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TRAINING PLAN

Legal Officer Qualification

AJCK

REGULAR FORCE:

- 00204

PRIMARY RESERVE:

- 00204

SPECIAL FORCE:

- N/A

Training Establishment: CFMLC

Basic Date: 28/10/2013
Change Date: 00/00/0000
Ammendments: 0

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RECORD OF AMENDMENTS

AMMENDMENT #	REQUESTING AGENCY	REVISION DESCRIPTION	APPROVAL	DATE
nil				

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FOREWORD

1. This is the Training Plan (TP) for the Legal Officer Qualification (AJCK).

2. This Publication is effective upon receipt.

3. Suggestions for changes shall be forwarded through the chain of command to CDA HQ.

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PREFACE

1. This TP was developed by the Canadian Forces Military Law Centre (CFMLC), a Directorate within the Canadian Defence Academy (CDA) Headquarters, in consultation with the Office of the Judge Advocate General of the Canadian Forces. It was prepared in accordance with the concept of training outlined in the A-P9-050 Series, Canadian Forces Manual of Individual Training and Education.

2. This TP is based upon Canadian Forces Manual of Military Structure Volume 2 Part 2, Occupational Specification for Military Occupation Specification ID (MOSID) 00204 Legal. It was also predicated upon the Qualification Standard (QS) for the Legal Officer MOSID approved by Commander CDA 20 June 2014.

3. This TP was developed as the basis for training of legal officers as General Legal Counsel in accordance with the norms established in the Legal Officer QS. This, in turn, was based upon a modified iteration of the requirements described for General Legal Counsel in the Canadian Forces Manual of Military Structure Volume 2 Part 1, Job Based Specifications (JBS) for the Legal Officer Occupation. This modified description of the tasks for General Legal Counsel was developed in consultation with representatives from the Office of the Judge Advocate General (OJAG).

4. Consultation and co-ordination with the OJAG continued throughout the initial development of this TP, including seeking consent from the Deputy Judge Advocates General (DJAG) for each of the three 'pillars' of military law: Military Administrative Law (MAL); Military Justice (MJ); and Operational Law (OpLaw).

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CHAPTER 1 - GENERAL

AIM

1. The aim of the training resulting from this Training Plan (TP) is to prepare junior legal officers of the Regular Force (Reg F) and Reserve Force (Res F) for their duties as General Legal Counsel, including duties as unit legal advisors, Deputy Judge Advocates (DJA) for CF Bases, legal advisors within directorates within the Office of the Judge Advocate General (OJAG), and as deployed legal officers supporting CAF operations.

2. Although the TP describes functions of legal advisors pertaining to the application of the Code of Service Discipline (CSD) at the Summary Trial level, the TP does not present extensive training material relating to the conduct of courts martial. Fewer than 25% of legal officers of the OJAG act as counsel before courts martial and, in accordance with the Canadian Forces Manual of Individual Training and Education, the knowledge and skills required for those tasks is not included in this TP. Director Military Prosecutions (DMP) and Director Defence Counsel Services (DDCS), who are responsible for, respectively, the Canadian Military Prosecution Service (CMPS) and Defence Counsel Services (DCS) may incorporate supplemental training in order to prepare legal officers for these respective tasks.

3. Legal officers of the Reg F and Res F will be trained to the same standard under a single TP.

TRAINING STRATEGY

1. This training will be delivered through both distributed learning (DL) and residential training.

2. Legal officers are expected to complete the Legal Officer Qualification (LOQ) course within their first four years of service as legal officers. Pre-requisites for the LOQ course include: Basic Officer Training; Second Language Training (as required); Presiding Officer Certification Training (POCT), including currency maintained through the Presiding Officer Re-certification Training (PORT); and, the Intermediate Law of Armed Conflict (ILOAC) course. Although candidates need not have completed the Canadian Armed Forces Junior Officer Development (CAFJOD) program, completion of some, or all, of the CAFJOD modules would be beneficial. There is no On Job Training (OJT) requirement prior to attendance on the LOQ course; however, it is anticipated that supervisors within the OJAG will evaluate thei performance of canddiates following the successful completion of the LOQ course as part of the nregular personnel development process described under the Caandian Forces Personnel Appraisal System (CFPAS).

3. Training will focus on the three 'pillars' of military law: Military Administrative Law (MAL); Military Justice (MJ); and Operational Law (OpLaw). The TP also includes foundational knoweldge relating to the role of the Judge Advocate General of the Canadian Forces (JAG), the OJAG and the legal officers who perfrom legal advisory duties under the supervision of the JAG. This foundational knowledge will also include training on the specific ethical issues that legal officers in the CAF may face.

4. This TP is comprised of 27 Performance Objectives (PO) divided between the three military law 'pillars' as well as the aforementioned foundational knoweldge. These PO are distributed as follows:

   a. PO 001 to 003 - Foundational knowledge;
   b. PO 004 to 013 - MAL;
   c. PO 014 to 020 - MJ; and
   d. PO 021 to 027 - OpLaw.

5. The DL portion of this training is comprised of reading lists pertaining to the three 'pillars' of military law, including: statutes and other legislative materials; CAF and governmental policies; caselaw; and, other orders and instructions. This DL reading list will be disseminated through the OJAG chain of command. Candidates will not be provided copies of these materials in either hard copy or electronic format, unless those materials are not otherwise available. However, the electronic versions of the DL reading lists will contain hyper-links to some of the materials in order to provide ease of access. For other portions of the reading list, such as caselaw and governmental or DND/CF policies, candidates are expected to search for such materials as part of the DL process in order to familiarize themselves with the sources of these materials.

6. Presently, the DL portion of training will not be confirmed through an examination (although a threshold knowledge test may be applied at the outset of the residential portion of the LOQ course). OJAG supervisors for candidates will be required to:

   a. Provide the potential canddiates with the DL reading list;
   b. Provide the potential candidates with sufficient time during working hours to complete the DL package. On average, a review of the DL materials should take approximately 60 hours of study time. This will permit a cursory review of the materials for all three 'pillars'; and
   c. Certify that the potential canddiate has completed the DL package.

7. The residential portion of the training encompasses four weeks of training. The first three weeks of training involve classroom instruction in the three 'pillars' (with one week assigned to each 'pillar'), and culminating in a field training exercise (FTX) during week four. Although intended to be conducted as a four-week course, the training is modularized in order to maximize flexibility of training for Res F personnel:

   a. Module One - Comprising one week for foundational knowledge and MAL (PO 001 to 010);
   b. Module Two - Comprising one week for MJ (PO 014 to 020); and
   c. Module Three - Comprising one week for OpLaw (PO 021 to 027) and a second week for the FTX.

8. Although each Module can be completed indepedently for greater flexibility for candidates with limited availability (such as Res F legal officers), the modules should be conducted in the sequence presented above. The teaching points on foundational and ethical knowledge are relevant across the spectrum of duties for Generral Legal Counsel and are delivered during the first day of training in Module One. The knowledge and skills conveyed in Modules One and Two are necessary for a candidate to complete the tasks assigned during the FTX. Consequently, a candidate must successfully complete Modules One and Two prior to attempting Module Three.

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9. Not all Enabling Checks (EC) and Performance Checks (PC) must be re-tested if a candidate fails the EC or PC. However, where a re-test is mandatory, it must be completed within the relevant Module. The FTX during Module Three is the final PC and is considered the Master PC. The FTX incorporates knowledge and skills taught in all 27 PO and a legal officer cannot be granted the AJCK qualification until and unless the canddiate successfully completes the tasks comprising the FTX.

RECERTIFICATION/REQUALIFICATION

1. Re-certification in accordance with this TP will be necessary wheer a legal officer has been absent from legal advisory duties as a legal officer in the CAF for a period in excess of three years.

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CHAPTER 2 - TRAINING MANAGEMENT DETAILS

RESPONSIBLE AGENCY AND TRAINING ESTABLISHMENTS

1. The Training Authority is CDA

2. Training Establishment: CFMLC is responsible for the conduct of the Legal Officer Qualification course.

SCHEDULING

3. Training will be scheduled by the Canadian Forces Military Law Centre (in consultation with the Office of the Judge Advocate General) in MITE to meet the training requirements.

PREREQUISITES

4. In order to be selected for this training, the member shall:

   a. fulfil the requirements to serve as a legal officer in the Canadian Forces, namely, be in good standing with a provincial law society;
   b. have completed Basic Officer Training (or received recognized equivalency);
   c. have normally completed Second Language Training (SLT), if required;
   d. have successfully completed Presiding Officer Certification Training (POCT) within four years of commencing this training, or have maintained standing as a qualified presiding officer through the Presiding Officer Re-certification Training (PORT); and
   e. have successfully completed the Intermediate law of Armed Conflict (ILOAC) course.

TRAINING DURATION

5. This training will require 14.8 training days based on instructional time only. See Annex D: Timetable of Instructional Time).

   a. Training days are based on 7 x 50 min periods/day;
   b. Training days have been adjusted to exclude PT, admin, worship, course photos, graduation, course reports, kit issue and return and briefings;
   c. The 1 multiplier converts 14.8 x instructional training days to 14.8 x resourced training days. For resource calculations, 14.8 is multiplied by a factor of 2/7 (0.29), which is added to the resourced training days 14.8 x 0.29 = 4.3, for a calculation total of 19.1 weekend resourced training days;
   d. This training will comprise the following training times:
      i. **14.8** instructional training days (ITDs);
      ii. **14.8** resourced training days (RTDs); and
      iii. **19.1** weekend resourced training days (WRTDs), or calendar days.

Timing Synopsis	Minutes	Periods	Days
Training	3710	74.2	14.8
Performance Checks	6105	122.1	24.4
Total	**9815**	**196.3**	**39.3**

INSTRUCTOR ALLOCATION

6. **Training Directors:**

RANK	MOC	NUMBER	QUALIFICATION
LCOL	00204 Legal	1	N/A

7. **Instructors:**

RANK	MOC	NUMBER	QUALIFICATION
MAJ	00204 Legal	6	At least 2 x Instructors should possess an LLM in an area of military law

8. **Guest Lecturers:**

RECOMMENDATIONS	NUMBER	TIME(MINS)	EO	TPT

9. **Training Assistance:**
   Additional Training resources will be co-ordinated by the CFMLC IC Support and the Trg Sp NCO.
   For the FTX during Week Four, a section of no fewer than 8 NCM will be required to assist with set up and tear down of the training site.

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10. Assistance for mentoring during practical phase will be required as follows:
As required, legal officers from the OJAG with responsibility in the different 'pillars' of military law may be called upon to assist with the training in their respective 'pillars'.
Ideally, a portion of the instructors on this course will have some, if not extensive, experience in the operational environments generally, and specifically, as deployed legal advisors in support of CAF operations in the maritime, land, and air environments.
Additionally, the CPO1/CWO assigned to the OJAG and Assistant Judge Advocates General (AJAG) can be employed on the FTX during Week Fourt to mentor the canddiates on working in an operational environment.

CAPACITY

11. The capacity is:

a. Maximum: 32
b. Optimum: 24
c. Minimum: 8

LANGUAGE OF INSTRUCTION

12. The language of instruction shall be in accordance with the stated tasking contained in the "Official Languages Act" (DAOD 5039-6 refers http://www.admfincs.forces.gc.ca/dao-doa/5000/5039-6-eng.asp).

ENVIRONMENTAL CONSIDERATIONS

13. Ensure compliance with environmental directives are IAW local unit Standard Operating Procedures and Base Range Standing Orders.

QUALIFICATION

14. This constitutes the only means of attaining occupational qualification AJCK.

RELATED DOCUMENTS

15. Related Documents:
Qualification Standard - Legakl Officer Qualification (AJCK), approved 20 June 2014.
Canadian Forces Manual of Military Occupational Structure, Volume 2, Parts 1 and 2, for the Legal Officer Occupation.

TERMINOLOGY

16. The following acronyms are used to describe methods of instruction used in Chapter 4 of this document:

a. Interactive Lecture (IL). This is normally the best method for introducing candidates to new knowledge required to perform or support a task, or to change attitudes and behaviours. Interactive lectures should be used when it is anticipated that candidates will have little or no previous familiarity with the material to be covered;
b. Guided Discussion (GD). This method provides candidates with a controlled medium in which to share knowledge and opinions on the subject matter and allow the comprehension of concepts to be reinforced. Guided discussions should be used when it is anticipated that candidates have previous familiarity with the material to be covered or that personal experiences can be used to develop, cover and emphasize required teaching points. It is anticipated that this method will primarily be employed on more advanced courses;
c. Homework Assignments (HA). These provide candidates with opportunities to develop greater depth of knowledge on a subject and/or to additionally apply/practice necessary skills. Study assignments should be used when there is a requirement to further develop candidate knowledge or skills outside of the constraints imposed by normal schedule timings or there is a requirement to emphasize key aspects of training or education;
d. Tutorials. These allow the instructor to provide directed assistance to the candidate in the application of knowledge to tasks and in the development of highly complex skills and completion of multiple tasks in any environment. Tutorials will normally be used when the candidate is required to practice very complex tasks or to combine a variety of tasks in completion of an overall mission. Tutorials will normally take the form of a Tutorial Exercise (TUTEX) where tutorial assistance is given within an overall exercise scenario. Final exercise ECs conducted prior to final exercise PCs will always be conducted as TUTEXs;

TRAINING SUPPORT

17. **Facilities.** The training area shall contain:

a. Modules One and Two and the first week of Module Three will be conducted in a classroom training environemnt. As CFMLC does not have its own integral classromm, this training facility must be obtained from CFB Kingston or a lodge unit;
b. The second week of Module Three will be conducted predominantly in the CFB Kingston Training Area.

18. **Material.** As follows:

a. material 1
    i. sub item 1
    ii. sub item 2

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b. material 2

19. **Consumable Items.**

a. item 1
b. item 2

20. **Audio-Visual Equipment.** To include:

a. item 1
b. item 2

TRAINING LIMITATIONS

21. The following are identified Training Limitations:

a. limitation 1
b. limitation 2

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CHAPTER 3 - ASSESSMENT

GENERAL

1. The POs identified in Chapter 2 of the QS, and amplified in the EOs identified in Chapter 4 of this TP will be the basis for pass/fail assessment. Any candidate who fails to complete all POs successfully in the alotted attempts will be assessed as a failure and referred to the commandant for action. PC descriptions are found in Assessment Plan at Annex B .

2. The Enabling Checks (ECs) and Performance Checks (PCs) will be based on the assessment plan and assessment instruments provided in this training plan.

3. Candidates seeking to be awarded the qualficication based on completion of on-job projects and ability acquired as a function of employment may request an assessment. In this circumstance, the activities and products required of the candidate will be to the same standard as those required of candidates undertaking training at the school.

SUPPLEMENTAL ASSESSMENT

4. A candidate will normally be permitted N/A repeat PCs on any failed PO to a maximum of two POs if:

   a. the attempt is likely to be successful;
   b. extra tutoring, if needed is practicable in terms of instruction time, the candidate's time, and school resources and facilities; and
   c. the attempt can be completed before the scheduled training programme serial end date.

5. Failure of any supplemental attempt will normally constitute training failure.

6. Further attempts may be granted by the commandant when unusual circumstances exist. The details shall be recorded on the course report.

PROGRESS MONITORING

7. **Monitoring.** Monitoring is required in order to provide the following:

   a. candidate interview and discussion of progress to date. A candidate who experiences difficulty is to be informed of the consequences of further failure(s) or marginal assessment and disposition options such as retraining, occupational transfer, RTU or release;
   b. feedback on the effectiveness of the training designl and
   c. information for Progress Review Boards (PRBs) are concluded IAW N/A. As a result of poor performance or conduct, a candidate may appear before a PRB. The PRB will make a recommendation to the commandant regarding the disposition of the candidate. Recommended action will normally be one of the following:
      i. continue training after being formally warned to show improvement in accordance with CFAO 26-17, or
      ii. cease training and/or referral to BPSO for further career action.

8. **Record file.** A candidate's record file shall be maintained and reflect the following.

   a. completion of essential training activities required by POs;
   b. results of PCs, Enabling Checks (ECs); written tests; etc. as specified in the assessment plan;
   c. identification of elements requiring observations such as leadership, participation, etc.; and
   d. interviewing/counselling results.

9. **Course Critiques.** Course critique sessions will be held IAW CFMLC SOPs to obtain feedback on learning activities, the presentation of training programme content and administration procedures. This does not preclude the class senior from commenting on positive matters or reporting problems as they arise.

REMOVAL FROM TRAINING

10. The commandant may direct that a candidate be removed from training:

    a. when the candidate's progress is below the minimum standard and there is virtually no likelyhood that the required standard will be attained; or
    b. when the candidate's continued presence on the training programme is adversely affecting the training, safety or morale of other candidates; and/or
    c. for administrative or disciplinary reasons.

11. When a candidate is removed for any of the above reasons, the commandant shall conform to the reporting procedures stated in A-P9-050-018/PT-000, Individual Training Reporting Procedures.

REPORTS

12. **Formal Course.** A Canadian Forces Course Report, Form CF 377, shall be prepared and distributed in accordance with DAOD 5031-9. The Course Report shall be descriptive, identifying the candidate's strengths and weaknesses. Additional comments to include:

    a. regard for safety of others;
    b. ability to work with others;
    c. ability to work under pressure

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d. oral and written expression; and
e. care and attention to detail.

13. **On-Job Performance Requirement**

nil

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CHAPTER 4 - LESSON SPECIFICATIONS

PO 001 EXPLAIN THE ROLES AND RESPONSIBILITIES OF THE OFFICE OF THE JAG

1. **Performance:** Explain the roles and responsibilities of the office of the JAG

2. **Conditions:**

   a. **Given:** Relevant factual context, legislation, policy, case law, reference materials (including prior legal advice).

   b. **Denied:** Direct supervision

   c. **Environmental:** CAF unit, base or wing headquarters, deployed internationally or domestically, under austere conditions.

3. **Standard**: The legal officer shall describe the functions and powers of the Judge Advocate General, the functions of the Office of the Judge Advocate General, and the duties and role of legal officers within the Canadian Armed Forces.

   a. Explain roles and responsibilities of the JAG

   b. Explain the organization of the Office of the JAG

   c. Explain the relationships between the Office of the JAG and supported commands, formations, units, and other elements of the CAF.

4. **Remarks:** Achieve and sustain the JAG's mission to deliver independent, operationally-focused, and solution-oriented legal support to teh CAF and DND, and the superintendance of military justice.

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ENABLING OBJECTIVES

EO 001.01 Explain roles and responsibilities of the JAG

1. **Performance:** Explain roles and responsibilities of the JAG
2. **Conditions:**
   a. **Given:** Relevant factual context, legislation, policy, case law, reference materials (including prior legal advice).
   b. **Denied:** Direct Supervision.
   c. **Environmental:** CAF unit, base, or wing headquarters; deployed internationally or domestically; under austere conditions.
3. **Standard:** The legal officer shall explain the roles and responsibilities of the Judge Advocate General.
   a. Legislative roles and responsibilities of the JAG IAW refs: LOQ-A3 http://laws-lois.justice.gc.ca/eng/acts/N-5/index.html, LOQ-A5-1 http://www.admfincs.forces.gc.ca/qro-orf/vol-01/index-eng.asp, LOQ-C1 http://jag.mil.ca/publications/directives-eng.asp
4. **Teaching Points:**

#	TEACHING POINT	DESCRIPTION	METHOD	MEDIA	ENVIRONMENT	TIME	REFERENCE
1	Legislative roles and responsibilities of the JAG	Statutory Role and Responsibilities of the JAG Relationship Between JAG and DND/CF LA (DoJ) Role and Responsibilities of DMP Role and responsibilities of DCS Role and Responsibilities of Military Judges, including the Chief Military judge Ministeriel direction regarding legal advice to DND and CF	Face to Face Instruction (poss. CAI)	N/A	Combination (centralized and distributed)	20 min	National Defence Act, R.S.C. 1985, c. N-5 () [ss. 17, 165 to 165.17, 249.18 to 249.21], Queen's Regulations and Orders for the Canadian Forces (QR&O) - Volume I - Administration () [Chapter 3; Article 4.081], JAG Policy Directives () [008/00, 009/00]

5. **TIME:**

Total class time	20 min
Instructional periods	0.4
Total Days	0.1

6. **Resources Required** a. CF supply documentation (electronic documentation preferred)
7. **Test Details:** See Annex B - Assessment Plan for details.
8. **Remarks:** Explain statutory role of the JAG Explain the source of independance of the legal advisor (QR&O 4.081) Consistency of legal advice on behalf of the JAG

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EO 001.02 Explain the organization of the Office of the JAG

1. **Performance:** Explain the organization of the Office of the JAG

2. **Conditions**:

   a. **Given:** Relevant factual context, legislation, policy, case law, reference materials (including prior legal advice).

   b. **Denied:** Direct supervision.

   c. **Environmental:** CAF unit, base, or wing headquarters; deployed internationally or domestically; under austere conditions.

3. **Standard**: The legal officer shall have a sufficient understanding of the organization of the Office of the JAG to describe its role, functions and capabilities to supported commanders, units and elements.

   a. Command relationships within the office of the JAG IAW refs: LOQ-A3 http://laws-lois.justice.gc.ca/eng/acts/N-5/index.html, LOQ-A5-1 http://www.admfincs.forces.gc.ca/qro-orf/vol-01/index-eng.asp, LOQ-C1 http://jag.mil.ca/publications/directives-eng.asp

4. **Teaching Points:**

#	TEACHING POINT	DESCRIPTION	METHOD	MEDIA	ENVIRONMENT	TIME	REFERENCE
1	Command relationships within the office of the JAG	Mechanism by which units, headquarters and formations are created. Distinction between units, formations and other elements. Command relationships established under QR&O Chapter 3. Role of legal officer and Command responsibility established under QR&O Art. 4.081. Organization of the Office of the JAG. Relationship between unit leagl advisors and DMP. JAG Policy Directive 008/00 General instructions in respect to prosecutions. Relationship detween DCS and other legal officers. JAG Policy Directive 009/00 General instructions in respect of Defence counsel services.	Face to Face Instruction (poss. CAI)	N/A	Combination (centralized and distributed)	10 min	National Defence Act, R.S.C. 1985, c. N-5 () [ss. 17, 165 to 165.17, 249.18 to 249.21], Queen's Regulations and Orders for the Canadian Forces (QR&O) - Volume I - Administration () [Chapter 3; Article 4.081], JAG Policy Directives () [008/00, 009/00]

5. **TIME:**

Total class time	10 min
Instructional periods	0.2
Total Days	0.0

6. **Resources Required** a. CF supply documentation (electronic documentation preferred)

7. **Test Details:** See Annex B - Assessment Plan for details.

8. **Remarks:** Explain organization of the Office of the JAG, command relationships within the Office of the JAG, and areas of responsibility of JAG divisions, directorates and sections.

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EO 001.03 Explain the relationships between the Office of the JAG and supported commands, formations, units, and other elements of the CAF.

1. **Performance:** Explain the relationships between the Office of the JAG and supported commands, formations, units, and other elements of the CAF.

2. **Conditions**:

   a. **Given:** Relevant factual context, legislation, policy, case law, reference materials (including prior legal advice).

   b. **Denied:** Direct supervision.

   c. **Environmental:** CAF unit, base, or wing headquarters; deployed internationally or domestically; under austere conditions.

3. **Standard**: The legal officer shall explain the role of a leagl officer in supporting commanders, commanding officers and other statutory decision-makers in commands, formations, units and other elements of the CAF.

   a. Nature of commands, formations, units and other elements of the CAF IAW refs: LOQ-A3 http://laws-lois.justice.gc.ca/eng/acts/N-5/index.html, LOQ-C1 http://vcds.mil.ca/sites/intranet-eng.aspx?page=4395, LOQ-C1 http://

   b. Nature of the independance of the JAG in relation to Commands, formations, units and other elements of the CAF IAW refs: LOQ-A5-1 http://www.admfincs.forces.gc.ca/qro-orf/vol-01/index-eng.asp

4. **Teaching Points:**

#	TEACHING POINT	DESCRIPTION	METHOD	MEDIA	ENVIRONMENT	TIME	REFERENCE
1	Nature of commands, formations, units and other elements of the CAF	Establishment of units, formations and commands under s. 17 of the National Defence Act. MOOs and CFOOs (very cursory review as this is covered in MAL in detail)	Face to Face Instruction (poss. CAI)	N/A	Combination (centralized and distributed)	15 min	National Defence Act, R.S.C. 1985, c. N-5 () [s. 17], Canadian Forces Organization Orders (CFOOs) (), Ministerial Organization Orders ()
2	Nature of the independance of the JAG in relation to Commands, formations, units and other elements of the CAF	Describe the application of QR&O Art. 4.081 Describe the command structure of the CAF (cursory overview as this is covered in detail in MAL)	Face to Face Instruction (poss. CAI)	N/A	Combination (centralized and distributed)	15 min	Queen's Regulations and Orders for the Canadian Forces (QR&O) - Volume I - Administration () [Art. 4.081]

5. **TIME:**

Total class time	30 min
Instructional periods	0.6
Total Days	0.1

6. **Resources Required** a. CF supply documentation (electronic documentation preferred)

7. **Test Details:** See Annex B - Assessment Plan for details.

8. **Remarks:** An understanding of the relationship between the Office of the JAG (and its divisions, directorates and sections) and supported commanders and other statutory decision-makers is vital to the success of the JAG mission.

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PO 002 PROVIDE LEGAL SERVICES IAW JAG POLICY DIRECTIVES

1. **Performance:** Provide legal services IAW JAG policy directives

2. **Conditions:**

   a. **Given:** Relevant factual context, legislation, policy, case law, reference materials (including prior legal advice).

   b. **Denied:** Direct supervision.

   c. **Environmental:** CAF unit, base or wing headquarters; deployed internationally or domestically; including under austere conditions.

3. **Standard**: The legal officer shall be capable of complying with JAG Policy Directives and direction when providing the legal services expected of general legal counsel.

   a. Explain general duties of a legal officer

   b. Provide legal advice IAW JAG policy directives

      i. Explain general duties of a legal officer

      ii. Provide legal advice IAW JAG policy directives

      iii. Provide base- and unit-level legal services

   c. Provide base and unit level legal services

4. **Remarks:** Instruction will be limited to the nature of the relevant legal parameters as opposed to sepecific content of the law: the nature of jurisdiction; the role of statutory decision-makers; and hierarchy of law. The constitution of the Canadian Armed Forces will be taught under PO 002

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ENABLING OBJECTIVES

EO 002.01 Explain general duties of a legal officer

1. **Performance:** Explain general duties of a legal officer

2. **Conditions**:

   a. **Given:** Relevant factual context, legislation, policy, case law, reference materials (including prior legal advice).

   b. **Denied:** Direct Supervision.

   c. **Environmental:** CAF unit, base, or wing headquarters; deployed internationally or domestically; under austere conditions.

3. **Standard**: The legal officer shall explain how the legislated role and responsibilities of the JAG and Office of the JAG influences how the legal officer will provide legal services to the CAF.

   a. Duties of a base or unit legal advisor IAW refs: LOQ-A5-1 http://www.admfincs.forces.gc.ca/qro-orf/vol-01/index-eng.asp, LOQ-C1 http://jag.mil.ca/publications/directives-eng.asp, LOQ-C4 http://jag.mil.ca/publications/directives/directive010-00.pdf, LOQ-C4 http://

   b. Role and responsibilities of defence counsel within DCS. IAW refs: LOQ-C4 http://

   c. Roles and responsibilities of a prosecutor within the CMPS IAW refs: LOQ-C4 http://jag.mil.ca/publications/directives/directive010-00.pdf, LOQ-C4 http://

4. **Teaching Points:**

#	TEACHING POINT	DESCRIPTION	METHOD	MEDIA	ENVIRONMENT	TIME	REFERENCE
0	Duties of a base or unit legal advisor	N/A	N/A	N/A	Combination (centralized and distributed)	15 min	Queen's Regulations and Orders for the Canadian Forces (QR&O) - Volume I - Administration () [Art. 4.081], JAG Policy Directives (), JAG Policy Directive 010/00 - Charge Screening Policy (), JAG Policy Directive 023/02 - Ethics directive ()
0	Role and responsibilities of defence counsel within DCS.	N/A	N/A	N/A	Combined (centralized and distributed)	10 min	JAG Policy Directive 009/00 - General instructions concerning Defence Counsel Services ()
0	Roles and responsibilities of a prosecutor within the CMPS	N/A	N/A	N/A	Combined (centralized and distributed)	10 min	JAG Policy Directive 010/00 - Charge Screening Policy (), JAG Policy Directive 008/00 - General instructions in respect of prosecutions ()

5. **TIME:**

Total class time	35 min
Instructional periods	0.7
Total Days	0.1

6. **Resources Required** a. CF supply documentation (electronic documentation preferred)

7. **Test Details:** See Annex B - Assessment Plan for details.

8. **Remarks:** Nil.

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EO 002.02 Provide legal advice IAW JAG policy directives

1. **Performance:** Provide legal advice IAW JAG policy directives

2. **Conditions**:

   a. **Given:** Relevant factual context, legislation, policy, case law, reference materials (including prior legal advice).

   b. **Denied:** Direct supervision.

   c. **Environmental:** CAF unit, base, or wing headquarters; deployed internationally or domestically; under austere conditions.

3. **Standard**: The legal officer shall comply with JAG Policy Directives and other relevant policies and direction when providing legal services to CAF units and decision-makers.

   a. Explain general duties of a legal officer
      i. Generic legal officer duties IAW refs: LOQ-C1 http://jag.mil.ca/publications/directives-eng.asp
      ii. Duties of a prosecutor IAW refs: LOQ-C4 http://
      iii. Duties of defence counsel IAW refs: LOQ-C4 http://
   b. (DT0055) Provide verbal legal advice IAW JAG Policy Directives IAW refs: LOQ-C4 http://jag.mil.ca/publications/directives/directive010-00.pdf
   c. (DT0050) Provide written legal advice IAW JAG Policy Directives IAW refs: LOQ-C4 http://jag.mil.ca/publications/directives/directive010-00.pdf
   d. (DT0050, DT0055) Provide legal advice IAW JAG policy directives
      i. Principles of statutory interpretation IAW refs: LOQ-B1 http://, LOQ-A3 http://laws-lois.justice.gc.ca/PDF/I-21.pdf, LOQ-A3 http://laws-lois.justice.gc.ca/PDF/S-22.pdf
      ii. Duties as legal advisor within a directorate of the Office of the JAG IAW refs: LOQ-C1 http://jag.mil.ca/publications/directives-eng.asp
      iii. Duties of a legal officer posted to DND/CFLA IAW refs: LOQ-C1 http://jag.mil.ca/publications/directives-eng.asp
   e. Provide base- and unit-level legal services
      i. Duties of a Deputy Judge Advocate/ Base legal advisor IAW refs: LOQ-C1 http://vcds.mil.ca/sites/intranet-eng.aspx?page=4395, LOQ-C1 http://jag.mil.ca/publications/directives-eng.asp, LOQ-C1 http://

4. **Teaching Points:**

#	TEACHING POINT	DESCRIPTION	METHOD	MEDIA	ENVIRONMENT	TIME	REFERENCE
1	Provide verbal legal advice IAW JAG Policy Directives	N/A	Instructor Supported Elearning (CBT/CAI)	N/A	Combination (centralized and distributed)	10 min	JAG Policy Directive 010/00 - Charge Screening Policy ()
2	Provide written legal advice IAW JAG Policy Directives	N/A	Instructor Supported Elearning (CBT/CAI)	N/A	Combination (centralized and distributed)	10 min	JAG Policy Directive 010/00 - Charge Screening Policy ()

5. **TIME:**

Total class time	20 min
Instructional periods	0.4
Total Days	0.1

6. **Resources Required** a. CF supply documentation (electronic documentation preferred)

7. **Test Details:** See Annex B - Assessment Plan for details.

8. **Remarks:** Nil.

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EO 002.03 Provide base and unit level legal services

1. **Performance:** Provide base and unit level legal services

2. **Conditions**:

   a. **Given:** Relevant factual context, legislation, policy, case law, reference materials (including prior legal advice).

   b. **Denied:** Direct supervision.

   c. **Environmental:** CAF unit, base, or wing headquarters; deployed internationally or domestically; under austere conditions.

