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**A Joint System of Summary Disposals  
for the New Zealand Armed Forces  
of the 21st Century**

A thesis presented in partial fulfillment of the requirements for the degree of

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## Abstract

The vast majority of charges under New Zealand military law are tried or dealt with summarily by commanders. There are currently two summary disposal systems, one for the Navy and one for the Army and Air Force. Those systems, which have evolved separately in line with the separate origins of New Zealand's naval and military forces, have fundamentally different conceptual bases. The naval system is quasi-adversarial in that it projects the appearance of an adversarial trial in the ordinary sense of the term, while retaining some inquisitorial elements such as the wide power of the officer exercising summary powers to call and question witnesses. The military system on the other hand is entirely inquisitorial, with no prosecutor or defending officer.

This thesis proposes a joint system of summary disposals, in the sense that it would apply to all three Services, which takes account of the demands of human rights law as reflected in the New Zealand Bill of Rights Act 1990 and adopts initiatives to improve the efficiency and effectiveness of the existing systems.

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Last but not least, I am as always indebted to my wife, without whose support I would not have been able to complete this research.

This project has been reviewed and approved by the Massey University Human Ethics Committee, PN Protocol 02/22.

## Preface

Currently, there are two separate though related systems of summary discipline operating within the New Zealand Armed Forces; one for the Navy and another for the other two Services. The Navy customarily refers to its summary disposals as ‘Tables’ or summary trials, while the Army and Air Force refer to theirs as ‘orderly rooms’. This thesis examines the differences between the two systems and the reasoning underlying them, proposing the development of one joint system for all three Services. Furthermore, changes in our understanding of domestic and international human rights law since the making of the Armed Forces Discipline Rules of Procedure 1983<sup>1</sup> give rise to questions as to whether or not certain aspects of the current systems are sustainable in law, particularly in the light of overseas developments. The thesis also grapples with this issue and proposes substantive reforms.

The examination of the summary disposal of charges in the New Zealand Armed Forces is conducted in the light of the New Zealand Bill of Rights Act 1990 and associated jurisprudence. The comparative systems operating in Australia, Canada, the United Kingdom and the United States are also taken into account.

As part of the research underpinning this thesis, and for the first time since the enactment of the Armed Forces Discipline Act 1971 (‘AFDA’), a major survey has been conducted involving all officers exercising summary powers and other key stakeholders. Throughout the remainder of the text, this survey will be referred to as the ‘Joint Summary Disposals Survey’. The Joint Summary Disposals Survey was distributed to 193 members of the Armed Forces across all three Services, in both regular and non-regular components, at home and abroad. The results of this survey, which are recorded in the appendix to this thesis and are incorporated in the text, tell us a lot about the system and where we should be heading.

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<sup>1</sup> Hereinafter referred to as ‘the RPs’. Individual rules will be referred to as ‘RP’ followed by the rule number, eg rule 6 of the Armed Forces Discipline Rules of Procedure 1983 translates as RP 6.

The chapters which follow address the following key questions:

- (a) How have New Zealand's summary disposal systems evolved into what they are today?
- (b) What is the composition of New Zealand's two summary disposal systems and what are the differences between them?
- (c) Why are the two systems different?
- (d) Should there be a joint system?
- (e) Are there any aspects of either system or both systems which are problematic from a human rights law perspective?
- (f) Are there any aspects of either system<sup>2</sup> or both systems which could be improved in the interests of the efficient administration of justice and discipline in the Armed Forces?
- (g) Can the two systems be harmonised into one system which:
  - (1) Can be applied in the joint context of New Zealand's operational forces in the 21<sup>st</sup> Century; and
  - (2) Is compatible with New Zealand's modern human rights law framework?

Chapter 1 examines the rationale underpinning the summary jurisdiction in military law, encompassing an analysis of the need for such a system from a command and leadership perspective and a review of its historical evolution in the New Zealand context. Chapter 2 describes the two summary disposal systems which are currently operating within the New Zealand Defence Force following a thematic sequence. Chapter 3 sets out the argument for a joint approach in the area of summary disposals. Chapter 4 examines whether the New Zealand Bill of Rights Act 1990 applies to the summary disposal of charges and, if so, to what extent. Chapter 5 examines three of the key rights guaranteed by the New Zealand Bill of Rights Act and assesses the impact of those rights on the existing summary disposal systems, drawing conclusions about what would be required of a joint summary disposals system for it to comply. Chapter 6 addresses two specific aspects of the current systems from a policy perspective, with a view to identifying potential efficiencies and

improvements. Chapter 7 summarises the conclusions drawn in the preceding chapters and makes recommendations about the shape of a future joint system.

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## Glossary of Abbreviations

### Abbreviations

### Definitions

AFDA	Armed Forces Discipline Act 1971
AFDEMO	Armed Forces Discipline (Exemptions and Modifications) Order 1983
BR 11	<i>Manual of Naval Law</i> , 3 vols (change 12), The Stationery Office, United Kingdom, September 2000.
cl	clause
CAS	Chief of Air Staff
CDF	Chief of Defence Force
CGS	Chief of General Staff
CMAC	Courts Martial Appeal Court
CNS	Chief of Naval Staff
CO	Commanding Officer
DFO(D)	Defence Force Orders (Discipline)
DFO(N)	Defence Force Orders (Navy)
DFO(A)	Defence Force Orders for the Army
DFO(F)	Defence Force Orders for the Air Force
ECHR	European Convention for the Protection of Human Rights and Fundamental Freedoms
ICCPR	International Covenant on Civil and Political Rights
NZBORA	New Zealand Bill of Rights Act 1990

QR&Os	<i>The Queen's Regulations and Orders for the Canadian Forces, 1994 rev</i>
RCM	Rules(s) for Courts-Martial (US)
RNZAF	Royal New Zealand Air Force
RNZN	Royal New Zealand Navy
The RPs	Armed Forces Discipline Rules of Procedure 1983
RP	rule of the Armed Forces Discipline Rules of Procedure 1983
s	section (of an Act)
UCMJ	Uniform Code of Military Justice (US)
XO	Executive Officer

## Glossary of Terms

<b>Terms</b>	<b>Definitions</b>
Commanding Officer	See definition in AFDA s 2(1).
Detachment commander	See definition in AFDA s 2(1).
European Court	European Court of Human Rights.
Executive Officer	See definition in RP 2(1).
Investigating officer	An officer delegated power to investigate charges under the AFDA pursuant to AFDA s 115.
Officer exercising summary powers	See definition in AFDA s 2(1).
Orderly room	An investigation or summary disposal in the New Zealand Army or the RNZAF.
Military law	The law relating to the discipline of the New Zealand Armed Forces, incorporating the AFDA, the Courts Martial Appeals Act 1953 and the subordinate legislation made thereunder.
Military system	The summary disposals system which applies to the New Zealand Army and the RNZAF.
Naval system	The summary disposals system which applies to the New Zealand Naval Forces.
Non-XO delegate	A naval officer exercising delegated powers of punishment, who is not an XO.
Subordinate commander	See definition in RP 2(1).
Superior commander	See definition in AFDA s 2(1).
Table	An investigation or summary trial in the New Zealand Naval Forces.