

**Senate Foreign Affairs, Defence and Trade  
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**SUBMISSION COVER SHEET**

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**Inquiry Title:** Effectiveness of Australia's Military Justice System

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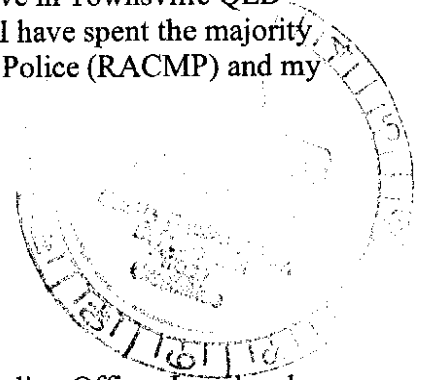
**Date Authorised:**

## SUBMISSION BY NIGEL SOUTHAM ON THE EFFECTIVENESS OF AUSTRALIA'S MILITARY JUSTICE SYSTEM

### **Introduction**

I am a serving member of the ADF currently on long service leave in Townsville QLD pending discharge on 03 Jan 05 after 20 years effective service. I have spent the majority of my ADF service with the Royal Australian Corps of Military Police (RACMP) and my submission focuses on:

- a. Effectiveness of Military Justice;
- b. Mistreatment of Personnel; and
- c. Administrative vs Disciplinary Action



### **Effectiveness of Military Justice**

In my experience Military Justice (MJ) is flawed at the Commanding Officer Level and below down to Subordinate Summary Authority. Effectively if legally trained personnel are not involved it is a Military Discipline issue. It survives but it struggles.

In the case of Military Police, you have to understand the culture of 'seen to be doing the right thing' and 'close hold' of information so as no one finds out that they stuffed up. It is Egos and careers that motivate them to ignore or stretch the rules to suit.

The problem is that MJ is confined. It relates to superiors having the say in who gets charged.

A soldier who identifies a superior commit an offence is able to report that offence to the CO or Military Police. But the soldier cannot have a say. He/She has not power of preferring of charges and it is up to the CO again if he decides to charge under the DFDA after a service police report is received (This can take moths to years). If it is an officer or key appointment person there is normally little ever done unless the case is so well known that the CO has no option than to be seen to do the correct thing and take DFDA action.

A fine example is my extensive ROG. Not one officer or senior soldier was ever investigated or charged as a result of several breeches of the DFDA by numerous personnel. I on the other hand was charged. It is not fair, it is not accountable and it needs to be fixed.

Similarly, the medical standards for officer's vs soldiers are not equal, neither are the application of MJ. Who says that an officer's medical standard can be lower than soldiers? We all fight in the same war. It is discrimination expressed in another area of the ADF.

### **Courts Martial**

I was found Not Guilty on 25 Nov 03 on four out of five charges in after a very trying and testing time at the mercy of the RACMP. I received a conviction no punishment on a minor charge of driving without authority by the fair and honorable Jury of Commissioned Officer's. All of this when I was given an undertaking by the CO 1 MP Bn that no disciplinary action would be taken in this case due to my pre-existing medical condition that was being treated by the ADF medical service prior to the alleged offences occurring at Singleton.

I recall the Judges comments; 'Yes you will always get someone in the ADF write out a charge sheet without consideration'. (Or words to that effect).

### **Impartial Military Justice**

Not impartial MJ.

In my case the CO 1 MP Bn was involved in the following issues relating directly to me:

- a. My ROG against RACMP and it's members in his direct line management where he had a reporting responsibility;
- b. Appointment of an IO for my ROG which mentions him;
- c. Authorizing DFDA charges against me;
- d. Hearing charges against me as the CO under the DFDA to which I objected to due to Bias on the CO's part;
- e. Administrative Posting out of RACMP due to medical downgrading to another unit;
- f. Recipient of my Submission on my Personal Reporting in 2001 at 1 MP Coy;
- g. CO 1 MP Bn Response to Personal Reporting in 2001 which contains threats against me by him in relation to my ROG, against ADF policy; and
- h. Final response to ROG which is totally Bias and resulted in not one recommendation of a single offence occurring under the DFDA to any RACMP member although there were several officers that ought to have been brought before the military justice system.

