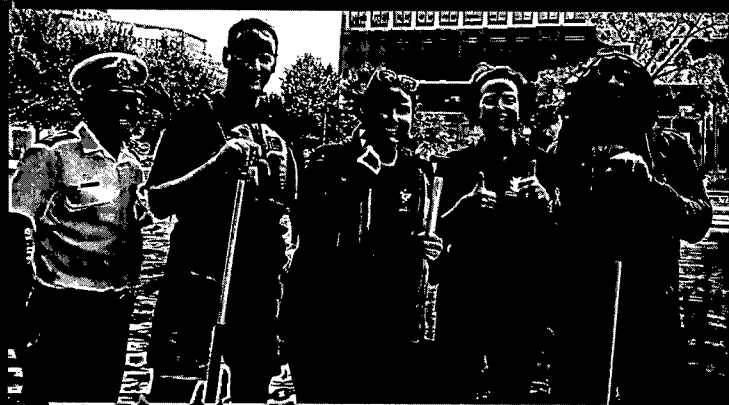
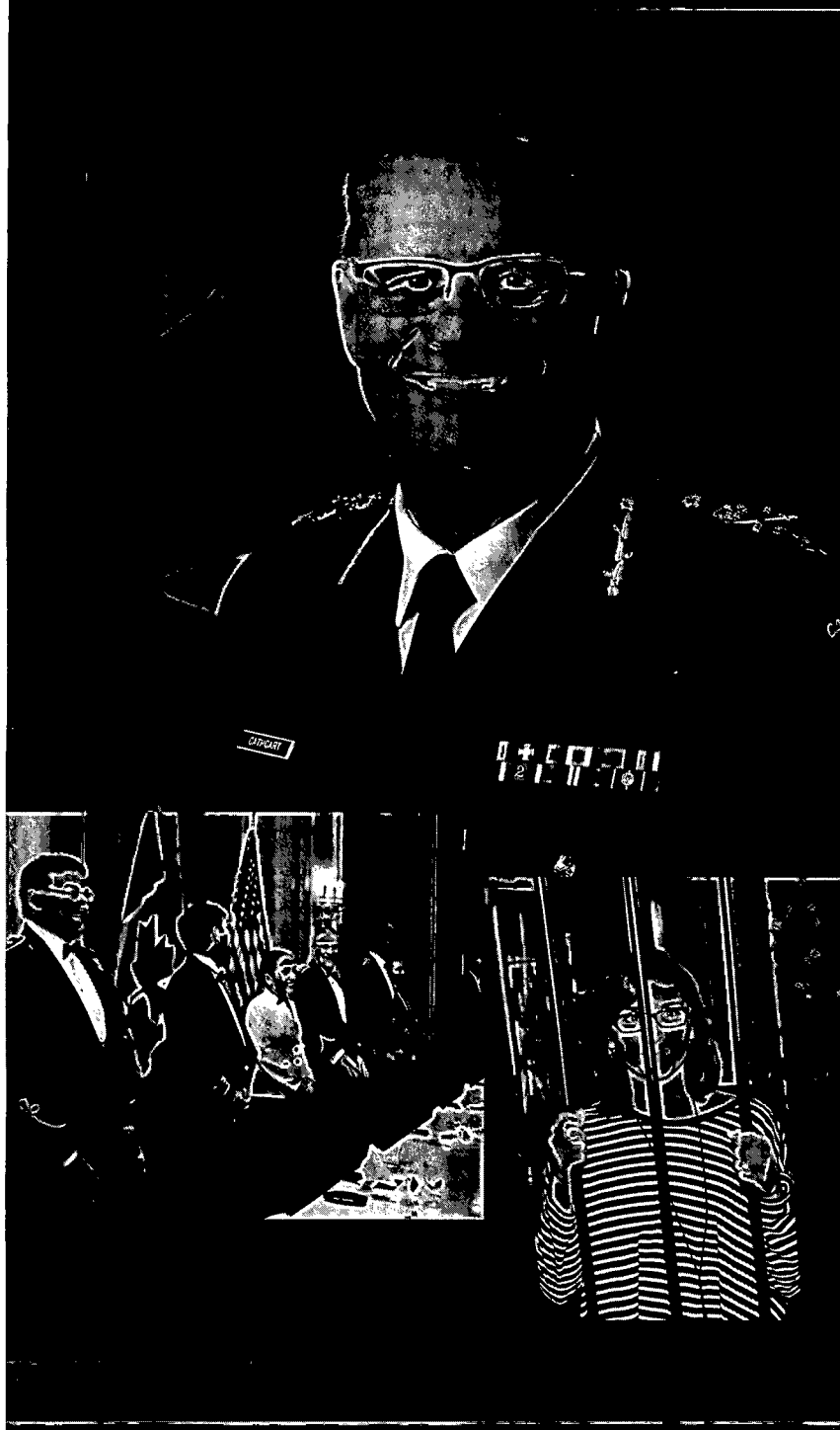


# JAG Business Plan

Fiscal year 2017-2018



Office of the Judge Advocate General

Cabinet du Juge-avocat général



National Défense  
Défense nationale

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# SECTION 1: OFFICE OF THE JUDGE ADVOCATE GENERAL (OJAG) STRATEGY AND OBJECTIVES

## 1. THE BASIS OF JAG BUSINESS PLANNING AND MANAGEMENT

### 1.1 CONTEXT

Level One Advisers are Department of National Defence (DND) and Canadian Armed Forces (CAF) senior managers who have direct accountability to the Deputy Minister (DM) and Chief of the Defence Staff (CDS) and over whom the DM and CDS exercise full authority to assign tasks, goals and resources. Special Entities are those senior managers who, while still responsible to the DM/CDS for effective resource stewardship, have a unique reporting and accountability relationship such that the DM and CDS do not exercise full authority over them.

The Judge Advocate General (JAG) is responsible to the Minister in the performance of the JAG's duties and functions<sup>1</sup> and is designated a Special Entity (SE) senior manager.<sup>2</sup>

### 1.2 THE JAG MANDATE

The JAG's duties and functions are set out in the *National Defence Act* (NDA):<sup>3</sup>

- The JAG acts as legal adviser to the Governor General, the Minister, the Department and the CAF in matters relating to military law.<sup>4</sup>
- The JAG has the superintendence of the administration of military justice in the CAF.
- The JAG shall conduct, or cause to be conducted, regular reviews of the administration of military justice.
- The JAG shall report annually to the Minister on the administration of military justice in the CAF.
- The JAG exercises general supervision over the Director of Military Prosecutions (DMP) and the Director of Defence Counsel Services (DDCS).
- In addition:
- The JAG has command over all officers and non-commissioned members posted to a position established within the OJAG.<sup>5</sup>

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<sup>1</sup> NDA Section 9.3 (1).

<sup>2</sup> Defence Plan 2001, Chapter 3, article 320.

<sup>3</sup> NDA Sections 9.1, 9.2 (1) and (2) and 9.3 (2) and ss. 165.17 and ss. 249.2.

<sup>4</sup> Military law means all international and domestic law relating to the Canadian Forces including its governance, administration and activities.

<sup>5</sup> QR&O 4.081 (2).

- The JAG has the power and jurisdiction of an officer commanding a command with respect to persons on the strength of the OJAG, except in respect of grievances and disciplinary matters.<sup>6</sup>

The accomplishment of JAG statutory responsibilities necessitates high standards of professional performance, which must be in compliance with applicable law society professional Codes of Conduct, the JAG Mission and Vision Document and various OJAG directives.

## **2. JAG STRATEGY**

In addition to the broad range of statutory responsibilities, the JAG will vigorously pursue a strategic transformation program highlighting continuous improvement with particular emphasis on the delivery of independent, timely, solution oriented and operationally focused legal advice and services. Further, the JAG will continue with initiatives to enhance the efficiency and effectiveness of the military justice system in a manner that reflects Canadian values and the Rule of Law. This is reflected in the JAG Mission and Vision so as to ensure that the OJAG continues to support and facilitate the achievement of the Defence Priorities.

## **3. THE JAG MISSION AND VISION**

### **THE JAG MISSION**

In support of the CAF and the DND, the OJAG delivers independent, operationally focused, solution oriented legal advice and services across the full spectrum of military law and superintends the administration of military justice.

### **THE JAG VISION**

To be an agile military team of world class, operationally focused, globally deployable and networked legal professionals, proudly contributing to a disciplined force and mission success in a manner that reflects Canadian values and the Rule of Law.

The JAG Vision reflects the intent to continually improve in responsiveness, relevancy and effectiveness in enabling the CAF, the DND and Canada in achieving mission success.

## **4. JAG STRATEGIC GOALS AND OBJECTIVES**

The four JAG strategic goals and their subordinate strategic objectives support the majority of DND/CAF Defence Priorities. All OJAG personnel, whether military or civilian, are expected to conduct themselves in accordance with the JAG goals and objectives in all aspects of their work.

### **4.1 STRATEGIC GOAL 1 – DELIVER RESPONSIVE, FORCE ENABLING LEGAL ADVICE AND SERVICES IN ALL AREAS OF MILITARY LAW**

Commanders are entrusted with the responsibility to make operational and policy decisions at the tactical, operational and strategic level. Such decisions are complex, often involve significant risk (including legal risk) and conflicting priorities and may have to be made in days, hours or minutes in an operationally dynamic environment.

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<sup>6</sup> Ministerial Organization Order 96-082, 1 August 1996.

It is in this context that the OJAG must deliver responsive, force-enabling legal advice and services in all areas of military law in a manner that achieves the following four strategic objectives:

- 1) Provide operationally focused, solution oriented, independent legal advice and services;
- 2) Champion fairness, effectiveness and efficiency in the application of military discipline;
- 3) Promote the fair, just, effective and responsive administration of the Canadian Forces and the Department of National Defence; and
- 4) Effect strategic legal engagement.

#### **4.2 STRATEGIC GOAL 2 – LEAD PROACTIVE MILITARY JUSTICE OVERSIGHT, RESPONSIBLE DEVELOPMENT AND POSITIVE CHANGE.**

As stated by the Supreme Court of Canada, the structure of the military justice system allows the CAF to deal with matters that pertain directly to the discipline, efficiency and morale of its members. This strategic goal and subordinate objectives reflect the JAG's statutory obligation to superintendence of the military justice system. The OJAG performs this legislatively mandated stewardship function in furtherance of the operational mandate of the CAF and the requirement of the military justice system to be and be perceived to be a fair adjudicative system.

This strategic goal includes the following three strategic objectives;

- 1) Discharge the statutorily mandated superintendence function in a manner that facilitates the fair and efficient administration of Canada's military justice system;
- 2) Advance the principled development of the military justice system ensuring it continues to be fair, efficient and responsive to the unique needs of the Canadian Forces within Canada's free and democratic society; and
- 3) Promote a broad understanding of the military justice system.

#### **4.3 STRATEGIC GOAL 3 – OPTIMIZE A DYNAMIC WORLD CLASS TEAM OF SPECIALIZED LEGAL PROFESSIONALS AND SUPPORT PERSONNEL THAT PUNCH WELL ABOVE ITS WEIGHT.**

The OJAG is team of military and civilian professionals whose legal services are in high demand. As a consequence of having OJAG legal expertise recognized internationally, the OJAG has assisted shape domestic and international legal frameworks, which in turn has facilitated CAF, Departmental and Governmental mission success. The OJAG core strength is its people and their knowledge-based expertise. The OJAG will continue to enhance its effectiveness by ensuring that its ability to deliver independent legal advice is preserved. The OJAG will continue to develop all aspects of resource allocation, career progression and legal knowledge and expertise in a planned, proactive and structured manner.

This strategic goal encompasses the following strategic objectives:

- 1) Preserve and promote the independence required to ensure the delivery of candid legal advice from a military perspective;
- 2) Achieve high levels of efficiency and effectiveness in furtherance of all strategic goals;
- 3) Attract, develop, train, educate, retain and empower high quality professionals to achieve excellence in all areas of military law; and
- 4) Demonstrate legal knowledge management and legal information mastery.

#### **4.4 STRATEGIC GOAL 4 – BE VIGILANT LEADERS IN CARING FOR OUR PEOPLE AND THEIR FAMILIES.**

The requirement for OJAG legal services has consistently exceeded its resources, imposing significant stress on its personnel. While OJAG personnel have always stepped up and met the challenge, it has come at a cost to them and their families. In keeping with the JAG's intent, the OJAG will ensure that it is able to care for and support its military and civilian personnel, recognizing that they are the core strength of the organization and fundamental to its ability to meet all other strategic goals and objectives. Individual and family welfare is an important consideration in leadership decisions taken at all levels. Furthermore, innovative and novel means of balancing the unique, and often unavoidable, stresses of military service is actively pursued in advancing the well-being of OJAG personnel as well as their families.

