




ANNUAL REPORT ON THE MILITARY JUSTICE SYSTEM

2021-2022

Director Defence Legal Services
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“New Zealand’s military justice system is a separate and parallel system of justice that forms an integral part of the New Zealand legal mosaic.”

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Introduction

New Zealand's military justice system is a separate and parallel system of justice that forms an integral part of the New Zealand legal mosaic. It shares many of the same underlying principles as the civilian criminal justice system.

The military justice system is designed to promote the operational effectiveness of the New Zealand Armed Forces by contributing to the maintenance of discipline, efficiency, and morale, while ensuring that justice is administered fairly and with respect to the rule of law. These objectives give rise to many of the substantive and procedural differences that distinguish the military justice system from the civilian justice system.

The military justice system is primarily administered through the Armed Forces Discipline Act 1971. Other legislation that impacts on the system includes the Court Martial Act 2008, and the Court Martial Appeals Court Act 1953.

The military justice system currently has a two-tiered structure comprised of a summary system and the Court Martial of New Zealand.

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Summary Trials

Summary trials are the most commonly used form of service tribunal. It allows for relatively minor offences to be tried and disposed of quickly and fairly at the unit level. Summary trials are presided over by disciplinary officers who hold a certificate of competency prescribed by the Chief of Defence Force.¹ At summary trial, the procedures are straightforward and powers of punishment are limited in scope, which is reflective of the relatively minor nature of the offences involved and the intent that punishments be primarily corrective in nature.²

Appeal of a Summary Trial Decision

A member of the Armed Forces who has been found guilty at summary trial has a right to appeal to the Summary Appeal Court of New Zealand. The Summary Appeal Court of New Zealand (SACNZ) was established on 1 July 2009 to hear appeals against decisions of disciplinary officers at Summary Trial.³ Any person found guilty of an offence by a disciplinary officer may appeal to the SACNZ.⁴ The decision of the SACNZ on any appeal is final and conclusive and there is no right of appeal against the Court's decision.⁵

Court Martial of New Zealand

The Court Martial of New Zealand is an independent court of record presided over by a civilian judge.⁶ It is designed to deal with more serious offences and has powers of punishments up to and including imprisonment for life. Courts martial are conducted in accordance with rules and procedures similar to those of civilian criminal courts, while taking into account the unique requirements of the military justice system. Courts martial, like summary trials, can be convened anywhere in New Zealand and abroad.

At court martial, the prosecution is conducted by a lawyer under the authority of the Director of Military Prosecutions. The accused is entitled to be represented by defence counsel assigned by the Registrar of the Court Martial with military legal aid, or their own choice of counsel at their own expense.

Appeal of a Court Martial Decision

Decisions made at a court martial may be appealed to the Court Martial Appeal Court by the member of the Armed Forces or by the Director of Military Prosecutions.⁷

¹ Armed Forces Discipline Act 1971, section 108.

² See Schedules 3 and 4 of the Armed Forces Discipline Act 1971 for the scale of authorised punishments and the punishments that may be imposed by a disciplinary officer.

³ Armed Forces Discipline Act 1971, section 118(1).

⁴ Armed Forces Discipline Act 1971, section 124.

⁵ Armed Forces Discipline Act 1971, section 136(1).

⁶ Court Martial Act 2007, section 8. For composition of any trial in the Court Martial see section 21 of the Court Martial Act 2007.

⁷ For proceedings in the Court Martial Appeal Court see the Court Martial Appeals Act 1953.



Statistics

A total of 426 summary trials (dealing with 590 offences) were heard over the 2021/2022 year. There were five appeals to the Summary Appeal Court.

Four trials were heard in the Court Martial of New Zealand and there were two appeals to the Court Martial Appeals Court.

The statistics provided in this chapter reflect the quantitative data collection over the financial year 2020/2021. Although every attempt has been made to ensure accuracy, the data presented is dependent on inputs from individual units. Accordingly, there may be errors in the data capture.

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Summary Trials

Trials by Service		
	Number	Percentage
Navy	73	17.14%
Army	330	77.46%
Air	23	5.40%

Trials by Rank ⁸		
	Number	Percentage
PTE(E) ⁹	260	61.03%
JNCO ¹⁰	71	16.67%
SNCO ¹¹	30	7.04%
WO(E) ¹²	7	1.64%
OFFCDT ¹³	36	8.45%
Junior Officer	16	3.76%
Major and above	6	1.41%

Trials by Gender		
	Number	Percentage
Female	83	19.48%
Male	343	80.52%

⁸ For an explanation of the relative rank structure see DM69 Vol 1 Chapter 1 Section 3.

⁹ Private(E).

¹⁰ Junior Non-Commissioned Officer: Lance Corporal/Corporal(E).

¹¹ Senior Non-Commissioned Officer: Sergeant/Staff Sergeant(E).