The CO 1 MP Bn was not impartial. In this case personally decided to keep things 'in house' so that he could control the investigation himself and determine the outcomes to suit his purposes. This led to his personal Bias in all aspects of this complex case and he became too personally involved, as did his RSM who laid the charges. He no longer maintain a professional and independent view of the ROG and due to other issues involving me that he was controlling, including personal reporting for promotion reasons, he sought to cover it all up internally. He was protecting a newly formed (01 Jan 01) 1 MP Bn as the first ever CO 1 MP Bn and his intentions was to ensure that it worked without airing any negative issues to his superiors. He ought to have excluded himself from the submission of the ROG, which stated that no RACMP member is to have any input, advise, control or command over the ROG whatsoever. This prejudiced the ROG system and due process and natural justice did not occur which then flowed onto the

application of military justice to grind me down, as he knew I was suffering emotionally. The Prosecution, Legal Officer 1 MP Bn, had sought to have me change my plea from Not Guilty to Guilty on numerous occasions prior to the commencement of the Courts Martial, as he would then go easy on the punishment for me.

### **Redress of Grievance (ROG)**

I submitted a ROG to the CO 1<sup>st</sup> MP Bn on 01 Oct 01 in relation to:

- a. Physical Assault in Bougainville by a Superior Officer (Feb 01) on peace operations.
- b. No action taken under the DFDA into the Assault in Bougainville because it was a key appointment on the HQ.
- c. No investigation into the Assault.
- d. Discrimination/Harassment/Abuse of Power/Sexual Harassment by RACMP Officer Commanding and other Commissioned Officers at 1 MP Coy Townsville.
- e. Various other serious breeches of ADF Policy.

A further two ROG submitted to the CO 1 MP Bn, Jan 03, as requested by him stating specifically that no RACMP member was to have any involvement in the investigation, no control, command, advice or any input whatsoever.

CO 1 MP Bn indicates that Legal Advice from CLO LHQ says that the Chain of Command cannot be bypassed so he continues as the CO for ROG purposes.

This initial ROG went to the CO 1 MP Bn but it was requested that due to the nature of the allegations that it be immediately referred to the Chief of Army. An Army Warrant Officer can request referral to the Chief of Army under ADF ROG Policy but the CO 1MP Bn never entertained it.

Incoming (New) CLO LHQ indicates that the Investigating Officer (IO) for my ROG who was a Legal Corps Officer (CAPT) in Townsville failed to keep appropriate records of the ROG Investigation and it contained major flaws. Also, that the CO 1 MP Bn failed to correctly appoint the IO in Townsville and a new IO is to be appointed due to the incorrect application of ROG policy. Basically, negligence performance of duty as we call it in the ADF. Again, no one was charged.

The statute of Limitations under the Defence Force Discipline Act (DFDA), 1982 has expired in the past out due to ineffectiveness of my ROG investigation thereby causing offenders to escape military justice.

I am waiting on another investigation at this point in time which might see another Military Police Officer slip through the net to escape military justice over an illegal live range practice that he conducted.

Another IO was appointed for my ROG (Initially dated 01 Oct 01) and to date I have been informed that the Investigation might be completed sometime in Apr 04. Over 2 and half years!

No ADF member has been held accountable to date since the first offence was committed under the DFDA in Feb 01, (Except of course, me!).

### **Mistreatment of Personnel**

I made allegations of mistreatment of me and others under my command in my ROG to the CO of 1 MP Bn. That is when I began to be mistreated by him, his officers and the discipline system. This is what makes such a joke out of the system in my case. I came forward and I was knocked all over the ADF.

I was informed that the mistreatment of others did not affect me service and therefore it was dismissed and no further action was taken to investigate these internal matters. No follow up, no referral, no accountability.

### **Mental Breakdown**

As a result of ineffective ROG procedures and continued Harassment I suffered a mental breakdown. My CO and OC of RACMP were aware that I was suffering and reported that they sought to reduce my responsibilities. They actually increased them and as a result I suffered a serious panic attack and was removed from a Military Police Training Course at Singleton NSW. The CO 1 MP Bn was responsible for the health and safety of members of 1 MP Bn and he failed in his duty of care by allowing an increase in responsibilities when it had been identified by one of his senior officers that my workload ought to be reduced. The OC 1 MP Coy additionally failed in his duty of care by appointing me to the higher position of Platoon Commander of 13<sup>th</sup> Military Police Platoon and again failed in his duty of care when he appointed me as the Course Manager for Military Skills of a Battalion sized major annual exercise at Singleton. This was after he reports that he had recognized that I was suffering emotionally on return from overseas service.

I was informed via the Army Doctor that from my CO and OC that I would not be charged under the DFDA for various charges as a result of leaving Singleton in Sep 02. In May 03 I was surprisingly formally charged by the RSM 1 MP Bn with 5 charges and ordered to attend a Restricted Courts Martial in Townsville Qld.