3. **Standard**: The legal advisor will provide timely, missionsolution-oriented and mission-focused legal services to CAF units and decision-makers.

   a. Provide legal education and training to unit. IAW refs: LOQ-C4 http://jag.mil.ca/publications/directives/directive010-00.pdf

   b. Provide other legal support IAW refs: LOQ-C4 http://

4. **Teaching Points:**

#	TEACHING POINT	DESCRIPTION	METHOD	MEDIA	ENVIRONMENT	TIME	REFERENCE
0	Provide legal education and training to unit.	N/A	N/A	N/A	Combined (centralized and distributed)	15 min	JAG Policy Directive 010/00 - Charge Screening Policy ()
0	Provide other legal support	N/A	N/A	N/A	Combined (centralized and distributed)	10 min	CFAO 56-5 Legal Aid ()

5. **TIME:**

Total class time	25 min
Instructional periods	0.5
Total Days	0.1

6. **Resources Required** a. CF supply documentation (electronic documentation preferred)

7. **Test Details:** See Annex B - Assessment Plan for details.

8. **Remarks:** Nil.

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PO 003 RESOLVE ETHICAL ISSUES ARISING FROM LEGAL OFFICER DUTIES

1. **Performance:** (DT0015) Resolve ethical issues arising from legal officer duties

2. **Conditions:**

   a. **Given:** Relevant factual context, legislation, policy, case law, reference materials (including prior legal advice) plus limited supervision or mentoring.

   b. **Denied:** Nil.

   c. **Environmental:** CAF unit, base, or wing headquarters; deployed internationally or domestically; under austere conditions.

3. **Standard**: The legal officer shall be capable of resolving professional ethical challenges arising in the course of the legal offcier's duties with limited supervision or mentoring.

   a. Identify the legal ethical issue(s)
   b. Identify the applicable regime(s)
   c. Apply appropriate course(s) of action

4. **Remarks:** Apply provincial/ territorial rules of professional conduct CBA Code of Conduct Unique military legal ethical issues JAG policy directives

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ENABLING OBJECTIVES

EO 003.01 Identify the legal ethical issue(s)

1. **Performance:** Identify the legal ethical issue(s)
2. **Conditions**:
   a. **Given:** Relevant factual context, legislation, policy, case law, reference materials (including prior legal advice) plus limited supervision or mentoring.
   b. **Denied:** Nil.
   c. **Environmental:** CF unit, base or wing headquarters; deployed internationally or domestically; under austere conditions
3. **Standard**: The legal officer shall identify potential ethical challenges and the appropriate resolution for each.
   a. Identify characteristics of legal ethical issues IAW refs: LOQ-A5-1 http://www.admfincs.forces.gc.ca/qro-orf/vol-01/index-eng.asp
   b. Examples of common or likely legal ethical dilemmas
4. **Teaching Points:**

#	TEACHING POINT	DESCRIPTION	METHOD	MEDIA	ENVIRONMENT	TIME	REFERENCE
1	Identify characteristics of legal ethical issues	Nature of solicitor client relationships Existence of a solicitor client relationship (within the context of the CAF) Two or more applicable obligations on the legal officer Conflict between two or more of these obligations	Face to Face Instruction (poss. CAI)	N/A	N/A	20 min	Queen's Regulations and Orders for the Canadian Forces (QR&O) - Volume I - Administration () [Art 4.081]
2	Examples of common or likely legal ethical dilemmas	Supported commander/ CO declines to follow legal advice Legal offcier disagrees with institutional legal positions Member of CAF seeks legal advice under false pretences "shopping" for legal advice Commander/ CO relies on "previous legal advice" Recipient of legal advice withholds information when seeking legal advice Legal officer is "correctly" called upon to provide legal advice on a matter that was previously subject to legal advice Inadvertent admisssions in personal or non legal communications. Legal officer required to provide legal advice where department of justice counsel have provided legal advice.	Face to Face Instruction (poss. CAI)	N/A	N/A	40 min	

5. **TIME:**

Total class time	60 min
Instructional periods	1.2
Total Days	0.2

6. **Resources Required** a. CF supply documentation (electronic documentation preferred)
7. **Test Details:** See Annex B - Assessment Plan for details.
8. **Remarks:** Nil.

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EO 003.02 Identify the applicable regime(s)

1. **Performance:** Identify the applicable regime(s)

2. **Conditions**:

   a. **Given:** Relevant factual context, legislation, policy, case law, reference materials (including prior legal advice) plus limited supervision or mentoring.

   b. **Denied:** Nil.

   c. **Environmental:** CF unit, base or wing headquarters; deployed internationally or domestically; under austere conditions

3. **Standard**: The legal officer shall identify the applicable regimes upon which the officer may rely to resolve ethical issues.

   a. Identify applicable regimes IAW refs: LOQ-C4 http://www.admfincs.forces.gc.ca/dao-doa/5000/5012-0-eng.asp, LOQ-C1 http://jag.mil.ca/publications/directives-eng.asp, LOQ-C4 http://jag.mil.ca/publications/directives/directive010-00.pdf, LOQ-D2 http://www.cba.org/CBA/activities/pdf/codeofconduct.pdf, LOQ-C4 http://, LOQ-C4 http://, LOQ-C4 http://, LOQ-C4 http://, LOQ-C4 http://

   b. Identify resources for assistance

4. **Teaching Points:**

#	TEACHING POINT	DESCRIPTION	METHOD	MEDIA	ENVIRONMENT	TIME	REFERENCE
1	Identify applicable regimes	Cursory review of provincial/ territorial rules of professional conduct CBA code of conduct JAG policy directives: 006/00 Professional standards review 010/00 Charge screening policy 023/02 Ethics directive 045/12 Requesting approval to submit papers and articles for publication DAOD 7021-1 Conflict of interest DAOD 5012-0 Harassment prevention and resolution Legal framework for solicior client conferences CFAO 56-5	Face to Face Instruction (poss. CAI)	N/A	N/A	40 min	DAOD 5012-0 Harassment Prevention and Resolution (), JAG Policy Directives (), JAG Policy Directive 010/00 - Charge Screening Policy (), CBA Code of Professional Conduct (), JAG Policy Directive 006/00 - Professional Standards Review (), JAG Policy Directive 023/02 - Ethics directive (), JAG Policy Directive 042/12 - Requesting Approval to Submit Papers and Articles for Publication (), DAOD 7021-1 Conflict of Interest (), CFAO 56-5 Legal Aid ()
2	Identify resources for assistance	Supervisor or mentor Collegue from the same provincial or teritorial law society Office of the JAG website Provincial or teritorial law society website	Face to Face Instruction (poss. CAI)	N/A	N/A	20 min	

5. **TIME:**

Total class time	60 min
Instructional periods	1.2
Total Days	0.2

6. **Resources Required** a. CF supply documentation (electronic documentation preferred)

7. **Test Details:** See Annex B - Assessment Plan for details.

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8. **Remarks:** Nil.

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EO 003.03 Apply appropriate course(s) of action

1. **Performance:** Apply appropriate course(s) of action

2. **Conditions**:

   a. **Given:** Relevant factual context, legislation, policy, case law, reference materials (including prior legal advice) plus limited supervision or mentoring.

   b. **Denied:** Nil.

   c. **Environmental:** CF unit, base or wing headquarters; deployed internationally or domestically; under austere conditions

3. **Standard**: The legal officer will resolve ethical issues in a manner consistent with obligations to the CAF and the legal profession

   a. Identify potential harm(s) arising from circumstances
   b. Identify the regime(s) best suited to prevent the harm(s)
   c. Evaluate compatiblity of regimes
   d. Identify consequences of the application of the regime
   e. Apply the appropriate regime to the circumstances in order to resolve dilemma.

4. **Teaching Points:**

#	TEACHING POINT	DESCRIPTION	METHOD	MEDIA	ENVIRONMENT	TIME	REFERENCE
1	Identify potential harm(s) arising from circumstances	N/A	Face to Face Instruction (poss. CAI)	N/A	N/A	10 min	
2	Identify the regime(s) best suited to prevent the harm(s)	N/A	Face to Face Instruction (poss. CAI)	N/A	N/A	10 min	
3	Evaluate compatiblity of regimes	N/A	Face to Face Instruction (poss. CAI)	N/A	N/A	20 min	
4	Identify consequences of the application of the regime	Confirm if the "best suited regime(s)" is superceeded by any other regime(s)	Face to Face Instruction (poss. CAI)	N/A	N/A	10 min	
5	Apply the appropriate regime to the circumstances in order to resolve dilemma.	N/A	Face to Face Instruction (poss. CAI)	N/A	N/A	20 min	

5. **TIME:**

Total class time	70 min
Instructional periods	1.4
Total Days	0.3

6. **Resources Required** a. CF supply documentation (electronic documentation preferred)

7. **Test Details:** See Annex B - Assessment Plan for details.

8. **Remarks:** This EO focuses on the application of professional governance regimes and ethical principles IOT resolve ethical dilemma.

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PO 004 ADVISE ON THE APPLICATION OF ADMIN LAW & PRINCIPLES IN CF DECISION MAKING

1. **Performance:** Advise on the application of admin law & principles in CF decision making

2. **Conditions:**

   a. **Given:** relevant factual context, legislation, policy, case law, reference materials (including prior legal advice)
   b. **Denied:** direct supervision
   c. **Environmental:** CF unit base or wing Headquarters Deployed internationally or domestically Under austere conditions

3. **Standard**: The legal officer shall advise on the application of admin law & principles in CF decision making including:advising on sources of authority,advising on jurisdiction,advising on procedural fairness,advising on substantive elements of decision making and advising on judicial review

   a. Advise on sources of authority
   b. Advise on jurisdiction
   c. Advise on procedural fairness
   d. Advise on substantive elements of decision making
   e. Advise on consequences of a failure of fairness

4. **Remarks:** advice may be given remotely

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ENABLING OBJECTIVES

EO 004.01 Advise on sources of authority

1. **Performance:** Advise on sources of authority

2. **Conditions**:

   a. **Given:** assistance as required, references, resources as required

   b. **Denied:** direct supervision

   c. **Environmental:** CF unit, base, wing headquarters, deployed domestically and internationally, under auustere conditions

3. **Standard**: the legal officer shall advise on sources of authority as it pertains to the administrative decison making process

   a. Hierarchy of sources of authority IAW refs: LOQ-A1 http://laws-lois.justice.gc.ca/eng/CONST/page-1.html, LOQ-A1 http://laws-lois.justice.gc.ca/eng/CON lois.justice.gc.ca/eng/acts/N-5/index.html

   b. Key sources of authority for the CF IAW refs: LOQ-A1 http://laws-lois.justice.gc.ca/eng/CONST/page-1.html, LOQ-A1 http://laws-lois.justice.gc.ca/eng/C(lois.justice.gc.ca/eng/acts/N-5/index.html, LOQ-A5-1 http://www.admfincs.forces.gc.ca/qro-orf/vol-01/index-eng.asp

   c. Methods of authorisation IAW refs: LOQ-A3 http://laws-lois.justice.gc.ca/eng/acts/N-5/index.html, LOQ-A5-1 http://www.admfincs.forces.gc.ca/qro-orf/vol- http://sjs.mil.ca/dgoperations/_docs/CDS_Directives/CF%20C2%20Directive%202013/Eng/Annex%20C%20CF%20C2%20and%20the%20Delegation

4. **Teaching Points:**

#	TEACHING POINT	DESCRIPTION	METHOD	MEDIA	ENVIRONMENT	TIME	REFERENCE
1	Hierarchy of sources of authority	constitutional statutory other legislative (regulations, CBIs, OICs, Ministeriel orders) common law (and other binding precedent) policy (orders, directives, instructions)	Face to Face Instruction (poss. CAI)	N/A	Combination	10 min	Constitution Act, 1867, 30 & 31 Victoria, c. 3 (U.K.), R.S.C. 1985, App. II, No. 11. (), Constitution Act, 1982, Enacted as Schedule B to the Canada Act 1982, 1982, c. 11 (U.K.), which came into force on April 17, 1982. (), National Defence Act, R.S.C. 1985, c. N-5 ()
2	Key sources of authority for the CF	Powers of GIC, treasury board, minister, deputy minister, CDS , JAG and other decision makers. Constituion: i.e. section 15, 91(7) CA1867 Crown prerogative NDA: SS.4, 12, 14, 17, 35	Face to Face Instruction (poss. CAI)	N/A	combination	10 min	Constitution Act, 1867, 30 & 31 Victoria, c. 3 (U.K.), R.S.C. 1985, App. II, No. 11. (), Constitution Act, 1982, Enacted as Schedule B to the Canada Act 1982, 1982, c. 11 (U.K.), which came into force on April 17, 1982. (), National Defence Act, R.S.C. 1985, c. N-5 (), Queen's Regulations and Orders for the Canadian Forces (QR&O) - Volume I - Administration ()
3	Methods of authorisation	Delegation, Devolution, Designation, Authorization, Description of mechanisms for the above forms of authorization	Face to Face Instruction (poss. CAI)	N/A	combination	10 min	National Defence Act, R.S.C. 1985, c. N-5 (), Queen's Regulations and Orders for the Canadian Forces (QR&O) - Volume I - Administration (), CDS Directive of CF Command and Control and Delegation of Authority for Force Employment, 28 April 2013 ()

5. **TIME:**

Total class time	30 min
Instructional periods	0.6
Total Days	0.1

6. **Resources Required** a. CF supply documentation (electronic documentation preferred)

7. **Test Details:** See Annex B - Assessment Plan for details.

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8. **Remarks:** advice may be given remotely

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EO 004.02 Advise on jurisdiction

1. **Performance:** Advise on jurisdiction

2. **Conditions**:

   a. **Given:** assistance as required, references, resources as required

   b. **Denied:** direct supervision

   c. **Environmental:** CF unit, base, wing headquartersm deployed domestically and internationally, under austere conditions

3. **Standard**: the legal officer shall advise on jurisdiction as it applies to the administrative decision making process

   a. Principle of vires IAW refs: LOQ-A1 http://laws-lois.justice.gc.ca/eng/CONST/page-1.html, LOQ-A1 http://laws-lois.justice.gc.ca/eng/CONST/page-15.html#h-38, LOQ-A3 http://laws-lois.justice.gc.ca/eng/acts/N-5/index.html, LOQ-A5-1 http://www.admfincs.forces.gc.ca/qro-orf/vol-01/index-eng.asp

   b. Types of administrative decisions IAW refs: LOQ-A3 http://laws-lois.justice.gc.ca/eng/acts/N-5/index.html, LOQ-A5-1 http://www.admfincs.forces.gc.ca/qro-orf/vol-01/index-eng.asp, LOQ-C4 http://www.admfincs.forces.gc.ca/dao-doa/5000/5019-4-eng.asp, LOQ-C4 http://www.admfincs.forces.gc.ca/dao-doa/5000/5019-2-eng.asp, LOQ-C4 http://www.admfincs.forces.gc.ca/dao-doa/7000/7002-0-eng.asp, LOQ-C4 http://www.admfincs.forces.gc.ca/dao-doa/5000/5012-0-eng.asp, LOQ-C1 http://vcds.mil.ca/sites/intranet-eng.aspx?page=4395, LOQ-C4 http://www.admfincs.forces.gc.ca/dao-doa/2000/2017-1-eng.asp, LOQ-D1 http://jag.mil.ca/publications/adminlaw-loiadmin/MilAdminlaw-DroitAdminMil-eng.pdf

4. **Teaching Points:**

#	TEACHING POINT	DESCRIPTION	METHOD	MEDIA	ENVIRONMENT	TIME	REFERENCE
1	Principle of vires	N/A	Face to Face Instruction (poss. CAI)	N/A	combination	10 min	Constitution Act, 1867, 30 & 31 Victoria, c. 3 (U.K.), R.S.C. 1985, App. II, No. 11. (), Constitution Act, 1982, Enacted as Schedule B to the Canada Act 1982, 1982, c. 11 (U.K.), which came into force on April 17, 1982. (), National Defence Act, R.S.C. 1985, c. N-5 (), Queen's Regulations and Orders for the Canadian Forces (QR&O) - Volume I - Administration ()
2	Types of administrative decisions	who makes the decision when is the decision made What decisions can be made	Face to Face Instruction (poss. CAI)	N/A	combination	10 min	National Defence Act, R.S.C. 1985, c. N-5 (), Queen's Regulations and Orders for the Canadian Forces (QR&O) - Volume I - Administration (), DAOD 5019-4 Remedial Measures (), DAOD 5019-2 Administrative Review (), DAOD 7002-0 Boards of Inquiry and Summary Investigations (), DAOD 5012-0 Harassment Prevention and Resolution (), Canadian Forces Organization Orders (CFOOs) (), DAOD 2017-1 Military Grievance Process (), Military Administrative Law Manual ()

5. **TIME:**

Total class time	20 min
Instructional periods	0.4
Total Days	0.1

6. **Resources Required** a. CF supply documentation (electronic documentation preferred)

7. **Test Details:** See Annex B - Assessment Plan for details.

8. **Remarks:** advice may be given remotely

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EO 004.03 Advise on procedural fairness

1. **Performance:** Advise on procedural fairness

2. **Conditions**:

   a. **Given:** assistance as required, references, resources as required

   b. **Denied:** direct supervision

   c. **Environmental:** Cf unit, base,, wing headquarters, deployed domestically and internationally, under austere conditions

3. **Standard**: the legal officer shall advise on procedural fairness as it pertains to the administrative decision making process

   a. Elements of procedural fairness IAW refs: LOQ-A3 http://laws-lois.justice.gc.ca/eng/acts/N-5/index.html, LOQ-A5-1 http://www.admfincs.forces.gc.ca/qro-orf/vol-01/index-eng.asp, LOQ-B1 http://www.canlii.org/en/ca/fct/doc/1994/1994canlii3544/1994canlii3544.html, LOQ-B1 http://www.canlii.org/en/ca/fct/doc/1998/1998canlii8010/1998canlii8010.html, LOQ-B1 http://www.canlii.org/en/ca/fct/doc/2000/2000canlii14976/2000canlii14976.html, LOQ-D1 http://jag.mil.ca/publications/adminlaw-loiadmin/MilAdminlaw-DroitAdminMil-eng.pdf

   b. Content of fairness IAW refs: LOQ-A5-1 http://www.admfincs.forces.gc.ca/qro-orf/vol-01/index-eng.asp, LOQ-C4 http://www.admfincs.forces.gc.ca/dao-doa/7000/7002-0-eng.asp, LOQ-D1 http://jag.mil.ca/publications/adminlaw-loiadmin/MilAdminlaw-DroitAdminMil-eng.pdf, LOQ-B1 http://www.canlii.org/en/ca/fct/doc/1994/1994canlii3544/1994canlii3544.html, LOQ-B1 http://www.canlii.org/en/ca/fct/doc/1998/1998canlii8010/1998canlii8010.html

4. **Teaching Points:**

#	TEACHING POINT	DESCRIPTION	METHOD	MEDIA	ENVIRONMENT	TIME	REFERENCE
1	Elements of procedural fairness	Rights interests or privileges, Right to know the case, Right to be heard, Right to an impartial decision maker	Face to Face Instruction (poss. CAI)	N/A	combination	5 min	National Defence Act, R.S.C. 1985, c. N-5 (), Queen's Regulations and Orders for the Canadian Forces (QR&O) - Volume I - Administration (), Gayler v. Canada (Director Personnel Careers Administration Other Ranks, National Defence Headquarters), [1995] 1 FC 801 (), McLennan v. Canada (Minister of National Defence), 1998 CanLII 8010 (FC) (), Rockman v. Canada (Attorney General), 2000 CanLII 14976 (FC) (), Military Administrative Law Manual ()
2	Content of fairness	Notice Disclosure Opportunity to make informed representations (to an impartial decision maker) Sufficiency of reasons	Face to Face Instruction (poss. CAI)	N/A	combination	10 min	Queen's Regulations and Orders for the Canadian Forces (QR&O) - Volume I - Administration (), DAOD 7002-0 Boards of Inquiry and Summary Investigations (), A-LG-007-000/AF-010 Military Administrative Law Manual (2008) (A-LG-007-000/AF-010), Gayler v. Canada (Director Personnel Careers Administration Other Ranks, National Defence Headquarters), [1995] 1 FC 801 (), McLennan v. Canada (Minister of National Defence), 1998 CanLII 8010 (FC) ()

5. **TIME:**

Total class time	15 min
Instructional periods	0.3
Total Days	0.1

6. **Resources Required** a. CF supply documentation (electronic documentation preferred)

7. **Test Details:** See Annex B - Assessment Plan for details.

8. **Remarks:** advice may be given remotely

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EO 004.04 Advise on substantive elements of decision making

1. **Performance:** Advise on substantive elements of decision making

2. **Conditions**:

   a. **Given:** relevant factual context, legislation, policy, case law, reference materials (including prior legal advice),

   b. **Denied:** direct supervision

   c. **Environmental:** CF unit, base, wing headquarters, deployed domestically and internationally, under austere conditions

3. **Standard**: the legal offcer shall advise on the substantive elements of decison making

   a. Steps in decision making IAW refs: LOQ-A3 http://laws-lois.justice.gc.ca/eng/acts/N-5/index.html, LOQ-A5-1 http://www.admfincs.forces.gc.ca/qro-orf/vol-01/index-eng.asp, LOQ-D1 http://jag.mil.ca/publications/adminlaw-loiadmin/MilAdminlaw-DroitAdminMil-eng.pdf, LOQ-B1 http://www.canlii.org/en/ca/fct/doc/1998/1998canlii7996/1998canlii7996.html

   b. Determine content of fairness for the particular decision IAW refs: LOQ-A3 http://laws-lois.justice.gc.ca/eng/acts/N-5/index.html, LOQ-B1 http://www.canlii.org/en/ca/fct/doc/1998/1998canlii8010/1998canlii8010.html, LOQ-D1 http://airdriecadets.com/docs/PO%20025%20OUTDOOR%20LEADER/Leadership%20in%20the%20CF%20Conceptual%20Foundations.pdf, LOQ-D1 http://jag.mil.ca/publications/adminlaw-loiadmin/MilAdminlaw-DroitAdminMil-eng.pdf

   c. Identification of the appropriate decision making mechanism IAW refs: LOQ-A5-1 http://www.admfincs.forces.gc.ca/qro-orf/vol-01/index-eng.asp, LOQ-D1 http://jag.mil.ca/publications/adminlaw-loiadmin/MilAdminlaw-DroitAdminMil-eng.pdf

4. **Teaching Points:**

#	TEACHING POINT	DESCRIPTION	METHOD	MEDIA	ENVIRONMENT	TIME	REFERENCE
1	Steps in decision making	jurisdiction/ vires Scope of authority	Face to Face Instruction (poss. CAI)	N/A	combination	10 min	National Defence Act, R.S.C. 1985, c. N-5 (), Queen's Regulations and Orders for the Canadian Forces (QR&O) - Volume I - Administration (), A-LG-007-000/AF-010 Military Administrative Law Manual (2008) (A-LG-007-000/AF-010), Hawco v. Canada (Attorney General), 1998 CanLII 7996 (FC) ()
2	Determine content of fairness for the particular decision	N/A	Face to Face Instruction (poss. CAI)	N/A	combination	10 min	National Defence Act, R.S.C. 1985, c. N-5 (), McLennan v. Canada (Minister of National Defence), 1998 CanLII 8010 (FC) (), Leadership in the Canadian Forces: Conceptual Foundations, (), Military Administrative Law Manual ()
3	Identification of the appropriate decision making mechanism	N/A	Face to Face Instruction (poss. CAI)	N/A	combination	10 min	Queen's Regulations and Orders for the Canadian Forces (QR&O) - Volume I - Administration (), A-LG-007-000/AF-010 Military Administrative Law Manual (2008) (A-LG-007-000/AF-010)

5. **TIME:**

Total class time	30 min
Instructional periods	0.6
Total Days	0.1

6. **Resources Required** a. CF supply documentation (electronic documentation preferred)

7. **Test Details:** See Annex B - Assessment Plan for details.

8. **Remarks:** advice may be given remotely

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EO 004.05 Advise on consequences of a failure of fairness

1. **Performance:** Advise on consequences of a failure of fairness

2. **Conditions**:

   a. **Given:** assistance as required, references, resources as required

   b. **Denied:** direct supervision

   c. **Environmental:** CF unit, base, wing headquarters, deployed domestically and internationally, under austere conditions

3. **Standard**: the legal officer shall advise on the consequences of a failure of fairness in the administrative deision making process

   a. Informal corrective mechanisms IAW refs: LOQ-A3 http://laws-lois.justice.gc.ca/eng/acts/N-5/index.html, LOQ-A5-1 http://www.admfincs.forces.gc.ca/qro-orf/vol-01/index-eng.asp, LOQ-C4 http://www.admfincs.forces.gc.ca/dao-doa/5000/5012-0-eng.asp, LOQ-C4 http://www.admfincs.forces.gc.ca/dao-doa/2000/2017-1-eng.asp, LOQ-C4

   b. Formal corrective measures IAW refs: LOQ-A5-1 http://www.admfincs.forces.gc.ca/qro-orf/vol-01/index-eng.asp, LOQ-C4 http://www.admfincs.forces.gc.ca/dao-doa/5000/5012-0-eng.asp, LOQ-C4 http://www.admfincs.forces.gc.ca/dao-doa/2000/2017-1-eng.asp, LOQ-A8 http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_90j01_ev001.htm, LOQ-A3 http://laws-lois.justice.gc.ca/eng/regulations/SOR-98-106/index.html

   c. External corrective measures IAW refs: LOQ-A3 http://laws-lois.justice.gc.ca/eng/acts/N-5/index.html, LOQ-A5-1 http://www.admfincs.forces.gc.ca/qro-orf/vol-01/index-eng.asp, LOQ-A8 http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_90j01_ev001.htm, LOQ-A3 http://laws-lois.justice.gc.ca/eng/regulations/SOR-98-106/index.html

4. **Teaching Points:**

#	TEACHING POINT	DESCRIPTION	METHOD	MEDIA	ENVIRONMENT	TIME	REFERENCE
1	Informal corrective mechanisms	N/A	Face to Face Instruction (poss. CAI)	N/A	combination	10 min	National Defence Act, R.S.C. 1985, c. N-5 (), Queen's Regulations and Orders for the Canadian Forces (QR&O) - Volume I - Administration (), DAOD 5012-0 Harassment Prevention and Resolution (), DAOD 2017-1 Military Grievance Process (), DAOD 5046-0 Alternative Dispute Resolution ()
2	Formal corrective measures	N/A	Face to Face Instruction (poss. CAI)	N/A	combination	20 min	Queen's Regulations and Orders for the Canadian Forces (QR&O) - Volume I - Administration (), DAOD 5012-0 Harassment Prevention and Resolution (), DAOD 2017-1 Military Grievance Process (), Ontario Judicial Procedure Act (), Federal Courts Act ()
3	External corrective measures	N/A	Face to Face Instruction (poss. CAI)	N/A	combination	10 min	National Defence Act, R.S.C. 1985, c. N-5 (), Queen's Regulations and Orders for the Canadian Forces (QR&O) - Volume I - Administration (), Ontario Judicial Procedure Act (), Federal Courts Act ()

5. **TIME:**

Total class time	40 min
Instructional periods	0.8
Total Days	0.2

6. **Resources Required** a. CF supply documentation (electronic documentation preferred)

7. **Test Details:** See Annex B - Assessment Plan for details.

8. **Remarks:** advice may be given remotely

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PO 005 ADVISE ON CAF ORGANIZATION AND COMMAND

1. **Performance:** (CT0340) Advise on CAF organization and command

2. **Conditions:**

   a. **Given:** assistance as required, references, resources as required

   b. **Denied:** direct supervision

   c. **Environmental:** CF unit, base, wing headquarters, deployed domestically and internationally, under austere conditions

3. **Standard:** the legal officer shall advise on CAF organization and command

   a. Advise on the constitution of the CF

   b. Advise on CF organisation

   c. Advise on CF Command

4. **Remarks:** advice may be given remotely

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ENABLING OBJECTIVES

EO 005.01 Advise on the constitution of the CF

1. **Performance:** Advise on the constitution of the CF
2. **Conditions:**
   a. **Given:** assistance as required, references, resources as required
   b. **Denied:** direct supervision
   c. **Environmental:** CF unit, base, wing headquarters, deployed domestically and internationally, under austere conditions
3. **Standard:** the legal officer shall advise on the constitution of the CF
   a. Legal basis for CF structure IAW refs: LOQ-A3 http://laws-lois.justice.gc.ca/eng/acts/N-5/index.html, LOQ-A5-1 http://www.admfincs.forces.gc.ca/qro-orf/vol-01/index-eng.asp, LOQ-C1 http://vcds.mil.ca/sites/intranet-eng.aspx?page=4395
4. **Teaching Points:**

#	TEACHING POINT	DESCRIPTION	METHOD	MEDIA	ENVIRONMENT	TIME	REFERENCE
1	Legal basis for CF structure	constitution of the CF components of the CF sub components of the CF	Face to Face Instruction (poss. CAI)	N/A	combination	10 min	National Defence Act, R.S.C. 1985, c. N-5 (), Queen's Regulations and Orders for the Canadian Forces (QR&O) - Volume I - Administration (), Canadian Forces Organization Orders (CFOOs) ()

5. **TIME:**

Total class time	10 min
Instructional periods	0.2
Total Days	0.0

6. **Resources Required** a. CF supply documentation (electronic documentation preferred)
7. **Test Details:** See Annex B - Assessment Plan for details.
8. **Remarks:** advice may be given remotely

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EO 005.02 Advise on CF organisation

1. **Performance:** Advise on CF organisation

2. **Conditions**:

   a. **Given:** assistance as required, references, resources as required

   b. **Denied:** direct supervision

   c. **Environmental:** CF unit, base, wing headquarters, deployed domestically or internationally, under austere conditions

3. **Standard**: the legal officer shall advise on the organization of the CF

   a. Building blocks of the CF IAW refs: LOQ-A3 http://laws-lois.justice.gc.ca/eng/acts/N-5/index.html, LOQ-A5-1 http://www.admfincs.forces.gc.ca/qro-orf/vol-01/index-eng.asp, LOQ-C1 http://vcds.mil.ca/sites/intranet-eng.aspx?page=4395

   b. Instruments to create the building blocks of the CF IAW refs: LOQ-A3 http://laws-lois.justice.gc.ca/eng/acts/N-5/index.html, LOQ-A5-1 http://www.admfincs.forces.gc.ca/qro-orf/vol-01/index-eng.asp, LOQ-C1 http://vcds.mil.ca/sites/intranet-eng.aspx?page=4395

4. **Teaching Points:**

#	TEACHING POINT	DESCRIPTION	METHOD	MEDIA	ENVIRONMENT	TIME	REFERENCE
1	Building blocks of the CF	elements commands formations units	Face to Face Instruction (poss. CAI)	N/A	combination	10 min	National Defence Act, R.S.C. 1985, c. N-5 (), Queen's Regulations and Orders for the Canadian Forces (QR&O) - Volume I - Administration (), Canadian Forces Organization Orders (CFOOs) ()
2	Instruments to create the building blocks of the CF	MOOs CFOOs TO&Es CFTPOs Deployed units or elements	Face to Face Instruction (poss. CAI)	N/A	combination	15 min	National Defence Act, R.S.C. 1985, c. N-5 (), Queen's Regulations and Orders for the Canadian Forces (QR&O) - Volume I - Administration (), Canadian Forces Organization Orders (CFOOs) ()

5. **TIME:**

Total class time	25 min
Instructional periods	0.5
Total Days	0.1

6. **Resources Required** a. CF supply documentation (electronic documentation preferred)

7. **Test Details:** See Annex B - Assessment Plan for details.