This strategic goal includes the following strategic objectives:

- 1) Create a working environment that will allow people to maintain a reasonable balance between their home life and workplace responsibilities; and
- 2) Responsibly prioritize tasking's and resource accordingly.

#### **5. OJAG SUPPORT TO THE PROGRAM ALIGNMENT AND ARCHITECTURE AND THE DEFENCE PRIORITIES**

In the recent realignment of the PAA, OJAG business now falls under PAA sub-sub program 4.1.9. : Organization – Security, Protection, Justice and Safety. While the current PAA 4.1.9. description focuses exclusively on the Military Justice aspect of our programme, the sub-sub program 4.1.9. encompasses all aspects of Military Law not just Military Justice. It is important to note that as an internal service L1, the OJAG organization and our output supports and assists in advancing the majority of Program Alignment Architecture Programs, Defence Priorities and Defence Priority Elements by providing timely and high quality legal advice and services to all groups and commands within the DND/CAF.

## **SECTION 2: DIVISIONAL OBJECTIVES AND PROJECTS**

#### **6. OJAG DIVISIONS AND KEY DIVISIONAL GOALS/OBJECTIVES**

The OJAG is comprised of 7 Regular Force Divisions and 1 Reserve Force Division: the Chief of Staff (COS) Division; the Administrative Law Division; the Military Justice Division; the Operations Division; the Regional Services Division; the Directorate of Defence Counsel Services (DDCS); the Directorate of Military Prosecutions (DMP); and the Reserves Division. Key goals and objectives for FY 17/18 are listed by division in Annex E to this business plan. Progress towards achievement of the divisional goals will be tracked through the OJAG Performance Management System (PMDSS).

##### **6.1 CHIEF OF STAFF (COS JAG)**

**The Chief of Staff Division** is responsible for providing all corporate support services required for the proper functioning of the OJAG. While principally involved with the provision of all internal support and administrative services to the OJAG, Division staff routinely represents the OJAG at meetings and working groups relevant to the OJAG as part of the larger DND and CAF



community. The COS JAG Division works on behalf of the OJAG to ensure that all of its external corporate responsibilities and requirements are achieved.

COS JAG Division's internal corporate support mandate includes both acting as the primary resource for all of OJAG in some key support areas, as well as assisting other OJAG Divisions' staff with support tasks devolved to them. The COS Division's general management team is responsible for knowledge and information management, civilian human resources management, business management, comptroller and financial services, education, training, professional development, and administrative support services.

## 6.2 THE ADMINISTRATIVE LAW DIVISION

**The Administrative Law Division headed by the Deputy Judge Advocate General/ Administrative Law (DJAG/AL)** is responsible for providing strategic legal advice and support to the CAF and DND on a wide range of matters dealing with all aspects of a CAF member's career from recruitment to release. The Division is also responsible for providing legal advice and support in respect of institutional matters that include the organization and command structure of the CAF and the operation of the military grievance system. Additionally, the Division supports the JAG in his role as the Director of Estates, and as the Special Voting Rules Coordinator (SVR Coord) for the CAF, DJAG/AL is responsible for implementing the special voting applicable to the CAF in respect of federal elections. The Division consists of the Directorates described below.

**Directorate of Law Compensation, Benefits, Pensions & Estates (DLaw/CBPE)** provides legal advice and support on the full spectrum of financial and compensation policies and instructions that support the military human resources management framework. This includes providing legal advice and support in respect of pay, allowances, pensions, and other benefits. DLaw/ CBP&E's principal client group is the Director General Compensation and Benefits, which includes the Directorates of Compensation and Benefits Administration, Canadian Forces Pension Services, Pay Policy Development, Military Pay & Allowances Processing, Relocation Business Management, and the Compensation and Benefits Grievance Section. DLaw/CBP&E also administers service estates on behalf of the JAG and elections on behalf of the SVR Coord.

**Directorate of Law Administrative Law (DLaw/Admin Law)** provides legal advice and support in four principal areas: military grievances, grievance-related litigation, CF organization, and administrative investigations. DLaw/ Admin Law's principal client groups are the Director General Canadian Forces Grievance Authority, the Chief of Programme (Director Defence Force Planning) and the Administrative Investigation Support Centre. DLaw/Admin Law provides direct legal support to the military grievance process established by the *National Defence Act* and QR&O through the provision of advice to Director General Canadian Forces Grievance Authority. Further, DLaw/Admin Law supports the conduct of CF boards of inquiry (BOI) and summary investigations (SI) by providing legal advice to the Administrative Investigation Support Centre as well as to the legal advisors to various BOI/SI. DLaw/Admin Law also works closely with the Directorate of Claims and Civil Litigation of the Office of the DND/CF Legal Advisor to deal with liability and litigation issues arising in connection with military grievances, including helping to formulate the arguments to be used by Department of Justice litigators in grievance-related proceedings.

**Directorate of Law Military Personnel (DLaw/Mil Pers)** provides legal advice and support on the development and application of military personnel policies and orders. In particular, DLaw/Mil Pers plays an important role in the modernization of military personnel policies by ensuring their compliance with human rights and administrative law and their consistency with the

legislative framework applicable to the CAF. Additionally, DLaw/Mil Pers advises on the application of military personnel policies and orders in areas such as recruitment, promotion, administrative reviews for conduct or performance deficiencies, and release. DLaw/ Mil Pers' principal client groups are the Chief of Military Personnel, the Director General Military Careers, and the Director General Military Personnel.

### 6.3 DEPUTY JUDGE ADVOCATE GENERAL / MILITARY JUSTICE (DJAG MJ)

**The Military Justice Division** is responsible for supporting the JAG in fulfilling his statutory responsibility for superintendence of the administration of military justice, and in positioning the Office of the JAG as a leader, both domestically and internationally in the military justice field. The Division delivers high quality advisory services, legislative and regulatory support in the military justice field, and actively promotes a greater understanding of the military justice system within the legislative, executive, professional and academic communities, at home and abroad. The Military Justice Division is established with two directorates, but is currently reorganized into three directorates and an additional two ad hoc teams, as described below. An Establishment Change Proposal to formalize the current three-directorate structure – which has enhanced the Division's ability to accomplish its mission in light of JAG Strategic Goal #2 and its related objectives – may be forthcoming.

**DLaw/MJ Strategic** is responsible for the development of a strategic military justice vision that will allow the OJAG and the CAF to anticipate and respond to external and internal challenges and effectively inform the development of the Canadian Military Justice System. Strategic engagement in the military justice field is intended to educate stakeholders, with the broader objective of contributing to the active engagement of the chain of command, legislative, executive, professional and academic communities domestically and abroad. DLaw/MJ Strat leadership in this field will seek to ensure that the Military Justice System evolves in a manner that reflects the critical role that military justice plays in the maintenance of discipline, efficiency and morale within the CAF, which are essential to operational effectiveness and the ultimate success of the CAF in the accomplishment of its mission. At present, DLaw/MJ Strat is engaged almost exclusively in the development and support of military justice legislation dealing with victims rights and summary trial reform, and the directorate will likely remain so engaged for the duration of FY 17/18. The Directorate also assists in the preparation of legislative initiatives sponsored by other government departments (OGD) that have an impact on the military justice system.

**DLaw/MJ Policy** is responsible for the implementation of the Office of the JAG's strategic military justice vision. The Directorate is also responsible for the development of regulations that result from both OGD legislative initiatives and from more comprehensive reforms to the *National Defence Act*. At present, DLaw/MJ Policy is engaged almost exclusively in the development and support of regulations relating to Bill C-15, the *Strengthening Military Justice in the Defence of Canada Act*, and the directorate is likely to remain so engaged for the beginning of FY 17/18. Once completed, DLaw/MJ Policy will be engaged in the development and support of military justice regulations dealing with victim's rights and summary trial reform.

**DLaw/MJ Operations** is responsible to provide support to the JAG as the superintendent of the administration of military justice in the CAF. In effect, the directorate is responsible for the day-to-day operation of the military justice system. This includes providing support on military justice issues to all legal officers within the Office of the JAG, formulating OJAG policy on military justice issues and providing the necessary support for the appointment of individuals to the various military justice committees. The directorate is also responsible to assist in the conduct of regular

reviews of the administration of military justice, for the production of the JAG's Annual Report to the Minister of National Defence and supporting the JAG in fulfilling his general supervision responsibilities in respect of the prosecution and defence counsel functions within the military justice system. As part of DLaw/MJ Operations the **CFPM Legal Advisor** is responsible to provide advisory support on military police policy and professional conduct issues to the Canadian Forces Provost Marshal (CFPM) and its key officers. It also provides legal advice and guidance in respect of Military Police Complaints Commission (MPCC) issues, including conduct complaints and legal support to public interest hearings. In this fiscal year the senior position on site with the CFPM Legal Advisor will no longer be a LCol/Cdr but will be filled by a senior major.

**The Superintendence Enhancement and Assessment Team (SEAT)** was created during the previous fiscal year to develop and pilot processes in order to enhance and assess the efficiency and effectiveness of the administration of the *Code of Service Discipline* within the Canadian Armed Forces. In order to create the SEAT two additional legal officer positions were created within the Military Justice Division. The SEAT has been tasked by the JAG to create and pilot a military justice database for use by military justice stakeholders in their day-to-day administration of the *Code of Service Discipline* and to design and pilot a program of audits aimed at collecting objective and measurable data to assist the JAG in his role as the superintendent of the administration of the *Code of Service Discipline*. The SEAT has been tasked to complete its work by July 2018.

**The Court Martial Comprehensive Review Team (CMCRT)** was formed in June 2016 in response to the JAG's direction to the DJAG/MJ to conduct a comprehensive review of the Canadian Armed Forces' court martial system. The purpose of this review is to conduct a legal and policy analysis of all aspects of the system and, where appropriate, to develop and analyse options to enhance the effectiveness, efficiency, and legitimacy of that system. The CMCRT's review process includes significant legal and policy analysis, and extensive consultation with Canadian and foreign subject matter experts, other government departments, senior CAF leaders, and the Canadian public. The CMCRT is required to produce a final report to the JAG by July 2017, but the team – or a portion of the team – may remain engaged with the review for the remainder of FY 17/18.

#### **6.4 DEPUTY JUDGE ADVOCATE GENERAL / OPERATIONS (DJAG OPS)**

The Operations Division is responsible for the provision of legal support to the CAF and DND in relation to the law applicable to domestic and international operations. The legal officers of the Operations Division advise the CAF chain of command at the tactical, operational and strategic levels. In addition, the Operations Division oversees all legal officers on deployed operations. The Operations Division is structured to provide multi-level legal services to key CAF and DND stakeholders. It is established by the directorates described below.

**Assistant Deputy Judge Advocate General Operations (ADJAG Ops)** is the legal advisor who acts as Division second-in-command (2 IC). In addition to his duties as 2IC, he supervises the legal advisor seconded to the Privy Council Office (PCO) as well as the operations of the National Defence Memorandum of Understanding Coordinator office (NDMOUC), responsible for the review and processing of all departmental MOUs.

**Strategic Joint Staff Legal Advisor (SJS-LA)** directorate provides legal advice on all strategic level operational issues affecting CAF operations around the world. SJS LA is the primary legal advisor to the Strategic Joint Staff (SJS) – who support and report to the Chief of the Defence Staff – as well as to the Director General International Security Policy (DGIS POL), responsible for providing policy advice to the Minister of National Defence (MND) in support of domestic and international CAF operations. SJS-LA also advises on selected issues from Director General Space (DG Space) and the Vice Chief of the Defence Staff (VCDS) OUTCAN. In addition to supervising the legal officers assigned to SJS, the SJS LA is the supervisor to the legal officer assigned to the Canadian Special Operations Forces Command (CANSOFCOM.) Key areas of advice for SJS LA include domestic and international legal authorities, operations orders, rules of engagement and use of force, diplomatic correspondence, air security incidents, NORAD and NATO operations, and space law.

**Directorate of International and Operational Law (DIOL)** provides advice on the international and domestic legal frameworks for CAF expeditionary activities. This includes advice on extant and prospective international instruments, and participation in initiatives and engagements dealing with, areas of international law that touch upon CAF interests. This law includes but is not limited to the law of armed conflict, international human rights law and international criminal law. Pertinent areas of domestic law include the Crown Prerogative and the extraterritorial application of domestic law. DIOL provides advice to directorates within the Office of the JAG and directorates within ADM Policy, including the Director General of Policy Planning and in conjunction with SJS LA, the Director General of International Security. DIOL is the principal liaison between the Office of the JAG and outside organizations such as the Legal Affairs Bureau of the Department of Foreign Affairs and Trade and Development and NGOs including the Canadian Red Cross and the International Committee of the Red Cross.