¹² Warrant Officer(E).

¹³ Officer Cadet.

Trials by Ethnicity¹⁴

	Number of Trials	Percentage
European	158	37.10%
Māori	109	25.59%
Pacific Peoples	32	7.5%
Asian	17	3.99%
Other/Not declared	110	25.82%

Offences Tried

AFDA Section	AFDA Offence	Number	Percentage
34/2/A	WHILE ON GUARD DUTY SLEEPING AT HIS POST	3	0.51%
35/1/A	STRIKING A SUPERIOR OFFICER	3	0.51%
35/1/B	USING VIOLENCE TO A SUPERIOR OFFICER	2	0.34%
35/1/C	OFFERING VIOLENCE TO A SUPERIOR OFFICER	1	0.17%
36/1/B	USING INSUBORDINATE LANGUAGE TO A SUPERIOR OFFICER	8	1.36%
36/1/C	USING INSULTING LANGUAGE TO A SUPERIOR OFFICER	6	1.02%
36/1/D	BEHAVING WITH CONTEMPT TOWARDS A SUPERIOR OFFICER	6	1.02%
37/1/A	OBSTRUCTION OF PROVOST OFFICERS	5	0.85%
38/1	DISOBEYING A LAWFUL COMMAND	48	8.14%
39/A	FAILURE TO COMPLY WITH WRITTEN ORDERS (DFO)	54	9.15%
39/B	FAILURE TO COMPLY WITH WRITTEN ORDERS (OTHER)	135	22.88%
41/A	STRIKING A PERSON OF LOWER RANK	2	0.34%
41/B	ILL-TREATMENT OF PERSON OF LOWER RANK	1	0.17%
42/A	CRUEL OR DISGRACEFUL CONDUCT	1	0.17%
42/B	BEHAVING IN A DISGRACEFUL AND INDECENT MANNER	9	1.53%
43/A	FIGHTING	1	0.17%
43/B	USING THREATENING/INSULTING/PROVOCATIVE LANGUAGE	14	2.37%
43/C	CAUSING A DISTURBANCE/LIKELY TO CAUSE	1	0.17%
44/1	RESISTING ARREST	1	0.17%
44/3/C	OFFERS VIOLENCE TO ANY PERSON	1	0.17%
48	ABSENCE WITHOUT LEAVE	11	1.86%

¹⁴ Note this data is voluntary and self-declared. Accordingly, the accuracy of this data cannot be verified and should not be used as a determinative statistical source.

49/A	AVOIDANCE OF DUTY (FAILS TO ATTEND)	15	2.54%
50/1/A	MALINGERING	2	0.34%
51/1/B	DRUNKENNESS	13	2.20%
52/1	BEING IN POSSESSION OF ALCOHOLIC LIQUOR	3	0.51%
55/1/B	MAKES A FALSE ENTRY IN AN OFFICIAL DOCUMENT	1	0.17%
55/1/C	ALTERS AN OFFICIAL DOCUMENT	1	0.17%
56/A	MAKING FALSE/MISLEADING STATEMENT	1	0.17%
57/1/A/II	STEALING PROPERTY OF A COMRADE	1	0.17%
57/1/B/I	FRAUDULENTLY MISAPPLYING SERVICE PROPERTY	3	0.51%
58/1/B	RECEIVES PROPERTY OF COMRADE	1	0.17%
59/A	BEING IN UNLAWFUL POSSESSION OF SERVICE PROPERTY	3	0.51%
60/1/A	UNLAWFULLY TAKING A MOTOR VEHICLE/SHIP/AIRCRAFT	3	0.51%
61/1/A	WILFULLY DAMAGES/DESTROYS SERVICE PROPERTY	1	0.17%
61/2/A	NEGLIGENTLY DAMAGES/DESTROYS SERVICE PROPERTY	3	0.51%
62/1/A	LOSING SERVICE PROPERTY	3	0.51%
63/2	UNLAWFUL DISPOSAL OF CLOTHING/ARMS/AMMUNITION	1	0.17%
65/2	NEGLIGENT DANGEROUS ACT/OMMISSION	1	0.17%
67/1/A	DRIVING VEHICLE RECKLESSLY	1	0.17%
67/2/A	DRIVING A VEHICLE CARELESSLY	10	1.69%
67/3	USING SERVICE VEHICLE FOR AN UNAUTHORISED PURPOSE	3	0.51%
73/1/A	ACT/OMISSION LIKELY TO PREJUDICE SERVICE DISCIPLINE	43	7.29%
73/1/B	ACT/OMISSION LIKELY TO BRING DISCREDIT ON THE SERVICE	9	1.53%
73/1/C	NEGLIGENTLY FAILING TO PERFORM A DUTY	24	4.07%
73/1/D	NEGLIGENTLY PERFORMS A DUTY	41	6.95%
74/1	OFFENCES AGAINST THE CIVIL LAW OF NEW ZEALAND	79	13.39%
75/4	BEING A SECONDARY PARTY TO AN OFFENCE	9	1.53%
76/1	ATTEMPTS TO COMMIT AN OFFENCE	2	0.34%