8. **Remarks:** advice may be given remotely

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EO 005.03 Advise on CF Command

1. **Performance:** Advise on CF Command

2. **Conditions**:

   a. **Given:** assistance as required, references, resources as required

   b. **Denied:** direct supervision

   c. **Environmental:** CF unit, base, wing headquarters, deployed domestically or internationally, under austere conditions

3. **Standard**: the legal offcier shall advise on CF command

   a. Sources of command IAW refs: LOQ-A3 http://laws-lois.justice.gc.ca/eng/acts/N-5/index.html, LOQ-A5-1 http://www.admfincs.forces.gc.ca/qro-orf/vol-01/ http://sjs.mil.ca/dgoperations/_docs/CDS_Directives/CF%20C2%20Directive%202013/Eng/Annex%20C%20CF%20C2%20and%20the%20Delegation LOQ-D1 http://jag.mil.ca/publications/adminlaw-loiadmin/MilAdminlaw-DroitAdminMil-eng.pdf

   b. Command relationships IAW refs: LOQ-A3 http://laws-lois.justice.gc.ca/eng/acts/N-5/index.html, LOQ-A5-1 http://www.admfincs.forces.gc.ca/qro-orf/vol-(

4. **Teaching Points:**

#	TEACHING POINT	DESCRIPTION	METHOD	MEDIA	ENVIRONMENT	TIME	REFERENCE
1	Sources of command	QR&O Designation	Face to Face Instruction (poss. CAI)	N/A	combination	5 min	National Defence Act, R.S.C. 1985, c. N-5 (), Queen's Regulations and Orders for the Canadian Forces (QR&O) - Volume I - Administration (), CDS Directive of CF Command and Control and Delegation of Authority for Force Employment, 28 April 2013 (), A-LG-007-000/AF-010 Military Administrative Law Manual (2008) (A-LG-007-000/AF-010)
2	Command relationships	distinction between the exercise of ministeriel power and operational doctrine	Face to Face Instruction (poss. CAI)	N/A	combination	5 min	National Defence Act, R.S.C. 1985, c. N-5 (), Queen's Regulations and Orders for the Canadian Forces (QR&O) - Volume I - Administration ()

5. **TIME:**

Total class time	10 min
Instructional periods	0.2
Total Days	0.0

6. **Resources Required** a. CF supply documentation (electronic documentation preferred)

7. **Test Details:** See Annex B - Assessment Plan for details.

8. **Remarks:** advice may be given remotely

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PO 006 ADVISE ON GENERAL PRINCIPLES OF CF SERVICE

1. **Performance:** Advise on general principles of CF service

2. **Conditions:**

   a. **Given:** assistance as requied, references, resources as required

   b. **Denied:** direct supervision

   c. **Environmental:** CF unit, base, wing headquarters, deployed domestically or internationally, under austere conditions

3. **Standard**: the legal officer shall advise on the general principles of CF service

   a. Advise on the nature of CF service

   b. Advise on human rights issues affecting CF members

4. **Remarks:** advice may be given remotely

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ENABLING OBJECTIVES

EO 006.01 Advise on the nature of CF service

1. **Performance:** Advise on the nature of CF service

2. **Conditions**:

   a. **Given:** assistance as required, references, resources as required

   b. **Denied:** direct supervision

   c. **Environmental:** CF unit, base, wing headquarters, deployed domestically or internationally, under austere conditions

3. **Standard**: the legal officer shall advise on the nature of CF service

   a. Advise on the Crown-CF member relationship IAW refs: LOQ-A3 http://laws-lois.justice.gc.ca/eng/acts/N-5/index.html, LOQ-A5-1 http://www.admfincs.forces.gc.ca/qro-orf/vol-01/index-eng.asp, LOQ-C4 DAOD 5002-1, Enrolment http://www.admfincs.forces.gc.ca/dao-doa/5000/5002-1-eng.asp, LOQ-D1 http://jag.mil.ca/publications/adminlaw-loiadmin/MilAdminlaw-DroitAdminMil-eng.pdf

      i. Legal basis of Crown- CF member relationship IAW refs: LOQ-A1 http://laws-lois.justice.gc.ca/eng/CONST/page-1.html, LOQ-A3 http://laws-lois.justice.gc.ca/eng/acts/N-5/index.html, LOQ-A5-1 http://www.admfincs.forces.gc.ca/qro-orf/vol-01/index-eng.asp

      ii. characteristics of the Crown- CF member relationship IAW refs: LOQ-A1 http://laws-lois.justice.gc.ca/eng/CONST/page-15.html#h-38, LOQ-A3 http://laws-lois.justice.gc.ca/eng/acts/N-5/index.html, LOQ-A5-1 http://www.admfincs.forces.gc.ca/qro-orf/vol-01/index-eng.asp, LOQ-C4 DAOD 5002-1, Enrolment http://www.admfincs.forces.gc.ca/dao-doa/5000/5002-1-eng.asp

   b. Advise on liability to serve IAW refs: LOQ-A3 http://laws-lois.justice.gc.ca/eng/acts/N-5/index.html, LOQ-A5-1 http://www.admfincs.forces.gc.ca/qro-orf/vol-01/index-eng.asp, LOQ-C4 DAOD 5002-1, Enrolment http://www.admfincs.forces.gc.ca/dao-doa/5000/5002-1-eng.asp, LOQ-C4 DAOD 5049-1, Obligatory Service http://www.admfincs.forces.gc.ca/dao-doa/5000/5049-1-eng.asp

      i. Nature of liability IAW refs: LOQ-A3 http://laws-lois.justice.gc.ca/eng/acts/N-5/index.html, LOQ-A5-1 http://www.admfincs.forces.gc.ca/qro-orf/vol-01/index-eng.asp, LOQ-C4 DAOD 5002-1, Enrolment http://www.admfincs.forces.gc.ca/dao-doa/5000/5002-1-eng.asp, LOQ-C4 DAOD 5049-1, Obligatory Service http://www.admfincs.forces.gc.ca/dao-doa/5000/5049-1-eng.asp, LOQ-C4 DAOD 5002-4, Supplementary Reserve http://www.admfincs.forces.gc.ca/dao-doa/5000/5002-4-eng.asp

   c. (CT0275) Advise on universality of service IAW refs: LOQ-A2 http://laws-lois.justice.gc.ca/eng/CONST/page-15.html#h-38, LOQ-A3 http://laws-lois.justice.gc.ca/eng/acts/N-5/index.html, LOQ-A3 http://laws-lois.justice.gc.ca/eng/acts/H-6/, LOQ-C4 DAOD 5023-0 Universality of Service http://www.admfincs.forces.gc.ca/dao-doa/5000/5023-0-eng.asp, LOQ-C4 DAOD 5023-1, Minimum Operational Standards Related to Universality of Service http://www.admfincs.forces.gc.ca/dao-doa/5000/5023-1-eng.asp

      i. Legal sources and nature of the principle IAW refs: LOQ-A3 http://laws-lois.justice.gc.ca/eng/acts/N-5/index.html, LOQ-A3 http://laws-lois.justice.gc.ca/eng/acts/H-6/, LOQ-C4 DAOD 5023-0 Universality of Service http://www.admfincs.forces.gc.ca/dao-doa/5000/5023-0-eng.asp, LOQ-C4 DAOD 5023-1, Minimum Operational Standards Related to Universality of Service http://www.admfincs.forces.gc.ca/dao-doa/5000/5023-1-eng.asp

      ii. Impact of the principle on CF policy development IAW refs: LOQ-A5-1 http://www.admfincs.forces.gc.ca/qro-orf/vol-01/index-eng.asp, LOQ-C4 DAOD 5023-0 Universality of Service http://www.admfincs.forces.gc.ca/dao-doa/5000/5023-0-eng.asp, LOQ-C4 DAOD 5023-1, Minimum Operational Standards Related to Universality of Service http://www.admfincs.forces.gc.ca/dao-doa/5000/5023-1-eng.asp, LOQ-C4 DAOD 5023-1, Minimum Operational Standards Related to Universality of Service http://www.admfincs-smafinsm.forces.gc.ca/dao-doa/5000/5023-1-eng.asp

4. **Teaching Points:**

#	TEACHING POINT	DESCRIPTION	METHOD	MEDIA	ENVIRONMENT	TIME	REFERENCE
1	Advise on the Crown-CF member relationship	legal basis of Crown-CAF member relationship characteristics of the Crown-CAF member relationship	Face to Face Instruction (poss. CAI)	N/A	Combination	20 min	National Defence Act, R.S.C. 1985, c. N-5 (), Queen's Regulations and Orders for the Canadian Forces (QR&O) - Volume I - Administration (), DAOD 5002-1, Enrolment (), A-LG-007-000/AF-010 Military Administrative Law Manual (2008) (A-LG-007-000/AF-010)
1.1	Legal basis of Crown- CF member relationship	constitution crown prerogative statutory case law	Face to Face Instruction (poss. CAI)	N/A	combination	10 min	Constitution Act, 1867, 30 & 31 Victoria, c. 3 (U.K.), R.S.C. 1985, App. II, No. 11. (), National Defence Act, R.S.C. 1985, c. N-5 (), Queen's Regulations and Orders for the Canadian Forces (QR&O) - Volume I - Administration ()

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1.2	characteristics of the Crown-CF member relationship	N/A	Face to Face Instruction (poss. CAI)	N/A	combination	10 min	Constitution Act, 1982, Enacted as Schedule B to the Canada Act 1982, 1982, c. 11 (U.K.), which came into force on April 17, 1982. (), National Defence Act, R.S.C. 1985, c. N-5 (), Queen's Regulations and Orders for the Canadian Forces (QR&O) - Volume I - Administration (), DAOD 5002-1, Enrolment ()
2	Advise on liability to serve	nature of liability	Face to Face Instruction (poss. CAI)	N/A	combination	10 min	National Defence Act, R.S.C. 1985, c. N-5 (), Queen's Regulations and Orders for the Canadian Forces (QR&O) - Volume I - Administration (), DAOD 5002-1, Enrolment (), DAOD 5049-1, Obligatory Service ()
2.1	Nature of liability	Reg Force Primary Reserve Supplementary Reserve Other subcomponents classes of service (A, B, C) Active service Component & sub component transfer	Face to Face Instruction (poss. CAI)	N/A	combination	10 min	National Defence Act, R.S.C. 1985, c. N-5 (), Queen's Regulations and Orders for the Canadian Forces (QR&O) - Volume I - Administration (), DAOD 5002-1, Enrolment (), DAOD 5049-1, Obligatory Service (), DAOD 5002-4, Supplementary Reserve ()
3	Advise on universality of service	legal sources and nature of the principle impact of the principle on CAF policy development	Face to Face Instruction (poss. CAI)	N/A	combination	40 min	Canadian Charter of Rights and Freedoms (), National Defence Act, R.S.C. 1985, c. N-5 (), Canadian Human Rights Act (), DAOD 5023-0 Universality of Service (), DAOD 5023-1, Minimum Operational Standards Related to Universality of Service ()
3.1	Legal sources and nature of the principle	section 33 NDA CHRA section 15(9) Case Law DAOD 5023 QR&O 15 (medical release) MND exemption employability, deployability, fitness	Face to Face Instruction (poss. CAI)	N/A	combination	20 min	National Defence Act, R.S.C. 1985, c. N-5 (), Canadian Human Rights Act (), DAOD 5023-0 Universality of Service (), DAOD 5023-1, Minimum Operational Standards Related to Universality of Service ()
3.2	Impact of the principle on CF policy development	Cannot be applied arbitrarily Impact on release policies Impact on fitness policies Impact on deployment policies Impact on career development policies Impact on postings	Face to Face Instruction (poss. CAI)	N/A	N/A	20 min	Queen's Regulations and Orders for the Canadian Forces (QR&O) - Volume I - Administration (), DAOD 5023-0 Universality of Service (), DAOD 5023-1, Minimum Operational Standards Related to Universality of Service (), DAOD 5023-1, Minimum Operational Standards Related to Universality of Service ()

5. **TIME:**

Total class time	140 min
Instructional periods	2.8
Total Days	0.6

6. **Resources Required** a. CF supply documentation (electronic documentation preferred)

7. **Test Details:** See Annex B - Assessment Plan for details.

8. **Remarks:** advice may be given remotely

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EO 006.02 Advise on human rights issues affecting CF members

1. **Performance:** Advise on human rights issues affecting CF members

2. **Conditions**:

   a. **Given:** assistance as required, references, resources as required

   b. **Denied:** direct supervision

   c. **Environmental:** CF unit, base, wing headquarters, deployed domestically and internationally, under austere conditions

3. **Standard**: the legal officer shall advise on human rights issues affecting CF members

   a. Key grounds relevant to CF policy development IAW refs: LOQ-A2 http://laws-lois.justice.gc.ca/eng/CONST/page-15.html#h-38, LOQ-A3 http://laws-lois.justice.gc.ca/eng/acts/N-5/index.html, LOQ-C4 DAOD 5516-0, Human Rights http://www.admfincs.forces.gc.ca/dao-doa/5000/5516-0-eng.asp, LOQ-C4 DAOD 5516-1, Human Rights Complaints http://www.admfincs.forces.gc.ca/dao-doa/5000/5516-1-eng.asp

   b. Relevant human rights legislation IAW refs: LOQ-A3 http://laws-lois.justice.gc.ca/eng/acts/N-5/index.html, LOQ-A5-1 http://www.admfincs.forces.gc.ca/qro-orf/vol-01/index-eng.asp, LOQ-A3 http://laws-lois.justice.gc.ca/eng/acts/H-6/, LOQ-B1- Canada (Attorney General) v. St Thomas, [1993] F.C.J. No. 1015, 109 D.L.R. (4th) 671 (C.A.). http://www.cdn-hr-reporter.ca/frontpage

4. **Teaching Points:**

#	TEACHING POINT	DESCRIPTION	METHOD	MEDIA	ENVIRONMENT	TIME	REFERENCE
1	Key grounds relevant to CF policy development	religion gender sexual orientation pregnancy language family status	Face to Face Instruction (poss. CAI)	N/A	combination	20 min	Canadian Charter of Rights and Freedoms (), National Defence Act, R.S.C. 1985, c. N-5 (), DAOD 5516-0, Human Rights (), DAOD 5516-1, Human Rights Complaints ()
2	Relevant human rights legislation	CHRA, Case Law	Face to Face Instruction (poss. CAI)	N/A	combination	20 min	National Defence Act, R.S.C. 1985, c. N-5 (), Queen's Regulations and Orders for the Canadian Forces (QR&O) - Volume I - Administration (), Canadian Human Rights Act (), Canada (Attorney-General) v. St. Thomas ()

5. **TIME:**

Total class time	40 min
Instructional periods	0.8
Total Days	0.2

6. **Resources Required** a. CF supply documentation (electronic documentation preferred)

7. **Test Details:** See Annex B - Assessment Plan for details.

8. **Remarks:** advice may be given remotely

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PO 007 ADVISE ON THE DEVELOPMENT AND APPLICATION OF SIGNIFICANT CF POLICIES

1. **Performance:** Advise on the development and application of significant CF policies

2. **Conditions:**

   a. **Given:** assistance as required, references, resources as required

   b. **Denied:** direct supervision

   c. **Environmental:** CAF unit, base or wing headquarters, deployed domesticaly or internationally, under austere conditions

3. **Standard**: The legal officer shall advise on the development and application of significant CAF policies to include: advice on drug/alcohol policy, advise on public comment, advise on conflict of interest, advise on sexual misconduct and sexual disorders, advise on removal from command positins

   a. Advise on drug/ alcohol policy

   b. Advise on public comment and conflict of interest

   c. Advise on sexual misconduct and sexual disorders

   d. Advise on removal from command positions

4. **Remarks:** advice may be given remotely

A-2015-01212--0056

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ENABLING OBJECTIVES

EO 007.01 Advise on drug/ alcohol policy

1. **Performance:** Advise on drug/ alcohol policy
2. **Conditions**:
   a. **Given:** assistance as required, references, resources as required
   b. **Denied:** direct supervision
   c. **Environmental:** CAF unit, base or wing headquarters, deployed domestically or internationally, under austere conditions
3. **Standard**: the legal officer shall advise on the CAF drug policy and the CAF alcohol policy
   a. relevant regulations and policies IAW refs: LOQ-A1 http://laws-lois.justice.gc.ca/eng/CONST/page-15.html#h-38, LOQ-A3 http://laws-lois.justice.gc.ca/eng/acts/N-5/index.html, LOQ-A5-1 http://www.admfincs.forces.gc.ca/qro-orf/vol-01/index-eng.asp, LOQ-C4 DAOD 5019-7 Alcohol Misconduct http://www.admfincs.forces.gc.ca/dao-doa/5000/5019-7-eng.asp, LOQ-C4 DAOD 5019-3, Canadian Forces Drug Control Program http://www.admfincs.forces.gc.ca/dao-doa/5000/5019-3-eng.asp
   b. CF Alcohol policy IAW refs: LOQ-C4 DAOD 5019-7 Alcohol Misconduct http://www.admfincs.forces.gc.ca/dao-doa/5000/5019-7-eng.asp
   c. CF Drug policy IAW refs: LOQ-C4 DAOD 5019-3, Canadian Forces Drug Control Program http://www.admfincs.forces.gc.ca/dao-doa/5000/5019-3-eng.asp
4. **Teaching Points:**

#	TEACHING POINT	DESCRIPTION	METHOD	MEDIA	ENVIRONMENT	TIME	REFERENCE
1	relevant regulations and policies	Constitutional issues CF drug control program (QR&O ch.20, CF drug control manual, DAOD 5091-3) Alcohol misconduct policy (DAOD 5091-7) Administrative measures Criminal Code DUI Provincial road side screening	Face to Face Instruction (poss. CAI)	N/A	combination	40 min	Constitution Act, 1982, Enacted as Schedule B to the Canada Act 1982, 1982, c. 11 (U.K.), which came into force on April 17, 1982. (), National Defence Act, R.S.C. 1985, c. N-5 (), Queen's Regulations and Orders for the Canadian Forces (QR&O) - Volume I - Administration (), DAOD 5019-7 Alcohol Misconduct (), DAOD 5019-3, Canadian Forces Drug Control Program ()
2	CF Alcohol policy	Alcohol misconduct Conduct deficieny involving alcohol Triggers for application of DAOD Policies relating to the serving of alcohol Measures taken as a consequence of these policies	Face to Face Instruction (poss. CAI)	N/A	combination	40 min	DAOD 5019-7 Alcohol Misconduct ()
3	CF Drug policy	Drug use and other drug involvment Drug testing Post testing actions	Face to Face Instruction (poss. CAI)	N/A	combination	40 min	DAOD 5019-3, Canadian Forces Drug Control Program ()

5. **TIME:**

Total class time	120 min
Instructional periods	2.4
Total Days	0.5

6. **Resources Required** a. CF supply documentation (electronic documentation preferred)
7. **Test Details:** See Annex B - Assessment Plan for details.
8. **Remarks:** advise may be given remotely

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EO 007.02 Advise on public comment and conflict of interest

1. **Performance:** Advise on public comment and conflict of interest

2. **Conditions**:

   a. **Given:** assistance as required, references, resources as required

   b. **Denied:** direct supervsion

   c. **Environmental:** CAF unit, base or wing headquarters, deployed domestically or internationally, under austere conditions

3. **Standard**: The legal officer shall advice on public comment and conflict of interest including: advice on public comment by CAF members, advice on conflict of interest, advise on political activities

   a. (CT0320) Advise on public comment by CAF members IAW refs: LOQ-A3 http://laws-lois.justice.gc.ca/eng/acts/N-5/index.html, LOQ-A5-1 http://www.admfincs.forces.gc.ca/qro-orf/vol-01/index-eng.asp, LOQ-C4 DAOD 2008-0, Public Affairs Policy http://www.admfincs.forces.gc.ca/dao-doa/2000/2008-0-eng.asp

      i. Applicable regulations and policies IAW refs: LOQ-A3 http://laws-lois.justice.gc.ca/eng/acts/N-5/index.html, LOQ-A5-1 http://www.admfincs.forces.gc.ca/qro-orf/vol-01/index-eng.asp, LOQ-C4 DAOD 2008-0, Public Affairs Policy http://www.admfincs.forces.gc.ca/dao-doa/2000/2008-0-eng.asp, LOQ-D1 JAG Policy Directive-Media Relations http://jag.mil.ca/publications/directives/directive001-99.pdf

   b. (CT0035) Advise on conflict of interest IAW refs: LOQ-A3 http://laws-lois.justice.gc.ca/eng/acts/N-5/index.html, LOQ-A5-1 http://www.admfincs.forces.gc.ca/qro-orf/vol-01/index-eng.asp, LOQ-C4 DAOD 7021-0, Conflict of Interest and Post-Employment http://www.admfincs.forces.gc.ca/dao-doa/7000/7021-0-eng.asp, LOQ-C4 DAOD 7021-1, Conflict of Interest http://www.admfincs.forces.gc.ca/dao-doa/7000/7021-1-eng.asp, LOQ-C4 DAOD 7021-3, Acceptance of Gifts, Hospitality and Other Benefits http://www.admfincs.forces.gc.ca/dao-doa/7000/7021-3-eng.asp

      i. Applicable regulations and policies on conflict of interest IAW refs: LOQ-A3 http://laws-lois.justice.gc.ca/eng/acts/N-5/index.html, LOQ-A5-1 http://www.admfincs.forces.gc.ca/qro-orf/vol-01/index-eng.asp, LOQ-C4 DAOD 7021-0, Conflict of Interest and Post-Employment http://www.admfincs.forces.gc.ca/dao-doa/7000/7021-0-eng.asp, LOQ-C4 DAOD 7021-1, Conflict of Interest http://www.admfincs.forces.gc.ca/dao-doa/7000/7021-1-eng.asp, LOQ-C4 DAOD 7021-3, Acceptance of Gifts, Hospitality and Other Benefits http://www.admfincs.forces.gc.ca/dao-doa/7000/7021-3-eng.asp

   c. (CT0045) Advise on political activities IAW refs: LOQ-A2 http://laws-lois.justice.gc.ca/eng/CONST/page-15.html#h-38, LOQ-A3 http://laws-lois.justice.gc.ca/eng/acts/N-5/index.html, LOQ-A5-1 http://www.admfincs.forces.gc.ca/qro-orf/vol-01/index-eng.asp, LOQ-A3 http://laws-lois.justice.gc.ca/eng/acts/E-2.01/FullText.html, LOQ-D9 FEDERAL,PROVINCIAL AND TERRITORIALELECTORAL EVENTS http://www.forces.gc.ca/assets/FORCES_Internet/docs/en/jag/fed-prov-terr-electoral-events.pdf, LOQ-B1-R. v. Oakes, [1986] 1 SCR 103 http://www.canlii.org/en/ca/scc/doc/1986/1986canlii46/1986canlii46.html

      i. (CT0125) Election issues pertaining to the CAF IAW refs: LOQ-A3 http://laws-lois.justice.gc.ca/eng/acts/N-5/index.html, LOQ-A5-1 http://www.admfincs.forces.gc.ca/qro-orf/vol-01/index-eng.asp, LOQ-A3 http://laws-lois.justice.gc.ca/eng/acts/E-2.01/FullText.html, LOQ-D9 FEDERAL,PROVINCIAL AND TERRITORIALELECTORAL EVENTS http://www.forces.gc.ca/assets/FORCES_Internet/docs/en/jag/fed-prov-terr-electoral-events.pdf

      ii. CAF regulations and policies pertaining to political activities IAW refs: LOQ-A2 http://laws-lois.justice.gc.ca/eng/CONST/page-15.html#h-38, LOQ-A3 http://laws-lois.justice.gc.ca/eng/acts/N-5/index.html, LOQ-A5-1 http://www.admfincs.forces.gc.ca/qro-orf/vol-01/index-eng.asp, LOQ-A3 http://laws-lois.justice.gc.ca/eng/acts/E-2.01/FullText.html, LOQ-D9 FEDERAL,PROVINCIAL AND TERRITORIALELECTORAL EVENTS http://www.forces.gc.ca/assets/FORCES_Internet/docs/en/jag/fed-prov-terr-electoral-events.pdf

4. **Teaching Points:**

#	TEACHING POINT	DESCRIPTION	METHOD	MEDIA	ENVIRONMENT	TIME	REFERENCE
1	Advise on public comment by CAF members	include information pertaining to disclosure of information, QR&O 19.36 Whistle blower	Face to Face Instruction (poss. CAI)	N/A	Combination	0 min	National Defence Act, R.S.C. 1985, c. N-5 (), Queen's Regulations and Orders for the Canadian Forces (QR&O) - Volume I - Administration (), DAOD 2008-0, Public Affairs Policy ()
1.1	Applicable regulations and policies	publication policies policies on interaction with the media Improper comment release of information	Face to Face Instruction (poss. CAI)	N/A	combination	20 min	National Defence Act, R.S.C. 1985, c. N-5 (), Queen's Regulations and Orders for the Canadian Forces (QR&O) - Volume I - Administration (), DAOD 2008-0, Public Affairs Policy (), JAG Policy Directive-Media Relations ()

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2	Advise on conflict of interest	N/A	Face to Face Instruction (poss. CAI)	N/A	combination	0 min	National Defence Act, R.S.C. 1985, c. N-5 (), Queen's Regulations and Orders for the Canadian Forces (QR&O) - Volume I - Administration (), DAOD 7021-0, Conflict of Interest and Post-Employment (), DAOD 7021-1, Conflict of Interest (), DAOD 7021-3, Acceptance of Gifts, Hospitality and Other Benefits ()
2.1	Applicable regulations and policies on conflict of interest	N/A	Face to Face Instruction (poss. CAI)	N/A	combination	20 min	National Defence Act, R.S.C. 1985, c. N-5 (), Queen's Regulations and Orders for the Canadian Forces (QR&O) - Volume I - Administration (), DAOD 7021-0, Conflict of Interest and Post-Employment (), DAOD 7021-1, Conflict of Interest (), DAOD 7021-3, Acceptance of Gifts, Hospitality and Other Benefits ()
3	Advise on political activities	election issues pertaining to CAF CAF regulations and policies pertaining to political activities	Face to Face Instruction (poss. CAI)	N/A	combination	40 min	Canadian Charter of Rights and Freedoms (), National Defence Act, R.S.C. 1985, c. N-5 (), Queen's Regulations and Orders for the Canadian Forces (QR&O) - Volume I - Administration (), Canada Elections Act (), FEDERAL,PROVINCIAL AND TERRITORIALELECTORAL EVENTS (), R. v. Oakes ()
3.1	Election issues pertaining to the CAF	N/A	Face to Face Instruction (poss. CAI)	N/A	N/A	20 min	National Defence Act, R.S.C. 1985, c. N-5 (), Queen's Regulations and Orders for the Canadian Forces (QR&O) - Volume I - Administration (), Canada Elections Act (), FEDERAL,PROVINCIAL AND TERRITORIALELECTORAL EVENTS ()
3.2	CAF regulations and policies pertaining to political activities	Candidature for office membership and political parties Political advertising and activities on defence establishments Civilian polling stations on defence establishments	Face to Face Instruction (poss. CAI)	N/A	combination	20 min	Canadian Charter of Rights and Freedoms (), National Defence Act, R.S.C. 1985, c. N-5 (), Queen's Regulations and Orders for the Canadian Forces (QR&O) - Volume I - Administration (), Canada Elections Act (), FEDERAL,PROVINCIAL AND TERRITORIALELECTORAL EVENTS ()

5. **TIME:**

Total class time	120 min
Instructional periods	2.4
Total Days	0.5

6. **Resources Required** a. CF supply documentation (electronic documentation preferred)

7. **Test Details:** See Annex B - Assessment Plan for details.

8. **Remarks:** advice may be given remotely

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EO 007.03 Advise on sexual misconduct and sexual disorders

1. **Performance:** Advise on sexual misconduct and sexual disorders

2. **Conditions**:

   a. **Given:** assistance as required, references, resources as required

   b. **Denied:** direct supervision

   c. **Environmental:** CAF unit, base or wing headquarters, deployed domestically or internationally, under austere conditions

3. **Standard**: the legal officer shall advise on sexual misconduct and sexual disorders as it pertains to CAF members including: prohibited conduct, disorders and consequences related to sexual misconduct and sexual disorders

   a. Relevant regulations and CF policies IAW refs: LOQ-A3 http://laws-lois.justice.gc.ca/eng/acts/N-5/index.html, LOQ-C4 DAOD 5019-5, Sexual Misconduct and Sexual Disorders http://www.admfincs.forces.gc.ca/dao-doa/5000/5019-5-eng.asp, LOQ-C4 http://www.admfincs.forces.gc.ca/dao-doa/5000/5019-4-eng.asp

4. **Teaching Points:**

#	TEACHING POINT	DESCRIPTION	METHOD	MEDIA	ENVIRONMENT	TIME	REFERENCE
1	Relevant regulations and CF policies	prohibited conduct Disorders Consequences	Face to Face Instruction (poss. CAI)	N/A	combination	40 min	National Defence Act, R.S.C. 1985, c. N-5 (), DAOD 5019-5, Sexual Misconduct and Sexual Disorders (), DAOD 5019-4 Remedial Measures ()

5. **TIME:**

Total class time	40 min
Instructional periods	0.8
Total Days	0.2

6. **Resources Required** a. CF supply documentation (electronic documentation preferred)

7. **Test Details:** See Annex B - Assessment Plan for details.

8. **Remarks:** advice may be given remotely

A-2015-01212--0060

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EO 007.04 Advise on removal from command positions

1. **Performance:** Advise on removal from command positions

2. **Conditions**:

   a. **Given:** assitance as required, references, resources as required

   b. **Denied:** direct supervision

   c. **Environmental:** CAF unit, base or wing headquarters, deployed domestically or internationally, under austere conditions

3. **Standard**: The legal oficer shall provide advice on removal from command positions

   a. Relevant regulations and CF policies IAW refs: LOQ-A3 http://laws-lois.justice.gc.ca/eng/acts/N-5/index.html, LOQ-A5-1 http://www.admfincs.forces.gc.c http://sjs.mil.ca/dgoperations/_docs/CDS_Directives/CF%20C2%20Directive%202013/Eng/Annex%20C%20CF%20C2%20and%20the%20Delegation

4. **Teaching Points:**

#	TEACHING POINT	DESCRIPTION	METHOD	MEDIA	ENVIRONMENT	TIME	REFERENCE
1	Relevant regulations and CF policies	commanders of commands / formations commanding officers designated Commanders and commanding officers Other appointments and positions Removal from command Distinguish from relief of performance of military duty	Face to Face Instruction (poss. CAI)	N/A	combination	40 min	National Defence Act, R.S.C. 1985, c. N-5 (), Queen's Regulations and Orders for the Canadian Forces (QR&O) - Volume I - Administration (), CDS Directive of CF Command and Control and Delegation of Authority for Force Employment, 28 April 2013 ()

5. **TIME:**

Total class time	40 min
Instructional periods	0.8
Total Days	0.2

6. **Resources Required** a. CF supply documentation (electronic documentation preferred)

7. **Test Details:** See Annex B - Assessment Plan for details.