**The Manual on International Law Applicable to Military Uses of Outer Space (MILAMOS) Project** aims to develop a widely-accepted manual clarifying the fundamental rules applicable to the military use of outer space, in times of peace, as well as in periods of tension and in outright armed conflict. The manual, to be known as the McGill Manual, will clarify the limitations international law places on the threat or use of force in outer space. It aims to look at how, against the backdrop of rapidly developing technologies and applications, what uses and objects are considered lawful or are outright prohibited in the event of an outbreak of conflict in outer space. In addition, it aims to address the issue of belligerent behaviour during hostilities and the question of when and under what circumstances it is lawful for nations to resort to the use of force in or through space. The intent is that it will be akin to the Tallinn Manual.

The manual will be drafted by a collaborative process that integrates the work of three groups, namely: international space law, use of force and international humanitarian law/LOAC. A senior legal officer, supported by a team of CAF legal offices, has been named the Group Editor for the Use of Force working group.

**Canadian Joint Operations Command Legal Advisor (CJOC-LA)** provides legal advice to Commander CJOC, his deputies and his staff on all legal matters related to the conduct of military operations at the operational level, in both continental and expeditionary contexts. CJOC-LA also provides legal support at the tactical level by supervising deployed legal advisors and, in conjunction with those legal advisors, reporting to DJAG Regional services when local CAF assets are committed domestically; as is the case when military assistance is provided to civilian agencies responding to natural disasters or when providing assistance to law enforcement agencies.

Whenever the component commanders (JFACC, MCC and LCC) are placed under the command of Commander CJOC, CJOC-LA coordinates the provision of legal services provided to CJOC as well as to those component commanders. The nature of legal services provided by CJOC-LA includes advice on the domestic legal framework applicable to military operations as well as on international law applicable to expeditionary operations. This ensures the lawful conduct of operations, particularly in regards of the legal standards applicable to the use of force, detention, the parameters of assistance provided to civilian agencies and interoperability with international allies and partners. CJOC-LA also contributes to CAF efforts to maintain a high state of readiness and preparedness by offering legal support to the generation of joint doctrine and the conduct of joint exercises.

**Canadian Special Operations Forces Command Legal Advisor (CANSOFCOM-LA)** provides legal advice in all aspects of military law to the five units that belong to CANSOFCOM (Joint Task Force 2, Canadian Joint Incident Response Unit, Canadian Special Operations Regiment, 427 Special Operations Aviation Squadron, and Canadian Special Operations Training Centre), as well as to the CANSOFCOM Headquarters. Due to CANSOFCOM's domestic and international mandates to respond to terrorist attacks, international crisis and CBRN threats, the CANSOFCOM directorate also provides task tailored legal advice with respect to operational and international legal matters in support of specialized task forces, including the Immediate Response Task Force, the Chemical, Biological, Radiological and Nuclear Task Force and Task Force Arrowhead, three standing Special Operations Task Forces.

**Directorate of Law, Intelligence and Information Operations (D Law I&IO)** provides legal advice on strategic, operational and tactical level issues relating to both domestic and international matters of an intelligence nature. D Law I&IO is the primary legal advice to the Canadian Forces Intelligence Command and the units and elements which fall under it, as well as providing legal advice to the Canadian Forces Information Operations Group (CFIOG), the Canadian Forces Network Operations Centre (CFNOC) and Director General Cyber (DG Cyber). Key areas of legal advice for DLaw I&IO include information sharing with both domestic and international entities, human, signals and open source intelligence, counter-intelligence investigations, and the development of future cyber capabilities. DLaw I&IO are also responsible for the provision of lectures and other training to the Canadian Forces School of Military Intelligence (CFSMI).

## **6.5 DEPUTY JUDGE ADVOCATE GENERAL / REGIONAL SERVICES (DJAG REG SVCS)**

The Deputy Judge Advocate General – Regional Services (DJAG Reg Svcs) provides general legal advisory services and support to the CAF and DND on matters across the full spectrum of military law, including military discipline, administrative law, operational law, training, education and force generation. The Regional Services team is comprised of Regular and Reserve Force legal officers, senior non-commissioned officers and civilian personnel. They assist the JAG in his legislative mandated responsibilities. This support is provided through the Reg Svcs team in the National Capital Region (NCR) advising the Royal Canadian Navy, the Canadian Army, the Royal Canadian Air Force and most of the L1 organisations, CFSU (O) and all lodger units in the NCR, as well as the Canadian Defence Liaison Staff in London and Washington and the Canadian Defence Attaches around the world. The Assistant Judge Advocates General (AJAGs) in the regions and their Deputy Judge Advocates (DJAs) advise formations and units across Canada, in Europe, and at NORAD Headquarters in Colorado.

AJAGs and DJAs are the front line legal advisors for all CAF clients outside the NCR. Within the NCR, DJAG Reg Svcs, Assistant DJAG Reg Svcs, and the DJA Ottawa legal officers

provide legal advice at the strategic and tactical level, often on issues which are time-sensitive and require consultation with other DJAGs or DND/CF LA. The work is complex and diversified, and the number of individual clients in each organization is significant. Advice seekers are from all ranks, from Warrant Officer for military justice questions, to General Flag Officers, directors and senior managers on the full spectrum of military law. The Reg Svcs Division force generates most of the deployed legal officers, as well as the legal officers who support military exercises. The Reg Svcs Division also delivers two-day Presiding Officer Certification Training (POCT) course serials. Fifty-one serials were scheduled for fiscal year 2016-17, and 62 are planned for fiscal year 2017-18.

DJAG Reg Svcs personally advises Level 1s on sensitive issues and may be the JAG representative on different DND/CAF committees. She ensures that: (1) the regions maintain a consistent approach to legal and policy issues ( in particular, by providing direction where the law is unsettled); (2) resources are properly allocated to each region; and (3) operational efficiency is maintained across the Division by appropriate distribution of national or international tasking's.

The Assistant DJAG Reg Svcs, in addition to being the DJAG Reg Svcs deputy (responsible for administrative coordination throughout the Division), also provides services comparable to the AJAGs across the country. The formal constitution of an AJAG(NCR) office with a structure comparable to those found in regional offices would improve performance and service delivery in the NCR.

## **6.6 DIRECTORATE OF DEFENCE COUNSEL SERVICES (DDCS)**

The Director of Defence Counsel Services (DDCS) is appointed by the Minister. Defence Counsel Services (DCS) provides legal services to those who are liable to be charged, dealt with and tried under the Code of Service Discipline (CSD). DDCS is assisted by 3 civilian staff as well as 7 regular and 4 reserve force legal officers and, where required, by contracted civilian counsel.

DDCS is mandated by legislation to provide two types of legal services.

### 1) To provide "legal advice" to CAF members:

- Arrested or detained;
- Assisting officers or accused persons seeking advice "of a general nature" relating to summary trials;
- Faced with an election between summary trial or court martial; and,
- The subject of an investigation under the Code of Service Discipline, a summary investigation or board of inquiry.

Bilingual service is available 24/7 through a toll-free number to persons subject to the CSD. The number of requests received over the past years was approximately 1500. The advice given is generally of a summary nature, delivered over the telephone and based on the information provided by the requestor without access to the complete file. DDCS estimates it will handle over 1500 calls for FY 17/18. This undertaking requires 8,760 hrs of having a lawyer "on call" and 500 to 600 hours of actual "talk time" advising clients.

### 2) To provide "legal counsel" to those who desire DCS representation and are:

- In custody, where a Custody Review Officer has decided not to direct their release;
- Accused, where their charges have been referred for court martial;
- Accused, where there are reasonable grounds to believe that they are unfit to stand trial;
- Accused, where they have been tried at court martial and the Minister appeals; and,
- Tried and convicted, and the Appeal Committee approves counsel at public expense.

The right to the provision of “legal counsel” by DCS is exercised by approximately 96% of those who desire legal representation. DDCS forecasts it will handle approximately 67 courts martial during FY 17/18. This is up from FY 16/17 where there were some unique circumstances affecting case flow through our system. This number includes the cases that will conclude just prior to trial but after significant preparation and involvement by defense counsel. This would require the contracting of an estimated 6 civilian counsel at the trial level in situations where the laying of charges against co-accused precludes DDCS representing all of them. Based on past experience, DDCS anticipates providing counsel in 10 appeals to the CMAC for that period. This would represent an estimated 7 appeals on behalf of members of the CF as well as responding to 3 appeals by the Minister. Past experience indicates that there will be a conflict of interest requiring the hiring of civilian counsel in one appeal.

DCS is presently representing one individual before the Supreme Court of Canada. This case involves an application for leave to appeal. We are awaiting a decision on this issue. A further eleven cases involving the same issue are presently before the Court Martial Appeal Court of Canada (CMAC) and we are awaiting a judgement from that court. Depending on the rulings of these courts there is a potential for twelve cases to be brought before the Supreme Court of Canada in two distinct appeals which we anticipate would be joined.

## **6.7 DIRECTORATE OF MILITARY PROSECUTIONS (DMP)**

The Director of Military Prosecutions (DMP) is appointed by the Minister of National Defence for a four year renewable term. Under the general supervision of the JAG he exercises specific duties and functions in an independent fashion as set out in the National Defence Act (NDA), the Queen’s Regulations and Orders (QR&O), ministerial orders and other agreements, including:

- Providing legal advice to military police personnel assigned to the CAF National Investigation Service (CAFNIS).
- Conducting pre-charge screening of potential service charges under the National Defence Act as investigated by the CAFNIS
- Assisting the Assistant Judge Advocate Generals in their pre-charge screening advice on potential service charges that can only be tried by court martial
- Reviewing all Code of Service Discipline charges referred to him through the CAF chain of command and determining whether:
- The referred charges or other charges founded on the evidence should be preferred for trial by court martial; or

- If the DMP is satisfied that charges should not be tried by court martial, refer the charges to an officer who has jurisdiction to try the accused by summary trial. Where applicable, determining the appropriate jurisdiction between the civilian criminal justice system and the military justice system of offences that are referred to him from the chain of command
- Where applicable, ensuring that victims are afforded a meaningful role in court martial proceedings so that they are protected, considered, informed, respected and heard
- Conducting – within Canada or at deployed locations overseas – the prosecution of all charges before courts martial.
- Acting as appellate counsel for the Minister of National Defence on all appeals from courts martial at the Court Martial Appeal Court (CMAC) and the Supreme Court of Canada (SCC).
- Acting as the representative of the CAF at all custody review hearings conducted before a military judge.

The DMP is assisted in his duties and functions by Regular and Reserve Force Legal Officers appointed to act as military prosecutors, along with civilian paralegals and support staff. This organization is known as the Canadian Military Prosecutions Service (CMPS). In addition to the DMP office in the National Capital Region, CMPS also consists of 5 Regional Military Prosecution (RMP) offices located throughout the country.

## **6.8 DEPUTY JUDGE ADVOCATE / RESERVES (DJAG/RES)**

The JAG PRL is a Primary Reserve organization which consists of 66 legal officer positions and 2 clerk positions. The legal officer positions are located throughout the country. All of the legal officers serve in Class A positions, while the clerks serve in Class B positions.

The JAG PRL works to support the Office of the Judge Advocate in a number of areas. The JAG PRL has most of its officers committed to supporting the DMP, DDCS, and DJAG Reg Svcs. The DDCS and DMP JAG PRL members support their respective Division. The DJAG/RS JAG PRL members primarily support Primary Reserve units, formations, and elements within their geographical location. All JAG PRL officers may backfill Regular Force officers who are deployed or are otherwise away from their duties for extended periods of time. JAG PRL officers are eligible to be selected to deploy in support of domestic and international operations.

## **7. OJAG PERFORMANCE MEASUREMENT AND MANAGEMENT**

Success in achieving performance targets is assessed through the use of the Performance Measurement Decision Support System (PMDSS). The OJAG PMDSS, implemented in April 1999, was determined to be a valid and reliable means of assessing the overall performance of the OJAG by an independent audit conducted in 2002.

Activity statistics gathered by field legal offices and directorates are organized and displayed using a specialized performance management software application that provides the JAG, his deputies and directors with performance information upon which risk mitigation measures and resource allocation decisions can be planned.



Monthly performance reports are provided to divisional and directorate managers and the OJAG business manager has one on one meetings on a quarterly basis with individual deputies to review performance data for their division.

The OJAG has completed the testing of PMDSS 2.0. We anticipate that the new system will be in use by the first quarter FY 17/18. The new performance measurement system will provide refined measurement of both the application of JAG's Mission/Vision as well as support to Defence priorities. Further, the system will incorporate changes to expedite data entry and to enhance its usefulness to the users. We anticipate a surge of service requests once the new system is in place due to a change in reporting criteria and the first full year of use will provide the OJAG with a new baseline amount of service requests per year. The realignment of the OJAG performance measurement software is consistent with the Defence Priority Element to "Develop and Implement Defence Business Management Capability".