These charges came about after I submitted my initial ROG to the CO 1 MP Bn on 01 Oct 01. A subsequent referral to the Army Psych Corps by my OC 1 MP Coy was dated on 04 Oct 01, after the submission of my ROG on 01 Oct 01. I was immediately removed from 1 MP Coy and the Military Police as a result. The charges followed after the ROG was submitted.

### **Fair Outcomes**

Fair outcomes were in the end in my favor in regards to Discipline only but it took its toll on my career and my life. These outcomes only occurred when 1 MP Bn was excluded from any further input.

The Jury saw the charges for what they were but the expense of this Courts Martial can never be costed, as I lost everything I had before it. This could have all been avoided had the CO 1 MP Bn maintained his undertaking that DFDA action would not occur in this case as all he wanted me to do was get better. I only managed to take the Military Justice to CM level because I sought to have the CO 1 MP Bn removed as the CO under the DFDA for my hearing as he was in my opinion – ‘Totally Bias’. He did in fact, in the end after my persistence, remove himself from my hearing at CO level, which proves that he was or was at least, seen to be Bias in my case. Yet he still maintained CO for my ROG and other issues in which he was still Bias.

The decisions in the lead up to the application of Military Justice in my case were not fair and were completely Bias. I was informed by several sources in the ADF that the CO 1 MP Bn was not going to charge me and he gave this undertaking in a professional context. Then the turnaround occurred and it saw a further decline in my health and welfare due to a breach of confidentiality by an Army Psychiatrist to a 1 MP Bn officer. I could not work at all in the ADF. I had been let down by the system that I sought to uphold at a time when I was reaching out for help medically after overseas service.

I fully agree with an independent director of military prosecutions department.

There was no public accountability into my military justice from the initial stages when a Bias CO made his decision to have me charged after I submitted a ROG to him and after I contacted the ADF Fair Go Hotline.

### **Peacetime Deaths**

This could have been me. I have lost my Wife, my Children, my Family, my Career in the ADF and my Spirit that I once thrived on. But I am one of the lucky ones; I am still here today to tell my story to help you all understand what is wrong with our ADF system.

### **Quality Investigations**

My ROG (Defence Investigation) initial investigation was not only poor but also it was negligent.

The fact that a Legal Officer at the rank of CAPT conducted it and failed in his duty gives little to no hope of any other member of the ADF, who has little or no training at all in relation to investigations under ADF policy, being able to manage a formal or informal investigation. He has not been charged either for his negligence, which has caused further deterioration to my health and wellbeing.

In my vast experience over nearly 20 yrs in the ADF, Majors and LT COL's acting under the DFDA in their capacity as Summary Authorities and CO's struggle to understand the law and in most cases, they work under the guidelines provided in the DFDA that Military Discipline must be maintained. That is all that they know about justice unless they have had previous experience. March in the Guilty! They often seek last minute advice from the Senior Warrant Officer who is trained in the application of the DFDA.

### **Administrative vs. Disciplinary Action**

My individual case is a classic example of when administrative action ought to be taken against a member as I was suffering after an assault by a superior, inaction by the ADF over the assault and ongoing Harassment on return to Australia by members of 1 MP Bn.

I was also undertaking a course of medication and psychological programs provided by the ADF medical services prior to being charged with an offence. It is interesting to note that I could not approach my OC or CO in relation to my personal problems and even when they identified deficiencies in my performance, they set about to destroy me using the DFDA as opposed to other more appropriate avenues.

They even increased my responsibilities when they had identified and agreed to reduce my responsibilities. I was never ever consulted during this time. This is what occurs in the ADF when commander's fail in their duty of care. They turn against the poor lower ranked member and burn them to protect their reputation and career.

The biggest single problem with the ADF is that we are positive reporters. Nothing ever goes wrong, no one in command makes a bad decision and we always win at every war-game.

Just check the CO 1 MP Bn and OC's 1 MP Coy personal reports/Australia Day Awards for 2001-2004 and you will see that do not match reality. The ADF needs accountability in terms of military justice and no one person should have all of the control. We have not and we do not give soldiers a fair go as the CDF says.

As I said, I am one of the lucky ones. I have lost everything and I nearly lost my life because of ineffective leaders and commanders who seek to further their careers with no regard to soldier's lives and the cumulative effects that has on families and the community. I wonder how others have survived these undue processes. I do know why the ADF is suffering from recruitment and particularly, retention of experienced soldiers and officer.

Nigel Southam

16 Feb 04