8. **Remarks:** advice may be given remotely

A-2015-01212--0061

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PO 008 ADVISE ON THE ADMINISTRATION OF CAF SERVICE

1. **Performance:** (CT0210) Advise on the administration of CAF service

2. **Conditions:**

   a. **Given:** asssitance as required, references, resources as required
   b. **Denied:** direct supervision
   c. **Environmental:** CAF unit, base or wing headquarters, deployed domestically or internationally, under austere conditions

3. **Standard**: the legal officer shall advise on the administration of CAF service including: advise on the enrolement of CAF members, advise on legal issues pertaining to career, advise on CAF compensation and benefits issues and advise on the release of CAF members

   a. Advise on the enrolment of CAF members
   b. Advise on legal issues pertaining to career
   c. Advise on CF compensation and benefits issues
   d. Advise on the release of CAF members

4. **Remarks:** advice may be given remotely

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ENABLING OBJECTIVES

EO 008.01 Advise on the enrolment of CAF members

1. **Performance:** Advise on the enrolment of CAF members
2. **Conditions**:
   a. **Given:** assistance as required, references, resources as required
   b. **Denied:** direct supervision
   c. **Environmental:** CAF unit, base or wing headquarters, deployed domestically or internationally, under austere conditions
3. **Standard**: the legal officer shall advise on the enrollement of CF members
   a. Relevant regulations and policies IAW refs: LOQ-A3 http://laws-lois.justice.gc.ca/eng/acts/N-5/index.html, LOQ-A5-1 http://www.admfincs.forces.gc.ca/qro-orf/vol-01/index-eng.asp, LOQ-C4 DAOD 5002-1, Enrolment http://www.admfincs.forces.gc.ca/dao-doa/5000/5002-1-eng.asp, LOQ-C4 DAOD 5002-2, Direct Entry Officer Plan - Regular Force http://www.admfincs.forces.gc.ca/dao-doa/5000/5002-2-eng.asp
4. **Teaching Points:**

#	TEACHING POINT	DESCRIPTION	METHOD	MEDIA	ENVIRONMENT	TIME	REFERENCE
1	Relevant regulations and policies	N/A	Face to Face Instruction (poss. CAI)	N/A	combination	10 min	National Defence Act, R.S.C. 1985, c. N-5 (), Queen's Regulations and Orders for the Canadian Forces (QR&O) - Volume I - Administration (), DAOD 5002-1, Enrolment (), DAOD 5002-2, Direct Entry Officer Plan - Regular Force ()

5. **TIME:**

Total class time	10 min
Instructional periods	0.2
Total Days	0.0

6. **Resources Required** a. CF supply documentation (electronic documentation preferred)
7. **Test Details:** See Annex B - Assessment Plan for details.
8. **Remarks:** advice may be given remotely

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EO 008.02 Advise on legal issues pertaining to career

1. **Performance:** Advise on legal issues pertaining to career

2. **Conditions**:

   a. **Given:** assistance as required, references, resources as required

   b. **Denied:** direct supervision

   c. **Environmental:** CAF unit, base or wing headquarters, deployed domestically or internationally, under austere conditions

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3. **Standard**: the legal officer shall advise on CAF career issues including: advise on rank, promotion and succession planning, advise on conduct and performance deficiencies, advise on administrative actions with regard to CAF members, advise on legal issues arising out of injury to CAF members and advise on civil an criminal court proceedings

   a. Advise on rank, promotion and succession planning IAW refs: LOQ-A3 http://laws-lois.justice.gc.ca/eng/acts/N-5/index.html, LOQ-A5-1 http://www.admfincs.forces.gc.ca/qro-orf/vol-01/index-eng.asp, LOQ-C4 DAOD 5059-0, Performance Assessment of Canadian Forces Members http://www.admfincs.forces.gc.ca/dao-doa/5000/5059-0-eng.asp

      i. Relevant regulations and policies IAW refs: LOQ-A3 http://laws-lois.justice.gc.ca/eng/acts/N-5/index.html, LOQ-A5-1 http://www.admfincs.forces.gc.ca/qro-orf/vol-01/index-eng.asp, LOQ-A3 http://laws-lois.justice.gc.ca/eng/acts/H-6/, LOQ-C4 DAOD 5002-0, Military Personnel Requirements and Production http://www.admfincs.forces.gc.ca/dao-doa/5000/5002-0-eng.asp, LOQ-D1 http://jag.mil.ca/publications/adminlaw-loiadmin/MilAdminlaw-DroitAdminMil-eng.pdf, LOQ-C4 DAOD 5002-3, Component and Sub-Component Transfer http://www.admfincs.forces.gc.ca/dao-doa/5000/5002-3-eng.asp

   b. Advise on conduct and performance deficiencies IAW refs: LOQ-A3 http://laws-lois.justice.gc.ca/eng/acts/N-5/index.html, LOQ-A5-1 http://www.admfincs.forces.gc.ca/qro-orf/vol-01/index-eng.asp, LOQ-C4 http://www.admfincs.forces.gc.ca/dao-doa/5000/5019-4-eng.asp, LOQ-C4 DAOD 5019-0, Conduct and Performance Deficiencies http://www.admfincs.forces.gc.ca/dao-doa/5000/5019-0-eng.asp, LOQ-C4 http://www.admfincs.forces.gc.ca/dao-doa/5000/5019-2-eng.asp, LOQ-C4 DAOD 5059-0, Performance Assessment of Canadian Forces Members http://www.admfincs.forces.gc.ca/dao-doa/5000/5059-0-eng.asp

      i. Relevant regulations and policies IAW refs: LOQ-A3 http://laws-lois.justice.gc.ca/eng/acts/N-5/index.html, LOQ-A5-1 http://www.admfincs.forces.gc.ca/qro-orf/vol-01/index-eng.asp, LOQ-C4 http://www.admfincs.forces.gc.ca/dao-doa/5000/5019-4-eng.asp, LOQ-C4 DAOD 5019-0, Conduct and Performance Deficiencies http://www.admfincs.forces.gc.ca/dao-doa/5000/5019-0-eng.asp, LOQ-C4 http://www.admfincs.forces.gc.ca/dao-doa/5000/5019-2-eng.asp, LOQ-C4 DAOD 5059-0, Performance Assessment of Canadian Forces Members http://www.admfincs.forces.gc.ca/dao-doa/5000/5059-0-eng.asp

   c. (CT0015) Advise on administrative actions WRT CF members IAW refs: LOQ-A3 http://laws-lois.justice.gc.ca/eng/acts/N-5/index.html, LOQ-A5-1 http://www.admfincs.forces.gc.ca/qro-orf/vol-01/index-eng.asp, LOQ-C4 http://www.admfincs.forces.gc.ca/dao-doa/5000/5019-4-eng.asp, LOQ-C4 DAOD 5019-0, Conduct and Performance Deficiencies http://www.admfincs.forces.gc.ca/dao-doa/5000/5019-0-eng.asp, LOQ-C4 http://www.admfincs.forces.gc.ca/dao-doa/5000/5019-2-eng.asp

      i. Relevant regulations and policies IAW refs: LOQ-A3 http://laws-lois.justice.gc.ca/eng/acts/N-5/index.html, LOQ-A5-1 http://www.admfincs.forces.gc.ca/qro-orf/vol-01/index-eng.asp, LOQ-C4 http://www.admfincs.forces.gc.ca/dao-doa/5000/5019-4-eng.asp, LOQ-C4 http://www.admfincs.forces.gc.ca/dao-doa/5000/5019-2-eng.asp

   d. (CT0205) Advise on legal issues arising out of injury of CAF members IAW refs: LOQ-A3 http://laws-lois.justice.gc.ca/eng/acts/N-5/index.html, LOQ-A5-1 http://www.admfincs.forces.gc.ca/qro-orf/vol-01/index-eng.asp, LOQ-C4 DAOD 5018-0, Injured Members and Military Casualties http://www.admfincs.forces.gc.ca/dao-doa/5000/5018-0-eng.asp, LOQ-C4 DAOD 5018-2, Report of Injuries and Exposure to Toxic Substances http://www.admfincs.forces.gc.ca/dao-doa/5000/5018-2-eng.asp, LOQ-A4 http://laws-lois.justice.gc.ca/eng/acts/P-21/, LOQ-C4 DAOD 1002-1, Requests under the Privacy Act for Personal Information http://www.admfincs.forces.gc.ca/dao-doa/1000/1002-1-eng.asp, LOQ-D9 The Guide to Benefits, Programs, and Services for Serving and Former Canadian Armed Forces Members and their Families http://www.forces.gc.ca/en/caf-community-benefits-ill-injured-deceased/guide-toc.page?

      i. legal issues relating to injuries attributable or arising out of military service and duty IAW refs: LOQ-A2 http://laws-lois.justice.gc.ca/eng/CONST/page-15.html#h-38, LOQ-A5-1 http://www.admfincs.forces.gc.ca/qro-orf/vol-01/index-eng.asp, LOQ-A3 http://laws-lois.justice.gc.ca/eng/acts/H-6/, LOQ-C4 DAOD 5023-0 Universality of Service http://www.admfincs.forces.gc.ca/dao-doa/5000/5023-0-eng.asp, LOQ-C4 DAOD 5018-0, Injured Members and Military Casualties http://www.admfincs.forces.gc.ca/dao-doa/5000/5018-0-eng.asp, LOQ-C4 DAOD 5023-1, Minimum Operational Standards Related to Universality of Service http://www.admfincs.forces.gc.ca/dao-doa/5000/5023-1-eng.asp, LOQ-C4 DAOD 5003-1, Restrictions on Duty http://www.admfincs.forces.gc.ca/dao-doa/5000/5003-1-eng.asp, LOQ-A3 http://laws-lois.justice.gc.ca/eng/acts/C-17/, LOQ-C9 Supplementary Death Benefit Plan http://www.forces.gc.ca/en/caf-community-pension-policy/supplementary-death-benefit-plan.page, LOQ-A3 http://laws-lois.justice.gc.ca/eng/acts/C-16.8/, LOQ-A3 Injured Military Members Compensation Act http://laws-lois.justice.gc.ca/eng/acts/I-9.8/page-1.html, LOQ-D9 The Guide to Benefits, Programs, and Services for Serving and Former Canadian Armed Forces Members and their Families http://www.forces.gc.ca/en/caf-community-benefits-ill-injured-deceased/guide-toc.page?

   e. (CT0290) Advise on civil and criminal court proceedings IAW refs: LOQ-A3 http://laws-lois.justice.gc.ca/eng/acts/N-5/index.html, LOQ-A3 http://laws-lois.justice.gc.ca/eng/acts/C-46/index.html, LOQ-A5-2 http://www.admfincs.forces.gc.ca/qro-orf/vol-02/index-eng.asp, LOQ-C4 DAOD 7001-0, Civil and Criminal Court Proceedings http://www.admfincs.forces.gc.ca/dao-doa/7000/7001-0-eng.asp, LOQ-C4 DAOD 7001-1, Attendance at Civil and Criminal Court Proceedings http://www.admfincs.forces.gc.ca/dao-doa/7000/7001-1-eng.asp, LOQ-C4 DAOD 7001-2, Service of Legal Documents Concerning Civil and Criminal Court Proceedings http://www.admfincs.forces.gc.ca/dao-doa/7000/7001-2-eng.asp, LOQ-C4 DAOD 7016-1, Canadian Forces Administration in Respect of a Pardon http://www.admfincs.forces.gc.ca/dao-doa/7000/7016-1-eng.asp, LOQ-C4 DAOD 7016-0, Pardons http://www.admfincs.forces.gc.ca/dao-doa/7000/7016-0-eng.asp

      i. Applicable regulations and policies IAW refs: LOQ-A5-2 http://www.admfincs.forces.gc.ca/qro-orf/vol-02/index-eng.asp

4. **Teaching Points**:

#	TEACHING POINT	DESCRIPTION	METHOD	MEDIA	ENVIRONMENT	TIME	REFERENCE

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1	Advise on rank, promotion and succession planning	N/A	Face to Face Instruction (poss. CAI)	N/A	combination	10 min	National Defence Act, R.S.C. 1985, c. N-5 (), Queen's Regulations and Orders for the Canadian Forces (QR&O) - Volume I - Administration (), DAOD 5059-0, Performance Assessment of Canadian Forces Members ()
1.1	Relevant regulations and policies	Relationship to CHRA Authorities to promote Appointments Conditions and standards Retroactivity	Face to Face Instruction (poss. CAI)	N/A	combined	10 min	National Defence Act, R.S.C. 1985, c. N-5 (), Queen's Regulations and Orders for the Canadian Forces (QR&O) - Volume I - Administration (), Canadian Human Rights Act (), DAOD 5002-0, Military Personnel Requirements and Production (), A-LG-007-000/AF-010 Military Administrative Law Manual (2008) (A-LG-007-000/AF-010), DAOD 5002-3, Component and Sub-Component Transfer ()
2	Advise on conduct and performance deficiencies	N/A	Face to Face Instruction (poss. CAI)	N/A	Combined	10 min	National Defence Act, R.S.C. 1985, c. N-5 (), Queen's Regulations and Orders for the Canadian Forces (QR&O) - Volume I - Administration (), DAOD 5019-4 Remedial Measures (), DAOD 5019-0, Conduct and Performance Deficiencies (), DAOD 5019-2 Administrative Review (), DAOD 5059-0, Performance Assessment of Canadian Forces Members ()
2.1	Relevant regulations and policies	DAOD 5019 series overview	Face to Face Instruction (poss. CAI)	N/A	combined	10 min	National Defence Act, R.S.C. 1985, c. N-5 (), Queen's Regulations and Orders for the Canadian Forces (QR&O) - Volume I - Administration (), DAOD 5019-4 Remedial Measures (), DAOD 5019-0, Conduct and Performance Deficiencies (), DAOD 5019-2 Administrative Review (), DAOD 5059-0, Performance Assessment of Canadian Forces Members ()
3	Advise on administrative actions WRT CF members	N/A	Face to Face Instruction (poss. CAI)	N/A	combined	10 min	National Defence Act, R.S.C. 1985, c. N-5 (), Queen's Regulations and Orders for the Canadian Forces (QR&O) - Volume I - Administration (), DAOD 5019-4 Remedial Measures (), DAOD 5019-0, Conduct and Performance Deficiencies (), DAOD 5019-2 Administrative Review ()
3.1	Relevant regulations and policies	Remedial measures Admin review Administrative actions Administrative interventions	Face to Face Instruction (poss. CAI)	N/A	combined	10 min	National Defence Act, R.S.C. 1985, c. N-5 (), Queen's Regulations and Orders for the Canadian Forces (QR&O) - Volume I - Administration (), DAOD 5019-4 Remedial Measures (), DAOD 5019-2 Administrative Review ()
4	Advise on legal issues arising out of injury of CAF members	N/A	Face to Face Instruction (poss. CAI)	N/A	combined	10 min	National Defence Act, R.S.C. 1985, c. N-5 (), Queen's Regulations and Orders for the Canadian Forces (QR&O) - Volume I - Administration (), DAOD 5018-0, Injured Members and Military Casualties (), DAOD 5018-2, Report of Injuries and Exposure to Toxic Substances (), Privacy Act (), DAOD 1002-1, Requests under the Privacy Act for Personal Information (), The Guide to Benefits, Programs, and Services for Serving and Former Canadian Armed Forces Members and their Families ()

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4.1	legal issues relating to injuries attributable or arising out of military service and duty	N/A	Face to Face Instruction (poss. CAI)	N/A	combined	10 min	Canadian Charter of Rights and Freedoms (), Queen's Regulations and Orders for the Canadian Forces (QR&O) - Volume I - Administration (), Canadian Human Rights Act (), DAOD 5023-0 Universality of Service (), DAOD 5018-0, Injured Members and Military Casualties (), DAOD 5023-1, Minimum Operational Standards Related to Universality of Service (), DAOD 5003-1, Restrictions on Duty (), Canadian Forces Superannuation Act (), Supplementary Death Benefit Plan (), Canadian Forces Members and Veterans Re-establishment and Compensation Act (), Injured Military Members Compensation Act (), The Guide to Benefits, Programs, and Services for Serving and Former Canadian Armed Forces Members and their Families ()
5	Advise on civil and criminal court proceedings	N/A	Face to Face Instruction (poss. CAI)	N/A	combined	10 min	National Defence Act, R.S.C. 1985, c. N-5 (), Criminal Code, R.S.C., 1985, c. C-46 (), Queen's Regulations and Orders for the Canadian Forces (QR&O) - Volume II - Disciplinary (), DAOD 7001-0, Civil and Criminal Court Proceedings (), DAOD 7001-1, Attendance at Civil and Criminal Court Proceedings (), DAOD 7001-2, Service of Legal Documents Concerning Civil and Criminal Court Proceedings (), DAOD 7016-1, Canadian Forces Administration in Respect of a Pardon (), DAOD 7016-0, Pardons ()
5.1	Applicable regulations and policies	Duty to report arrest by civil authority Attending officer Sureties Certificate of conviction Action following conviction Attendance at trial Civil proceedings Service of documents Jury summons Subpoenas, production orders and summons	Face to Face Practical	N/A	combined	10 min	Queen's Regulations and Orders for the Canadian Forces (QR&O) - Volume II - Disciplinary ()

5. **TIME:**

Total class time	100 min
Instructional periods	2.0
Total Days	0.4

6. **Resources Required** a. CF supply documentation (electronic documentation preferred)

7. **Test Details:** See Annex B - Assessment Plan for details.

8. **Remarks:** advice may be given remotely

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EO 008.03 Advise on CF compensation and benefits issues

1. **Performance:** Advise on CF compensation and benefits issues

2. **Conditions**:

   a. **Given:** assistance as required, references, resources as required

   b. **Denied:** direct supervision

   c. **Environmental:** CAF unit, base or wing headquarters, deployed domestically or internationally, under austere conditions

3. **Standard**: the legal officer shall advise on CF compensation and benefits issues

   a. Sources of authority relating to compensations and benefits IAW refs: LOQ-A3 http://laws-lois.justice.gc.ca/eng/acts/N-5/index.html, LOQ-A5-3 http://www.admfincs-smafinsm.forces.gc.ca/qro-orf/vol-03/index-eng.asp, LOQ-C4 DAOD 5001-2, Maternity and Parental Benefits http://www.admfincs.forces.gc.ca/dao-doa/5000/5001-2-eng.asp, LOQ-C9 Compensation and Benefits Instruction http://www.forces.gc.ca/en/caf-community-benefits/cbi-benefits.page?, LOQ-D9 The Guide to Benefits, Programs, and Services for Serving and Former Canadian Armed Forces Members and their Families http://www.forces.gc.ca/en/caf-community-benefits-ill-injured-deceased/guide-toc.page?

   b. Garnishments and forfeitures IAW refs: LOQ-A3 http://laws-lois.justice.gc.ca/eng/acts/N-5/index.html, LOQ-A5-1 http://www.admfincs.forces.gc.ca/qro-orf/vol-01/index-eng.asp, LOQ-A5-3 http://www.admfincs-smafinsm.forces.gc.ca/qro-orf/vol-03/index-eng.asp, LOQ-A3 Garnishment, Attachment and Pension Diversion Act http://laws-lois.justice.gc.ca/eng/acts/G-2/index.html, LOQ-C4 DAOD 5019-8, Private Debts http://www.admfincs.forces.gc.ca/dao-doa/5000/5019-8-eng.asp, LOQ-A3 Pension Benefits Division Act http://laws-lois.justice.gc.ca/eng/acts/P-6.7/index.html

   c. Significant issues regarding compensations and benefits IAW refs: LOQ-A5-1 http://www.admfincs.forces.gc.ca/qro-orf/vol-01/index-eng.asp, LOQ-A5-3 http://www.admfincs-smafinsm.forces.gc.ca/qro-orf/vol-03/index-eng.asp, LOQ-C9 Compensation and Benefits Instruction http://www.forces.gc.ca/en/caf-community-benefits/cbi-benefits.page?, LOQ-A3 http://laws-lois.justice.gc.ca/eng/acts/C-8/index.html, LOQ-D9 The Guide to Benefits, Programs, and Services for Serving and Former Canadian Armed Forces Members and their Families http://www.forces.gc.ca/en/caf-community-benefits-ill-injured-deceased/guide-toc.page?

   d. Common law partnerships IAW refs: LOQ-A5-1 http://www.admfincs.forces.gc.ca/qro-orf/vol-01/index-eng.asp

4. **Teaching Points:**

#	TEACHING POINT	DESCRIPTION	METHOD	MEDIA	ENVIRONMENT	TIME	REFERENCE
1	Sources of authority relating to compensations and benefits	Roles and responsibilities of Treasury Board Statutory authorities for regulations Statutory authorities for CBIs and related instructions Limitations regarding compensations and benefits	Face to Face Instruction (poss. CAI)	N/A	combined	15 min	National Defence Act, R.S.C. 1985, c. N-5 (), Queen's Regulations and Orders for the Canadian Forces (QRandO) - Volume III - Financial (), DAOD 5001-2, Maternity and Parental Benefits (), Compensation and Benefits Instruction (), The Guide to Benefits, Programs, and Services for Serving and Former Canadian Armed Forces Members and their Families ()
2	Garnishments and forfeitures	Financial support orders Compulsory payments Judgment debts Forfeitures arising from CF regulations Recovery of overpayments Impact of relief of performance of military duty Role of CBP&E	Face to Face Instruction (poss. CAI)	N/A	combined	20 min	National Defence Act, R.S.C. 1985, c. N-5 (), Queen's Regulations and Orders for the Canadian Forces (QR&O) - Volume I - Administration (), Queen's Regulations and Orders for the Canadian Forces (QRandO) - Volume III - Financial (), Garnishment, Attachment ans Pension Diversion Act (), DAOD 5019-8, Private Debts (), Pension Benefits Division Act ()

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3	Significant issues regarding compensations and benefits	seperation expense Distinction between pensions and anuities Leave Impact of TD vice attached posting	Face to Face Instruction (poss. CAI)	N/A	combined	10 min	Queen's Regulations and Orders for the Canadian Forces (QR&O) - Volume I - Administration (), Queen's Regulations and Orders for the Canadian Forces (QRandO) - Volume III - Financial (), Compensation and Benefits Instruction (), Canada Pension Plan (), The Guide to Benefits, Programs, and Services for Serving and Former Canadian Armed Forces Members and their Families ()
4	Common law partnerships	Requirements to establish a CLP required documentation Impacts upon benefits	Face to Face Instruction (poss. CAI)	N/A	N/A	10 min	Queen's Regulations and Orders for the Canadian Forces (QR&O) - Volume I - Administration ()

5. **TIME:**

Total class time	55 min
Instructional periods	1.1
Total Days	0.2

6. **Resources Required** a. CF supply documentation (electronic documentation preferred)

7. **Test Details:** See Annex B - Assessment Plan for details.

8. **Remarks:** advice may be given remotely

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DND - MDN

EO 008.04 Advise on the release of CAF members

1. **Performance:** Advise on the release of CAF members

2. **Conditions**:

   a. **Given:** assistance as required, references, resources as required

   b. **Denied:** direct supervision

   c. **Environmental:** CAF unit, base or wing headquarters, deployed domestically or internationally, under austere conditions

3. **Standard**: the legal officer shall advise on issues related to the release of CF members

   a. Advise on release issues IAW refs: LOQ-A3 http://laws-lois.justice.gc.ca/eng/acts/N-5/index.html, LOQ-A5-1 http://www.admfincs.forces.gc.ca/qro-orf/vol-01/index-eng.asp, LOQ-A3 http://laws-lois.justice.gc.ca/eng/acts/C-8/index.html

      i. Applicable legislation and policy IAW refs: LOQ-A5-1 http://www.admfincs.forces.gc.ca/qro-orf/vol-01/index-eng.asp, LOQ-C4 http://www.admfincs.forces.gc.ca/dao-doa/5000/5019-2-eng.asp, LOQ-C4 DAOD 5049-1, Obligatory Service http://www.admfincs.forces.gc.ca/dao-doa/5000/5049-1-eng.asp

   b. (CT0195) Advise on pension and annuity related issues IAW refs: LOQ-A5-1 http://www.admfincs.forces.gc.ca/qro-orf/vol-01/index-eng.asp, LOQ-A3 Garnishment, Attachment and Pension Diversion Act http://laws-lois.justice.gc.ca/eng/acts/G-2/index.html, LOQ-A3 http://laws-lois.justice.gc.ca/eng/acts/C-8/index.html, LOQ-A3 http://laws-lois.justice.gc.ca/eng/acts/C-17/, LOQ-A3 Pension Benefits Division Act http://laws-lois.justice.gc.ca/eng/acts/P-6.7/index.html

      i. Applicable legislation and policies IAW refs: LOQ-A5-2 http://www.admfincs.forces.gc.ca/qro-orf/vol-02/index-eng.asp, LOQ-A3 Garnishment, Attachment and Pension Diversion Act http://laws-lois.justice.gc.ca/eng/acts/G-2/index.html, LOQ-A3 http://laws-lois.justice.gc.ca/eng/acts/C-8/index.html, LOQ-A3 http://laws-lois.justice.gc.ca/eng/acts/C-17/, LOQ-A3 Pension Benefits Division Act http://laws-lois.justice.gc.ca/eng/acts/P-6.7/index.html

   c. Advise on legal issues arising out of death of CAF members IAW refs: LOQ-A5-1 http://www.admfincs.forces.gc.ca/qro-orf/vol-01/index-eng.asp, LOQ-A3 http://laws-lois.justice.gc.ca/eng/acts/C-17/, LOQ-C4 http://www.admfincs.forces.gc.ca/dao-doa/7000/7002-0-eng.asp, LOQ-C4 DAOD 7012-0, Wills http://www.admfincs.forces.gc.ca/dao-doa/7000/7012-0-eng.asp, LOQ-C4 DAOD 7011-0, Service Estates and Personal Belongings http://www.admfincs.forces.gc.ca/dao-doa/7000/7011-0-eng.asp, LOQ-C4 DAOD 7011-1, Responsibilities for Service Estates and Personal Belongings http://www.admfincs-smafinsm.forces.gc.ca/dao-doa/7000/7011-1-eng.asp, LOQ-C4 DAOD 7012-1, Preparation and Administration of Wills http://www.admfincs.forces.gc.ca/dao-doa/7000/7012-1-eng.asp, LOQ-C9 Supplementary Death Benefit Plan http://www.forces.gc.ca/en/caf-community-pension-policy/supplementary-death-benefit-plan.page

      i. Significant issues arising from death IAW refs: LOQ-A3 http://laws-lois.justice.gc.ca/eng/acts/C-17/, LOQ-C4 DAOD 7011-0, Service Estates and Personal Belongings http://www.admfincs.forces.gc.ca/dao-doa/7000/7011-0-eng.asp, LOQ-C4 DAOD 7011-1, Responsibilities for Service Estates and Personal Belongings http://www.admfincs-smafinsm.forces.gc.ca/dao-doa/7000/7011-1-eng.asp

      ii. Issues best addressed prior to death IAW refs: LOQ-C4 DAOD 7012-0, Wills http://www.admfincs.forces.gc.ca/dao-doa/7000/7012-0-eng.asp, LOQ-C4 DAOD 7012-1, Preparation and Administration of Wills http://www.admfincs.forces.gc.ca/dao-doa/7000/7012-1-eng.asp, LOQ-C9 Supplementary Death Benefit Plan http://www.forces.gc.ca/en/caf-community-pension-policy/supplementary-death-benefit-plan.page

4. **Teaching Points:**

#	TEACHING POINT	DESCRIPTION	METHOD	MEDIA	ENVIRONMENT	TIME	REFERENCE
1	Advise on release issues	N/A	Face to Face Instruction (poss. CAI)	N/A	combined	10 min	National Defence Act, R.S.C. 1985, c. N-5 (), Queen's Regulations and Orders for the Canadian Forces (QR&O) - Volume I - Administration (), Canada Pension Plan ()
1.1	Applicable legislation and policy	Reasons for release Authority for release Release authorities items of release and its consequences release processes reinstatement	Face to Face Instruction (poss. CAI)	N/A	combined	10 min	Queen's Regulations and Orders for the Canadian Forces (QR&O) - Volume I - Administration (), DAOD 5019-2 Administrative Review (), DAOD 5049-1, Obligatory Service ()
2	Advise on pension and annuity related issues	N/A	Face to Face Instruction (poss. CAI)	N/A	combined	10 min	Queen's Regulations and Orders for the Canadian Forces (QR&O) - Volume I - Administration (), Garnishment, Attachment ans Pension Diversion Act (), Canada Pension Plan (), Canadian Forces Superannuation Act (), Pension Benefits Division Act ()

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2.1	Applicable legislation and policies	annuities and annual allowances pensions other entitlements supplementary death benefit Role of VAC Role of SISIP	Face to Face Instruction (poss. CAI)	N/A	N/A	10 min	Queen's Regulations and Orders for the Canadian Forces (QR&O) - Volume II - Disciplinary (), Garnishment, Attachment ans Pension Diversion Act (), Canada Pension Plan (), Canadian Forces Superannuation Act (), Pension Benefits Division Act ()
3	Advise on legal issues arising out of death of CAF members	N/A	Face to Face Instruction (poss. CAI)	N/A	combined	20 min	Queen's Regulations and Orders for the Canadian Forces (QR&O) - Volume I - Administration (), Canadian Forces Superannuation Act (), DAOD 7002-0 Boards of Inquiry and Summary Investigations (), DAOD 7012-0, Wills (), DAOD 7011-0, Service Estates and Personal Belongings (), DAOD 7011-1, Responsibilities for Service Estates and Personal Belongings (), DAOD 7012-1, Preparation and Administration of Wills (), Supplementary Death Benefit Plan ()
3.1	Significant issues arising from death	impact on compensation including under CFSA Processes relating to service estates Funeral issues Triggering of release Admin investigation Role of CBP&E as director of estates	Face to Face Instruction (poss. CAI)	N/A	combined	10 min	Canadian Forces Superannuation Act (), DAOD 7011-0, Service Estates and Personal Belongings (), DAOD 7011-1, Responsibilities for Service Estates and Personal Belongings ()
3.2	Issues best addressed prior to death	Wills & Will certificates (including privileged wills) SDB forms PEN form Next of Kin form (distinguishable from personal representative of estate) Memorial Cross forms	Face to Face Instruction (poss. CAI)	N/A	N/A	10 min	DAOD 7012-0, Wills (), DAOD 7012-1, Preparation and Administration of Wills (), Supplementary Death Benefit Plan ()

5. **TIME:**

Total class time	80 min
Instructional periods	1.6
Total Days	0.3

6. **Resources Required** a. CF supply documentation (electronic documentation preferred)

7. **Test Details:** See Annex B - Assessment Plan for details.

8. **Remarks:** advice may be given remotely

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PO 009 ADVISE ON COMPLAINT RESOLUTION

1. **Performance:** Advise on complaint resolution

2. **Conditions:**

   a. **Given:** assistance as required, references, resources as required

   b. **Denied:** direct supervision

   c. **Environmental:** CAF unit, base or wing headquarters, deployed domestically or internationally, under austere conditions

3. **Standard**: the legal officer shall advise on complaint resolution

   a. Advise on harassment prevention and resolution

   b. Advise on grievances

   c. Advise on other complaint resolution processes

4. **Remarks:** advice may be given remotely

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ENABLING OBJECTIVES

EO 009.01 Advise on harassment prevention and resolution

1. **Performance:** Advise on harassment prevention and resolution
2. **Conditions**:
   a. **Given:** assistance as required, references, reources as required
   b. **Denied:** direct supervision
   c. **Environmental:** CAF unit, base or wing headquarters, deployed domestically or internationally, under austere conditions
3. **Standard**: the legal officer shall advise on harassement prevention and resolutions policies and procedures
   a. Applicable policies IAW refs: LOQ-A3 http://laws-lois.justice.gc.ca/eng/acts/N-5/index.html, LOQ-A5-1 http://www.admfincs.forces.gc.ca/qro-orf/vol-01/index-eng.asp, LOQ-C4 http://www.admfincs.forces.gc.ca/dao-doa/5000/5012-0-eng.asp, LOQ-C9 Policy on Harassment Prevention and Resolution http://www.tbs-sct.gc.ca/pol/doc-eng.aspx?id=26041
4. **Teaching Points:**

#	TEACHING POINT	DESCRIPTION	METHOD	MEDIA	ENVIRONMENT	TIME	REFERENCE
1	Applicable policies	definition of harrassment responsible officer rights and responsibilities of complainant rights and responsibilities of respondent Harrassment prevention and resolution process Legal issues	Face to Face Instruction (poss. CAI)	N/A	combined	10 min	National Defence Act, R.S.C. 1985, c. N-5 (), Queen's Regulations and Orders for the Canadian Forces (QR&O) - Volume I - Administration (), DAOD 5012-0 Harassment Prevention and Resolution (), Policy on Harassment Prevention and Resolution ()

5. **TIME:**

Total class time	10 min
Instructional periods	0.2
Total Days	0.0

6. **Resources Required** a. CF supply documentation (electronic documentation preferred)
7. **Test Details:** See Annex B - Assessment Plan for details.
8. **Remarks:** advice may be given remotely

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EO 009.02 Advise on grievances

1. **Performance:** Advise on grievances

2. **Conditions**:

   a. **Given:** assistance as required, references, resources as required

   b. **Denied:** direct supervision

   c. **Environmental:** CAF unit, base or wing headquarters, deployed domestically or internationally, under austere conditions

3. **Standard**: the legal officer shall advise on grievance policies and procedures

   a. Framework for the grievance process IAW refs: LOQ-A5-1 http://www.admfincs.forces.gc.ca/qro-orf/vol-01/index-eng.asp, LOQ-C4 DAOD 2017-0, Military Grievances http://www.admfincs.forces.gc.ca/dao-doa/2000/2017-0-eng.asp, LOQ-C4 http://www.admfincs.forces.gc.ca/dao-doa/2000/2017-1-eng.asp

4. **Teaching Points:**

#	TEACHING POINT	DESCRIPTION	METHOD	MEDIA	ENVIRONMENT	TIME	REFERENCE
1	Framework for the grievance process	entitlement to grieve submission of grievance assisting member Determination(s) at the IA level Determination(s) at the FA level Role of the MGERC Implementation of the decision and available redress Litigation considerations	Face to Face Instruction (poss. CAI)	N/A	combined	20 min	Queen's Regulations and Orders for the Canadian Forces (QR&O) - Volume I - Administration (), DAOD 2017-0, Military Grievances (), DAOD 2017-1 Military Grievance Process ()

5. **TIME:**

Total class time	20 min
Instructional periods	0.4
Total Days	0.1

6. **Resources Required** a. CF supply documentation (electronic documentation preferred)

7. **Test Details:** See Annex B - Assessment Plan for details.

