair loss, burning eyes—all classic and, even in that era, well-known signs of radiation exposure. And in the years since, many veterans have attributed infertility, illness and early death, as well as birth defects in their offspring, to exposure to nuclear fallout.

Former aircraft electrical fitter Ken Sutton, now 75, witnessed the April 28 test from a runway. “It was like somebody putting a blowtorch across your back,” he recalls. “The vegetation was badly scorched.” The concussion tossed ashore entire schools of fish. Sutton also watched as Snooper 2, the Canberra bomber flown by 26-year-old Royal Air Force flight lieutenant Eric S. Denson, penetrated the mushroom cloud within minutes of detonation; Denson’s mission was to sample radioactivity.

According to Sutton, the Canberra was in the heart of the cloud for about 10 seconds, and when Denson and his navigator emerged after landing, Sutton saw that they wore “no protective clothing whatsoever.” The next day, Sutton donned cotton overalls and re-entered the fuselage for two stopwatch-timed minutes to retrieve radiation monitors. The plane was later quarantined.

The records of these nuclear tests—or at least those documents that have been released—are spotty. They range from diaries and eyewitness accounts, like those from Dunstan, to more dispassionate accounts, such as the military file on Denson that notes that he absorbed “dose gamma 13,000” millirems—the equivalent of 6,500 chest X-rays. Denson, who developed dermatitis on his chest and chronic respiratory and psychological problems after leaving the Pacific, committed suicide at age 44.

And there are the men themselves—or those who are still alive. Roy Prescott, for instance, watched U.S. thermonuclear tests at Christmas Island in 1962; he has been treated for tumors of the arms, head and neck, and two of his children were born with serious defects. “Of five pals who went to Christmas Island together,” the former Royal Engineer says, “one has thyroid cancer, one is diabetic, one died of a brain tumor, one died of cancer. Radiation illness can’t always be proved, but there’s a duty of care to these people.”

The United States has recognized that responsibility since 1988, when Congress enacted the Radiation-Exposed Veterans Compensation Act, which presumed a service connection for veterans with specific cancers, and in 1990 Congress even

offered an apology to U.S. atomic vets. The British government, from the U.K. War Pensions Agency through successive Prime Ministers, has rejected most efforts by these veterans to receive compensation, steadfastly maintaining that the vets were too far away from the detonations to be harmed.

For the British Nuclear Test Veterans' Association, though, such stonewalling is unacceptable. After failing to get satisfaction in Britain, they have brought their case to a higher judge, the European Commission of Human Rights. Attorney Ian Anderson filed arguments on behalf of three representative victims—Edward Egan, a former naval man, Kenneth McGinley, a soldier, and Lorraine Burns, the daughter of a deceased vet who witnessed five Christmas Island tests and who, at age 4, was herself diagnosed with leukemia. After finding that the vets had a serious claim, the commission sent the case on to the Court of Human Rights in Strasbourg, which in November heard oral arguments on the suit, which asks for \$2.24 billion for veterans with radiogenic illness.

The difficulty that has faced the plaintiffs all along is a lack of hard evidence. The British Ministry of Defence has said that radiation records are in many cases attached to other classified information, and the National Radiological Protection Board, a government-sponsored agency, reported that records for some 16,000 participants were never kept. As a result, the War Pensions Agency has rejected hundreds of claims by cold war veterans and their kin, including 80 percent of those filed by widows, granting the maximum weekly benefit of \$175 to only 17 petitioners. Scotsman Kenneth McGinley, chairman of the B.N.T.V.A., witnessed the April 28 blast as a 20-year-old soldier. He has said that he could see the bones of his hand through his skin, and that after the explosion he went to army doctors with a blistering rash across his upper torso, and then numbness in his legs and bouts of nausea. He is also sterile, unlike his five siblings who have 23 children among them. His army medical records, however, do not mention any of these problems.

The nuclear vets' claims have also been called into question by a key study by the National Radiological Protection Board, which in 1993 issued an opinion that although test participants seemed to be at a higher risk for liver and bladder cancer and for leukemia, the vets had no "excess" illness. Statisticians also reported that cancer incidence actually appeared to decrease as recorded doses of gamma radiation increased. As a result, the government's stance hardened: Prime Minister Tony Blair, citing that study—which runs counter to most medical knowledge of the results of radiation exposure—has refused to take action in the case, and attorney James Eadie,

who is representing the U.K. in Strasbourg, alleged in court that the vets were spinning “conspiracy theory after conspiracy theory.” Government records, said Eadie, show that the plaintiffs had not been exposed to harmful levels of radiation.

The conclusions of the N.R.P.B. study, however, have been called into question by other, smaller studies. Trinity Post 7-45, a private research agency for American veterans based in Portland, Maine, has reported that the average lifespan for about 500 British veterans in one of their studies was 53.8 years, and that nearly three-quarters of the deaths were cancer-related. And a Dundee University study of 455 death certificates reports fatal malignancies in 68.3%—“more than double the normal appearance of cancer deaths in [any] male occupational cohort of the post-war years,” according to researcher Sue Rabbitt Roff. Says Otis S. Kerns, an engineer at the U.S. Environmental Protection Agency who attended the Strasbourg hearings out of a personal interest in the case:

“It seems to me that too many people are suffering and too many have died to dismiss, out of hand—as the British government seems to be doing—both the reality and the consequences of their exposure to radiation.”