## **8. OJAG ORGANIZATION AND ESTABLISHMENT (O&E)**

The OJAG currently consists of 155 established Regular Force legal officer positions allocated primarily to UIC 0160 (OJAG) and in 31 other supporting UICs. The OJAG presently has 130 legal officers on trained effective strength (TES) with a further 33 personnel on the JAG Basic Training List (JAG BTL) and 16 candidate's currently undergoing education through the Military Legal Training Plan (MLTP). There will be an intake of an additional five in August 2017 to the MLTP.

An experience and effective strength reduction has resulted from a significantly greater number of personnel releasing than forecast during the annual military occupation review. The unexpectedly high numbers of experienced personnel taking their release has resulted in the OJAG being unable to fill approximately 20% of Maj/LCdr legal officer positions with trained and experienced personnel. The risk associated with the loss of experience and the decreased effective strength is the inability to respond to the increasing demand for legal services. This risk will not be mitigated in the short-term as a minimum of four years is necessary to develop a legal officer new to the Branch. That said, for the long-term health of the Branch, the OJAG will be seeking an increased Strategic Intake Plan (SIP) to compensate for the experienced and forecast personnel retiring or taking their release.

The Directorate of Cyber Force's proposed establishment change has presently resulted in an increase to the OJAG establishment by one position. We were informed that the DG Cyber's proposal, if accepted, includes the creation of a further 2-3 legal officer positions. This increase in positions exacerbates the effective strength and experience gap risk identified above and may necessitate the creation of an additional DJAG/Ops Directorate dedicated to Cyber Law. Once the requirements from Cyber Force become clear OJAG will be able to determine what our role will be.

The Targeting Capability Implementation Team (TCIT) and the OJAG is in the process of assessing the legal support required for this CAF capacity. Initial staff level planning by TCIT indicates the potential for the creation of as many as six legal officer positions. That increase, if required will be introduced through the Multi Year Establishment Plan (MYEP)

The Civilian O&E information can be found in the OJAG Human Resources Plan for FY 17/18.

## **SECTION 3: RISKS AND PRESSURES**

### **9. RISK MANAGEMENT**

Legal and corporate risk is managed proactively within the OJAG. The JAG and OJAG senior leadership regularly meet to review the latest corporate priorities and devise strategies to deal with potential risks and pressures. The strategic use of data gathered via PMDSS has effectively functioned as an early warning system allowing early identification and resolution/mitigation of prospective risks.

### **10. STRATEGIC RISK ASSESSMENT**

Following are brief descriptions of the main risks faced by the OJAG in FY 17/18.

#### **10.1 DEMAND FOR SERVICES EXCEED PERSONNEL RESOURCES**

A major risk to the OJAG Programme is the relative resource deficit between service demand (the number of legal support requests received) and the current total trained effective strength of the organization (see section 8 above for further detail). Furthermore, even though the operational tempo and the number of legal officers deployed on operations have decreased from the operational tempo during support to the mission in Afghanistan, demand for legal services and support is at an all-time high and has shown to be increasing by 10% per year. Specifically according to current data obtained from PMDSS, legal service demands for FY 16/17 are anticipated to surpass FY 15/16 record numbers.

#### **RISK MITIGATION**

Risk mitigation will require further refinement of the SIP with the Directorate Personnel Generation Requirements (DPGR). Through CAF Recruiting group (CFRG), JAG will continue to undertake concerted recruiting initiatives with a view to obtaining the right Legal Officer candidates in sufficient numbers and at the right time. In seeking to accomplish this goal, the OJAG will target its recruiting efforts in a competitive employment environment to convince the most qualified candidates to view service as a specialist legal officer in the CAF as a career of choice. The OJAG has also been proactive in promoting the option of a Regular Force Component Transfer to its Reserve Force Legal Officers.

Risk related to knowledge and experience loss will be to some extent mitigated through the Legal Knowledge Management (LKM) component of the Comprehensive Information Management Project (CIMP).

#### **10.2 PUBLIC CONFIDENCE IN THE MILITARY JUSTICE SYSTEM**

The Judge Advocate General (JAG) has several duties and functions specifically related to military justice. In addition to acting as legal advisor to the Governor General, the MND, the DND and the CAF in matters relating to military law including military justice, the JAG has the superintendence of the administration of military justice in the CAF. He is required to conduct regular reviews of the administration of military justice. Furthermore he has general supervision of the Director of Military Prosecutions (DMP) and the Director of Defence Counsel Services (DDCS), and may issue general instructions or guidelines to the DMP in respect of prosecutions and to the DDCS in respect of defence counsel services. He may also issue instructions or guidelines to the DMP in respect of particular prosecutions.

The greatest risk to any justice system is a loss of public confidence in the system itself. This is particularly true of the military justice system, which is less familiar to the Canadian public and which exists in part to promote values that are not similarly promoted by the civilian justice system. The military justice system must be seen to be transparent, fair, compliant with the *Canadian Charter of Rights and Freedoms (Charter)*, and consistent with the expectations of all Canadians in order to best serve the needs of the CAF, DND, the Government of Canada and the Canadian public. Public confidence in the administration of military justice will foster the CAF's ability to deliver excellence at home, contribute to Canada's ability to be a strong and reliable partner in the defence of North America, and allow the CAF to project leadership abroad by making effective and meaningful contributions to expeditionary operations. In recognition of the risk associated with a loss of public confidence in the military justice system, the JAG has included, as part of his Mission and Vision, the following as a Strategic Goal: "Lead proactive military justice oversight, responsible development and positive change".

## RISK MITIGATION

Bill C-15 (*Strengthening Military Justice in the Defence of Canada Act*) received Royal Assent on 19 June 2013, and enacted a number of changes to the NDA – some of which are intended to strengthen the military justice system. Some provisions of C-15 were brought into force over the course of previous FY. In order to mitigate the risk of a loss of public confidence associated with excessive delay in fully implementing the provisions of Bill C-15, the MJ Policy directorate is working closely with the Department of Justice regulatory drafters to complete the voluminous regulatory amendment packages required for the full implementation of the bill with a goal of submitting the amendments for approval in the spring 2017 timeframe. Extensive coordination with the Department of Justice has and will continue to be required in order to ensure that this strategic initiative is efficiently addressed.

On 15 June 2015, the Government introduced Bill C-71 (*the Victims Rights in the Military Justice System Act*). This Bill would have strengthened victims rights in the military justice system, mirroring changes made to the civilian justice system by Bill C-32 (*the Victims Bill of Rights Act*). It would also have made important changes to the Summary Trial system to make it more effective in its purpose of providing prompt and fair justice in respect of minor service misconduct. Bill C-71 died on the order paper when Parliament was dissolved on 2 August 2015. The MJ Strategic directorate will continue to support the development of policy and legislative options that would further victim's rights within the military justice system and modify the current summary trial regime as a strategic priority. The development of these policy options contributes to public confidence through responsible development and positive change in the military justice system.

Misconceptions about military justice can lead to a decrease of confidence in the military justice system. The institutional focus of military justice limits the exposure of the broad spectrum of the Canadian public to its processes and this limitation may lead to such misconceptions. One critical means through which the Military Justice Division can continue to promote more broad understanding of and confidence in the military justice system is through strategic legal analysis and engagement (SLAE) with military justice stakeholders, both in Canada and internationally. Strategic legal analysis contributes to the responsible development and positive change in the military justice system. The MJ Strategic directorate has developed, and will continue throughout FY 17/18 to implement a military justice SLAE plan that includes academic, internal, and external outreach components. This outreach is designed to build and strengthen the understanding of and confidence in the administration of military justice through the dissemination of accurate information about the

military justice system. It is also intended to track changes in foreign and international laws and policies relating to military justice in order to promote responsible development of the Canadian military justice system.

Public confidence in the court martial system, which deals with more serious offences under the *National Defence Act*, is essential to the continued effectiveness of the military justice system. In order to ensure that the CAF's court martial system is effective, efficient, and aligns with Canadian values and the rule of law, all the while serving the particular needs of the CAF, the Military Justice Division is undertaking a comprehensive review of the court martial system. This review is conducting a legal and policy analysis of all aspects of the system and, where appropriate, will develop and analyze options to enhance the system – thereby promoting the efficiency, effectively, legitimacy and public trust in the system. The review will lead to the production of a final report in July 2017, although the work of the review team may continue beyond that point in order to further develop preferred options.

The JAG is responsible for the superintendence of the administration of military justice pursuant to subsection 9.2(1) of the *National Defence Act*. Through the development and piloting of processes for the collection and analysis of objective and measurable data relevant to the military justice system, the Superintendence Enhancement and Assessment Project will better position the JAG to superintend the administration of military justice in the CAF by allowing him to maintain an overall appreciation and awareness of the efficiency and effectiveness of the functioning of the military justice system. It will also allow him to make better informed evidence-based recommendations for the responsible development of the military justice system and ensure positive change within the system. Ultimately, this will improve the capacity of the JAG to assess the efficiency and effectiveness of the administration of the *Code of Service Discipline* within the Canadian Armed Forces.

## 11. JAG FINANCES AND RESOURCE REQUIREMENTS

The JAG anticipates being able to fulfill his mandate as well as ensure the day to day running of the OJAG while staying within the OJAG financial allocation for FY 17/18 with the exception of the listed in-year pressures which are above and beyond the usual JAG Programme and cannot be funded using his baseline allocation. The JAG therefore requests the additional funding for the two pressures below are considered and added to his budget allocation as an in-year pressure for FY 17/18. The JAG also requests an increase to the FTE ceiling by two, additional SWE is not required.

### 11.1 LEGACY FILE CLEAN UP - \$60,000

In support of the TBS record keeping directive and the move to NDHQ/Carling Campus, a clean-up of OJAG legacy files is required. There are several cabinets full of physical files located within the DJAG Ops Division that need to be vetted, registered and stored or disposed. In order to address this surge activity, additional temporary resources are required in the form of THS, professional services, and/or PRL. The cost has been calculated based on one RMS clerk for duration of six months. The risk in not completing this activity includes potential loss or destruction of corporate information, knowledge and legal experience.

### **11.2 LEGAL KNOWLEDGE MANAGEMENT (LKM) – INCREASE OF TWO FULL TIME EQUIVALENT POSITIONS (FTE)**

The LKM program attempts to leverage information and knowledge that each lawyer has accumulated over his or her years of experience. The information will allow lawyers to deliver consistent service with information of appropriate quality, comprehensiveness, timeliness and efficiency. In order for the LKM program to be successful an increase of two FTEs is being requested by OJAG. Without the additional staff to obtain and manage the information, the fear is the information will be lost and the program will fail which will result in a loss of efficiency and knowledge.

### **11.3 UPGRADE OF CSNI COMPUTER TERMINAL AND PERIPHERY DEVICES - \$27,000.00**

AJAG(Atlantic) staff require TEMPEST CSNI access for their support to operational commanders and to deployed operations. Due to its age, the current CSNI workstation performs poorly and does not permit simultaneous application processing; as a consequence, the office legal officers have been unable to access classified operational information.

Additionally, in support of the CSNI Port Control Policy, AJAG (Atlantic) must replace and convert their CSNI standalone printer to a networked solution. This will involve new fibre cabling, a Tempest level network switch, and a new network-capable printer.