8. **Remarks:** advice may be given remotely

A-2015-01212--0074

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DIVULGUE EN VERTU DE LAI - RENSEIGNEMENTS NON CLASSIFIES
DND - MDN

EO 009.03 Advise on other complaint resolution processes

1. **Performance:** Advise on other complaint resolution processes

2. **Conditions**:

   a. **Given:** assistance as required, references, resources as required

   b. **Denied:** direct supervision

   c. **Environmental:** CAF unit, base or wing headquarters, deployed domestically or internationally, under austere conditions

3. **Standard**: the legal officer shall advise on complaint resolution processes other than grievances and harassment

   a. Functions of other complaint resolution mechanism IAW refs: LOQ-A5-1 http://www.admfincs.forces.gc.ca/qro-orf/vol-01/index-eng.asp, LOQ-C4 DAOD 5047-1, Office of the Ombudsman http://www.admfincs.forces.gc.ca/dao-doa/5000/5047-1-eng.asp, LOQ-C4

4. **Teaching Points:**

#	TEACHING POINT	DESCRIPTION	METHOD	MEDIA	ENVIRONMENT	TIME	REFERENCE
1	Functions of other complaint resolution mechanism	relation to CF decision makers Informal complaint (QR&O 19.12) ADR MP complaints CRS Ombudsman litigation (complaints under other Acts) Interaction between the various processes	Face to Face Instruction (poss. CAI)	N/A	N/A	10 min	Queen's Regulations and Orders for the Canadian Forces (QR&O) - Volume I - Administration (), DAOD 5047-1, Office of the Ombudsman (), DAOD 5046-0 Alternative Dispute Resolution ()

5. **TIME:**

Total class time	10 min
Instructional periods	0.2
Total Days	0.0

6. **Resources Required** a. CF supply documentation (electronic documentation preferred)

7. **Test Details:** See Annex B - Assessment Plan for details.

8. **Remarks:** QR&O 19.12 MPC Ombudsman Human rights complaints (CHRA) ADR Health services complaints

A-2015-01212--0075

RELEASED UNDER THE AIA - UNCLASSIFIED INFORMATION
DIVULGUE EN VERTU DE LAI - RENSEIGNEMENTS NON CLASSIFIES
DND - MDN

PO 010 ADVISING ON ADMIN INVESTIGATIONS

1. **Performance:** (CT0005) Advising on admin investigations

2. **Conditions:**

   a. **Given:** assistance as required, references, resources as required

   b. **Denied:** direct supervision

   c. **Environmental:** CAF unit, base or wing headquarters, deployed domestically or internationally, under austere conditions

3. **Standard:** the legal officer shall advise on andiminstrative investigations

   a. Advise on the appropriate type of investigation

   b. Advise on the convening orders for BOIs and terms of reference for SIs and informal investigations

   c. Advise on the conduct of administrative investigations

   d. Advise on the administrative investigation report

   e. Advise on post report action

4. **Remarks:** advice may be given remotely

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DIVULGUE EN VERTU DE LAI - RENSEIGNEMENTS NON CLASSIFIES
DND - MDN

ENABLING OBJECTIVES

EO 010.01 Advise on the appropriate type of investigation

1. **Performance:** Advise on the appropriate type of investigation
2. **Conditions**:
   a. **Given:** assistance as required, references, resources as required
   b. **Denied:** direct supervision
   c. **Environmental:** Caf unit, base or wing headquarters, deployed domestically or internationally, under austere conditions
3. **Standard**: the legal officer shall advise on the appropriate type of investigation
   a. subjects of investigations and reasons to investigate IAW refs: LOQ-A3 http://laws-lois.justice.gc.ca/eng/acts/N-5/index.html, LOQ-A5-1 http://www.admfincs.forces.gc.ca/qro-orf/vol-01/index-eng.asp, LOQ-C4 http://www.admfincs.forces.gc.ca/dao-doa/7000/7002-0-eng.asp, LOQ-C4 DAOD 7002-3, Subjects of Investigation and References http://www.admfincs.forces.gc.ca/dao-doa/7000/7002-3-eng.asp
   b. Options for investigating IAW refs: LOQ-A3 http://laws-lois.justice.gc.ca/eng/acts/N-5/index.html, LOQ-A5-1 http://www.admfincs.forces.gc.ca/qro-orf/vol-01/index-eng.asp, LOQ-C4 http://www.admfincs.forces.gc.ca/dao-doa/7000/7002-0-eng.asp, LOQ-A3 http://laws-lois.justice.gc.ca/eng/acts/A-2/index.html
4. **Teaching Points:**

#	TEACHING POINT	DESCRIPTION	METHOD	MEDIA	ENVIRONMENT	TIME	REFERENCE
1	subjects of investigations and reasons to investigate	N/A	Face to Face Instruction (poss. CAI)	N/A	combined	20 min	National Defence Act, R.S.C. 1985, c. N-5 (), Queen's Regulations and Orders for the Canadian Forces (QR&O) - Volume I - Administration (), DAOD 7002-0 Boards of Inquiry and Summary Investigations (), DAOD 7002-3, Subjects of Investigation and References ()
2	Options for investigating	mandated investigations discretionary investigations factors to consider, including role of AISC	Face to Face Instruction (poss. CAI)	N/A	combined	10 min	National Defence Act, R.S.C. 1985, c. N-5 (), Queen's Regulations and Orders for the Canadian Forces (QR&O) - Volume I - Administration (), DAOD 7002-0 Boards of Inquiry and Summary Investigations (), Aeronautics Act ()

5. **TIME:**

Total class time	30 min
Instructional periods	0.6
Total Days	0.1

6. **Resources Required** a. CF supply documentation (electronic documentation preferred)
7. **Test Details:** See Annex B - Assessment Plan for details.
8. **Remarks:** advice may be given remotely

A-2015-01212--0077

RELEASED UNDER THE AIA - UNCLASSIFIED INFORMATION
DIVULGUE EN VERTU DE LAI - RENSEIGNEMENTS NON CLASSIFIES
DND - MDN

EO 010.02 Advise on the convening orders for BOIs and terms of reference for SIs and informal investigations

1. **Performance:** Advise on the convening orders for BOIs and terms of reference for SIs and informal investigations

2. **Conditions**:

   a. **Given:** assistance as required, references, resources as required

   b. **Denied:** direct supervision

   c. **Environmental:** CAF unit, base or wing headquarters, deployed domestically or internationally, under austere conditions

3. **Standard**: the legal officer shall advise on the convening orders for BOIs and terms of reference for SIs and informal investigations

   a. Authorities to convene BOIs and order SIs IAW refs: LOQ-A5-1 http://www.admfincs.forces.gc.ca/qro-orf/vol-01/index-eng.asp, LOQ-C4 http://www.admfincs.forces.gc.ca/dao-doa/7000/7002-0-eng.asp, LOQ-C4 DAOD 7002-1, Boards of Inquiry http://www.admfincs.forces.gc.ca/dao-doa/7000/7002-1-eng.asp

   b. Convening of BOI IAW refs: LOQ-A5-1 http://www.admfincs.forces.gc.ca/qro-orf/vol-01/index-eng.asp, LOQ-C4 http://www.admfincs.forces.gc.ca/dao-doa/7000/7002-0-eng.asp, LOQ-C4 DAOD 7002-1, Boards of Inquiry http://www.admfincs.forces.gc.ca/dao-doa/7000/7002-1-eng.asp

   c. Ordering an SI IAW refs: LOQ-A5-1 http://www.admfincs.forces.gc.ca/qro-orf/vol-01/index-eng.asp, LOQ-C4 http://www.admfincs.forces.gc.ca/dao-doa/7000/7002-0-eng.asp, LOQ-C4 DAOD 7002-2, Summary Investigations http://www.admfincs.forces.gc.ca/dao-doa/7000/7002-2-eng.asp

4. **Teaching Points:**

#	TEACHING POINT	DESCRIPTION	METHOD	MEDIA	ENVIRONMENT	TIME	REFERENCE
1	Authorities to convene BOIs and order SIs	Applicable regulations and policies Role of AISC	Face to Face Instruction (poss. CAI)	N/A	combined	20 min	Queen's Regulations and Orders for the Canadian Forces (QR&O) - Volume I - Administration (), DAOD 7002-0 Boards of Inquiry and Summary Investigations (), DAOD 7002-1, Boards of Inquiry ()
2	Convening of BOI	Scope of investigation Composition of the board Selection of advisors Issues related to concurrent investigations/ proceedings Direction wrt to attendance/ openess to the public	Face to Face Instruction (poss. CAI)	N/A	combined	10 min	Queen's Regulations and Orders for the Canadian Forces (QR&O) - Volume I - Administration (), DAOD 7002-0 Boards of Inquiry and Summary Investigations (), DAOD 7002-1, Boards of Inquiry ()
3	Ordering an SI	Scope of investigation Selection of an investigator(s) Role of advisors Issues related to concurrent investigations	Face to Face Instruction (poss. CAI)	N/A	combined	20 min	Queen's Regulations and Orders for the Canadian Forces (QR&O) - Volume I - Administration (), DAOD 7002-0 Boards of Inquiry and Summary Investigations (), DAOD 7002-2, Summary Investigations ()

5. **TIME:**

Total class time	50 min
Instructional periods	1.0
Total Days	0.2

6. **Resources Required** a. CF supply documentation (electronic documentation preferred)

7. **Test Details:** See Annex B - Assessment Plan for details.

8. **Remarks:** advice may be given remotely

A-2015-01212--0078

RELEASED UNDER THE AIA - UNCLASSIFIED INFORMATION
DIVULGUE EN VERTU DE LAI - RENSEIGNEMENTS NON CLASSIFIES
DND - MDN

EO 010.03 Advise on the conduct of administrative investigations

1. **Performance:** Advise on the conduct of administrative investigations

2. **Conditions**:

   a. **Given:** assistance as required, references, resources as required

   b. **Denied:** direct supervision

   c. **Environmental:** CAF unit, base or wing headquarters, deployed domestically or internationally, under austere conditions

3. **Standard**: the legal officer shall advise on the conduct of administrative investigations

   a. Conduct of a BOI IAW refs: LOQ-A3 http://laws-lois.justice.gc.ca/eng/acts/N-5/index.html, LOQ-A5-1 http://www.admfincs.forces.gc.ca/qro-orf/vol-01/index-eng.asp, LOQ-C4 http://www.admfincs.forces.gc.ca/dao-doa/7000/7002-0-eng.asp, LOQ-C4 DAOD 7002-1, Boards of Inquiry http://www.admfincs.forces.gc.ca/dao-doa/7000/7002-1-eng.asp

   b. Conduct of an SI IAW refs: LOQ-A3 http://laws-lois.justice.gc.ca/eng/acts/N-5/index.html, LOQ-A5-1 http://www.admfincs.forces.gc.ca/qro-orf/vol-01/index-eng.asp, LOQ-C4 http://www.admfincs.forces.gc.ca/dao-doa/7000/7002-0-eng.asp, LOQ-C4 DAOD 7002-2, Summary Investigations http://www.admfincs.forces.gc.ca/dao-doa/7000/7002-2-eng.asp

   c. Conduct of other investigations IAW refs: LOQ-A3 http://laws-lois.justice.gc.ca/eng/acts/N-5/index.html, LOQ-A5-1 http://www.admfincs.forces.gc.ca/qro-orf/vol-01/index-eng.asp, LOQ-A3 http://laws-lois.justice.gc.ca/eng/acts/A-2/index.html, LOQ-C9 Complaints About The Conduct Of Members Of The Military Police Regulations http://www.mpcc-cppm.gc.ca/01/100/151-eng.aspx

4. **Teaching Points:**

#	TEACHING POINT	DESCRIPTION	METHOD	MEDIA	ENVIRONMENT	TIME	REFERENCE
1	Conduct of a BOI	Logistical matters Role of the legal advisor Role of legal counsel Notice of adverse evidence powers to compel preparation of questions for witness Witness preparation Witness testimony Other evidentiary matters	Face to Face Instruction (poss. CAI)	N/A	combined	30 min	National Defence Act, R.S.C. 1985, c. N-5 (), Queen's Regulations and Orders for the Canadian Forces (QR&O) - Volume I - Administration (), DAOD 7002-0 Boards of Inquiry and Summary Investigations (), DAOD 7002-1, Boards of Inquiry ()
2	Conduct of an SI	Powers of an SI Legal support to the investigator Gathering of evidence NOAE Absence of powers to compell	Face to Face Instruction (poss. CAI)	N/A	combined	20 min	National Defence Act, R.S.C. 1985, c. N-5 (), Queen's Regulations and Orders for the Canadian Forces (QR&O) - Volume I - Administration (), DAOD 7002-0 Boards of Inquiry and Summary Investigations (), DAOD 7002-2, Summary Investigations ()
3	Conduct of other investigations	Informal investigations Flight safety Military police complaints MSE Other accident investigations Limited legal involvment	Face to Face Instruction (poss. CAI)	N/A	combined	10 min	National Defence Act, R.S.C. 1985, c. N-5 (), Queen's Regulations and Orders for the Canadian Forces (QR&O) - Volume I - Administration (), Aeronautics Act (), Complaints About The Conduct Of Members Of The Military Police Regulations ()

5. **TIME:**

Total class time	60 min

A-2015-01212--0079

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DIVULGUE EN VERTU DE LAI - RENSEIGNEMENTS NON CLASSIFIES
DND - MDN

Instructional periods	1.2
Total Days	0.2

6. **Resources Required** a. CF supply documentation (electronic documentation preferred)

7. **Test Details:** See Annex B - Assessment Plan for details.

8. **Remarks:** Not limited to BOIs and SIs, includes admin investigations beyond those initiated by the COC such as MPCCs. Advise may be given remotely

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DIVULGUE EN VERTU DE LAI - RENSEIGNEMENTS NON CLASSIFIES
DND - MDN

EO 010.04 Advise on the administrative investigation report

1. **Performance:** Advise on the administrative investigation report

2. **Conditions**:

   a. **Given:** assistance as required, references, resources as required

   b. **Denied:** direct supervision

   c. **Environmental:** CAF unit, base or wing headquarters, deployed domestically or internationally, under austere conditions

3. **Standard**: the legal officer shall advise on the administrative investigation report

   a. BOI report IAW refs: LOQ-A3 http://laws-lois.justice.gc.ca/eng/acts/N-5/index.html, LOQ-A5-1 http://www.admfincs.forces.gc.ca/qro-orf/vol-01/index-eng.asp, LOQ-C4 http://www.admfincs.forces.gc.ca/dao-doa/7000/7002-0-eng.asp, LOQ-C4 DAOD 7002-1, Boards of Inquiry http://www.admfincs.forces.gc.ca/dao-doa/7000/7002-1-eng.asp

   b. SI report IAW refs: LOQ-A3 http://laws-lois.justice.gc.ca/eng/acts/N-5/index.html, LOQ-A5-1 http://www.admfincs.forces.gc.ca/qro-orf/vol-01/index-eng.asp, LOQ-C4 http://www.admfincs.forces.gc.ca/dao-doa/7000/7002-0-eng.asp, LOQ-C4 DAOD 7002-2, Summary Investigations http://www.admfincs.forces.gc.ca/dao-doa/7000/7002-2-eng.asp

4. **Teaching Points:**

#	TEACHING POINT	DESCRIPTION	METHOD	MEDIA	ENVIRONMENT	TIME	REFERENCE
1	BOI report	Legal requirements Analysis Attributability Findings and recommendations Role of legal advisor in report preparation	Face to Face Instruction (poss. CAI)	N/A	combined	10 min	National Defence Act, R.S.C. 1985, c. N-5 (), Queen's Regulations and Orders for the Canadian Forces (QR&O) - Volume I - Administration (), DAOD 7002-0 Boards of Inquiry and Summary Investigations (), DAOD 7002-1, Boards of Inquiry ()
2	SI report	Legal requirements Analysis Findings and recommendations Role of legal advisor in report	Face to Face Instruction (poss. CAI)	N/A	combined	10 min	National Defence Act, R.S.C. 1985, c. N-5 (), Queen's Regulations and Orders for the Canadian Forces (QR&O) - Volume I - Administration (), DAOD 7002-0 Boards of Inquiry and Summary Investigations (), DAOD 7002-2, Summary Investigations ()

5. **TIME:**

Total class time	20 min
Instructional periods	0.4
Total Days	0.1

6. **Resources Required** a. CF supply documentation (electronic documentation preferred)

7. **Test Details:** See Annex B - Assessment Plan for details.

8. **Remarks:** Includes reports other than those arising from BOIs and SIs. advise may be given remotely

A-2015-01212--0081

RELEASED UNDER THE AIA - UNCLASSIFIED INFORMATION
DIVULGUE EN VERTU DE LAI - RENSEIGNEMENTS NON CLASSIFIES
DND - MDN

EO 010.05 Advise on post report action

1. **Performance:** Advise on post report action

2. **Conditions**:

   a. **Given:** assistance as requied, references, resources as required

   b. **Denied:** direct supervision

   c. **Environmental:** CAF unit, base or wing headquarters, deployed domestically or internationally, under austere conditions

3. **Standard**: the legal officer shall advise on psot report action

   a. Post BOI report actions IAW refs: LOQ-A3 http://laws-lois.justice.gc.ca/eng/acts/N-5/index.html, LOQ-A5-1 http://www.admfincs.forces.gc.ca/qro-orf/vol-01/index-eng.asp, LOQ-C4 DAOD 7002-1, Boards of Inquiry http://www.admfincs.forces.gc.ca/dao-doa/7000/7002-1-eng.asp

   b. Post SI report actions IAW refs: LOQ-A3 http://laws-lois.justice.gc.ca/eng/acts/N-5/index.html, LOQ-A5-2 http://www.admfincs.forces.gc.ca/qro-orf/vol-02/index-eng.asp, LOQ-C4 DAOD 7002-2, Summary Investigations http://www.admfincs.forces.gc.ca/dao-doa/7000/7002-2-eng.asp

4. **Teaching Points:**

#	TEACHING POINT	DESCRIPTION	METHOD	MEDIA	ENVIRONMENT	TIME	REFERENCE
1	Post BOI report actions	Required actions (DAOD 7002-1) Legal advice to the convening authority Legal advice to the reviewing and approving authority Board Consultation with the family, when required Letters of closure for NOAE Release of the report	Face to Face Instruction (poss. CAI)	N/A	combined	10 min	National Defence Act, R.S.C. 1985, c. N-5 (), Queen's Regulations and Orders for the Canadian Forces (QR&O) - Volume I - Administration (), DAOD 7002-1, Boards of Inquiry ()
2	Post SI report actions	Required actions Advice to officer who ordered the SI Advice to the reviewing or approving authority Letters of closure for NOAE	Face to Face Instruction (poss. CAI)	N/A	combined	10 min	National Defence Act, R.S.C. 1985, c. N-5 (), Queen's Regulations and Orders for the Canadian Forces (QR&O) - Volume II - Disciplinary (), DAOD 7002-2, Summary Investigations ()

5. **TIME:**

Total class time	20 min
Instructional periods	0.4
Total Days	0.1

6. **Resources Required** a. CF supply documentation (electronic documentation preferred)

7. **Test Details:** See Annex B - Assessment Plan for details.

8. **Remarks:** advice may be given remotely

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DIVULGUE EN VERTU DE LAI - RENSEIGNEMENTS NON CLASSIFIES
DND - MDN

PO 011 ADVISE ON CROWN LIABILITY ISSUES

1. **Performance:** (CT0155) Advise on Crown liability issues

2. **Conditions:**

   a. **Given:** assistance as required, references, resources as required

   b. **Denied:** direct supervision

   c. **Environmental:** CAF unit, base or wing headquarters, deployed domestically or internationally, under austere conditions

3. **Standard**: the legal officer shall advise on crown liability issues

   a. Advise on risk assessment

   b. Advise on claims for/ against the crown

   c. Determine claims for/ against the crown

4. **Remarks:** advice may be given remotely

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DIVULGUE EN VERTU DE LAI - RENSEIGNEMENTS NON CLASSIFIES
DND - MDN

ENABLING OBJECTIVES

EO 011.01 Advise on risk assessment

1. **Performance:** Advise on risk assessment
2. **Conditions**:
   a. **Given:** assistance as required, references, resources as required, Waiver template
   b. **Denied:** direct supervision
   c. **Environmental:** CAF unti, base or wing headquarters, deployed domestically or internationally, under austere conditions
3. **Standard**: the legal officer shall advise on risk assessment
   a. (CT0160) Advise on liability waivers
      i. Waiver requirements
   b. Statutory basis for liability of the crown IAW refs: LOQ-A3 http://laws-lois.justice.gc.ca/eng/acts/N-5/index.html, LOQ-A3 http://laws-lois.justice.gc.ca/eng/acts/C-50/index.html
4. **Teaching Points:**

#	TEACHING POINT	DESCRIPTION	METHOD	MEDIA	ENVIRONMENT	TIME	REFERENCE
1	Advise on liability waivers	O'Brien's Forms, template	Face to Face Instruction (poss. CAI)	N/A	combined	10 min	
1.1	Waiver requirements	Structure Format Template O'Brien's Forms Language Llimitations	Face to Face Instruction (poss. CAI)	N/A	combined	10 min	
2	Statutory basis for liability of the crown	Crown perogative Crown liability and proceedings act Common law Civil law in Quebec Absence of TB volunteer policy	Face to Face Instruction (poss. CAI)	N/A	combined	20 min	National Defence Act, R.S.C. 1985, c. N-5 (), Crown Liability and Proceedings Act ()

5. **TIME:**

Total class time	40 min
Instructional periods	0.8
Total Days	0.2

6. **Resources Required** a. CF supply documentation (electronic documentation preferred)
7. **Test Details:** See Annex B - Assessment Plan for details.
8. **Remarks:** advice may be given remotely

A-2015-01212--0084

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DIVULGUE EN VERTU DE LAI - RENSEIGNEMENTS NON CLASSIFIES
DND - MDN

EO 011.02 Advise on claims for/ against the crown

1. **Performance:** Advise on claims for/ against the crown

2. **Conditions**:

   a. **Given:** assistance as required, references, resources required

   b. **Denied:** direct supervision

   c. **Environmental:** CAF unit, base or wing headquarters, deployed domestically or internationally, under austere conditions

3. **Standard**: the legal officer shall advise on claims by or againt the crown

   a. Applicable policies IAW refs: LOQ-A3 http://laws-lois.justice.gc.ca/eng/acts/C-50/index.html, LOQ-C4 DAOD 7004-1, Claims and Ex gratia Procedures http://www.admfincs.forces.gc.ca/dao-doa/7000/7004-1-eng.asp, LOQ-C4 DAOD 7004-0, Claims By or Against the Crown and Ex gratia Payments http://www.admfincs.forces.gc.ca/dao-doa/7000/7004-0-eng.asp, LOQ-C4 DOAD 7004-2, Compensation for Loss or Damage to Personal Property http://www.admfincs.forces.gc.ca/dao-doa/7000/7004-2-eng.asp

   b. Indemnification of CF member IAW refs: LOQ-A3 http://laws-lois.justice.gc.ca/eng/acts/N-5/index.html, LOQ-A5-1 http://www.admfincs.forces.gc.ca/qro-orf/vol-01/index-eng.asp, LOQ-A3 http://laws-lois.justice.gc.ca/eng/acts/C-50/index.html, LOQ-C9 Treasury Board Policy on Legal Assistance and Indemnification http://www.tbs-sct.gc.ca/pol/doc-eng.aspx?id=13937§ion=text

4. **Teaching Points:**

#	TEACHING POINT	DESCRIPTION	METHOD	MEDIA	ENVIRONMENT	TIME	REFERENCE
1	Applicable policies	Standing to bring a claim Requirements for the claim Claims process Legal advisor's role Settlement authorities ex-gratia Per-quod	Face to Face Instruction (poss. CAI)	N/A	combined	10 min	Crown Liability and Proceedings Act (), DAOD 7004-1, Claims and Ex gratia Procedures (), DAOD 7004-0, Claims By or Against the Crown and Ex gratia Payments (), DOAD 7004-2, Compensation for Loss or Damage to Personal Property ()
2	Indemnification of CF member	N/A	Face to Face Instruction (poss. CAI)	N/A	combined	10 min	National Defence Act, R.S.C. 1985, c. N-5 (), Queen's Regulations and Orders for the Canadian Forces (QR&O) - Volume I - Administration (), Crown Liability and Proceedings Act (), Policy on Legal Assistance and Indemnification ()

5. **TIME:**

Total class time	20 min
Instructional periods	0.4
Total Days	0.1

6. **Resources Required** a. CF supply documentation (electronic documentation preferred)

7. **Test Details:** See Annex B - Assessment Plan for details.

8. **Remarks:** includes advising on litigation. advice my be given remotely

A-2015-01212--0085

RELEASED UNDER THE AIA - UNCLASSIFIED INFORMATION
DIVULGUE EN VERTU DE LAI - RENSEIGNEMENTS NON CLASSIFIES
DND - MDN

EO 011.03 Determine claims for/ against the crown

1. **Performance:** Determine claims for/ against the crown

2. **Conditions**:

   a. **Given:** asssitance as required, references, resources as required

   b. **Denied:** direct supervision

   c. **Environmental:** CAF unit, base or wing headquarters, deployed domestically or internationally, under austere conditions

3. **Standard**: the legal offcier shall determine claims by or against the crown

   a. (CT0105) Recover debts to the Crown IAW refs: LOQ-C4 DAOD 7004-1, Claims and Ex gratia Procedures http://www.admfincs.forces.gc.ca/dao-doa/7000/7004-1-eng.asp, LOQ-C4 DAOD 7004-0, Claims By or Against the Crown and Ex gratia Payments http://www.admfincs.forces.gc.ca/dao-doa/7000/7004-0-eng.asp, LOQ-C4 DOAD 7004-2, Compensation for Loss or Damage to Personal Property http://www.admfincs.forces.gc.ca/dao-doa/7000/7004-2-eng.asp, LOQ-A3 http://laws-lois.justice.gc.ca/eng/acts/F-11/

   b. Approval of payment of claims IAW refs: LOQ-A3 http://laws-lois.justice.gc.ca/eng/acts/N-5/index.html, LOQ-C4 DAOD 7004-1, Claims and Ex gratia Procedures http://www.admfincs.forces.gc.ca/dao-doa/7000/7004-1-eng.asp, LOQ-C4 DAOD 7004-0, Claims By or Against the Crown and Ex gratia Payments http://www.admfincs.forces.gc.ca/dao-doa/7000/7004-0-eng.asp, LOQ-C4 DOAD 7004-2, Compensation for Loss or Damage to Personal Property http://www.admfincs.forces.gc.ca/dao-doa/7000/7004-2-eng.asp

4. **Teaching Points:**

#	TEACHING POINT	DESCRIPTION	METHOD	MEDIA	ENVIRONMENT	TIME	REFERENCE
1	Recover debts to the Crown	Requirements of the financial administration act Limitation period Limitations on administrative deductions	Face to Face Instruction (poss. CAI)	N/A	combined	10 min	DAOD 7004-1, Claims and Ex gratia Procedures (), DAOD 7004-0, Claims By or Against the Crown and Ex gratia Payments (), DOAD 7004-2, Compensation for Loss or Damage to Personal Property (), Financial Administration Act ()
2	Approval of payment of claims	Limitations on settlement authority liability claims and ex-gratia Coodination between OJAG and CCL	Face to Face Instruction (poss. CAI)	N/A	combined	10 min	National Defence Act, R.S.C. 1985, c. N-5 (), DAOD 7004-1, Claims and Ex gratia Procedures (), DAOD 7004-0, Claims By or Against the Crown and Ex gratia Payments (), DOAD 7004-2, Compensation for Loss or Damage to Personal Property ()

5. **TIME:**

Total class time	20 min
Instructional periods	0.4
Total Days	0.1

6. **Resources Required** a. CF supply documentation (electronic documentation preferred)

7. **Test Details:** See Annex B - Assessment Plan for details.

8. **Remarks:** advice may be given remotely

A-2015-01212--0086

RELEASED UNDER THE AIA - UNCLASSIFIED INFORMATION
DIVULGUE EN VERTU DE LAI - RENSEIGNEMENTS NON CLASSIFIES
DND - MDN

PO 012 ADVISE ON AGREEMENTS & ARRANGEMENTS

1. **Performance:** (CT0230) Advise on agreements & arrangements

2. **Conditions:**

   a. **Given:** assistance as required, references, resources as required

   b. **Denied:** direct supervision

   c. **Environmental:** CAF unit, base or wing headquarters, deployed domestically or internationally, under austere conditions

3. **Standard**: the legal officer shall advise on agreements and arrangements

   a. Advise on provision of services policy

   b. Advise on MOUs and other arrangements

4. **Remarks:** advice may be given remotely

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DIVULGUE EN VERTU DE LAI - RENSEIGNEMENTS NON CLASSIFIES
DND - MDN

ENABLING OBJECTIVES

EO 012.01 Advise on provision of services policy

1. **Performance:** Advise on provision of services policy
2. **Conditions**:
   a. **Given:** assistance as required, references, resources as required Provision of Services Policy
   b. **Denied:** direct supervision
   c. **Environmental:** CAF unit, base or wing headquarters. deployed domestically or internationally, under austere conditions
3. **Standard**: the legal officer shall advise on provision of services policy
   a. (CT0125) Advise on contracts IAW refs: LOQ-C4 DAOD 3015-1, Management of Green Procurement http://www.admfincs.forces.gc.ca/dao-doa/3000/3015-1-eng.asp, LOQ-C4 DAOD 3000-0, Materiel Acquisition and Support http://www.admfincs.forces.gc.ca/dao-doa/3000/3000-0-eng.asp, LOQ-C4 DAOD 3015-0, Green Procurement http://www.admfincs.forces.gc.ca/dao-doa/3000/3015-0-eng.asp, LOQ-C9 Treasury Board Contracting Policy http://www.tbs-sct.gc.ca/pol/doc-eng.aspx?id=14494§ion=text
4. **Teaching Points:**

#	TEACHING POINT	DESCRIPTION	METHOD	MEDIA	ENVIRONMENT	TIME	REFERENCE
1	Advise on contracts	N/A	Face to Face Instruction (poss. CAI)	N/A	combined	10 min	DAOD 3015-1, Management of Green Procurement (), DAOD 3000-0, Materiel Acquisition and Support (), DAOD 3015-0, Green Procurement (), Treasury Board Contracting Policy ()

5. **TIME:**

Total class time	10 min
Instructional periods	0.2
Total Days	0.0

6. **Resources Required** a. CF supply documentation (electronic documentation preferred)
7. **Test Details:** See Annex B - Assessment Plan for details.
8. **Remarks:** advice may be given remotely

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DND - MDN

EO 012.02 Advise on MOUs and other arrangements

1. **Performance:** Advise on MOUs and other arrangements

2. **Conditions**:

   a. **Given:** assistance as required, references, resources as required

   b. **Denied:** direct supervison

   c. **Environmental:** CAF unit, base or wing headquarters, deployed domestically or internationally, under austere conditions

3. **Standard**: The legal officer shall advise on MOU and other arrangements

   a. MOUs IAW refs: LOQ-C4 DAOD 7014-0, Memoranda of Understanding http://www.admfincs.forces.gc.ca/dao-doa/7000/7014-0-eng.asp, LOQ-C4 DAOD 7014-1, Memoranda of Understanding Development http://www.admfincs.forces.gc.ca/dao-doa/7000/7014-1-eng.asp, LOQ-D1 Memoranda of Understanding (MoU) Writing Guidelines http://www.forces.gc.ca/en/about-reports-pubs-military-law/daod-mou-writing-guidelines.page

   b. Other arrangements IAW refs: LOQ-A3 http://laws-lois.justice.gc.ca/eng/acts/F-11/, LOQ-D1 PROVISION OF SERVICES POLICY http://admfincs.mil.ca/dfpp/101901_e.asp, LOQ-A3 http://laws-lois.justice.gc.ca/eng/acts/F-8.4/index.html, LOQ-A4 Public Property Loan Regulations http://laws-lois.justice.gc.ca/eng/regulations/SOR-92-745/page-1.html, LOQ-A4 Defence Materiel Loan Regulations http://laws-lois.justice.gc.ca/eng/regulations/C.R.C.,_c._690/page-1.html

4. **Teaching Points:**

#	TEACHING POINT	DESCRIPTION	METHOD	MEDIA	ENVIRONMENT	TIME	REFERENCE
1	MOUs	Applicable policies DNDMOUC Nature Purpose The role of the legal advisor in the review MOU development Structure and Format Nomenclature Technical arrangements under MOUs	Face to Face Instruction (poss. CAI)	N/A	combined	30 min	DAOD 7014-0, Memoranda of Understanding (), DAOD 7014-1, Memoranda of Understanding Development (), JAG Memoranda of Understanding (MoU) Writing Guidelines ()
2	Other arrangements	SLAs technical support agreements Mutual support agreements other arrangements	Face to Face Instruction (poss. CAI)	N/A	combined	10 min	Financial Administration Act (), PROVISION OF SERVICES (), Federal Real Property and Federal Immovables Act (), Public Property Loan Regulations (), Defence Materiel Loan Regulations ()

5. **TIME:**

Total class time	40 min
Instructional periods	0.8
Total Days	0.2

6. **Resources Required** a. CF supply documentation (electronic documentation preferred)

7. **Test Details:** See Annex B - Assessment Plan for details.