Punishments Imposed¹⁵

	Number	Percentage
A Caution	13	2.67%
Extra Duty not exceeding 2 hours a day	23	4.72%
Stoppage of leave	17	3.49%
Extra work and drill	17	3.49%

¹⁵ See Schedule 3 of the Armed Forces Discipline Act 1971. Punishments may be a single punishment or combination of punishments. Note that there may also have been trials where no punishment was awarded.

Confinement to ship or barracks	170	34.90%
A reprimand	55	11.29%
A fine	155	31.83%
Stay of seniority	11	2.23%
Reduction in rank	10	2.05%
Detention	16	3.39%

Summary Appeal Court of New Zealand

Over the reporting period there were five appeals lodged with the Summary Appeal Court. Of these, one was dismissed, one was allowed in part, one was withdrawn by the appellant and two remained pending at the end of the reporting period.

Court Martial of New Zealand

Over the reporting period eight matters were referred to the Director of Military Prosecutions for a decision whether to lay charges in the Court Martial of New Zealand.¹⁶ Four matters were referred back to the Commanding Officer. Four courts martial were held during the reporting period. Of those one was in respect of a Navy service member, one was in respect of an Army service member and two were in respect of Air Force Service members.

In respect of the gender of those court martialled, one service member identified as female and three identified as male. In respect of ethnicity one service member identified themselves as European and one identified themselves as Other.¹⁷

All four trials in the Court Martial of New Zealand resulted in guilty findings. The following punishments were imposed by the Court Martial, noting that a single punishment or combination of punishments may be imposed by the Court Martial:

Punishments Imposed by the Court Martial ¹⁸	
Dismissal from Her Majesty's Service	2
Detention	3
Stay of Seniority	1
Severe Reprimand	1

¹⁶ Defence Force Orders require specific classes of offence to be tried only in the Court Martial unless there is a written waiver issued by the Director of Military Prosecutions. See DM69 Vol 1 Chapter 4 Section 3 para 4.3.1.

¹⁷ Note this data is voluntary and self-declared. Accordingly, the accuracy of this data cannot be verified and should not be used as a determinative statistical source.

¹⁸ See Schedule 2 of the Armed Forces Discipline Act 1971 or the scale of punishments which may be imposed by Court Martial.

Reprimand	1
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In addition, one compensation order was awarded of \$3,000.

Timelines

In respect of timelines for the four trials heard in the Court Martial of New Zealand over the reporting period, there was, on average:

- 234 days from the laying of the initial complaint to referral to the Director of Military Prosecutions by the Commanding Officer/Disciplinary Officer;
- 57 days from the date of referral to the Director of Military Prosecutions and the laying of the charge in the Court Martial of New Zealand;
- 103 days from the laying of the charge to the date of the first day of the trial/first appearance.

Court Martial Appeal Court

The Court Martial Appeal Court sat twice during the reporting period. One appeal was dismissed¹⁹, the other appeal was allowed and a re-trial was ordered.²⁰ Leave to the Court of Appeal was sought by the Director of Military Prosecutions for one matter and this was declined.²¹

¹⁹ *R v Leger* [2021] NZHC 2200 (CMAC).

²⁰ *R v Lipa-Mclean* [2021] NZHC 3171 (CMAC).

²¹ *R v Stewart* [2022] NZCA 280.



Legislative Developments and Policy Initiatives

Armed Forces Discipline Committee

The Armed Forces Discipline Committee is empowered to produce sentencing guidelines for the New Zealand Defence

“The importance of the Committee [is to] enable command to monitor disciplinary trends to ensure that the systems works as effectively and efficiently as possible.”

Force.²² The Committee also discusses aspects of the military justice system more generally. The Committee met once during the reporting period and discussed updates and amendments to the Commander's Handbook on Military Law (DM 69 Vol 1), the time taken to bring matters to trial in the Court Martial, custodial sentences in the Services Correctional Establishment, and the importance of the Committee to enable command to monitor disciplinary trends to ensure that the systems works as effectively and efficiently as possible.

Operation Respect and Military Justice Modernisation

The *Independent Review on the New Zealand Defence Force's progress on the action plan for Operation Respect* was completed during the reporting period. This report contained a number of recommendations for the military justice system that have been incorporated into the Military Justice Modernisation Project. This Project has been initiated to develop policy and legislative updates to the military justice system arising from this and other reviews.

²² See Part 8A of the Armed Forces Discipline Act 1971.