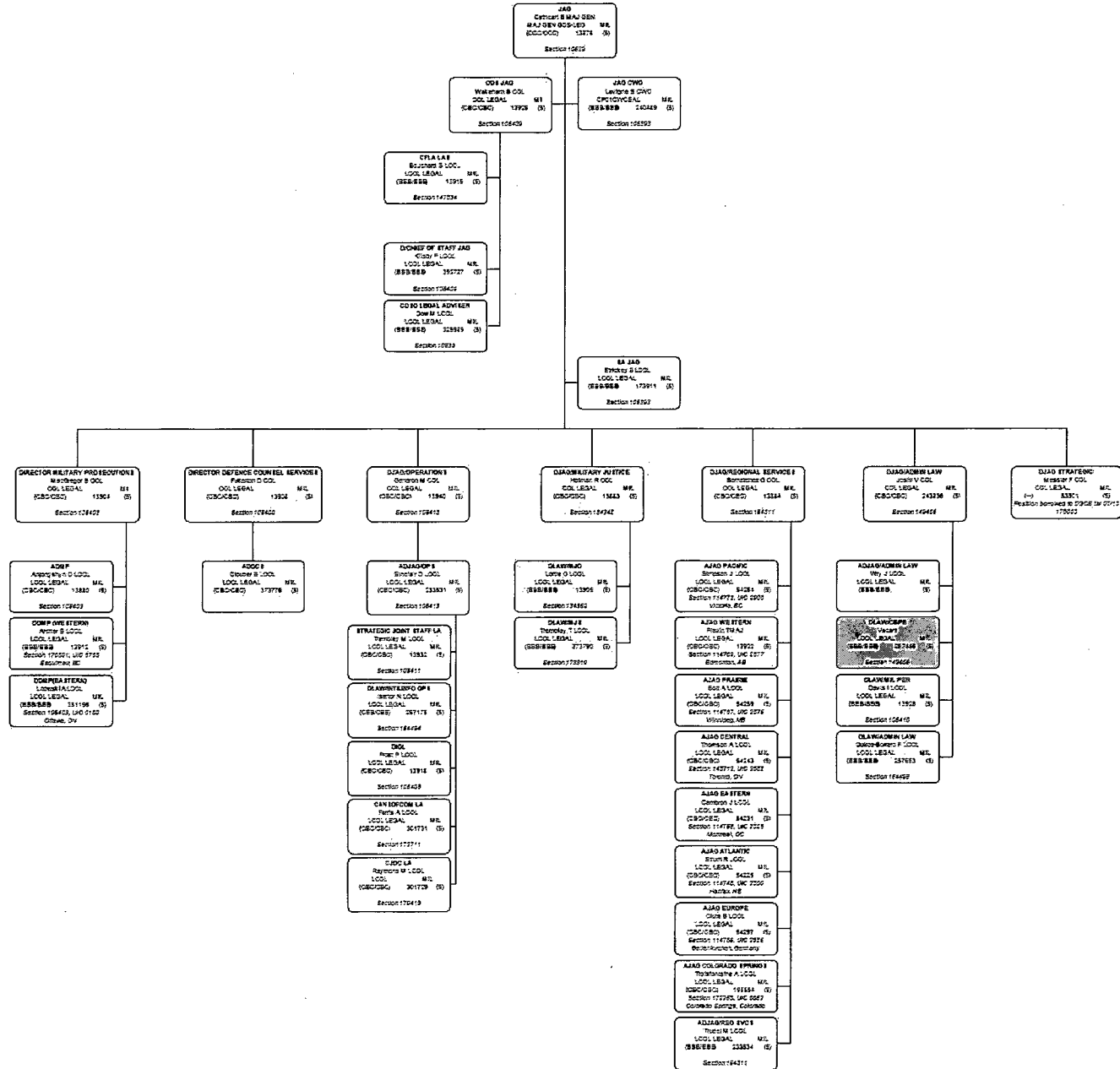
A request to obtain a temporary waiver allowing AJAG(Atlantic) staff to continue with local printing has already been submitted and approved however, if changes are not implemented before the waiver expires, OJAG Legal Officers run the risk of losing printing capability from CSNI networks affecting responsiveness in the delivery of legal services.

## **12. HOSPITALITY REQUIREMENTS**

The OJAG's Centennial will be celebrated in February 2018. OJAG is requesting an amount of \$5,000.00 in hospitality for one of the events. This hospitality event will be held in the broader context of the Legal Branch's Centennial. It will assist in the conducting of CAF business by assembling current OJAG legal officers and VIP participants (*e.g.*, federal judges, members of Parliament, representatives from the legal community, etc.) while allowing them to celebrate the Legal Branch's history and its role in support of the rule of law in Canada and abroad, and to exchange in an informal context on issues that will shape the future of military law and of the Legal Branch. Light food will be served, and alcohol may be served at no cost to VIP participants.

13. OJAG ORGANIZATIONAL CHART

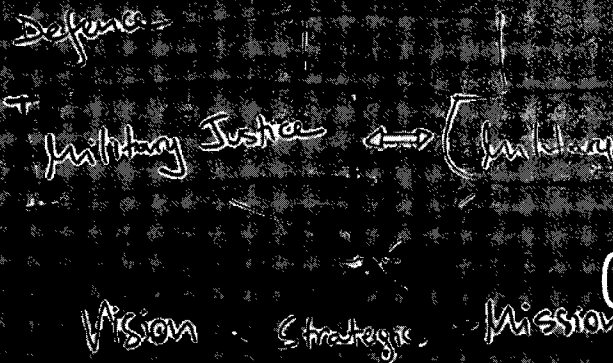
# JUDGE ADVOCATE GENERAL (JAG)



Défense National  
nationale Defence



CABINET DU JUGE-AVOCAT GÉNÉRAL  
OFFICE OF THE JUDGE ADVOCATE GENERAL



# Plan d'affaire du Cabinet du Office of the **JAG** Business Plan Année fiscale / fiscal year **2018-2019**



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# SECTION 1: OFFICE OF THE JUDGE ADVOCATE GENERAL (OJAG)

## 1. THE BASIS OF OJAG BUSINESS PLANNING AND MANAGEMENT

### 1.1 CONTEXT

Level One Advisers are Department of National Defence (DND) and Canadian Armed Forces (CAF) senior managers who have direct accountability to the Deputy Minister (DM) or Chief of the Defence Staff (CDS) and over whom the DM or CDS exercise full authority to assign tasks, goals and resources. Special Entities are those senior managers who, while still responsible to the DM/CDS for effective resource stewardship, have a unique reporting and accountability relationship such that the DM and CDS do not exercise full authority over them. The Judge Advocate General (JAG) is responsible to the Minister of National Defence (MND) in the performance of the JAG's duties and functions<sup>1</sup> and is designated a Special Entity (SE) senior manager.<sup>2</sup>

### 1.2 THE JAG MANDATE

The JAG's duties and functions are set out in the *National Defence Act* (NDA):<sup>3</sup>

- The JAG acts as legal adviser to the Governor General, the Minister, the Department and the CAF in matters relating to military law.<sup>4</sup>
- The JAG has the superintendence of the administration of military justice in the CAF.
- The JAG shall conduct, or cause to be conducted, regular reviews of the administration of military justice.
- The JAG shall report annually to the Minister on the administration of military justice in the CAF.
- The JAG exercises general supervision over the Director of Military Prosecutions (DMP) and the Director of Defence Counsel Services (DDCS).

In addition:

- The JAG has command of all officers and non-commissioned members posted to a position established within the OJAG.<sup>5</sup>

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<sup>1</sup> NDA subsection 9.3(1).

<sup>2</sup> Defence Plan 2001, Chapter 3, article 320.

<sup>3</sup> NDA sections 9.1-9.3, 165.17 and 249.2.

<sup>4</sup> Military law means all international and domestic law relating to the Canadian Forces, including its governance, administration and activities.

<sup>5</sup> QR&O 4.081(2).

- The JAG has the power and jurisdiction of an officer commanding a command with respect to persons on the strength of the OJAG, except with respect to grievances and disciplinary matters.<sup>6</sup>

## **2. OJAG SUPPORT TO THE DEPARTMENTAL RESULTS FRAMEWORK AND THE STRONG, SECURE, ENGAGED INITIATIVES**

The Departmental Results Framework (DRF) was introduced in FY 2016/2017 to replace the Program Alignment Architecture (PAA). The DRF describes, at a high level, the domains in which the Department and Canadian Armed Forces act, the changes they seek to contribute to, and how these support government priorities. A program (3.8) has been created to reflect the JAG's statutory mandate, titled "Military Law Services/Military Justice Superintendence." The JAG's program resides under Core Responsibility 3, Defence Team. The Office of the Chief Military Judge is a segment within the JAG's Performance Information Profile (PIP). The program is a "pure" program, meaning that funds are not mapped to any other programs within the DRF.

The Defence Policy (Strong, Secure, Engaged, SSE) was released in FY 16/17, resulting in the identification of a number of initiatives. Although the OJAG is not identified as a L1 OPI for specific initiatives, it is required to provide legal advice and services in relation to military law and military justice. The current estimate is that the JAG is the primary legal advisor for eight Core Missions, eight Concurrent Operations and 53 initiatives.

## **SECTION 2: DIVISIONAL OBJECTIVES AND PROJECTS**

### **3. OJAG DIVISIONS AND KEY DIVISIONAL GOALS/OBJECTIVES**

The OJAG is comprised of seven regular force subdivisions and the JAG Primary Reserve List (PRL). These include the Chief of Staff (COS), Administrative Law, Military Justice, Operations, and Regional Services Divisions, as well as the Directorate of Defence Counsel Services (DDCS) and the Directorate of Military Prosecutions (DMP).

Each provides client focused, timely, options oriented and operationally driven legal services in support of Government of Canada, Department of National Defence and CAF priorities and objectives.

#### **3.1 CHIEF OF STAFF (COS)**

The Chief of Staff Division is responsible for providing all corporate support services required for the proper functioning of the OJAG. While principally involved with the provision of services to the OJAG, Division staff are also responsible for meeting external corporate requirements, and routinely represent the OJAG at meetings and working groups relevant to the OJAG as part of the larger DND and CAF community.

In terms of support services, the COS Division is responsible for knowledge and information management, civilian human resources support, business management, corporate reporting,

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<sup>6</sup> Ministerial Organization Order 96-082, 1 August 1996.

comptroller and financial services, training, and administrative support services. The COS Division acts as the primary resource for all of OJAG in some key support areas, as well as assisting other Divisions with support tasks devolved to them. Finally, the COS Division provides support to the legal branch advisor, assisting in the recruiting and professional development of legal officers.

### 3.2 DEPUTY JUDGE ADVOCATE GENERAL / ADMINISTRATIVE LAW

The Administrative Law Division headed up by the Deputy Judge Advocate General/ Administrative Law (DJAG/AL) is responsible for providing strategic legal advice and support to the CAF and DND on a wide range of matters dealing with all aspects of a CAF member's service from recruitment to release. The Division comprises three Directorates (the Directorate of Law/Military Personnel, the Directorate of Law/Compensation, Benefits, Pensions & Estates, and the Directorate of Law/Administrative Law) through which strategic legal advice and support is provided principally to the Chief of Military Personnel (CMP) and CMP decision-makers on all matters pertaining to military human resources policy, compensation, benefits and pensions; to the CDS and the Director General Canadian Forces Grievance Authority (DGCFGA) on all matters pertaining to the military grievance process and the handling of individual grievances; and to the Administrative Investigation Support Centre (AISC) in relation to administrative investigations. The AL Division is also responsible for the administration of Service Estates on behalf of the JAG as the Director of Estates and to support the DJAG/AL, in his additional role as the Special Voting Rules Coordinator, to administer the special voting rules applicable to the CAF with respect to federal elections.

The Administrative Law Division is responsible for:

- The provision of legal advice and services in direct support of principal client groups and in their efforts to address the Defence Policy (SSE) initiatives for which they have been assigned principal or coordinating interest, and in particular, initiatives 1, 6, 7, 8, 9, F, 18, 27, 28, 75, 78, 80 and 81. The Funded Allocation Plan includes \$15,000 for targeted capacity-building training focused on strategic planning and programme development to better enable the Division to efficiently and effectively provide the legal services required to support the strategic programme/policy development agendas of its clients.
- The provision of legal advice and services to CMP and CMP decision-makers in their efforts to implement the following priority identified in the MND mandate letter that falls within CMP's functional authority: work with the Minister of Veterans Affairs/ Associate MND to reduce complexity, overhaul service delivery, and strengthen partnerships between National Defence and Veterans Affairs.
- The provision of legal advice and services to CMP and CMP decision-makers in their efforts to implement the following priorities identified in the Minister of Veterans Affairs/ Assoc MND mandate letter that fall within CMP's functional authority:
  - work with the MND to reduce complexity and strengthen partnerships between the two departments and drive efforts to close the seam between them,
  - increase the veteran survivor's pension amount from 50% to 70%, and
  - eliminate the "marriage after 60" claw-back clause so that surviving spouses of veterans receive appropriate pension and health benefits.

- The provision of legal advice and services to CMP and CMP decision-makers in their efforts to support the efforts of the Minister of Democratic Institutions to amend the Canada Elections Act and in particular the portions pertaining to the Special Voting Rules for the CAF.
- The provision of legal advice and services to decision-makers within principal client groups to advance other strategic priorities not directly linked to SSE or mandate letters.

The possible interdependencies in each area depend on the specific subject matters for which legal advice/support is being provided. There may be a requirement to consult and seek specialised legal support from other OJAG Divisions, from DND/CF LA, or from other DOJ units in order to provide the needed legal advice/support.

### 3.3 DEPUTY JUDGE ADVOCATE GENERAL / MILITARY JUSTICE (DJAG/MJ)

The JAG has several duties and functions specifically related to military justice. In addition to acting as legal advisor to the Governor General, the MND, the DND and the CAF in matters relating to military law including military justice, the JAG has the superintendence of the administration of military justice in the CAF. She is required to conduct regular reviews of the administration of military justice. Furthermore she has general supervision of the Director of Military Prosecutions (DMP) and the Director of Defence Counsel Services (DDCS), and may issue general instructions or guidelines to the DMP with respect to prosecutions and to the DDCS with respect to defence counsel services. She may also issue instructions or guidelines to the DMP with respect to particular prosecutions.

The Military Justice (MJ) Division is responsible for supporting the JAG in fulfilling her statutory responsibility for superintendence of the administration of military justice, including assisting in the development and implementation of the JAG's strategic military justice vision. The MJ Division delivers high quality advisory services, and legislative and regulatory support in the military justice field, and actively promotes a greater understanding of the military justice system within the legislative, executive, professional and academic communities, at home and abroad. The MJ Division is established with two directorates, but is currently organized into four, as follows.