8. **Remarks:** advice may be given remotely

A-2015-01212--0089

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DND - MDN

PO 013 ADVISE ON MATTERS IN CONJUCTION WITH DEPARTMENT OF JUSTICE AND OGD

1. **Performance:** Advise on matters in conjuction with Department of Justice and OGD

2. **Conditions:**

   a. **Given:** assistance as required, references, resources as required
   b. **Denied:** direct supervision
   c. **Environmental:** CAF unit, base or wing headquarters, deployed domestically or internationally, under austere conditions

3. **Standard**: the legal officer shall advise on matters in conjunction with the Department of Justice and otehr governmental departments

   a. Advise on legal issues relating to public property and non public property
   b. Advise on provision of health services
   c. Advise on official language issues
   d. Advise on access to information (ATI) and privacy issues
   e. Advise on other areas of law, impacting the CF, in conjuction with the DOJ

4. **Remarks:** advice may be given remotely

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DND - MDN

ENABLING OBJECTIVES

EO 013.01 Advise on legal issues relating to public property and non public property

1. **Performance:** Advise on legal issues relating to public property and non public property

2. **Conditions**:

   a. **Given:** assistance as required, references, resources as required

   b. **Denied:** direct supervision

   c. **Environmental:** CAF unit, base or wing headquarters, deployed domestically or internationally, under austere conditions

3. **Standard**: the legal offcier shall advise on legal issues related to public property and non public property

   a. Public property IAW refs: LOQ-A3 http://laws-lois.justice.gc.ca/eng/acts/N-5/index.html, LOQ-A5-3 http://www.admfincs-smafinsm.forces.gc.ca/qro-orf/vol-03/index-eng.asp, LOQ-A3 http://laws-lois.justice.gc.ca/eng/acts/F-11/, LOQ-C4 DAOD 9003-1, Non-Public Property Governance Framework, Chief of Military Personnel and the Non-Public Property Board http://www.admfincs.forces.gc.ca/dao-doa/9000/9003-1-eng.asp, LOQ-A3 http://laws-lois.justice.gc.ca/eng/acts/F-8.4/index.html, LOQ-C5 CFAO 38-1 -- LIABILITY FOR PUBLIC AND NON-PUBLIC PROPERTY http://admfincs.mil.ca/admfincs/subjects/cfao/038-01_e.asp

   b. Non-public property IAW refs: LOQ-A3 http://laws-lois.justice.gc.ca/eng/acts/N-5/index.html, LOQ-A5-1 http://www.admfincs.forces.gc.ca/qro-orf/vol-01/index-eng.asp, LOQ-C4 DAOD 9003-1, Non-Public Property Governance Framework, Chief of Military Personnel and the Non-Public Property Board http://www.admfincs.forces.gc.ca/dao-doa/9000/9003-1-eng.asp, LOQ-A3 http://laws-lois.justice.gc.ca/eng/acts/F-8.4/index.html, LOQ-C5 CFAO 38-1 -- LIABILITY FOR PUBLIC AND NON-PUBLIC PROPERTY http://admfincs.mil.ca/admfincs/subjects/cfao/038-01_e.asp

4. **Teaching Points:**

#	TEACHING POINT	DESCRIPTION	METHOD	MEDIA	ENVIRONMENT	TIME	REFERENCE
1	Public property	N/A	Face to Face Instruction (poss. CAI)	N/A	combined	10 min	National Defence Act, R.S.C. 1985, c. N-5 (), Queen's Regulations and Orders for the Canadian Forces (QRandO) - Volume III - Financial (), Financial Administration Act (), DAOD 9003-1, Non-Public Property Governance Framework, Chief of Military Personnel and the Non-Public Property Board (), Federal Real Property and Federal Immovables Act (), CFAO 38-1 -- LIABILITY FOR PUBLIC AND NON-PUBLIC PROPERTY ()
2	Non-public property	N/A	Face to Face Instruction (poss. CAI)	N/A	combined	10 min	National Defence Act, R.S.C. 1985, c. N-5 (), Queen's Regulations and Orders for the Canadian Forces (QR&O) - Volume I - Administration (), DAOD 9003-1, Non-Public Property Governance Framework, Chief of Military Personnel and the Non-Public Property Board (), Federal Real Property and Federal Immovables Act (), CFAO 38-1 -- LIABILITY FOR PUBLIC AND NON-PUBLIC PROPERTY ()

5. **TIME:**

Total class time	20 min
Instructional periods	0.4
Total Days	0.1

6. **Resources Required** a. CF supply documentation (electronic documentation preferred)

7. **Test Details:** See Annex B - Assessment Plan for details.

8. **Remarks:** advice may be given remotely

A-2015-01212--0091

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DND - MDN

EO 013.02 Advise on provision of health services

1. **Performance:** Advise on provision of health services

2. **Conditions**:

   a. **Given:** assistance as required, references, resources as required

   b. **Denied:** direct supervision

   c. **Environmental:** CAF unit, base or wing headquarters, deployed domestically or internationally, under austere conditions

3. **Standard**: the legal officer shall advise on provision of health services

   a. Scope of provision of health service IAW refs: LOQ-C4 DAOD 5003-1, Restrictions on Duty http://www.admfincs.forces.gc.ca/dao-doa/5000/5003-1-eng.asp, LOQ-C4 DAOD 5003-5, Pregnancy Administration http://www.admfincs.forces.gc.ca/dao-doa/5000/5003-5-eng.asp, LOQ-D1 CAF Health Serivces http://www.forces.gc.ca/en/caf-community-health-services/index.page, LOQ-C4 http://admfincs.mil.ca/admfincs/subjects/cfao/034-28_e.asp, LOQ-C4 CFAO 35-5 -- DENTAL CARE AND SCREENING OF DEPENDANTS AND OTHER CIVILIANS http://admfincs.mil.ca/admfincs/subjects/cfao/035-05_e.asp

   b. Use of medical information IAW refs: LOQ-A4 http://laws-lois.justice.gc.ca/eng/acts/P-21/, LOQ-C4 DAOD 1001-0, Access to Information http://www.admfincs.forces.gc.ca/dao-doa/1000/1001-0-eng.asp, LOQ-C4 DAOD 1001-1, Formal Requests for Access to Departmental Information http://www.admfincs.forces.gc.ca/dao-doa/1000/1001-1-eng.asp, LOQ-C4 DAOD 1002-0, Personal Information http://www.admfincs.forces.gc.ca/dao-doa/1000/1002-0-eng.asp, LOQ-C4 DAOD 1002-1, Requests under the Privacy Act for Personal Information http://www.admfincs.forces.gc.ca/dao-doa/1000/1002-1-eng.asp, LOQ-C4 DAOD 1002-3, Management of Personal Information http://www.admfincs.forces.gc.ca/dao-doa/1000/1002-3-eng.asp

4. **Teaching Points:**

#	TEACHING POINT	DESCRIPTION	METHOD	MEDIA	ENVIRONMENT	TIME	REFERENCE
1	Scope of provision of health service	Spectrum of care Recipients (reg force, reserve, civilians) Authorities	Face to Face Instruction (poss. CAI)	N/A	combined	20 min	DAOD 5003-1, Restrictions on Duty (), DAOD 5003-5, Pregnancy Administration (), CAF Health Services (), CFAO 34-28 -- DEPENDANTS -- MEDICAL SCREENING (), CFAO 35-5 -- DENTAL CARE AND SCREENING OF DEPENDANTS AND OTHER CIVILIANS ()
2	Use of medical information	N/A	Face to Face Instruction (poss. CAI)	N/A	combined	10 min	Privacy Act (), DAOD 1001-0, Access to Information (), DAOD 1001-1, Formal Requests for Access to Departmental Information (), DAOD 1002-0, Personal Information (), DAOD 1002-1, Requests under the Privacy Act for Personal Information (), DAOD 1002-3, Management of Personal Information ()

5. **TIME:**

Total class time	30 min
Instructional periods	0.6
Total Days	0.1

6. **Resources Required** a. CF supply documentation (electronic documentation preferred)

7. **Test Details:** See Annex B - Assessment Plan for details.

8. **Remarks:** advice may be given remotely

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DIVULGUE EN VERTU DE LAI - RENSEIGNEMENTS NON CLASSIFIES
DND - MDN

EO 013.03 Advise on official language issues

1. **Performance:** Advise on official language issues

2. **Conditions**:

   a. **Given:** assistance as required, references, resources as required

   b. **Denied:** direct supervision

   c. **Environmental:** CAF unit, base or wing headquarters, deployed domestically or internationally, under austere conditions

3. **Standard**: the legal officer shall advise on official languages issues

   a. Applicable legislation and policies IAW refs: LOQ-A3 http://laws-lois.justice.gc.ca/eng/acts/N-5/index.html, LOQ-C4 DAOD 5039-0, Official Languages http://www.admfincs.forces.gc.ca/dao-doa/5000/5039-0-eng.asp, LOQ-A3 Official Languages Act http://laws-lois.justice.gc.ca/eng/acts/O-3.01/index.html

4. **Teaching Points:**

#	TEACHING POINT	DESCRIPTION	METHOD	MEDIA	ENVIRONMENT	TIME	REFERENCE
1	Applicable legislation and policies	Rights and obligations	Face to Face Instruction (poss. CAI)	N/A	N/A	0 min	National Defence Act, R.S.C. 1985, c. N-5 (), DAOD 5039-0, Official Languages (), Official Languages Act ()

5. **TIME:**

Total class time	0 min
Instructional periods	0.0
Total Days	0.0

6. **Resources Required** a. CF supply documentation (electronic documentation preferred)

7. **Test Details:** See Annex B - Assessment Plan for details.

8. **Remarks:** advice may be given remotely

A-2015-01212--0093

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DND - MDN

EO 013.04 Advise on access to information (ATI) and privacy issues

1. **Performance:** Advise on access to information (ATI) and privacy issues

2. **Conditions**:

   a. **Given:** assistance as required, references, resources as required

   b. **Denied:** direct supervision

   c. **Environmental:** CAF unit, base or wing headquarters, depoyed domestically or internationally, under austere conditions

3. **Standard**: the legal offcier shall advise on access to information and privacy issues

   a. Key issues IAW refs: LOQ-A4 http://laws-lois.justice.gc.ca/eng/acts/P-21/, LOQ-C4 DAOD 1001-0, Access to Information http://www.admfincs.forces.gc.ca/dao-doa/1000/1001-0-eng.asp, LOQ-C4 DAOD 1001-1, Formal Requests for Access to Departmental Information http://www.admfincs.forces.gc.ca/dao-doa/1000/1001-1-eng.asp, LOQ-C4 DAOD 1002-0, Personal Information http://www.admfincs.forces.gc.ca/dao-doa/1000/1002-0-eng.asp, LOQ-C4 DAOD 1002-1, Requests under the Privacy Act for Personal Information http://www.admfincs.forces.gc.ca/dao-doa/1000/1002-1-eng.asp, LOQ-A3 http://laws-lois.justice.gc.ca/eng/acts/A-1/index.html

4. **Teaching Points:**

#	TEACHING POINT	DESCRIPTION	METHOD	MEDIA	ENVIRONMENT	TIME	REFERENCE
1	Key issues	ATIP requests Protection of personal information maintenance of database	Face to Face Instruction (poss. CAI)	N/A	combined	20 min	Privacy Act (), DAOD 1001-0, Access to Information (), DAOD 1001-1, Formal Requests for Access to Departmental Information (), DAOD 1002-0, Personal Information (), DAOD 1002-1, Requests under the Privacy Act for Personal Information (), Access to Information Act ()

5. **TIME:**

Total class time	20 min
Instructional periods	0.4
Total Days	0.1

6. **Resources Required** a. CF supply documentation (electronic documentation preferred)

7. **Test Details:** See Annex B - Assessment Plan for details.

8. **Remarks:** advice may be given remotely

A-2015-01212--0094

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EO 013.05 Advise on other areas of law, impacting the CF, in conjuction with the DOJ

1. **Performance:** Advise on other areas of law, impacting the CF, in conjuction with the DOJ

2. **Conditions**:

   a. **Given:** assistance as required, references, resources as required

   b. **Denied:** direct supervision

   c. **Environmental:** CAF unit, base or wing headquarters, deployed domestically or internationally, under austere conditions

3. **Standard**: the legal officer shall advise on other areas of law, impacting the CF, in conjuction with the DOJ

   a. (CT0190) Labour law issues affecting the CF IAW refs: LOQ-A3 http://laws-lois.justice.gc.ca/eng/acts/N-5/index.html, LOQ-A3 http://laws-lois.justice.gc.ca/eng/acts/H-6/

   b. (CT0165) Environmental law IAW refs: LOQ-A3 http://laws-lois.justice.gc.ca/eng/acts/C-15.31/, LOQ-C4 DAOD 4003-0, Environmental Protection and Stewardship http://www.admfincs.forces.gc.ca/dao-doa/4000/4003-0-eng.asp, LOQ-A3 Fisheries Act http://laws-lois.justice.gc.ca/eng/acts/F-14/index.html, LOQ-A3 Oceans Act http://laws-lois.justice.gc.ca/eng/acts/O-2.4/index.html, LOQ-C4 DAOD 4003-2, Environmental Assessment http://www.admfincs-smafinsm.forces.gc.ca/dao-doa/4000/4003-2-eng.asp

   c. (CT0075) Advise on federal-provincial jurisdictional issues IAW refs: LOQ-A1 http://laws-lois.justice.gc.ca/eng/CONST/page-1.html, LOQ-A1 http://laws-lois.justice.gc.ca/eng/CONST/page-15.html#h-38, LOQ-A3 http://laws-lois.justice.gc.ca/eng/acts/N-5/index.html, LOQ-A5-4-3.2-DCAARS http://laws-lois.justice.gc.ca/eng/regulations/SOR-86-957/

   d. (CT0325) Aboriginal law issues IAW refs: LOQ-A1 http://laws-lois.justice.gc.ca/eng/CONST/page-1.html, LOQ-A3 http://laws-lois.justice.gc.ca/eng/acts/N-5/index.html, LOQ-A3 Indian Act http://laws-lois.justice.gc.ca/eng/acts/I-5/

4. **Teaching Points:**

#	TEACHING POINT	DESCRIPTION	METHOD	MEDIA	ENVIRONMENT	TIME	REFERENCE
1	Labour law issues affecting the CF	N/A	Face to Face Instruction (poss. CAI)	N/A	combined	10 min	National Defence Act, R.S.C. 1985, c. N-5 (), Canadian Human Rights Act ()
2	Environmental law	N/A	Face to Face Instruction (poss. CAI)	N/A	combined	10 min	Canadian Environmental Protection Act, R.S.C. 1985, c. C-15 (), DAOD 4003-0, Environmental Protection and Stewardship (), Fisheries Act (), Oceans Act (), DAOD 4003-2, Environmental Assessment ()
3	Advise on federal-provincial jurisdictional issues	N/A	Face to Face Instruction (poss. CAI)	N/A	combined	10 min	Constitution Act, 1867, 30 & 31 Victoria, c. 3 (U.K.), R.S.C. 1985, App. II, No. 11. (), Constitution Act, 1982, Enacted as Schedule B to the Canada Act 1982, 1982, c. 11 (U.K.), which came into force on April 17, 1982. (), National Defence Act, R.S.C. 1985, c. N-5 (), Defence Controlled Access Area Regulations (SOR/86-957) ()
4	Aboriginal law issues	N/A	Face to Face Instruction (poss. CAI)	N/A	combiined	10 min	Constitution Act, 1867, 30 & 31 Victoria, c. 3 (U.K.), R.S.C. 1985, App. II, No. 11. (), National Defence Act, R.S.C. 1985, c. N-5 (), Indian Act ()

5. **TIME:**

Total class time	40 min
Instructional periods	0.8
Total Days	0.2

6. **Resources Required** a. CF supply documentation (electronic documentation preferred)

7. **Test Details:** See Annex B - Assessment Plan for details.

A-2015-01212--0095

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8. **Remarks:** advice may be given remotely

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PO 014 ADVISE ON DISCIPLINARY JURISDICTION AT0035

1. **Performance:** (MJ0007) Advise on disciplinary jurisdiction AT0035

2. **Conditions:**

   a. **Given:** Assistance as required; References; Resources as required.

   b. **Denied:** Direct supervision

   c. **Environmental:** CF unit base or wing headquarters deployed internationally or domestically, sometimes under austere conditions.

3. **Standard**: The legal officer shall advise on disciplinary jurisdiction issues with regards to: 1) investigations; 2) custody, and; 3) trial

   a. Advise on jurisdiction issues related to disciplinary investigations

   b. Advise on disciplinary jurisdiction related to custody

   c. Advise on jurisdictional considerations relating to trial

4. **Remarks:** Advise may be provided remotely

A-2015-01212--0097

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DND - MDN

ENABLING OBJECTIVES

EO 014.01 Advise on jurisdiction issues related to disciplinary investigations

1. **Performance:** Advise on jurisdiction issues related to disciplinary investigations

2. **Conditions**:

   a. **Given:** Assistance as required; references; resources as required.

   b. **Denied:** Direct supervision

   c. **Environmental:** CF unit base or wing Headquarters Deployed internationally or domestically Under austere conditions

3. **Standard**: The legal officer shall advise on jurisdiction issues related to disciplinary investigations

   a. Limitations arising from disciplinary investigations IAW refs: LOQ-A1 http://laws-lois.justice.gc.ca/eng/CONST/page-1.html, LOQ-A3 http://laws-lois.justice.gc.ca/eng/acts/N-5/index.html, LOQ-A3 http://laws-lois.justice.gc.ca/eng/acts/C-46/index.html, LOQ-A5-1 http://www.admfincs.forces.gc.ca/qro-orf/vol-01/index-eng.asp, LOQ-A5-2 http://www.admfincs.forces.gc.ca/qro-orf/vol-02/index-eng.asp, LOQ-A5-4-3.2-DCAARS http://laws-lois.justice.gc.ca/eng/regulations/SOR-86-957/, LOQ-B1-2-Nolan http://scc-csc.lexum.com/scc-csc/scc-csc/en/item/229/index.do?r=AAAAAQAJciB2lG5vbGFuAAAAAAE, LOQ-C1 http://vcds.mil.ca/sites/cfpm/resources/Advisories/2003/04-03_b.pdf, LOQ-B2b-1-Haynes http://www.canlii.org/en/ns/nsca/doc/1994/1994canlii4160/1994canlii4160.html, LOQ-C2 http://vcds.mil.ca/sites/cfpm/resources/Advisories/2006/25-06.pdf, LOQ-B2a-1-Moriarity http://decisions.cmac-cacm.ca/cmac-cacm/cmac-cacm/en/item/66417/index.do, LOQ-C3 http://vcds.mil.ca/sites/intranet-eng.aspx?page=9288&title=Policies%20and%20Publications%20-%20Police%20Advisories&site=CFPM%20-%20Policies%20and%20Publications, LOQ-C4-DAOD-5016-0 http://www.admfincs.forces.gc.ca/dao-doa/5000/5016-0-eng.asp, LOQ-C5-CFPM-DPM-PA- 16/08 http://vcds.mil.ca/sites/cfpm/resources/Advisories/2008/16-08.pdf, LOQ-A6-Bill C-15 http://www.parl.gc.ca/content/hoc/Bills/411/Government/C-15/C-15_4/C-15_4.PDF, LOQ-B2a-2-Perrier http://decisions.cmac-cacm.ca/cmac-cacm/cmac-cacm/en/item/7828/index.do

   b. Applicable Military Police Policies on investigations IAW refs: LOQ-A3 http://laws-lois.justice.gc.ca/eng/acts/N-5/index.html, LOQ-B2a-1-Moriarity http://decisions.cmac-cacm.ca/cmac-cacm/cmac-cacm/en/item/66417/index.do, LOQ-C3 http://vcds.mil.ca/sites/intranet-eng.aspx?page=9288&title=Policies%20and%20Publications%20-%20Police%20Advisories&site=CFPM%20-%20Policies%20and%20Publications, LOQ-D1 http://www.forces.gc.ca/en/about-reports-pubs-military-law-summary-trial-level/index.page?, LOQ-C6-JAG-Policy Directive-010/00 http://jag.mil.ca/publications/directives/directive010-00.pdf

   c. Canadian Forces Command and Organisation IAW refs: LOQ-A3 http://laws-lois.justice.gc.ca/eng/acts/N-5/index.html, LOQ-A3 http://laws-lois.justice.gc.ca/eng/acts/C-46/index.html, LOQ-A5-2 http://www.admfincs.forces.gc.ca/qro-orf/vol-02/index-eng.asp, LOQ-C3 http://vcds.mil.ca/sites/intranet-eng.aspx?page=9288&title=Policies%20and%20Publications%20-%20Police%20Advisories&site=CFPM%20-%20Policies%20and%20Publications, LOQ-A6-Bill C-15 http://www.parl.gc.ca/content/hoc/Bills/411/Government/C-15/C-15_4/C-15_4.PDF, LOQ-D1 http://www.forces.gc.ca/en/about-reports-pubs-military-law-summary-trial-level/index.page?, LOQ-C7-JAG-Policy Directive 006/00 http://jag.mil.ca/publications/directives/directive006-00.pdf

4. **Teaching Points:**

#	TEACHING POINT	DESCRIPTION	METHOD	MEDIA	ENVIRONMENT	TIME	REFERENCE

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1	Limitations arising from disciplinary investigations	By whom: authorities to investigate; Who: Jurisdiction limited over the persons; Where: Jurisdiction limited in space; What: Jurisdiction limited over the matters; Until when: Jurisdiction limited by time;	Instructor Supported Elearning (CBT/CAI)	Instructor; Print; Web Based Training (WBT)	N/A	20 min	Constitution Act, 1867, 30 & 31 Victoria, c. 3 (U.K.), R.S.C. 1985, App. II, No. 11. () [ss. 91(7);92(14)], National Defence Act, R.S.C. 1985, c. N-5 () [ss. 2, 60-65, 69, 130(1)(a),156(b), 162, 163 (1.1), 163 (1.2)], Criminal Code, R.S.C., 1985, c. C-46 () [ss. 2(g)(i) and (ii), 786], Queen's Regulations and Orders for the Canadian Forces (QR&O) - Volume I - Administration () [chap. 22.01(2); 22.02(2)], Queen's Regulations and Orders for the Canadian Forces (QR&O) - Volume II - Disciplinary () [Chap. 106.02 (Note B); 106.03], Defence Controlled Access Area Regulations (SOR/86-957) (), R. v. Nolan, [1987] 1 S.C.R. 1212 (), DPM Police Advisory 04/03 - Military Police Jurisdiction with Regard to Persons - 25 Dec 2003 (), R. v. Haynes, 1994 CanLII 4160 (NS CA); 130 NSR (2d) 311 (), DPM Police Advisory 25/06 - Jurisdiction - 1 Dec 2006 (), Moriarity v. R., 2014 CMAC 1, CMAC-560, CMAC-563 () [para. 64-66], Military Police Policies and Technical Procedures Manual (A-SJ-100-004/AG-000) [ch. 2, Annex H, para. 5], DAOD 5016-0, Standards of Civilian Conduct and Discipline (), DPM Police Advisory 16/08 MP Reports - Timeless - 8 July 2008 (), Bill C-15, An Act to amend the National Defence Act and to make consequential amendments to other Acts, 1st Sess, 41st Parl, 2013 (assented to 19 June 2013), S.C. 2013, c 24. () [cl. 35], R v. Perrier, CMAC-434 ()
2	Applicable Military Police Policies on investigations	Sub-divisions of investigative jurisdiction: CFNIS, MP Dets, Units; Description of civilian-military police cooperation; Legal Advisor - CFNIS/MP/Units Relationships;	Face to Face Instruction (poss. CAI)	Web Based Training (WBT); Instructor; Print	N/A	10 min	National Defence Act, R.S.C. 1985, c. N-5 () [s. 130(1)(a);], Moriarity v. R., 2014 CMAC 1, CMAC-560, CMAC-563 () [Paras. 64-66], Military Police Policies and Technical Procedures Manual (A-SJ-100-004/AG-000) [ch. 2, Annex H; ch. 5, 44(a), ch. 6, para. 22, 24, 29-31; ch. 6, Annex A, Appendix 2; ch. 6, Annex A, Appendix 3; ch. 6, Annex A, Appendix 4, p. 6A4-1/1;], B-GG-005-027/AF-011 Military Justice at the Summary Trial Level 2.2 (B-GG-005-027/AF-011) [Annex C; Annex M; ch. 5, para. 33;], Charge Screening Policy, 10 Jul 00 () [Paras. 10, 14]
3	Canadian Forces Command and Organisation	Unit Discipline Investigations Legal Advisor Units Relationships Interaction between chain-of-command and conduct of investigations	Face to Face Instruction (poss. CAI)	Web Based Training (WBT); Print; Instructor	N/A	10 min	National Defence Act, R.S.C. 1985, c. N-5 () [ss. 18.4, 18.5(2) to (5), 250.19], Criminal Code, R.S.C., 1985, c. C-46 () [s. 129], Queen's Regulations and Orders for the Canadian Forces (QR&O) - Volume II - Disciplinary () [ch. 107.03; 101.12(3); 101.12(2); 101.12(14); 108.17], Military Police Policies and Technical Procedures Manual (A-SJ-100-004/AG-000) [ch. 6, Annex A, p. 6A-5 to 6A-7, paras. 11 to 16; ch. 6, p. 6-2, para. 7;], Bill C-15, An Act to amend the National Defence Act and to make consequential amendments to other Acts, 1st Sess, 41st Parl, 2013 (assented to 19 June 2013), S.C. 2013, c 24. () [cl. 4], B-GG-005-027/AF-011 Military Justice at the Summary Trial Level 2.2 (B-GG-005-027/AF-011) [ch. 5, p. 5-3, para. 13-19;], Professional Standards Review () [Para. 7; Annex A]

5. **TIME:**

Total class time	40 min
Instructional periods	0.8
Total Days	0.2

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6. **Resources Required** a. CF supply documentation (electronic documentation preferred)

7. **Test Details:** See Annex B - Assessment Plan for details.

8. **Remarks:** Advice can be provided remotely

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EO 014.02 Advise on disciplinary jurisdiction related to custody

1. **Performance:** Advise on disciplinary jurisdiction related to custody

2. **Conditions**:

   a. **Given:** Assistance as required; references; resources as required.

   b. **Denied:** Direct supervision

   c. **Environmental:** CF unit base or wing headquarters deployed internationally or domestically, sometimes under austere conditions.

3. **Standard**: The legal officer shall advise on disciplinary jurisdiction related to custody

   a. Limitations arising from circumstances of custody IAW refs: LOQ-A2 http://laws-lois.justice.gc.ca/eng/CONST/page-15.html#h-38, LOQ-A3 http://laws-lois.justice.gc.ca/eng/acts/N-5/index.html, LOQ-A3 http://laws-lois.justice.gc.ca/eng/acts/C-46/index.html, LOQ-D2-Black Law Dictionary http://, LOQ-B1-3-Grant https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7799/index.do

   b. Applicable military policy policies. IAW refs: LOQ-C3 http://vcds.mil.ca/sites/intranet-eng.aspx?page=9288&title=Policies%20and%20Publications%20-%20Police%20Advisories&site=CFPM%20-%20Policies%20and%20Publications, LOQ-D1 http://www.forces.gc.ca/en/about-reports-pubs-military-law-summary-trial-level/index.page?, LOQ-C8-CFPM http://vcds.mil.ca/sites/cfpm/resources/Advisories/2009/28-09.pdf

4. **Teaching Points:**

#	TEACHING POINT	DESCRIPTION	METHOD	MEDIA	ENVIRONMENT	TIME	REFERENCE
1	Limitations arising from circumstances of custody	Custody in general; Legal authorities to put in custody; Conditions for custody; Location of custody	Instructor Supported Elearning (CBT/CAI)	Instructor; Print; Web Based Training (WBT)	N/A	10 min	Canadian Charter of Rights and Freedoms () [ss. 7,9,10], National Defence Act, R.S.C. 1985, c. N-5 () [ss. 2, 153 to 159.9,], Criminal Code, R.S.C., 1985, c. C-46 () [s. 497(1)], Black Law Dictionary, 5th ed. St. Paul, Minnesota: West Publishing Company, 1979 () [p. 347], R. v. Grant, 2009 SCC 32, [2009] 2 S.C.R. 353 () [Para. 54]
2	Applicable military policy policies.	Beginning of jurisdiction End of jurisdiction Transfer	Face to Face Instruction (poss. CAI)	Instructor; Print; Web Based Training	N/A	15 min	Military Police Policies and Technical Procedures Manual (A-SJ-100-004/AG-000) [ch. 5 and 7], B-GG-005-027/AF-011 Military Justice at the Summary Trial Level 2.2 (B-GG-005-027/AF-011) [ch. 7], DPM Police Advisory 28/09 Investigative detention ()

5. **TIME:**

Total class time	25 min
Instructional periods	0.5
Total Days	0.1

6. **Resources Required** a. CF supply documentation (electronic documentation preferred)

7. **Test Details:** See Annex B - Assessment Plan for details.

8. **Remarks:** Advice can be provided remotely.

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EO 014.03 Advise on jurisdictional considerations relating to trial

1. **Performance:** Advise on jurisdictional considerations relating to trial

2. **Conditions**:

   a. **Given:** Assistance as required; references; resources as required.

   b. **Denied:** Direct supervision

   c. **Environmental:** CF unit base or wing headquarters deployed internationally or domestically, sometimes under austere conditions.

3. **Standard**: The legal officer shall advise on jurisdictional considerations relating to trial

   a. (AT0035, AT0040, AT0045, AT0050, AT0055, AT0065, AT0075, AT0105, AT0180, AT0185, AT0190) Advise on jurisdictional considerations relating to Trial

      i. Limitations pertaining to the right to elect court martial IAW refs: LOQ-A5-2 http://www.admfincs.forces.gc.ca/qro-orf/vol-02/index-eng.asp, LOQ-D1 http://www.forces.gc.ca/en/about-reports-pubs-military-law-summary-trial-level/index.page?

   b. (AT0040, AT0045, AT0035, AT0050, AT0065, AT0180, AT0185, AT0190) Advise on jurisdictional considerations relating to charge laying

      i. Authority to lay charges IAW refs: LOQ-A5-1 http://www.admfincs.forces.gc.ca/qro-orf/vol-01/index-eng.asp, LOQ-A5-2 http://www.admfincs.forces.gc.ca/qro-orf/vol-02/index-eng.asp, LOQ-D1 http://www.forces.gc.ca/en/about-reports-pubs-military-law-summary-trial-level/index.page?

   c. (AT0035, AT0060, AT0065, AT0105, AT0180, AT0185, AT0190, AT0210, AT0220) Advise on jurisdictional considerations relating to charge referral

      i. Limitations on jurisdiction of person making referral IAW refs: LOQ-A5-2 http://www.admfincs.forces.gc.ca/qro-orf/vol-02/index-eng.asp, LOQ-D1 http://www.forces.gc.ca/en/about-reports-pubs-military-law-summary-trial-level/index.page?, LOQ-D1 http://cda.mil.ca/cfmlc-cdmfc/doc/GuideforCourtMartialReferralAuthorities-bil.pdf

      ii. Types of referral IAW refs: LOQ-A5-2 http://www.admfincs.forces.gc.ca/qro-orf/vol-02/index-eng.asp, LOQ-D1 http://www.forces.gc.ca/en/about-reports-pubs-military-law-summary-trial-level/index.page?, LOQ-D1 http://cda.mil.ca/cfmlc-cdmfc/doc/GuideforCourtMartialReferralAuthorities-bil.pdf

   d. (AT0035, AT0055, AT0065, AT0075, AT0090, AT0180, AT0185, AT0190,) Advise on jurisdictional considerations relating to Trial & Punishment

      i. Limitations on powers of trial and punishment IAW refs: LOQ-A5-2 http://www.admfincs.forces.gc.ca/qro-orf/vol-02/index-eng.asp, LOQ-D1 http://www.forces.gc.ca/en/about-reports-pubs-military-law-summary-trial-level/index.page?, LOQ-D1 http://cda.mil.ca/cfmlc-cdmfc/doc/GuideforCourtMartialReferralAuthorities-bil.pdf

   e. (AT0035, AT0050, AT0080, AT0085, AT0100, AT0105, AT0180, AT0185, AT0190, AT0220) Advise on jurisdictinal considerations relating to the review of a summary trial

      i. Types of review IAW refs: LOQ-A3 http://laws-lois.justice.gc.ca/eng/acts/N-5/index.html, LOQ-A5-2 http://www.admfincs.forces.gc.ca/qro-orf/vol-02/index-eng.asp, LOQ-D1 http://www.forces.gc.ca/en/about-reports-pubs-military-law-summary-trial-level/index.page?