In January 1997, the plaintiffs won their first major victory. The European Commissioners found the British government guilty of treating the vets in an illegal and dishonest manner, withholding or delaying the release of their medical records. The commission’s report described, for instance, a 1953 memo entitled “Atomic Weapons Trials” and marked “top secret.” It explained that the purpose of the tests was to “discover the detailed effects of various types of explosions on equipment, stores and men with and without various types of protection.” And the government, apparently, was well aware of the potentially life-threatening results:

“A pity,” reads a confidential memo from Sir Anthony Eden, who was Prime Minister in 1955. “But we cannot help it.” . . .

The government could have done more after the fact, however, and it is this inaction—rather than the fact of the tests themselves—that so disturbs the nuclear vets. “Any sensible person would have to agree that, in those times, it was essential we should have the nuclear deterrent,” says Eric Denson’s widow Shirley. “What offends—what appalls me—is that succeeding governments have turned their backs on these men and their families.” A spokesman for the Foreign Office responds that the government’s position remains that explained by John Spellar, Parliamentary

Undersecretary of State for the Ministry of Defence, in the House of Commons last month. Spellar said that the government stood by the findings of the N.R.P.B. study, and that “the health and safety of the trial participants were regarded very seriously, and that a great deal of trouble was taken over radiological protection.”

The 13-judge Strasbourg court panel is expected to rule by this May. If the veterans lose, they have vowed they will continue fighting in the court of public opinion. If they win, they could receive damages for human rights violations—far more than the pension compensation they originally sought. And along with the vets’ offspring, Pacific Islanders, too, could begin making claims—in which case the British government could find itself suffering the nuclear tests’ fallout for generations to come.

*[ Military Personnel exposed: From 1945 to 1992 about a million "atomic veterans" were exposed to ionizing radiation either from being in the vicinity of the detonation or residuals of nuclear weapons. From 1963 (the temporary atmospheric test ban treaty) to 1992 approximately 60,000 Department of Defense personnel, either military or civilian, were exposed during underground nuclear testing at the Nevada Test Site. Efforts to trace and document persons exposed continue. Among the known US service personnel available for study, life expectancy for survivors exposed was found to be 57 years.]*

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### **3 Responses to NZ NUCLEAR TEST VETERANS A BRIEF ON THEIR LEGAL HISTORY**



**gunther** says:

1.

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September 11, 2012 at 8:00 am

it is only obvious that successive govt’s have had a vested interest in not allowing vetrans their due rights. the evidence provided by witness’s to the actual happenings at the tests and what they had to go thru plus the fact the british govt released documents proving that servicemen were being ‘tested’ should have gotten them their due rights, but no, the judge/judges were obviously ‘got at’ by their government and hence the state the vets are at now..there is no doubt about it they sure getting the shit end of the stick. I remember in a conversations with our skipper on Otago when at the bomb tests at muroroa, him saying that no way would he put his ship or

crew in any danger when the bomb went off and he took measures to ensure that we were always upwind and well away from the bomb when it eventually did go off. (he was at the tests in the 50's, as was our comm's officer Jerry Wright)

[Reply](#)



2. **Jim says:**

[September 11, 2012 at 8:34 am](#)

Interesting that Roy should mention prostate cancer and ischaemic heart diseases. During my research on the possible health effects of RF and EM radiation, Prostate cancer and ischaemic heart disease were top of the list – many of the comms personnel that I had spoken to (or their relatives) indicated that they too had the aforementioned health problems, including myself. Furthermore, none of them/us had been to Operation Grapple or Mururoa.

[Reply](#)



o **roy sefton says:**

[October 18, 2012 at 10:53 pm](#)

Hi Jim.. It was interesting that when we started the research on the op grapple veterans at Massey University during my visits there I noticed a rather long tube with an array of unrecognizable bits and pieces attached to it. In the end curiosity got the better of me and I asked what it was. They were doing a low cost experiment to try and evaluate dangerous levels of RF from various pieces of equipment.. from memory things like cell phones and possible cell phone towers.. It was a rather cheap setup as there was no funding for it and I do not think that it produced any results of significance...However that does not mean that with better methodology and equipment it may well have.. The thing that I felt disturbing was the National Radiation Laboratory's (NRL) criticism of this research and others like it...The Government funded NRL of course has always denied that the NZ nuclear test vets were not affected by ionizing radiation either.

The research to discover if RF especially in the years that we served had affected navy personnel would probably require extensive and international research on navy personnel and matched control groups who had not been in the navy or worked in similar occupations. such an experiment would be extremely expensive if a robust result either way was to be achieved..... All best Roy

[Reply](#)