- **DLaw/MJ Strategic** is responsible for helping the JAG in her development of a strategic military justice vision that will allow the OJAG and the CAF to anticipate and respond to external and internal challenges and effectively inform the development of the Canadian military justice system.
- **DLaw/MJ Policy** is responsible for implementing the JAG's strategic military justice vision, as well as for the development of regulations that result from other departments' legislative initiatives or from more comprehensive reforms to the National Defence Act (NDA). The directorate also drafts ministerial and CDS orders relating to the military justice system.
- **DLaw/MJ Operations** is responsible for providing direct, operational, support to the JAG as the superintendent of the administration of military justice in the CAF. In effect, the directorate is responsible for advising on the day-to-day operation of the military justice system. This includes providing support on military justice issues to all legal officers within the OJAG, formulating OJAG policy on military justice issues and providing the necessary support for the appointment of individuals to the various

military justice committees. The directorate is also responsible for the production of the JAG's Annual Report to the MND, and for supporting the JAG in fulfilling her general supervision responsibilities with respect to the prosecution and defence counsel functions within the military justice system.

- **Directorate - CFPM Legal Services** is responsible for providing legal advice and services to the Canadian Forces Provost Marshal (CFPM) and Commander of the Canadian Forces Military Police Group (CF MP Gp), as well as staff within CF MP Gp Headquarters. This directorate is responsible for supporting the CFPM and the CF MP Gp in their conduct of policing operations, investigations, custody and mandated security tasks lawfully, efficiently and effectively. Its lines of operations include the provision of legal support to judicial proceedings involving the MP, which are often of strategic interest because of the sensitivity of cases, the complexity of their legal issues, and the importance of maintaining institutional trust within the CAF as well as public confidence.

Together, the various directorates of the MJ Division are responsible for:

**Bill C-15 regulations** - Bill C-15 (Strengthening Military Justice in the Defence of Canada Act) received Royal Assent on 19 June 2013, and enacted a number of changes to the NDA, some of which are intended to strengthen the military justice system. The MJ Policy directorate has worked closely with Department of Justice drafters to complete the regulatory amendments required for full implementation of C-15, and will assist in the development and delivery of the extensive training for military justice system participants required as a result of the amendments.

**Support to victims** - The MJ Division is working to provide options for putting in place a legal framework for victim support within the military justice system, while CFPM Legal Services are supporting the CFPM in developing a policy framework. CFPM Legal Services are also supporting a CFPM initiative that seeks to enhance public confidence in the military justice system through review of sexual assault investigation files that have been concluded unfounded.

**Superintendence of the administration of Military Justice** - Pursuant to subsection 9.2(1) of the NDA, the JAG is responsible for the superintendence of the administration of military justice in the CAF.

Currently, in order to superintend the administration of military justice the OJAG maintains two separate databases for summary trial and court martial results which provide useful data on completed trials, in addition to a separate database maintained by the Director of Military Prosecutions. Although somewhat effective, these databases are duplicative and at times there are discrepancies between them. In addition, for summary trial data, the OJAG only collects data following the completion of a summary trial as opposed to throughout the entire process and it depends on unit authorities to provide Records of Disciplinary Proceedings once a summary trial has been completed. Therefore, the JAG does not have any oversight of cases as they progress through the summary trial process and the data provided by units is often incomplete. This creates a risk for the military justice system in that the JAG is not able to superintend all aspects of the administration of the system. In order to mitigate this risk, and improve superintendence more broadly, the MJ Division will work with ADM(IM) to create a real-time centralized military justice case management tool and database which will enhance the CAF's ability to monitor the progression of cases and the JAG's ability to superintend the administration of military justice by:

- maintaining an overall appreciation and up-to-date awareness of the efficiency and effectiveness of the functioning of the military justice system;
- identifying and implementing procedures to assist commanders at all levels in their responsibilities for the day-to-day administration of the military justice system by making specific recommendations to improve and enhance their military justice related processes;
- identifying larger trends in the administration of military justice, including those areas that may require further investigation; and
- providing complete information allowing for evidence-based recommendations for the responsible development of the military justice system and ensuring meaningful change within the system.

The database will allow the tracking of military justice files from the reporting of an alleged infraction, through to investigation, charge laying, trial disposition and review in both the summary trial and court martial processes. Front end users of the system (including investigators, charge layers, presiding officers and review authorities) will input data at each stage of the process thereby allowing unit authorities and legal officers to track the progress of a file in real-time. It will also ensure that a case proceeds through the system in a timely manner by ensuring that necessary steps are taken in the required order and prompting key actors at the appropriate time when they are required to take a specific action.

In addition, DLaw/MJ Strat is engaged in the longer term project of helping to develop a performance measurement system with a view to allowing the OJAG to gather good quality and pertinent data, leading to a method to measure military justice system performance, and assessments – on a quantitative basis – of the effectiveness, efficiency and legitimacy of the military justice system. Use of this performance measurement system will in turn guide or dictate which data should be gathered, and assist in refining, as necessary, the data collection and tracking systems used. Ultimately, this performance measurement system will assist the JAG both to effectively superintend the administration of military justice in the CAF and to develop options for its improvement.

**Support to Military Justice System reviews.** As part of her responsibility to superintend the administration of military justice, the JAG is also responsible for conducting regular reviews of the administration of military justice pursuant to subsection 9.2(2) of the NDA. In previous years those reviews have taken the form of stakeholder surveys and on-site visits and interviews by members of the MJ Division to elicit feedback from selected key stakeholders. The information gathered provided useful qualitative feedback on the functioning of the military justice system from a chain of command perspective which positioned the JAG to assess the effectiveness of the military justice system and assist in the development of military justice policy. It is anticipated that members of the MJ Division will conduct similar surveys and interviews in fiscal year (FY) 18/19.

**Support to institutional governance of the Military Police.** CFPM Legal Services will continue to play an important role in the institutional governance of the MP in several ways, including by taking an active part in the generation of the CF MP Gp Orders, advising MP Professional Standards and with respect to Credential Review Board decisions, and assisting the CFPM in his interactions with the Military Police Complaints Commission (MPCC).

**Stakeholder engagement** - The greatest risk to any justice system is a loss of public confidence in the system itself. This is particularly true of the military justice system, which is less familiar to the Canadian public and which exists in part to promote values that are not similarly promoted by the civilian justice system. The military justice system must be – and must be seen to be – transparent, fair, compliant with the Canadian Charter of Rights and Freedoms, and consistent with the expectations of all Canadians in order to best serve the needs of the CAF, DND, the Government of Canada and the Canadian public. Public confidence in the administration of military justice will foster the CAF’s ability to be strong at home, secure in North America, and engaged in the world; to achieve excellence across the full spectrum of military operations, from humanitarian assistance and disaster relief, to peacekeeping, to combat.

One critical means through which the MJ Division can continue to promote more broad understanding of and confidence in the military justice system is through strategic legal engagement (SLE) with military justice stakeholders, predominantly in Canada but also internationally as appropriate. The MJ Strategic directorate is developing, and will implement throughout FY 18/19, a military justice SLE plan that includes government, parliamentary, academic, internal, and external outreach components. This outreach is designed to build and strengthen the understanding of and confidence in the administration of military justice through the dissemination of accurate information about the military justice system. It is also intended to track changes in foreign and international laws and policies relating to military justice in order to promote responsible development of the Canadian military justice system.

**Aboriginal Sentencing** - The MJ Division is proposing two related initiatives in line with broader government priorities to further Canada’s relationship with aboriginal peoples and developments in the civilian justice system providing special rules for the sentencing of aboriginal offenders. First, the Division is supporting broader departmental and governmental initiatives to give aboriginal sentencing considerations the force of law within the military justice system. Second, the Division is examining options to implement these changes through a policy on aboriginal sentencing. To further these initiatives, Division members are consulting with a broad range of stakeholders, both within the CAF and wider government, and external to government.

### 3.4 DEPUTY JUDGE ADVOCATE GENERAL / OPERATIONS (DJAG/OPS)

The Operations Division is responsible for the provision of legal support to the CAF and DND in relation to the law applicable to domestic and international operations. The legal officers of the Operations Division advise the CAF chain of command at the tactical, operational and strategic levels. In addition, the Operations Division oversees all legal officers on deployed operations. The Operations Division is structured to provide multi-level legal services to key CAF and DND stakeholders and is comprised of the following:

**Assistant Deputy Judge Advocate General Operations (ADJAG/Ops)** is the legal advisor who acts as Division second-in-command (2IC). In addition to his duties as 2IC, he supervises the legal advisor seconded to the Privy Council Office (PCO) and the National Defence Memorandum of Understanding Coordinator (NDMOUC), responsible for the review and processing of all DND/CAF MOUs.

**Strategic Joint Staff Legal Advisor (SJS LA)** provides legal advice on all strategic level operational issues affecting CAF operations around the world. SJS LA is the primary legal advisor to the Strategic Joint Staff (SJS) – who support and report to the CDS – as well as to the Director General International Security Policy (DGIS Pol), responsible for providing policy advice to the



MND in support of domestic and international CAF operations. SJS LA also advises on selected issues from Director General Space (DG Space) and the Vice Chief of the Defence Staff (VCDS) OUTCAN. In addition to supervising the legal officers assigned to SJS LA, the SJS LA supervises the legal officer assigned to the Canadian Special Operations Forces Command (CANSOFCOM). Key areas of advice for SJS LA include domestic and international legal authorities, operations orders, rules of engagement and use of force, diplomatic correspondence, air security incidents, NORAD and NATO operations, and space law.

**Directorate of International and Operational Law (DIOL)** provides advice on the international and domestic legal frameworks for CAF expeditionary activities. This includes advice on extant and prospective international instruments, and participation in initiatives and engagements dealing with areas of international law that touch upon CAF interests. This law includes, but is not limited to, the law of armed conflict (LOAC), international human rights law, and international criminal law. Pertinent areas of domestic law include the Crown Prerogative and the extraterritorial application of domestic law. DIOL provides advice to directorates within the OJAG and divisions within ADM Policy, including the Director General of Policy Planning, and – in conjunction with SJS LA – DG IS Pol. DIOL is the principal liaison between the OJAG and outside organizations such as the Legal Affairs Bureau of Global Affairs Canada and NGOs including the Canadian Red Cross and the International Committee of the Red Cross.

**Canadian Joint Operations Command Legal Advisor (CJOC LA)** provides legal advice to Commander CJOC and his staff on all legal matters related to the conduct of military operations at the operational level, in both continental and expeditionary contexts. CJOC LA also provides legal support at the tactical level by supervising deployed legal advisors and, in conjunction with those legal advisors when local CAF assets are committed domestically (e.g., when military assistance is provided to civilian agencies responding to natural disasters or to law enforcement agencies). Whenever component commanders are placed under the command of Commander CJOC, CJOC LA coordinates the provision of legal services to those component commanders as well as to CJOC. The legal services provided by CJOC LA include advice on the domestic legal framework applicable to military operations as well as on international law applicable to expeditionary operations (e.g., the legal standards applicable to the use of force, detention, the parameters of assistance provided to civilian agencies, and interoperability with international allies and partners). CJOC LA also contributes to CAF efforts to maintain a high state of readiness and preparedness by offering legal support to the generation of joint doctrine and the conduct – in conjunction with the Regional Services Division – of joint exercises.

**Canadian Special Operations Forces Command Legal Advisor (CANSOFCOM LA)** provides legal advice in all aspects of military law to the five units that belong to CANSOFCOM (Joint Task Force 2, Canadian Joint Incident Response Unit, Canadian Special Operations Regiment, 427 Special Operations Aviation Squadron, and Canadian Special Operations Training Centre), as well as to CANSOFCOM Headquarters. Due to CANSOFCOM's domestic and international mandates to respond to terrorist attacks, international crisis and chemical, biological, radiological and nuclear (CBRN) threats, CANSOFCOM LA also provides task-tailored legal advice with respect to operational and international legal matters in support of specialized task forces (TF), including the Immediate Response TF, the CBRN TF and TF Arrowhead, three standing Special Operations TF.

**Directorate of Law, Intelligence and Information Operations (DLaw/I&IO)** provides legal advice on strategic, operational and tactical level issues relating to both domestic and international matters of an intelligence nature, as well as in relation to the development and employment of cyber capabilities. DLaw/I&IO is the primary legal advisor to the Canadian Forces Intelligence Command and its units and elements, as well as to the Canadian Forces Information Operations Group (CFIOG), and Director General Cyber (DG Cyber). Key areas of legal advice for DLaw/I&IO include information sharing with both domestic and international entities; human, signals and open source intelligence; counter-intelligence investigations; and the development of future cyber capabilities (directly linked to SSE initiatives). DLaw/I&IO is also responsible for providing lectures and other training to the Canadian Forces School of Military Intelligence (CFSMI).