4. **Teaching Points:**

#	TEACHING POINT	DESCRIPTION	METHOD	MEDIA	ENVIRONMENT	TIME	REFERENCE
1	Advise on jurisdictional considerations relating to Trial	N/A	Face to Face Instruction (poss. CAI)	Instructor; Print; Web Based Training	N/A	0 min	

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1.1	Limitations pertaining to the right to elect court martial	Rank of the accused person Seriousness of the offence Potential sentence	Face to Face Instruction (poss. CAI)	Web Based Training; Instructor; Print	N/A	10 min	Queen's Regulations and Orders for the Canadian Forces (QR&O) - Volume II - Disciplinary () [ch. 108.14, 108.15, 108.16, 108.17,108.18], B-GG-005-027/AF-011 Military Justice at the Summary Trial Level 2.2 (B-GG-005-027/AF-011) [ch. 11]
2	Advise on jurisdictional considerations relating to charge laying	N/A	Face to Face Instruction (poss. CAI)	Instructor; Print; Web Based Training	N/A	0 min	
2.1	Authority to lay charges	Who could lay charges: CO; CFNIS; officer or NCM authorized; Factors to be considered for who would be authorized; Uniformed standard in drafting charges to be maintained; Laying charges is one aspect of maintenance of discipline.	Basic Elearning (CBT/WBT)	Web Based Training; Instructor; Print	N/A	10 min	Queen's Regulations and Orders for the Canadian Forces (QR&O) - Volume I - Administration () [ch. 4.02, 5.01], Queen's Regulations and Orders for the Canadian Forces (QR&O) - Volume II - Disciplinary () [ch. 107.2, 108.9 and Note,], B-GG-005-027/AF-011 Military Justice at the Summary Trial Level 2.2 (B-GG-005-027/AF-011) [ch. 8; Annex M]
3	Advise on jurisdictional considerations relating to charge referral	N/A	Face to Face Instruction (poss. CAI)	Instructor; Print; Web Based Training	N/A	0 min	

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3.1	Limitations on jurisdiction of person making referral	Temporal Personal Arising from conflict of interest, seriousness of offence, Inadequate powers of punishment	Instructor Supported Elearning (CBT/CAI)	Web Based Training; Instructor; Print	N/A	8 min	Queen's Regulations and Orders for the Canadian Forces (QR&O) - Volume II - Disciplinary () [ch. 107.09; 109], B-GG-005-027/AF-011 Military Justice at the Summary Trial Level 2.2 (B-GG-005-027/AF-011) [ch. 7, p. 11-18 to 11-23, paras 72-94], Guide for Referral Authorities () [pp. 2-6]
3.2	Types of referral	Referral by charge layer to a presiding officer; Referral by a delegated officer to a commanding officer; Referral by a commanding officer to a superior officer; Referral to an alternate presiding officer; Submission by a commanding officer to a referral authority; Referral by a referral authority to DMP; Refferal by a commanding officer to a delgated officer; Refferal by NIS to a commanding officer;	Basic Elearning (CBT/WBT)	Web Based Training	Distributed Learning	7 min	Queen's Regulations and Orders for the Canadian Forces (QR&O) - Volume II - Disciplinary () [ch. 107.09(1)(a), 107.09 (2)(b), 108.16, 108.19, 108.195, 108.34, ch. 109], B-GG-005-027/AF-011 Military Justice at the Summary Trial Level 2.2 (B-GG-005-027/AF-011) [ch. 11, section 6 "Referral", paras. 72-94], Guide for Referral Authorities ()
4	Advise on jurisdictional considerations relating to Trial & Punishment	N/A	Face to Face Instruction (poss. CAI)	Instructor; Print; Web Based Training	N/A	0 min	

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4.1	Limitations on powers of trial and punishment	Alleged offence Rank of alleged offender Temporal limitations Powers of punishment Rank or position of presiding officer Consequence of absence of election to court martial Location of unit Nature of delegation of powers where applicable	Basic Elearning (CBT/WBT)	Web Based Training	Distributed Instruction	10 min	Queen's Regulations and Orders for the Canadian Forces (QR&O) - Volume II - Disciplinary () [ch. 107.09(1)(a), 107.09 (2)(b), 108.16, 108.19, 108.195, 108.34, ch. 109], B-GG-005-027/AF-011 Military Justice at the Summary Trial Level 2.2 (B-GG-005-027/AF-011) [ch. 11, section 6 "Referral", paras. 72-94], Guide for Referral Authorities ()
5	Advise on jurisdictinal considerations relating to the review of a summary trial	N/A	Face to Face Instruction (poss. CAI)	Instructor; Print; Web Based Training	N/A	0 min	
5.1	Types of review	Authority to review Temporal limitations Standing to request Judicial review	Basic Elearning (CBT/WBT)	Web Based Training	Distributed instruction	10 min	National Defence Act, R.S.C. 1985, c. N-5 () [ss. 249(3), 249(4)], Queen's Regulations and Orders for the Canadian Forces (QR&O) - Volume II - Disciplinary () [ch. 116.02], B-GG-005-027/AF-011 Military Justice at the Summary Trial Level 2.2 (B-GG-005-027/AF-011) [ch. 15, sections 2, 3, 6]

5. **TIME:**

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Total class time	55 min
Instructional periods	1.1
Total Days	0.2

6. **Resources Required** a. CF supply documentation (electronic documentation preferred)

7. **Test Details:** See Annex B - Assessment Plan for details.

8. **Remarks:** Advice can be provided remotely.

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PO 015 ADVISE ON LEGAL ISSUES RELATED TO CUSTODY AT0010

1. **Performance:** (AT0010) Advise on legal issues related to custody AT0010

2. **Conditions:**

   a. **Given:** References; resources as required; assistance as required.

   b. **Denied:** Direct supervision.

   c. **Environmental:** CF unit base or wing headquarters deployed internationally or domestically, sometimes under austere conditions.

3. **Standard**: The Legal Officer shall advise on legal issues related to custody to include:

   a. Advise on arrest

   b. Review unit delegation, designations and authorisations

   c. Review custody related documents

   d. Advise on the requirements of custody

   e. Advise the Custody Review Officer (CRO) on the decision to be made

   f. Support the hearing before military judge

4. **Remarks:** Advise may be provided remotely.

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ENABLING OBJECTIVES

EO 015.01 Advise on arrest

1. **Performance:** Advise on arrest

2. **Conditions**:

   a. **Given:** References; resources as required; assistance as required.

   b. **Denied:** Direct supervision.

   c. **Environmental:** CF unit base or wing headquarters deployed internationally or domestically, sometimes under austere conditions.

3. **Standard**: The legal officer shall advise on arrest, including:

   a. Persons subject to arrest IAW refs: LOQ-A3 http://laws-lois.justice.gc.ca/eng/acts/N-5/index.html, LOQ-A3 http://laws-lois.justice.gc.ca/eng/acts/C-46/index.html, LOQ-A5-2 http://www.admfincs.forces.gc.ca/qro-orf/vol-02/index-eng.asp, LOQ-A5-4-3.2-DCAARS http://laws-lois.justice.gc.ca/eng/regulations/SOR-86-957/, LOQ-B1-2-Nolan http://scc-csc.lexum.com/scc-csc/scc-csc/en/item/229/index.do?r=AAAAAQAJciB2lG5vbGFuAAAAAAE, LOQ-B2b-1-Haynes http://www.canlii.org/en/ns/nsca/doc/1994/1994canlii4160/1994canlii4160.html, LOQ-D1 http://www.forces.gc.ca/en/about-reports-pubs-military-law-summary-trial-level/index.page?

   b. Basis for arrest IAW refs: LOQ-A3 http://laws-lois.justice.gc.ca/eng/acts/N-5/index.html, LOQ-A3 http://laws-lois.justice.gc.ca/eng/acts/C-46/index.html, LOQ-A5-2 http://www.admfincs.forces.gc.ca/qro-orf/vol-02/index-eng.asp, LOQ-A5-4-3.2-DCAARS http://laws-lois.justice.gc.ca/eng/regulations/SOR-86-957/, LOQ-D1 http://www.forces.gc.ca/en/about-reports-pubs-military-law-summary-trial-level/index.page?

   c. Persons empowered to arrest IAW refs: LOQ-A3 http://laws-lois.justice.gc.ca/eng/acts/N-5/index.html, LOQ-A3 http://laws-lois.justice.gc.ca/eng/acts/C-46/index.html, LOQ-A5-2 http://www.admfincs.forces.gc.ca/qro-orf/vol-02/index-eng.asp, LOQ-A5-4-3.2-DCAARS http://laws-lois.justice.gc.ca/eng/regulations/SOR-86-957/, LOQ-D1 http://www.forces.gc.ca/en/about-reports-pubs-military-law-summary-trial-level/index.page?

   d. Conditions of arrest IAW refs: LOQ-A2 http://laws-lois.justice.gc.ca/eng/CONST/page-15.html#h-38, LOQ-A3 http://laws-lois.justice.gc.ca/eng/acts/N-5/index.html, LOQ-A3 http://laws-lois.justice.gc.ca/eng/acts/C-46/index.html, LOQ-A5-2 http://www.admfincs.forces.gc.ca/qro-orf/vol-02/index-eng.asp, LOQ-D1 http://www.forces.gc.ca/en/about-reports-pubs-military-law-summary-trial-level/index.page?

   e. Types of arrest IAW refs: LOQ-A3 http://laws-lois.justice.gc.ca/eng/acts/N-5/index.html, LOQ-A3 http://laws-lois.justice.gc.ca/eng/acts/C-46/index.html, LOQ-A5-2 http://www.admfincs.forces.gc.ca/qro-orf/vol-02/index-eng.asp, LOQ-D1 http://www.forces.gc.ca/en/about-reports-pubs-military-law-summary-trial-level/index.page?

4. **Teaching Points:**

#	TEACHING POINT	DESCRIPTION	METHOD	MEDIA	ENVIRONMENT	TIME	REFERENCE
1	Persons subject to arrest	Who can be arrested and why	Face to Face Instruction (poss. CAI)	Instructor; Print	Centralized instruction	20 min	National Defence Act, R.S.C. 1985, c. N-5 () [ss. 31, 33, 47, 60(1), 60(1)(c), 60(1)(i), 61(1), 153, 154, 155, 156, 157, 272], Criminal Code, R.S.C., 1985, c. C-46 () [ss. 31(1), 494, 495], Queen's Regulations and Orders for the Canadian Forces (QR&O) - Volume II - Disciplinary () [chap. 1.02, 102.05, 105.1-105.04, 105.13 Note A], Defence Controlled Access Area Regulations (SOR/86-957) () [ss. 2, 10], R. v. Nolan, [1987] 1 S.C.R. 1212 (), R. v. Haynes, 1994 CanLII 4160 (NS CA); 130 NSR (2d) 311 (), B-GG-005-027/AF-011 Military Justice at the Summary Trial Level 2.2 (B-GG-005-027/AF-011) [ch. 6, paras 6-10]

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2	Basis for arrest	Circumstances that could justify arrest Exercise of discretion	Basic Elearning (CBT/WBT)	Print (electronically transmitted as pre-reading)	Distributed instruction	20 min	National Defence Act, R.S.C. 1985, c. N-5 () [ss. 154-158, 252(2);], Criminal Code, R.S.C., 1985, c. C-46 () [ss. 31, 494, 495;], Queen's Regulations and Orders for the Canadian Forces (QR&O) - Volume II - Disciplinary () [ch. 105.01-105.04], Defence Controlled Access Area Regulations (SOR/86-957) () [ss. 2, 10], B-GG-005-027/AF-011 Military Justice at the Summary Trial Level 2.2 (B-GG-005-027/AF-011) [ch 6, paras 1-33;]
3	Persons empowered to arrest	Peace officers (military police) Peace officers (civilian police) Officers and NCMs Security Guard Any CF member Anyone	Face to Face Instruction (poss. CAI)	Instructor; print	Centralized instruction	15 min	National Defence Act, R.S.C. 1985, c. N-5 () [ss. 2, 83, 154-158, 252(2)], Criminal Code, R.S.C., 1985, c. C-46 () [ss. 2, 494, 495], Queen's Regulations and Orders for the Canadian Forces (QR&O) - Volume II - Disciplinary () [ch. 105.01-105.04, 105.07], Defence Controlled Access Area Regulations (SOR/86-957) () [ss. 2, 10], B-GG-005-027/AF-011 Military Justice at the Summary Trial Level 2.2 (B-GG-005-027/AF-011) [ch. 6, paras 1-10, 19-21, 22, 23-25, 26-27, 28]
4	Conditions of arrest	Detention before arrest Requirement to submit to arrest Lawful use of force Indicators of arrest Powers incidental to arrest Rights to be informed of the reason for arrest Right to counsel Special reporting requirements in certain cases	Basic Elearning (CBT/WBT)	Web Based Training; Print	Distributed Instruction	25 min	Canadian Charter of Rights and Freedoms () [ss. 10(a), 10(b)], National Defence Act, R.S.C. 1985, c. N-5 () [ss. 102; 154(2)], Criminal Code, R.S.C., 1985, c. C-46 () [ss. 25-28, 129, 270, 494], Queen's Regulations and Orders for the Canadian Forces (QR&O) - Volume II - Disciplinary () [ch 19.56, 22.01 Note B, 103.35, 105.08(1), (2), (3) and Notes A and B, 105.09, 105.11], B-GG-005-027/AF-011 Military Justice at the Summary Trial Level 2.2 (B-GG-005-027/AF-011) [ch. 6, paras 11-14, 34-52;]
5	Types of arrest	With warrant Without warrant Types of warrants	Basic Elearning (CBT/WBT)	Web Based Training; Print	Distributed Instruction	15 min	National Defence Act, R.S.C. 1985, c. N-5 () [ss. 103, 130(1), 154(1), 155(1), 155(2), 155(3), 154(2) 156(a), 157, 157 (2), 157 (3) 272], Criminal Code, R.S.C., 1985, c. C-46 () [s. 2], Queen's Regulations and Orders for the Canadian Forces (QR&O) - Volume II - Disciplinary () [ch. 19.51(1), 19.51(3), 103.36, 105.01 Note B, 105.04(1), 105.02, 105.04(2), 105.05 Note, 105.05(3), 105.09, 105.10], B-GG-005-027/AF-011 Military Justice at the Summary Trial Level 2.2 (B-GG-005-027/AF-011) [ch. 6, paras 15-28; paras 29-33, Annex I]

5. **TIME:**

Total class time	95 min
Instructional periods	1.9
Total Days	0.4

6. **Resources Required** a. CF supply documentation (electronic documentation preferred)

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7. **Test Details:** See Annex B - Assessment Plan for details.

8. **Remarks:** Advise may be provided remotely.

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EO 015.02 Review unit delegation, designations and authorisations

1. **Performance:** Review unit delegation, designations and authorisations

2. **Conditions**:

   a. **Given:** References; resources as required; assistance as required.

   b. **Denied:** Direct supervision.

   c. **Environmental:** CF unit base or wing headquarters deployed internationally or domestically, sometimes under austere conditions.

3. **Standard**: The legal officer shall review unit delegations, designations and authorisations in the context of:

   a. CF command and organisation IAW refs: LOQ-A3 http://laws-lois.justice.gc.ca/eng/acts/N-5/index.html, LOQ-A5-1 http://www.admfincs.forces.gc.ca/qro-orf/vol-01/index-eng.asp, LOQ-A5-2 http://www.admfincs.forces.gc.ca/qro-orf/vol-02/index-eng.asp, LOQ-D1 http://jag.mil.ca/publications/adminlaw-loiadmin/MilAdminlaw-DroitAdminMil-eng.pdf, LOQ-C1 http://vcds.mil.ca/sites/intranet-eng.aspx?page=4395

   b. Distinguish between power, authority, duty and responsibilities IAW refs: LOQ-A3 http://laws-lois.justice.gc.ca/eng/acts/N-5/index.html, LOQ-A5-1 http://www.admfincs.forces.gc.ca/qro-orf/vol-01/index-eng.asp, LOQ-A5-2 http://www.admfincs.forces.gc.ca/qro-orf/vol-02/index-eng.asp, LOQ-D2

   c. What can be delegated, designated or authorised IAW refs: LOQ-A3 http://laws-lois.justice.gc.ca/eng/acts/N-5/index.html, LOQ-A3 http://laws-lois.justice.gc.ca/eng/acts/C-46/index.html, LOQ-A5-2 http://www.admfincs.forces.gc.ca/qro-orf/vol-02/index-eng.asp, LOQ-D1 http://www.forces.gc.ca/en/about-reports-pubs-military-law-summary-trial-level/index.page?

   d. Who can receive a delegation, be designated or authorised IAW refs: LOQ-A3 http://laws-lois.justice.gc.ca/eng/acts/N-5/index.html, LOQ-A5-1 http://www.admfincs.forces.gc.ca/qro-orf/vol-01/index-eng.asp, LOQ-A5-2 http://www.admfincs.forces.gc.ca/qro-orf/vol-02/index-eng.asp, LOQ-D1 http://jag.mil.ca/publications/adminlaw-loiadmin/MilAdminlaw-DroitAdminMil-eng.pdf, LOQ-D2 http://

   e. Who can delegate, designate or authorise IAW refs: LOQ-A3 http://laws-lois.justice.gc.ca/eng/acts/N-5/index.html, LOQ-A5-1 http://www.admfincs.forces.gc.ca/qro-orf/vol-01/index-eng.asp, LOQ-A5-2 http://www.admfincs.forces.gc.ca/qro-orf/vol-02/index-eng.asp, LOQ-D1 http://www.forces.gc.ca/en/about-reports-pubs-military-law-summary-trial-level/index.page?, LOQ-D1 http://jag.mil.ca/publications/adminlaw-loiadmin/MilAdminlaw-DroitAdminMil-eng.pdf

4. **Teaching Points:**

#	TEACHING POINT	DESCRIPTION	METHOD	MEDIA	ENVIRONMENT	TIME	REFERENCE
1	CF command and organisation	MOOs CFOOs QR&Os related to command organisation and delegation, designation and authorisations	Basic Elearning (CBT/WBT)	Web Based Trained; Print	Distributed learning	15 min	National Defence Act, R.S.C. 1985, c. N-5 () [ss. 153, 158.1(1)], Queen's Regulations and Orders for the Canadian Forces (QR&O) - Volume I - Administration () [ch. 2, 3.20 to 3.34], Queen's Regulations and Orders for the Canadian Forces (QR&O) - Volume II - Disciplinary () [ch. 105.17], A-LG-007-000/AF-010 Military Administrative Law Manual (2008) (A-LG-007-000/AF-010) [ch. 1, section 4, p. 1-8, paras 36-38; ch. 1, section 6, p. 1-15, paras 73-74;], Canadian Forces Organization Orders (CFOOs) ()
2	Distinguish between power, authority, duty and responsibilities	Power Authority Duty Responsibilities	Basic Elearning (CBT/WBT)	Web Based Training; Print	Distributed instruction	10 min	National Defence Act, R.S.C. 1985, c. N-5 () [ss. 2 Definitions "summary trial", 18(2), 18.4, 18.5, 158 (3), 158.2-158.5, 158.6(3)], Queen's Regulations and Orders for the Canadian Forces (QR&O) - Volume I - Administration () [ch. 2.07, 4.01, 4.02, 5.01], Queen's Regulations and Orders for the Canadian Forces (QR&O) - Volume II - Disciplinary () [ch. 105.04, 105.07], Black's Law Dictionary, 8th ed. (St. Paul, MN: West Publishing, 2004) () [pp. 142, 543, 1207, 1338]

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3	What can be delegated, designated or authorised	Powers of arrest Charge laying authority Designation of Custody Review Officers Delegation of powers of trial and punishment Specific designations pertaining to custody (visitors, correspondance) Jurisdictional concerns (continuity)	Face to Face Instruction (poss. CAI)	Instructor; Print	Centralized instruction	15 min	National Defence Act, R.S.C. 1985, c. N-5 () [ss. 49, 50, 153, 154(2), 155(1), 155(2), 155(3), 156, 161, 163(4), 163.1(1)(b)], Criminal Code, R.S.C., 1985, c. C-46 () [ss. 31, 494, 495], Queen's Regulations and Orders for the Canadian Forces (QR&O) - Volume II - Disciplinary () [ch. 1.02, 3.23, 101.01, 105.02 Note, 105.04, 105.10, 105.17 Note, 105.32, 105.33, 107.02], B-GG-005-027/AF-011 Military Justice at the Summary Trial Level 2.2 (B-GG-005-027/AF-011) [p. 3-7, para 39 footnote 45; p. 6-6, para 21; p. 7-5, para. 20; p. 7-8, para. 37; pp. 7-10 and 7-11, paras. 55-56; pp. 8-1 and 8-2, paras. 3-8; pp. 11-9, para 34]
4	Who can receive a delegation, be designated or authorised	Prerequisites and limitations with regard to delegations, designations and authorisations (from the delegatee/designated point of view)	Face to Face Instruction (poss. CAI)	Instructor; Print;	Centralized instruction	10 min	National Defence Act, R.S.C. 1985, c. N-5 () [ss. 4, 153, 155, 158.6 (2)(a)], Queen's Regulations and Orders for the Canadian Forces (QR&O) - Volume I - Administration () [ch. 1.02 "civil custody", "commanding officer" "detention barracks", 1.13(4),], Queen's Regulations and Orders for the Canadian Forces (QR&O) - Volume II - Disciplinary () [ch. 105.02, 105.17, 105.23, 105.32, 105.33], A-LG-007-000/AF-010 Military Administrative Law Manual (2008) (A-LG-007-000/AF-010) [pp. 1-14 to 1-16, paras. 68 to 76], The Dictionary of Canadian Law, 3d ed () [pp. 95, 329, 344,]
5	Who can delegate, designate or authorise	Limitations and prerequisites for delegation, designations and authorisations (from the delegator/designator point of view)	Face to Face Instruction (poss. CAI)	Instructor; Print	Centralized instruction	10 min	National Defence Act, R.S.C. 1985, c. N-5 (), Queen's Regulations and Orders for the Canadian Forces (QR&O) - Volume I - Administration (), Queen's Regulations and Orders for the Canadian Forces (QR&O) - Volume II - Disciplinary (), B-GG-005-027/AF-011 Military Justice at the Summary Trial Level 2.2 (B-GG-005-027/AF-011) [ch. 7, para. 20], A-LG-007-000/AF-010 Military Administrative Law Manual (2008) (A-LG-007-000/AF-010)

5. **TIME:**

Total class time	60 min
Instructional periods	1.2
Total Days	0.2

6. **Resources Required** a. CF supply documentation (electronic documentation preferred)

7. **Test Details:** See Annex B - Assessment Plan for details.

8. **Remarks:** Advise may be provided remotely.

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EO 015.03 Review custody related documents

1. **Performance:** Review custody related documents

2. **Conditions**:

   a. **Given:** References; resources as required; assistance as required.

   b. **Denied:** Direct supervision.

   c. **Environmental:** CF unit base or wing headquarters deployed internationally or domestically, sometimes under austere conditions.

3. **Standard**: The legal officer shall review custody related documents

   a. Types of custody related documents IAW refs: LOQ-A3 http://laws-lois.justice.gc.ca/eng/acts/N-5/index.html, LOQ-A5-1 http://www.admfincs.forces.gc.ca/qro-orf/vol-01/index-eng.asp, LOQ-A5-2 http://www.admfincs.forces.gc.ca/qro-orf/vol-02/index-eng.asp, LOQ-D1 http://www.forces.gc.ca/en/about-reports-pubs-military-law-summary-trial-level/index.page?, LOQ-D1 http://, LOQ-D1 http://

   b. Military Police Policies IAW refs: LOQ-C3 http://vcds.mil.ca/sites/intranet-eng.aspx?page=9288&title=Policies%20and%20Publications%20-%20Police%20Advisories&site=CFPM%20-%20Policies%20and%20Publications

4. **Teaching Points:**

#	TEACHING POINT	DESCRIPTION	METHOD	MEDIA	ENVIRONMENT	TIME	REFERENCE
1	Types of custody related documents	Account in writing Report of custody Request custody related documents from unit Direction on release from custody Guard report Civil court reports Arrest warrants	Face to Face Instruction (poss. CAI)	Instructor; Print	Centralized instruction	20 min	National Defence Act, R.S.C. 1985, c. N-5 () [ss. 157, 158(4), 158.1 (1), (2), (3), (4), (5), 158.6(1), (2)(a) and (b)], Queen's Regulations and Orders for the Canadian Forces (QR&O) - Volume I - Administration () [ch. 19.56], Queen's Regulations and Orders for the Canadian Forces (QR&O) - Volume II - Disciplinary () [ch 22.06(1), (2), (3), 105.06, 105.12, 105.16(2),105.16(3), 105.16(4), 105.22(2), 105.23 Note], B-GG-005-027/AF-011 Military Justice at the Summary Trial Level 2.2 (B-GG-005-027/AF-011) [ch. 6, ch. 7, Annex I], JAG #162888 Military Law Digest Article - Pre-Trial Custody (), JAG #162879 Military Law Digest Article - Arrest ()
2	Military Police Policies	N/A	Face to Face Instruction (poss. CAI)	Instructor; Print	Centralized instruction	10 min	Military Police Policies and Technical Procedures Manual (A-SJ-100-004/AG-000)

5. **TIME:**

Total class time	30 min
Instructional periods	0.6
Total Days	0.1

6. **Resources Required** a. CF supply documentation (electronic documentation preferred)

7. **Test Details:** See Annex B - Assessment Plan for details.

8. **Remarks:** Advise may be provided remotely.

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EO 015.04 Advise on the requirements of custody

1. **Performance:** Advise on the requirements of custody

2. **Conditions**:

   a. **Given:** References; resources as required; assistance as required.

   b. **Denied:** Direct supervision.

   c. **Environmental:** CF unit base or wing headquarters deployed internationally or domestically, sometimes under austere conditions.

3. **Standard**: The legal officer shall advise wrt the requirements of custody

   a. Distinction between power and duty to retain in custody IAW refs: LOQ-A3 http://laws-lois.justice.gc.ca/eng/acts/N-5/index.html, LOQ-A5-2 http://www.admfincs.forces.gc.ca/qro-orf/vol-02/index-eng.asp, LOQ-D1 http://www.forces.gc.ca/en/about-reports-pubs-military-law-summary-trial-level/index.page?, LOQ-D1 http://

   b. Rights of detained person IAW refs: LOQ-A2 http://laws-lois.justice.gc.ca/eng/CONST/page-15.html#h-38, LOQ-A5-2 http://www.admfincs.forces.gc.ca/qro-orf/vol-02/index-eng.asp, LOQ-D1 http://www.forces.gc.ca/en/about-reports-pubs-military-law-summary-trial-level/index.page?, LOQ-D1 http://

   c. Reasons for retention IAW refs: LOQ-A3 http://laws-lois.justice.gc.ca/eng/acts/N-5/index.html, LOQ-A5-2 http://www.admfincs.forces.gc.ca/qro-orf/vol-02/index-eng.asp, LOQ-D1 http://www.forces.gc.ca/en/about-reports-pubs-military-law-summary-trial-level/index.page?, LOQ-D1 http://

4. **Teaching Points:**

#	TEACHING POINT	DESCRIPTION	METHOD	MEDIA	ENVIRONMENT	TIME	REFERENCE
1	Distinction between power and duty to retain in custody	Designated Offences Duty to retain Power to retain	Face to Face Instruction (poss. CAI)	Instructor; Print	Centralized instruction	15 min	National Defence Act, R.S.C. 1985, c. N-5 () [ss. 153, 158(1), 158.2, 158.3, 158.6(1),], Queen's Regulations and Orders for the Canadian Forces (QR&O) - Volume II - Disciplinary () [ch. 105.18, 105.19, 105.20, 105.22.], B-GG-005-027/AF-011 Military Justice at the Summary Trial Level 2.2 (B-GG-005-027/AF-011) [ch. 7, paras. 28-35; Annex K], JAG #162888 Military Law Digest Article - Pre-Trial Custody () [paras. 28-38]
2	Rights of detained person	Performance and Duties Visitors Correspondence Exercise Mess Privileges Hospitalization while in Custory In Custody of Civil Authorities	Face to Face Instruction (poss. CAI)	Instructor; Print	Centralized instruction	5 min	Canadian Charter of Rights and Freedoms () [ss. 9 and 10], Queen's Regulations and Orders for the Canadian Forces (QR&O) - Volume II - Disciplinary () [ch. 105.08(1),105.31(1),(2),(3), and (4), 105.32, 105.33, 105.34, 105.35, 105.39, 105.40(1) and (2)], B-GG-005-027/AF-011 Military Justice at the Summary Trial Level 2.2 (B-GG-005-027/AF-011) [ch. 7], JAG #162888 Military Law Digest Article - Pre-Trial Custody () [paras. 51-60]
3	Reasons for retention	Designated Offences Reasonable grounds Circumstances to be considered	Face to Face Instruction (poss. CAI)	Instructor; Print	Centralized instruction	10 min	National Defence Act, R.S.C. 1985, c. N-5 () [ss. 153, 158(1)], Queen's Regulations and Orders for the Canadian Forces (QR&O) - Volume II - Disciplinary (), B-GG-005-027/AF-011 Military Justice at the Summary Trial Level 2.2 (B-GG-005-027/AF-011) [ch. 7, paras 30-33], JAG #162888 Military Law Digest Article - Pre-Trial Custody () [paras. 30-33]

5. **TIME:**

Total class time	30 min
Instructional periods	0.6
Total Days	0.1

6. **Resources Required** a. CF supply documentation (electronic documentation preferred)

7. **Test Details:** See Annex B - Assessment Plan for details.

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8. **Remarks:** Advise may be provided remotely.

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EO 015.05 Advise the Custody Review Officer (CRO) on the decision to be made

1. **Performance:** Advise the Custody Review Officer (CRO) on the decision to be made

2. **Conditions**:

   a. **Given:** References; Previous legal opinions (Templates); resources as required; assistance as required.

   b. **Denied:** Direct supervision.

   c. **Environmental:** CF unit base or wing headquarters deployed internationally or domestically, sometimes under austere conditions.