### **3.5 DEPUTY JUDGE ADVOCATE GENERAL / REGIONAL SERVICES (DJAG/REG SVCS)**

The Deputy Judge Advocate General – Regional Services (DJAG/Reg Svcs) provides general legal advisory services and support to the CAF and DND on matters across the full spectrum of military law, including military justice, administrative law, operational law, as well as supporting CAF units in their training, education and force generation. The Reg Svcs Division is comprised of regular and reserve force legal officers, senior non-commissioned officers and DND employees. They assist the JAG in carrying out her statutory responsibilities.

In the National Capital Region (NCR), the Reg Svcs Division provides general legal support to National Defence Headquarters (NDHQ), as well as to the Canadian Forces Support Unit (Ottawa) and other units and elements. DJAG/Reg Svcs personally advises NDHQ Level 1s on sensitive issues and may also participate in their leadership meetings or briefings. He ensures that: (1) legal officers within the Reg Svcs Division maintain a consistent approach to legal and policy issues (in particular, by providing direction where the law is unsettled); (2) resources are properly allocated to each region; and (3) operational efficiency is maintained across the Division by appropriate distribution of national or international taskings. The Assistant DJAG Reg Svcs, in addition to being the DJAG/Reg Svcs deputy (responsible for administrative coordination throughout the Division), also provides services comparable to the regional Assistant Judge Advocate General (AJAG) offices across the country.

DJAG/Reg Svcs, Assistant DJAG/Reg Svcs, and the Deputy Judge Advocate (DJA) Ottawa legal officers provide general legal advice at the strategic and tactical level, often on issues which are time-sensitive and require consultation with other DJAGs or DND/CF LA. The work is complex and diversified, and the number of individual clients in each organization is significant, ranging from warrant officers requesting advice on disciplinary matters, to general or flag officers, directors or senior managers requesting advice on matters across the full spectrum of military law.

The Reg Svcs Division also advises formations and units across Canada, in Europe, and at NORAD Headquarters in Colorado, as well as the Canadian Defence Liaison Staff in London and Washington and Canadian Defence Attaches around the world. The AJAGs and their DJAs are the front-line legal advisors for all CAF clients outside the NCR, supporting day-to-day command and control and training activities for regular and reserve force units and elements.

The Reg Svcs Division force generates most of the deployed legal officers for CAF core missions within Canada and abroad, as well as the legal officers who support military exercises. The Reg Svcs Division also delivers two-day Presiding Officer Certification Training (POCT) course serials at NDHQ and other defence establishments throughout Canada.

### 3.6 DIRECTORATE OF DEFENCE COUNSEL SERVICES (DDCS)

The Director of Defence Counsel Services (DDCS) is appointed by the MND for a fixed term of four years. Defence Counsel Services (DCS) provides prescribed legal services to those who are liable to be charged, dealt with and tried under the Code of Service Discipline (CSD). DDCS provides, supervises and directs the provision of these legal services under the general supervision of the JAG. DDCS is assisted by three DND employees as well as seven regular and four reserve force legal officers, and where required, by contracted civilian counsel.

A person who is liable to be charged, dealt with and tried under the CSD has the statutory right to be represented free of charge in the circumstances and in the manner prescribed in the regulations made by Governor in Council.

DDCS is mandated by legislation to provide two types of legal services.

First, to provide legal advice to those who are:

- arrested or detained;
- assisting officers or accused persons seeking advice “of a general nature” relating to summary trials;
- faced with an election between summary trial or court martial; or
- the subject of an investigation under the Code of Service Discipline, a summary investigation or board of inquiry.

Bilingual service is available 24/7 through a toll-free number to persons subject to the CSD. The number of requests received over the past years has been approximately 1500. The advice given is generally of a summary nature, delivered over the phone and based on the information provided by the requestor without access to the complete file. DDCS estimates it will handle over 1500 calls for FY 18/19. This undertaking requires 8,760 hrs of having a lawyer “on call” and 500 to 600 hours of actual “talk time” advising clients.

Second, to provide legal counsel to those who desire DCS representation and are:

- in custody, where a Custody Review Officer has decided not to direct their release;
- accused, where their charges have been referred for court martial;
- accused, where there are reasonable grounds to believe that they are unfit to stand trial;
- accused, where they have been tried at court martial and the Minister appeals; or
- tried and convicted, and the Appeal Committee approves counsel at public expense.

The right to the provision of legal counsel by DCS is exercised by approximately 96% of those who desire legal representation. DDCS forecasts it will handle approximately 66 courts martial during FY 18/19. This is up from FY 16/17 where there were some unique circumstances affecting case flow through the system. This number includes cases that will conclude just prior to trial but after significant preparation and involvement by defense counsel. This will require the contracting of an estimated six civilian counsel at the trial level in situations where either the laying of charges against co-accused precludes DDCS representing all of them or where there are other reasons that the accused cannot be represented by military counsel.

Based on past experience, DDCS anticipates providing counsel in 10 appeals to the Court Martial Appeal Court (CMAC) for this period. This would represent an estimated four appeals on behalf of CAF members as well as responding to six appeals by the MND. Past experience indicates that there will be a conflict of interest requiring the hiring of civilian counsel in one appeal.

DCS is presently representing 11 individuals before the Supreme Court of Canada (SCC). These have been joined together in a single case. This case is presently at the stage of an application for leave to appeal. DCS is awaiting a decision on this issue. A further case involving section 11(f) of the Charter is presently before the CMAC and DCS is also awaiting a judgement from that court. Depending on the rulings of these courts there is a potential for twelve cases to be brought before the SCC in two distinct appeals which DCS anticipates would be joined.

These tasks for FY 18/19 would require maintenance of the current staffing at DCS, which has only recently been brought up to authorized strength after running for several years under authorized manning levels. If leave is granted on the applications to the SCC, stability will be required in DCS legal officers so that this constitutional litigation, which has spanned some years, can be brought to a close on the merits.

This business plan is based on DCS being assigned resources that will maintain its mandated strength of eight regular force legal officers, as well as having reserve positions filled to historical levels. It is based on the anticipated workload rising slightly now that a fourth military judge has been appointed, and courts martial are receiving and resolving cases arising from Op Honour.

### **3.7 DIRECTORATE OF MILITARY PROSECUTIONS (DMP)**

The Director of Military Prosecutions (DMP) is appointed by the MND. Under the general supervision of the JAG, he exercises specific duties and functions in an independent fashion as set out in the NDA, the Queen's Regulations & Orders (QR&O), ministerial orders and other instruments, including:

- Supporting the JAG in her duty under section 9.2 of the NDA to superintend the administration of military justice in the CAF;
- Providing legal advice and training to military police personnel assigned to the CF National Investigation Service (CFNIS);
- Conducting pre-charge screening of potential service charges under the NDA as investigated by the CFNIS;
- Assisting the AJAGs and DJAs in their pre-charge screening advice on charges for potential service offences that can only be tried by court martial;
- Reviewing all CSD charges referred to him through the CAF chain of command and determining whether:
  - The referred charges or other charges founded on the evidence should be preferred for trial by court martial; or
  - If the DMP is satisfied that charges should not be tried by court martial, refer the charges to an officer who has jurisdiction to try the accused by summary trial. Where applicable, determining the appropriate jurisdiction between the civilian criminal justice system and the military justice system of offences referred to him from the chain of command.

- Where applicable, ensuring that victims are afforded a meaningful role in court martial proceedings so that they are protected, considered, informed, respected and heard;
- Conducting – within Canada or at deployed locations overseas – the prosecution of all charges before courts martial;
- Acting as appellate counsel for the MND on all appeals from courts martial at the CMAC and the Supreme Court of Canada; and
- Acting as the representative of the CAF at all custody review hearings conducted before a military judge.

Prosecutors from the CMPS undertake these duties and functions on behalf of DMP, with both regular and reserve force prosecutors sometimes conducting sensitive and high profile prosecutions across the country.

There are four primary strategic concerns for DMP: data collection and performance management, support for victims, adequate numbers of DND employees, and prosecutors' proficiency.

Data collection and performance measurement are two critical requirements to enable DMP to fulfill his statutory mandate. Significant time and human resources have been allocated, in collaboration with JAG Information Services, to developing a database to track CMPS output regarding pre-charge files and referrals as well as delays, which are reported in the DMP Annual Report. The purpose of the database is also to gather statistics to enable decision-making regarding resource allocation and to support the JAG in her duty to superintend the administration of military justice in the CAF. Finally, the database will also be instrumental in allowing DMP to maintain public confidence in the military justice system and in military prosecutions through transparency in providing timely information to the public, the media, and the Office of the Auditor General.

Support for victims has been clearly stated as a DND and CAF strategic objective in Canada's Defence Policy (SSE initiative 19). As such, the DMP remains committed to ensuring that CAF environment is free from workplace harassment and violence as expressly set out in the MND's mandate letter, by holding CAF members accountable in an open and transparent court martial system. DMP will further continue working on finding ways to better account for victims' views in the course of prosecuting sexual misconduct offences and on the continuous improvement of DMP policies and practices in that regard.

#### **Strategic Objectives and Goals for DMP:**

- Continue to provide competent, fair, swift and deployable prosecution services to the CAF in Canada and overseas;
- Continue to make an effective contribution to the maintenance of discipline, morale and effectiveness in the CAF;
- Seek to achieve and uphold the highest standards in supporting victims and ridding the CAF of workplace harassment and violence;
- Continue to provide legal advice and training to the CFNIS to increase the overall effectiveness of investigations and ultimately the military justice system;

- Continue to develop the skills and experience required to carry out criminal prosecutions, especially pertaining to sexual misconduct offences as prosecutors' competency is key in achieving all other objectives;
- Continue to build bonds with other prosecution services - nationally and internationally, to gain exposure to best practices while sharing with others experience gained in the military justice system;
- Continue to inform the public with a view of supporting DMP's vision of increasing public confidence in the military justice system and in military prosecutions; and
- Build effective tools to monitor and measure CMPS performance in fulfilling its mandate. This will in turn enable DMP in supporting the JAG in her duty to superintend the administration of military justice in the CAF, in augmenting transparency regarding military prosecutions and in contributing to the principled development of the military justice system.

In accomplishing these strategic objectives and goals, DMP supports SSE, particularly the objectives regarding the enhanced investigation and prosecution of sexual offences at page 27 as well as objectives 18 to 21 regarding the promotion of a culture of leadership, respect and honour.

In summary, CMPS will continue to support DMP in carrying out his statutory duties, constantly seeking ways to work more efficiently and effectively. The proactive communication of DMP's independence will increase awareness of his unique and important role within the military justice system.

### **3.8 DEPUTY JUDGE ADVOCATE / RESERVES (DJAG/RES)**

The JAG PRL consists of 66 legal officer and four clerk positions. The legal officer positions are located throughout Canada, while the clerk positions are in Ottawa. The legal officers generally serve in Class A positions, while two clerks currently serve in Class B positions. However, JAG PRL legal officers may from time to time perform Class B service in order to backfill regular force legal officers who are deployed or are otherwise away from their duties for extended periods of time. JAG PRL officers are also eligible to be selected to deploy in support of domestic and international operations. Members of the JAG PRL otherwise support the OJAG in a number of areas, with the majority supporting DMP, DDCS, and DJAG/Reg Svcs.

## **4. OJAG PERFORMANCE MEASUREMENT REPORTING TOOL (PMRT)**

The OJAG continues its integration with the DND/CAF approach to its Force, Posture and Readiness (FP&R), SSE and the Departmental Results Framework (DRF). The OJAG has been given its own DRF program (3.8 – Military Law Services/Military Justice Superintendence) as part of the Defence Team Core Responsibility. Its focus is the JAG's statutory mandate. The challenge for performance measurement is that the OJAG provides legal services in relation to most of the DND/CAF Core Responsibilities without the JAG serving as OPI for any SSE initiatives.

Since 1999, the OJAG has relied on the Performance Measurement Decision Support System (PMDSS) to measure work output, with all legal officers being required to record service requests, as well as leave and sick days taken, number of days in court; number of days delivering and receiving training etc. Monthly reports were generated for each level in the OJAG chain of

command. A 2002 independent audit assessed PMDSS to be a valid and reliable means of assessing the overall performance of the OJAG.

However, the current production version was released in 2008, and is an aging non-standard application in need of modernization. Moreover, it has not kept pace with the evolving nature of military legal services, and therefore provides uncertain data that does not necessarily measure what is required. Furthermore, legal officers did not necessarily input data in a consistent manner nor – in view of significant workload pressures – on a consistent basis. As a result of these concerns about the reliability and validity of PMDSS data, the JAG in late 2017 directed that the OJAG cease use of PMDSS.

However, with the advent of the new Defence Policy, the OJAG is required to assess its capacities in terms of its FP&R, SSE and the DRF, and to provide better analytics regarding the provision of legal services. This can only be achieved with a modern, flexible performance measurement system that enables evidence-based decision-making.

The anticipated replacement, currently identified as the OJAG Performance Management Reporting Tool (PMRT), will be based on a Microsoft Dynamics (CRM) platform that is compatible with Business Objects (the overarching reporting framework directed by the VCDS). It is anticipated that the PMRT will be easily adapted to perform this function to enable effective real-time decisions, efficient resource allocation, and appropriate real-time data concerning the legal services provided by the OJAG to DND and the CAF. The analytics and design parameters are currently being devised with the intent of implementation in FY 18/19.

## **5. OJAG ORGANIZATION AND ESTABLISHMENT (O&E)**

The OJAG currently includes 148 regular force legal officer positions. The Legal Branch presently has a trained effective strength (TES) of 135 legal officers with a further 55 personnel on the Basic Training List (BTL). Of those on the BTL, 28 are presently employed within the OJAG, 17 are currently completing law school through the Military Legal Training Plan, nine are attending second language training and one is attending the Basic Military Officer Qualification course.

Higher than forecast attrition of legal officers has reduced the Legal Branch TES, such that approximately 15% of Maj/LCdr legal officer positions within the OJAG are unfilled. This creates a risk that the OJAG will not be able to respond to the demand for legal services (reported in PMDSS as increasing from 34,508 in F 10/11 to 51,025 in FY 14/15) in a timely fashion. This risk will not be mitigated in the short term, as a minimum of four years is necessary to train and develop a legal officer.

In FY 17/18, Chief of Programme – at the request of CAF sponsors – established two new legal officer positions within the OJAG, one with the Targeting Capability Implementation Team (TCIT), and one with the CAF task force in Latvia. Five additional legal officer positions have been also been requested by CAF sponsors through the Defence Team Establishment Plan (DTEP) process for FY 18/19 and subsequent years: two more positions for TCIT, two to support cyber capability development, and one to support CANSOFCOM. These additional positions, if approved, will exacerbate the TES gap risk identified above.

DCS will reclassify their CR-3 position to that of CR-5 to increase civilian support within DCS and to make the position attractive to those with the required skills and consistent with actual responsibilities of the position.

## **SECTION 3: RISKS AND PRESSURES**

### **6. RISK MANAGEMENT**

OJAG senior leadership meet regularly to review the latest DND/CAF priorities and to devise strategies to deal with potential or actual risks and pressures.

### **7. STRATEGIC RISK ASSESSMENT**

Following are brief descriptions of the main risks faced by the OJAG in FY 18/19.

#### **7.1 SHORTAGE OF LEGAL OFFICERS**

A major risk to the OJAG program is the shortage of trained and experienced legal officers, with 15% of the Maj/LCdr legal officer positions in the OJAG being unfilled (see section 5 above for further detail). This, together with an increase in requests for legal services, was noted in the recent evaluation performed by ADM (Review Services).

#### **RISK MITIGATION**

Risk mitigation will require further refinement of the Strategic Intake Plan (SIP) with the Directorate Personnel Generation Requirements (DPGR). Through the CF Recruiting Group (CFRG), the Legal Branch Advisor will continue to undertake concerted recruiting initiatives with a view to obtaining the right legal officer candidates in sufficient numbers and at the right time. In seeking to accomplish this goal, the Legal Branch will target its recruiting efforts in a competitive employment environment to convince the most qualified candidates to view service as a military legal officer as a career of choice. The OJAG has also been proactive in promoting to its reserve force legal officers the option of a component transfer to the regular force.

### **8. JAG FINANCES AND RESOURCE REQUIREMENTS**

The JAG anticipates being able to fulfill her mandate as well as ensure the day-to-day running of the OJAG while staying within the OJAG financial allocation for FY 18/19 with the exception of the listed in-year pressures and one baseline pressure. These are above and beyond the usual OJAG program and cannot be funded using her baseline allocation. The JAG therefore requests the additional funding for the two pressures below to be considered and added to her budget allocation as an in-year pressure for FY 18/19. The JAG also requests that the additional funds for C125 be approved as a baseline pressure.

#### **8.1 IMPLEMENTATION OF A MILITARY JUSTICE CASE MANAGEMENT SYSTEM – FY 18/19 \$349,124; FY 19/20 \$53,725; FY 20/21 \$53,725**

The military justice system is a tool for commanders and leaders at all levels of the CAF which contributes to the operational effectiveness of the CAF by promoting discipline, efficiency and morale. The Defence Plan 2016-2019 lists "Integrated Information Management (IM) / Information Technology (IT)" as one of the primary risks and priorities. Furthermore, pursuant to



subsection 9.2(1) of the NDA, the JAG has a statutory responsibility to superintend the administration of military justice in the CAF.

The current military justice database is an ad hoc tool with multiple potential points of failure. It is compiled manually and after the fact and therefore lacks the ability to provide key military justice stakeholders with up-to-date information. Furthermore, it is dependent on unit authorities to forward completed, paper-based records of disciplinary proceedings (RDPs) on a monthly basis (pursuant to QR&O 107.15). Often times, as there is no mechanism to ensure compliance, the data remains incomplete. This precludes the JAG from using it to identify trends in the discipline of the CAF and to develop evidence-based policy options.

The electronic case management system will be a fully integrated, electronic system designed to track military justice files in real-time from the reporting of an alleged infraction through to trial disposition. Front end users of the system will have access rights to input data at each stage to move the file along to the next procedural step. The data collected will be accessible in real time to provide up-to-date military justice statistics, thus greatly improving IM/IT integration, the JAG's ability to perform her superintendence function, and the OJAG's ability to transparently report on the military justice system and recommend future reforms.

The system would also provide commanders at all levels with a user-friendly up-to-date case management system that would enhance the administration of military justice at the unit level by providing unit authorities with a real-time overview of discipline matters allowing them to track the progress of a file through all of the procedural steps, ensuring that a case proceeds through the system in a timely manner.

The electronic case management system will greatly benefit every member of the chain of command involved in the disciplinary process. It will automate and streamline the system, eliminating the need for a paper-based transactional record, while simultaneously increasing efficiency, transparency, flexibility and institutional oversight. A more efficient and effective military justice system has a direct positive effect on CAF operations at home and abroad. An integrated IT/IM military justice case management system will drastically reduce personnel hours. This requirement has been approved by the Information Management Board (IMB) and ranked #19 in their priority list.

## **8.2 IMPLEMENTATION OF THE OJAG PERFORMANCE MEASUREMENT REPORTING TOOL (PMRT) - \$35,000**

Since 1999, the OJAG has relied on PMDSS to measure work output. The current production version is an aging non-standard application in need of modernization. Moreover, PMDSS has not kept pace with the evolving nature of military legal services and the institutional needs of the OJAG, thereby providing uncertain data that does not necessarily measure what is required. The advent of the new Defence Policy has precipitated the requirement to provide better analytics regarding the provision of legal services. The OJAG is now required to assess its capacities in terms of FP&R, legal services provided in the context of SSE, and the DRF. This can only be achieved with a modern, flexible performance measurement system that enables effective decision-making. The Microsoft Dynamics CRM tool can be easily adapted to perform this function to enable effective real time decision, efficient resource allocations and appropriate data concerning the legal services provided to DND and CAF. This request is included in the IM/IT plan.

### 8.3 INCREASE TO C125 FUNDS - \$174,603

Under section 249.21 of the NDA, the DDCS may hire civilian counsel to assist accused at public expense in cases where, having received a request for representation by DCS, no legal officer is in a position to represent the accused. This occurs primarily as a result of a real or potential conflict of interest, often involving DCS representation of a co-accused. It may occur for other reasons as well. During FY 17/18, the OJAG requested additional C125 funds at T3. Additional funding is required, as these services are mandated by the NDA and QR&O, linked to the disciplinary requirements of the CAF, including Op Honour, and must be performed in accordance with professional norms.

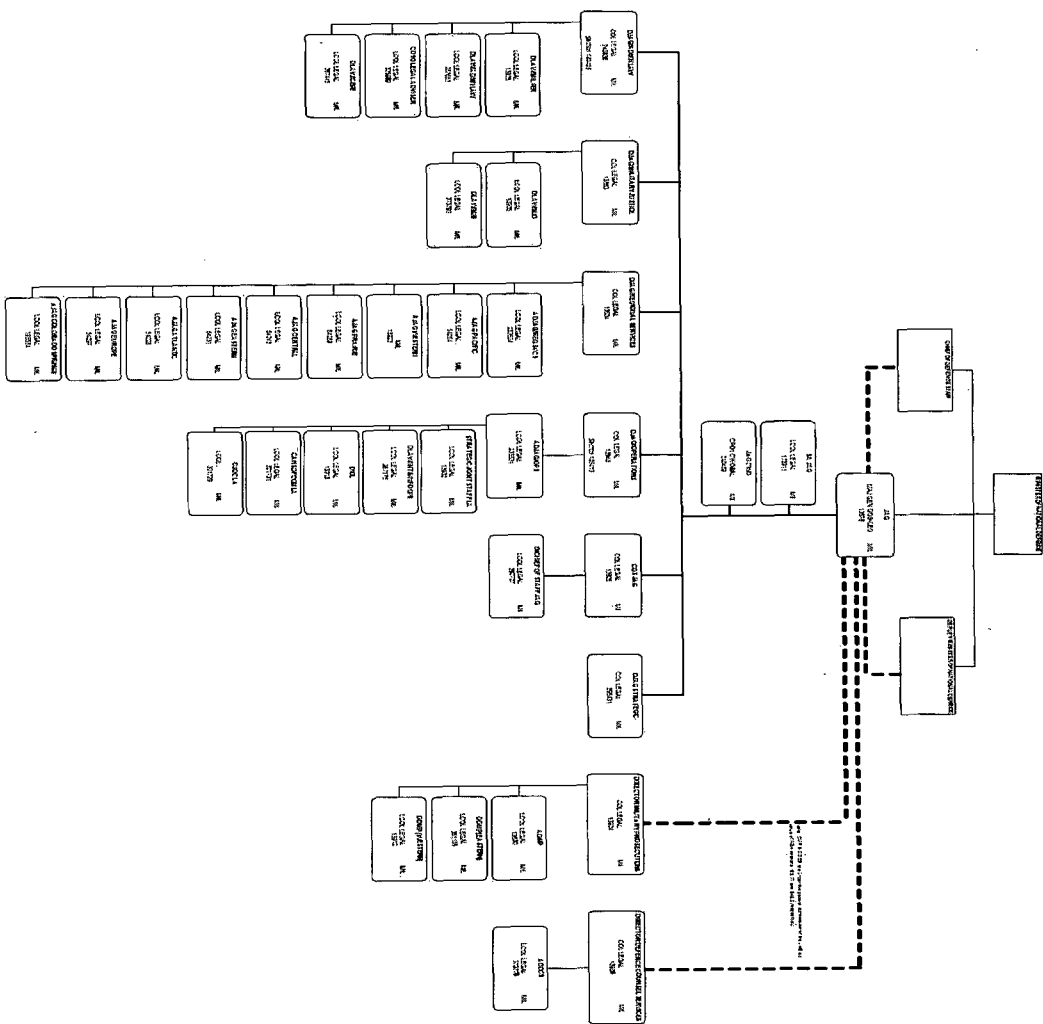
### 9. HOSPITALITY REQUIREMENTS

The Legal Branch's Centennial will be celebrated in 2018. The Centennial Gala will bring together legal officers and distinguished representatives of Canada's legal community to celebrate the Legal Branch's history and role in support of the rule of law in Canada and abroad. In support of this event, the OJAG is requesting hospitality funds in the amount of \$1,100. The OJAG is also requesting hospitality funds in the amount of \$230 to purchase refreshments for the annual conference of its CWO/CPO1.

The DMP is requesting an amount of \$9,000 for the Heads of Prosecution (HoP) meeting. The Federal, Provincial and Territorial (FPT) HoP Committee is comprised of the DMP, the Director of Public Prosecutions (Canada), and the equivalent heads of all provincial and territorial prosecution services. The FPT HoP Committee is a national coordination and consultation forum that discusses common problems which touch upon criminal law and practice management. The FPT HoP Committee holds two meetings throughout the year at various locations across Canada. The meetings promote inter-jurisdictional cooperation on operational issues and afford a unique opportunity to keep abreast of new developments in the area of criminal prosecutions across Canada.

Each member of the committee takes turns hosting these meetings with the support of the Public Prosecution Service of Canada (PPSC). The DMP proposes to hold the meeting at Canadian Forces Base (CFB) Esquimalt's Wardroom and CPO's & PO's mess facilities on 24-25 October 2018. As the host, the DMP is responsible to provide for the cost of refreshments for meeting breaks for the two-day conference, two working lunches (at the discretion of the host), transportation from the hotel to the meeting venue, as well as to sponsor the annual awards reception.

# 10. OJAG ORGANIZATIONAL CHART



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