3. **Standard**: The legal officer shall advise the CRO on the decision to be made

   a. Powers of custody review officer IAW refs: LOQ-A3 http://laws-lois.justice.gc.ca/eng/acts/N-5/index.html, LOQ-A5-2 http://www.admfincs.forces.gc.ca/qro-orf/vol-02/index-eng.asp, LOQ-D1 http://www.forces.gc.ca/en/about-reports-pubs-military-law-summary-trial-level/index.page?, LOQ-D1 http://

   b. Duties of custody review officer IAW refs: LOQ-A3 http://laws-lois.justice.gc.ca/eng/acts/N-5/index.html, LOQ-A5-2 http://www.admfincs.forces.gc.ca/qro-orf/vol-02/index-eng.asp, LOQ-D1 http://www.forces.gc.ca/en/about-reports-pubs-military-law-summary-trial-level/index.page?, LOQ-D1 http://

   c. Process of review of direction to release IAW refs: LOQ-A3 http://laws-lois.justice.gc.ca/eng/acts/N-5/index.html, LOQ-A5-2 http://www.admfincs.forces.gc.ca/qro-orf/vol-02/index-eng.asp, LOQ-A6-Bill C-15 http://www.parl.gc.ca/content/hoc/Bills/411/Government/C-15/C-15_4/C-15_4.PDF, LOQ-D1 http://www.forces.gc.ca/en/about-reports-pubs-military-law-summary-trial-level/index.page?, LOQ-D1 http://

4. **Teaching Points:**

#	TEACHING POINT	DESCRIPTION	METHOD	MEDIA	ENVIRONMENT	TIME	REFERENCE
1	Powers of custody review officer	Release without conditions Release with conditions 'Reasonable conditions'	Basic Elearning (CBT/WBT)	Web Based Training; Print	Decentralized instruction	15 min	National Defence Act, R.S.C. 1985, c. N-5 () [s. 158.6(1)], Queen's Regulations and Orders for the Canadian Forces (QR&O) - Volume II - Disciplinary () [ch. 105.22], B-GG-005-027/AF-011 Military Justice at the Summary Trial Level 2.2 (B-GG-005-027/AF-011) [ch. 7 paras. 34-35, Annex K], JAG #162888 Military Law Digest Article - Pre-Trial Custody () [paras. 34-35]
2	Duties of custody review officer	Review the account in writing and accompanying documents Determination why a charge has not been laid Duty to release when no sufficient grounds Duty to maintain if charged with designated offence Time considerations	Basic Elearning (CBT/WBT)	Web Based Training; Print	Decentralized instruction	10 min	National Defence Act, R.S.C. 1985, c. N-5 () [ss. 153, 158.2, 158.3], Queen's Regulations and Orders for the Canadian Forces (QR&O) - Volume II - Disciplinary () [ch 105.18, 105.19, 105.20], B-GG-005-027/AF-011 Military Justice at the Summary Trial Level 2.2 (B-GG-005-027/AF-011) [ch. 7, paras. 28 to 33], JAG #162888 Military Law Digest Article - Pre-Trial Custody () [paras. 28-33]
3	Process of review of direction to release	By a CRO By a military judge, if necessary	Face to Face Instruction (poss. CAI)	Instructor; Print	Centralized instruction	15 min	National Defence Act, R.S.C. 1985, c. N-5 () [ss. 158.6(2)(a) and (b), 159(1) and (2)], Queen's Regulations and Orders for the Canadian Forces (QR&O) - Volume II - Disciplinary () [ch. 105.23 Note, 105.24], Bill C-15, An Act to amend the National Defence Act and to make consequential amendments to other Acts, 1st Sess, 41st Parl, 2013 (assented to 19 June 2013), S.C. 2013, c 24. () [cl. 31 (adding NDA, s. 158.7)], B-GG-005-027/AF-011 Military Justice at the Summary Trial Level 2.2 (B-GG-005-027/AF-011) [ch. 7, paras. 36 to 39], JAG #162888 Military Law Digest Article - Pre-Trial Custody () [paras. 36-39]

5. **TIME:**

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Total class time	40 min
Instructional periods	0.8
Total Days	0.2

6. **Resources Required** a. CF supply documentation (electronic documentation preferred)

7. **Test Details:** See Annex B - Assessment Plan for details.

8. **Remarks:** Advise may be provided remotely.

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EO 015.06 Support the hearing before military judge

1. **Performance:** Support the hearing before military judge

2. **Conditions**:

   a. **Given:** References; resources as required; assistance as required.

   b. **Denied:** Direct supervision.

   c. **Environmental:** CF unit base or wing headquarters deployed internationally or domestically, sometimes under austere conditions.

3. **Standard**: The legal officer shall support the hearing before military judge

   a. Evidentiary requirements IAW refs: LOQ-A3 http://laws-lois.justice.gc.ca/eng/acts/N-5/index.html

   b. Roles and responsibilities IAW refs: LOQ-A3 http://laws-lois.justice.gc.ca/eng/acts/N-5/index.html, LOQ-A5-2 http://www.admfincs.forces.gc.ca/qro-orf/vol-02/index-eng.asp, LOQ-D1 http://www.forces.gc.ca/en/about-reports-pubs-military-law-summary-trial-level/index.page?, LOQ-D1 http://

4. **Teaching Points:**

#	TEACHING POINT	DESCRIPTION	METHOD	MEDIA	ENVIRONMENT	TIME	REFERENCE
1	Evidentiary requirements	When not charged with a designated offence When charged with a designated offence	Basic Elearning (CBT/WBT)	Web Based Training; Print	Decentralized instruction	10 min	National Defence Act, R.S.C. 1985, c. N-5 () [ss. 159.1, 159.2, 159.3]
2	Roles and responsibilities	Military posecutor Defence counsel Military judge Unit DJA Unit personnel	Basic Elearning (CBT/WBT)	Web Based Training; Print	Decentralized instruction	15 min	National Defence Act, R.S.C. 1985, c. N-5 () [ss. 159.4-159.8], Queen's Regulations and Orders for the Canadian Forces (QR&O) - Volume II - Disciplinary () [ch 105.24 to 105.29], B-GG-005-027/AF-011 Military Justice at the Summary Trial Level 2.2 (B-GG-005-027/AF-011) [ch 7, paras. 39-50], JAG #162888 Military Law Digest Article - Pre-Trial Custody () [paras. 39-50]

5. **TIME:**

Total class time	25 min
Instructional periods	0.5
Total Days	0.1

6. **Resources Required** a. CF supply documentation (electronic documentation preferred)

7. **Test Details:** See Annex B - Assessment Plan for details.

8. **Remarks:** Advise may be provided remotely.

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PO 016 ADVISE ON A DISCIPLINARY INVESTIGATION AT0005

1. **Performance:** (AT0005) Advise on a disciplinary investigation AT0005

2. **Conditions:**

   a. **Given:** References (including legal opinions); resources as required; assistance as required.

   b. **Denied:** Direct supervision.

   c. **Environmental:** CF unit base or wing headquarters deployed internationally or domestically, sometimes under austere conditions

3. **Standard**: The legal officer shall advise on a disciplinary investigation to include:

   a. Advise on types of investigations

   b. Advise on legal issues related to search & seizure

   c. Advise on conduct of interviews

   d. Advise on the sufficiency of the investigation

4. **Remarks:** Advice may be provided remotely.

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ENABLING OBJECTIVES

EO 016.01 Advise on types of investigations

1. **Performance:** Advise on types of investigations
2. **Conditions**:
   a. **Given:** References (including legal opinions); resources as required; assistance as required.
   b. **Denied:** Direct supervision.
   c. **Environmental:** CF unit base or wing headquarters deployed internationally or domestically, sometimes under austere conditions.
3. **Standard**: The legal officer shall advise on types of investigations
   a. Distinction between investigations that could lead to Code of Service Discipline action and those that do not. IAW refs: LOQ-A5-1 http://www.admfincs.forces.gc.ca/qro-orf/vol-01/index-eng.asp, LOQ-A5-2 http://www.admfincs.forces.gc.ca/qro-orf/vol-02/index-eng.asp, LOQ-D1 http://www.forces.gc.ca/en/about-reports-pubs-military-law-summary-trial-level/index.page?, LOQ-D1 http://, LOQ-A5 http://laws-lois.justice.gc.ca/eng/regulations/SOR-86-958/FullText.html
   b. Types of criminal and disciplinary investigations IAW refs: LOQ-C3 http://vcds.mil.ca/sites/intranet-eng.aspx?page=9288&title=Policies%20and%20Publications%20-%20Police%20Advisories&site=CFPM%20-%20Policies%20and%20Publications, LOQ-D1 http://www.forces.gc.ca/en/about-reports-pubs-military-law-summary-trial-level/index.page?, LOQ-D1 http://
   c. Advise on rights to access. IAW refs: LOQ-C3 http://vcds.mil.ca/sites/intranet-eng.aspx?page=9288&title=Policies%20and%20Publications%20-%20Police%20Advisories&site=CFPM%20-%20Policies%20and%20Publications, LOQ-C4 DAOD 1001-0, Access to Information http://www.admfincs.forces.gc.ca/dao-doa/1000/1001-0-eng.asp, LOQ-C4 DAOD 1001-1, Formal Requests for Access to Departmental Information http://www.admfincs.forces.gc.ca/dao-doa/1000/1001-1-eng.asp, LOQ-A3 http://laws-lois.justice.gc.ca/eng/acts/A-1/, LOQ-A5 http://laws-lois.justice.gc.ca/eng/regulations/SOR-83-507/index.html, LOQ-A3 http://laws-lois.justice.gc.ca/eng/acts/P-21/
      i. Disclosure of information relating to investigations IAW refs: LOQ-A3 http://laws-lois.justice.gc.ca/eng/acts/A-1/index.html, LOQ-A3 http://laws-lois.justice.gc.ca/eng/acts/P-21/
4. **Teaching Points:**

#	TEACHING POINT	DESCRIPTION	METHOD	MEDIA	ENVIRONMENT	TIME	REFERENCE
1	Distinction between investigations that could lead to Code of Service Discipline action and those that do not.	Disciplinary / criminal investigations Administrative investigations Inspections	Face to Face Instruction (poss. CAI)	Instructor, Print	Centralized instruction	15 min	Queen's Regulations and Orders for the Canadian Forces (QR&O) - Volume I - Administration () [ch. 21, in particular 21.01, 21.06, 21.07, 21.41; ch 19.76], Queen's Regulations and Orders for the Canadian Forces (QR&O) - Volume II - Disciplinary () [ch. 106.02 Note B, 107.01 Note A], B-GG-005-027/AF-011 Military Justice at the Summary Trial Level 2.2 (B-GG-005-027/AF-011) [ch. 5, paras. 1 to 12, 20 to 32, 61 to 64], JAG #162880 Military Law Digest Article - Powers of Investigation () [paras. 1-12, 20-33], Inspection and Search Defence Regulations (SOR/86-958) () [s. 3]
2	Types of criminal and disciplinary investigations	NIS Military police investigations Civilian police investigations Unit disciplinary investigations	Basic Elearning (CBT/WBT)	Web Based Training; Print	Distributed instruction	20 min	Military Police Policies and Technical Procedures Manual (A-SJ-100-004/AG-000) [Ch. 6, Annex A, and Appendicies 2 and 3], B-GG-005-027/AF-011 Military Justice at the Summary Trial Level 2.2 (B-GG-005-027/AF-011) [ch. 5 paras 6-12 and 33, Annex C], JAG #162880 Military Law Digest Article - Powers of Investigation () [paras. 6-12, 33]
3	Advise on rights to access.	Disclosure of information relating to investigations Military Police Policies	Basic Elearning (CBT/WBT)	Web Based Training; Print	Decentralized instruction	0 min	Military Police Policies and Technical Procedures Manual (A-SJ-100-004/AG-000), DAOD 1001-0, Access to Information (), DAOD 1001-1, Formal Requests for Access to Departmental Information (), Access to Information Act (R.S.C., 1985, c. A-1) () [s. 16(1)], Access to Information Regulations (SOR/83-507) () [s. 9], Privacy Act (R.S.C., 1985, c. P-21 ()

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3.1	Disclosure of information relating to investigations	Access to information Privacy act	Instructor Supported Elearning (CBT/CAI)	Computer Based Training; Print	Centralized training	10 min	Access to Information Act () [s. 16(1)], Privacy Act (R.S.C., 1985, c. P-21 ()

5. **TIME:**

Total class time	45 min
Instructional periods	0.9
Total Days	0.2

6. **Resources Required** a. CF supply documentation (electronic documentation preferred)

7. **Test Details:** See Annex B - Assessment Plan for details.

8. **Remarks:** Advice may be provided remotely.

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EO 016.02 Advise on legal issues related to search & seizure

1. **Performance:** Advise on legal issues related to search & seizure

2. **Conditions**:

   a. **Given:** References (including legal opinions); resources as required; assistance as required.

   b. **Denied:** Direct supervision.

   c. **Environmental:** CF unit base or wing headquarters deployed internationally or domestically, sometimes under austere conditions.

3. **Standard**: The legal oifficer shall advise on legal issues related to search & seizure

   a. Advise on search without warrant (AT0030) IAW refs: LOQ-C3 http://vcds.mil.ca/sites/intranet-eng.aspx?page=9288&title=Policies%20and%20Publications%20-%20Police%20Advisories&site=CFPM%20-%20Policies%20and%20Publications, LOQ-D1 http://www.forces.gc.ca/en/about-reports-pubs-military-law-summary-trial-level/index.page?, LOQ-D1 http://, LOQ-D1 http://

      i. Basis for search without warrant IAW refs: LOQ-C3 http://vcds.mil.ca/sites/intranet-eng.aspx?page=9288&title=Policies%20and%20Publications%20-%20Police%20Advisories&site=CFPM%20-%20Policies%20and%20Publications, LOQ-D1 http://www.forces.gc.ca/en/about-reports-pubs-military-law-summary-trial-level/index.page?, LOQ-D1 http://, LOQ-D1 http://

      ii. Persons who may conduct or authorise searches without warrant IAW refs: LOQ-C3 http://vcds.mil.ca/sites/intranet-eng.aspx?page=9288&title=Policies%20and%20Publications%20-%20Police%20Advisories&site=CFPM%20-%20Policies%20and%20Publications, LOQ-D1 http://www.forces.gc.ca/en/about-reports-pubs-military-law-summary-trial-level/index.page?, LOQ-D1 http://, LOQ-A5 http://laws-lois.justice.gc.ca/eng/regulations/SOR-86-958/FullText.html

      iii. Limitations on searches without warrant IAW refs: LOQ-A2 http://laws-lois.justice.gc.ca/eng/CONST/page-15.html#h-38, LOQ-C3 http://vcds.mil.ca/sites/intranet-eng.aspx?page=9288&title=Policies%20and%20Publications%20-%20Police%20Advisories&site=CFPM%20-%20Policies%20and%20Publications, LOQ-D1 http://www.forces.gc.ca/en/about-reports-pubs-military-law-summary-trial-level/index.page?, LOQ-D1 http://, LOQ-D1 http://, LOQ-A5 http://laws-lois.justice.gc.ca/eng/regulations/SOR-86-958/FullText.html

   b. (AT0205) Advise on preparation of search warrants. IAW refs: LOQ-A3 http://laws-lois.justice.gc.ca/eng/acts/N-5/index.html, LOQ-A5-2 http://www.admfincs.forces.gc.ca/qro-orf/vol-02/index-eng.asp, LOQ-D1 http://www.forces.gc.ca/en/about-reports-pubs-military-law-summary-trial-level/index.page?, LOQ-D1 http://

      i. Types of search warrants IAW refs: LOQ-A3 http://laws-lois.justice.gc.ca/eng/acts/N-5/index.html, LOQ-A5-2 http://www.admfincs.forces.gc.ca/qro-orf/vol-02/index-eng.asp

      ii. Evidentiary requirements. IAW refs: LOQ-A3 http://laws-lois.justice.gc.ca/eng/acts/N-5/index.html, LOQ-A5-2 http://www.admfincs.forces.gc.ca/qro-orf/vol-02/index-eng.asp, LOQ-D1 http://www.forces.gc.ca/en/about-reports-pubs-military-law-summary-trial-level/index.page?, LOQ-D1 http://

   c. (AT0030) Advise on search without warrant

      i. basis for search without warrant

      ii. Persons who may conduct or authorise searches without warrant

      iii. limitations on searches without warrant

   d. Advise on issues related to integrity of evidence IAW refs: LOQ-A5-2 http://www.admfincs.forces.gc.ca/qro-orf/vol-02/index-eng.asp, LOQ-D1 http://www.forces.gc.ca/en/about-reports-pubs-military-law-summary-trial-level/index.page?, LOQ-D1 http://, LOQ-A5-5 http://laws-lois.justice.gc.ca/eng/regulations/C.R.C.,_c._1049/

      i. Types of evidence. IAW refs: LOQ-A5-5 http://laws-lois.justice.gc.ca/eng/regulations/C.R.C.,_c._1049/

      ii. Chain of custody IAW refs: LOQ-C3 http://vcds.mil.ca/sites/intranet-eng.aspx?page=9288&title=Policies%20and%20Publications%20-%20Police%20Advisories&site=CFPM%20-%20Policies%20and%20Publications, LOQ-A5-5 http://laws-lois.justice.gc.ca/eng/regulations/C.R.C.,_c._1049/

4. **Teaching Points:**

#	TEACHING POINT	DESCRIPTION	METHOD	MEDIA	ENVIRONMENT	TIME	REFERENCE
1	Advise on search without warrant (AT0030)	Basis for search without warrant Persons who may conduct or authorise searches without warrant Limitations on searches without warrant	Instructor Supported Full Simulation (CBT)	Computer Based Training; Instructor; Print	Centralized instruction	0 min	Military Police Policies and Technical Procedures Manual (A-SJ-100-004/AG-000), B-GG-005-027/AF-011 Military Justice at the Summary Trial Level 2.2 (B-GG-005-027/AF-011) [ch. 5 paras. 46-49; ch. 6, paras. 38-39], JAG #162879 Military Law Digest Article - Arrest () [paras. 38-39], JAG #162877 Military Law Digest Article - Search and Seizure () [paras.46-49]

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1.1	Basis for search without warrant	Search incidental to lawful arrest Consent searches	Basic Elearning (CBT/WBT)	Web Based Training	Distributed instruction	10 min	Military Police Policies and Technical Procedures Manual (A-SJ-100-004/AG-000), B-GG-005-027/AF-011 Military Justice at the Summary Trial Level 2.2 (B-GG-005-027/AF-011) [ch. 5 paras. 46-49; ch. 6 paras. 38-39], JAG #162879 Military Law Digest Article - Arrest () [paras. 38-39], JAG #162877 Military Law Digest Article - Search and Seizure () [paras. 46-49]
1.2	Persons who may conduct or authorise searches without warrant	Military Police officers Unit investigators Civilian police officers Designated authorities	Basic Elearning (CBT/WBT)	Web Based Training	Distributed instruction	5 min	Military Police Policies and Technical Procedures Manual (A-SJ-100-004/AG-000), B-GG-005-027/AF-011 Military Justice at the Summary Trial Level 2.2 (B-GG-005-027/AF-011) [ch. 5, paras 46], JAG #162877 Military Law Digest Article - Search and Seizure () [para 46], Inspection and Search Defence Regulations (SOR/86-958) () [ss. 4 to 8]
1.3	Limitations on searches without warrant	Geographic Temporal Personal Reasonable fashion	Face to Face Instruction (poss. CAI)	Instructor; Print	Centralized instruction	15 min	Canadian Charter of Rights and Freedoms () [ss. 8, 24(1)], Military Police Policies and Technical Procedures Manual (A-SJ-100-004/AG-000), B-GG-005-027/AF-011 Military Justice at the Summary Trial Level 2.2 (B-GG-005-027/AF-011) [ch. 5, para. 47; ch. 6, para. 39], JAG #162879 Military Law Digest Article - Arrest () [para. 39], JAG #162877 Military Law Digest Article - Search and Seizure () [paras. 47 and 49], Inspection and Search Defence Regulations (SOR/86-958) () [ss. 4-8]
2	Advise on preparation of search warrants.	Types of search warrants. Evidentiary requirements.	Face to Face Practical	Instructor; Print;	Centralized instruction	0 min	National Defence Act, R.S.C. 1985, c. N-5 () [ss. 273.2 to 273.5], Queen's Regulations and Orders for the Canadian Forces (QR&O) - Volume II - Disciplinary () [ch 106.04 to 106.12], B-GG-005-027/AF-011 Military Justice at the Summary Trial Level 2.2 (B-GG-005-027/AF-011) [ch 5. paras 36-60], JAG #162877 Military Law Digest Article - Search and Seizure () [paras. 35-45]
2.1	Types of search warrants	Civilian search warrants Commanding officer search warrants Production orders (DNA)	Basic Elearning (CBT/WBT)	Web Based Training; Print	Descentralized instruction	15 min	National Defence Act, R.S.C. 1985, c. N-5 () [ss. 196.11 to 196.13; 273.2 to 273.5], Queen's Regulations and Orders for the Canadian Forces (QR&O) - Volume II - Disciplinary () [ch. 106.05 to 106.07; 106.10 to 106.12]
2.2	Evidentiary requirements.	Specified premises or objects Reasonable grounds to believe Information to Obtain a Search Warrant	Basic Elearning (CBT/WBT)	Web Based Training; Print; Template	Descentralized instruction	15 min	National Defence Act, R.S.C. 1985, c. N-5 () [s. 196.12; 273.3 to 273.5], Queen's Regulations and Orders for the Canadian Forces (QR&O) - Volume II - Disciplinary () [ch. 106.04(2); 106.05 (2) and (3); 106.06 (2), Note B], B-GG-005-027/AF-011 Military Justice at the Summary Trial Level 2.2 (B-GG-005-027/AF-011) [ch. 5, paras 41-43], JAG #162877 Military Law Digest Article - Search and Seizure () [paras. 37 to 45]
3	Advise on search without warrant	N/A	Instructor Supported Full Simulation (CBT)	N/A	N/A	0 min	

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3.1	basis for search without warrant	N/A	Basic Elearning (CBT/WBT)	N/A	N/A	10 min	
3.2	Persons who may conduct or authorise searches without warrant	N/A	Basic Elearning (CBT/WBT)	N/A	N/A	10 min	
3.3	limitations on searches without warrant	Geographic Temporal Personal	Face to Face Instruction (poss. CAI)	N/A	N/A	10 min	
4	Advise on issues related to integrity of evidence	Types of evidence Chain of custody	Instructor Supported Full Simulation (CBT)	Computer Based Training; Instructor; Print	Combination of centralized and distributed instruction	0 min	Queen's Regulations and Orders for the Canadian Forces (QR&O) - Volume II - Disciplinary () [ch. 101.055; 106.09], B-GG-005-027/AF-011 Military Justice at the Summary Trial Level 2.2 (B-GG-005-027/AF-011) [ch. 5, paras. 50-60], JAG #162877 Military Law Digest Article - Search and Seizure () [paras. 50-60], Military Rules of Evidence (C.R.C., c. 1049) ()
4.1	Types of evidence.	Testimonial Documentary Real evidence	Basic Elearning (CBT/WBT)	Web Based Training; Print	Distributed Learning	10 min	Military Rules of Evidence (C.R.C., c. 1049) () [Part IV, ss. 79-112]
4.2	Chain of custody	Handling of evidence Military police procedures Physical security of evidence	Elearning Simulation 2D/3D (CBT)	Computer Based Training; Print	Distributed Learning	10 min	Military Police Policies and Technical Procedures Manual (A-SJ-100-004/AG-000), Military Rules of Evidence (C.R.C., c. 1049) () [ss. 102 to 111]

5. **TIME:**

Total class time	110 min
Instructional periods	2.2
Total Days	0.4

6. **Resources Required** a. CF supply documentation (electronic documentation preferred)

7. **Test Details:** See Annex B - Assessment Plan for details.

8. **Remarks:** Advice may be provided remotely.

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EO 016.03 Advise on conduct of interviews

1. **Performance:** Advise on conduct of interviews

2. **Conditions**:

   a. **Given:** References; resources as required; assistance as required.

   b. **Denied:** Direct supervision.

   c. **Environmental:** CF unit base or wing headquarters deployed internationally or domestically, sometimes under austere conditions.

3. **Standard**: N/A

   a. Types of interviews IAW refs: LOQ-A5-2 http://www.admfincs.forces.gc.ca/qro-orf/vol-02/index-eng.asp, LOQ-C3 http://vcds.mil.ca/sites/intranet-eng.aspx?page=9288&title=Policies%20and%20Publications%20-%20Police%20Advisories&site=CFPM%20-%20Policies%20and%20Publications

   b. Rights of interview subjects IAW refs: LOQ-A2 http://laws-lois.justice.gc.ca/eng/CONST/page-15.html#h-38, LOQ-C3 http://vcds.mil.ca/sites/intranet-eng.aspx?page=9288&title=Policies%20and%20Publications%20-%20Police%20Advisories&site=CFPM%20-%20Policies%20and%20Publications

   c. Roles of interviewers IAW refs: LOQ-A2 http://laws-lois.justice.gc.ca/eng/CONST/page-15.html#h-38, LOQ-A5-2 http://www.admfincs.forces.gc.ca/qro-orf/vol-02/index-eng.asp, LOQ-C3 http://vcds.mil.ca/sites/intranet-eng.aspx?page=9288&title=Policies%20and%20Publications%20-%20Police%20Advisories&site=CFPM%20-%20Policies%20and%20Publications, LOQ-C2 http://vcds.mil.ca/sites/cfpm/resources/Advisories/2007/14-07.pdf, LOQ-C2 http://vcds.mil.ca/sites/cfpm/resources/Advisories/2004/15-04_b.pdf

   d. Cautions IAW refs: LOQ-A5-2 http://www.admfincs.forces.gc.ca/qro-orf/vol-02/index-eng.asp, LOQ-C3 http://vcds.mil.ca/sites/intranet-eng.aspx?page=9288&title=Policies%20and%20Publications%20-%20Police%20Advisories&site=CFPM%20-%20Policies%20and%20Publications, LOQ-C2 http://vcds.mil.ca/sites/cfpm/resources/Advisories/2007/14-07.pdf, LOQ-C2 http://vcds.mil.ca/sites/cfpm/resources/Advisories/2004/12-04_b.pdf

4. **Teaching Points:**

#	TEACHING POINT	DESCRIPTION	METHOD	MEDIA	ENVIRONMENT	TIME	REFERENCE
1	Types of interviews	Interviews of witnesses Interviews of persons of interest Recording of interviews Subject(s) of the investigation Supplementary interviews	Basic Elearning (CBT/WBT)	Web Based Training	Distributed instruction	15 min	Queen's Regulations and Orders for the Canadian Forces (QR&O) - Volume II - Disciplinary () [ch. 106.1, 106.2, 106.3], Military Police Policies and Technical Procedures Manual (A-SJ-100-004/AG-000)
2	Rights of interview subjects	Rights of persons of interest Rights of witnesses Rights of suspects or subjects of investigation	Basic Elearning (CBT/WBT)	Web Based Training; Print	Distributed instruction	10 min	Canadian Charter of Rights and Freedoms () [ss. 7, 11(c)], Military Police Policies and Technical Procedures Manual (A-SJ-100-004/AG-000) [ch. 7]
3	Roles of interviewers	Powers Duties Authorities Responsibilities	Instructor Supported Elearning (CBT/CAI)	Computer Based Training; Print	Distributed instruction	20 min	Canadian Charter of Rights and Freedoms () [ss. 7, 11(c)], Queen's Regulations and Orders for the Canadian Forces (QR&O) - Volume II - Disciplinary () [ch. 106.1, 106.2, 106.3], Military Police Policies and Technical Procedures Manual (A-SJ-100-004/AG-000) [ch. 7; ch. 7, Annex E, appendix 1], DPM Police Advisory 14\07 Preamble for Interviews () [paras. 1-4], DPM Police Advisory 15/04 Audio/Video Recording (AV) of an interview () [paras. 1-3; Annex A]
4	Cautions	Types of cautions Applicability of cautions Timing and sequencing of cautions Documentation pertaining to cautions	Instructor Supported Elearning (CBT/CAI)	Computer Based Training; Print	Distributed Instruction	10 min	Queen's Regulations and Orders for the Canadian Forces (QR&O) - Volume II - Disciplinary () [ch. 101.12], Military Police Policies and Technical Procedures Manual (A-SJ-100-004/AG-000) [ch. 7, Annex E, Appendix 2], DPM Police Advisory 14\07 Preamble for Interviews () [paras. 1-4], DPM Police Advisory 12/04 Amendment Caution Non-Specific Charge () [paras. 2-3]

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5. **TIME:**

Total class time	55 min
Instructional periods	1.1
Total Days	0.2

6. **Resources Required** a. CF supply documentation (electronic documentation preferred)

7. **Test Details:** See Annex B - Assessment Plan for details.

8. **Remarks:** Advice may be provided remotely.

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EO 016.04 Advise on the sufficiency of the investigation

1. **Performance:** Advise on the sufficiency of the investigation

2. **Conditions**:

   a. **Given:** References (including legal opinions); resources as required; assistance as required.

   b. **Denied:** Direct supervision.

   c. **Environmental:** CF unit base or wing headquarters deployed internationally or domestically, sometimes under austere conditions.

3. **Standard**: The legal officer shall advise on the sufficiency of the investigation

   a. Advise on elements of offences relevant to the investigation IAW refs: LOQ-A3 http://laws-lois.justice.gc.ca/eng/acts/N-5/index.html, LOQ-A3 http://laws-lois.justice.gc.ca/eng/acts/C-46/index.html, LOQ-A3 http://laws-lois.justice.gc.ca/eng/acts/c-38.8/, LOQ-D1 http://

      i. Elements of the pertinent offence(s) IAW refs: LOQ-A3 http://laws-lois.justice.gc.ca/eng/acts/N-5/index.html, LOQ-A3 http://laws-lois.justice.gc.ca/eng/acts/C-46/index.html, LOQ-A3 http://laws-lois.justice.gc.ca/eng/acts/c-38.8/, LOQ-D1 http://

   b. Advise on evidentiary issues IAW refs: LOQ-A2 http://laws-lois.justice.gc.ca/eng/CONST/page-15.html#h-38, LOQ-A5-2 http://www.admfincs.forces.gc.ca/qro-orf/vol-02/index-eng.asp, LOQ-A5-5 http://laws-lois.justice.gc.ca/eng/regulations/C.R.C.,_c._1049/

      i. Rules of admissibility of evidence IAW refs: LOQ-A5-2 http://www.admfincs.forces.gc.ca/qro-orf/vol-02/index-eng.asp

      ii. Inculpatory evidence IAW refs: LOQ-D3 http://

   c. Advise on the requirement for further legal advice IAW refs: LOQ-A5-2 http://www.admfincs.forces.gc.ca/qro-orf/vol-02/index-eng.asp, LOQ-C3 http://vcds.mil.ca/sites/intranet-eng.aspx?page=9288&title=Policies%20and%20Publications%20-%20Police%20Advisories&site=CFPM%20-%20Policies%20and%20Publications, LOQ-C4 http://http://jag.mil.ca/publications/CMPS-SCPM/policy-politiques-002-eng.pdf, LOQ-C4 http://jag.mil.ca/publications/CMPS-SCPM/policy-politiques-003-eng.pdf, LOQ-C4 http://jag.mil.ca/publications/directives/directive010-00.pdf

      i. Circumstances giving rise for further legal advice IAW refs: LOQ-A5-2 http://www.admfincs.forces.gc.ca/qro-orf/vol-02/index-eng.asp, LOQ-C3 http://vcds.mil.ca/sites/intranet-eng.aspx?page=9288&title=Policies%20and%20Publications%20-%20Police%20Advisories&site=CFPM%20-%20Policies%20and%20Publications, LOQ-C4 http://http://jag.mil.ca/publications/CMPS-SCPM/policy-politiques-002-eng.pdf, LOQ-C4 http://jag.mil.ca/publications/CMPS-SCPM/policy-politiques-003-eng.pdf

4. **Teaching Points:**

#	TEACHING POINT	DESCRIPTION	METHOD	MEDIA	ENVIRONMENT	TIME	REFERENCE
1	Advise on elements of offences relevant to the investigation	Elements of the relevant offence(s)	Face to Face Instruction (poss. CAI)	Instructor; Print	Centralized instruction	0 min	National Defence Act, R.S.C. 1985, c. N-5 () [Part. III], Criminal Code, R.S.C., 1985, c. C-46 (), Controlled Drugs and Substances Act (S.C. 1996, c. 19) (), Elements of the Offence ()
1.1	Elements of the pertinent offence(s)	Identify the relevant offence (s) Identify the element (s)	Basic Elearning (CBT/WBT)	Web Based Training; Print	Distributed instruction	20 min	National Defence Act, R.S.C. 1985, c. N-5 () [Part III], Criminal Code, R.S.C., 1985, c. C-46 (), Controlled Drugs and Substances Act (S.C. 1996, c. 19) (), Elements of the Offence ()
2	Advise on evidentiary issues	Rules of admissibility of evidence Inculpatory evidence	Face to Face Instruction (poss. CAI)	Instructor; Print	Centralized instruction	0 min	Canadian Charter of Rights and Freedoms () [ss. 7; 11(c)], Queen's Regulations and Orders for the Canadian Forces (QR&O) - Volume II - Disciplinary () [ch. 106.03], Military Rules of Evidence (C.R.C., c. 1049) ()
2.1	Rules of admissibility of evidence	Testimony Real evidence Documents Opinions Hearsay	Basic Elearning (CBT/WBT)	Web Based Training; Print	Distributed instruction	20 min	Queen's Regulations and Orders for the Canadian Forces (QR&O) - Volume II - Disciplinary () [ch. 108.20 and 108.21; 112.68 to 112.72]
2.2	Inculpatory evidence	Confessions Persons in authority Hearsay exception - Res gestae	Basic Elearning (CBT/WBT)	Web Based Training	Distributed learning	20 min	Cox's Criminal Evidence Handbook (2013-2014) () [ch. 13 paras 13.350 and 13.360; ch. 16 paras 16.10 to 16.65; 16.140 to 16.155; 16.340 to 16.350; 16. 450 to 16.550]

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3	Advise on the requirement for further legal advice	Circumstances giving rise for further legal advice	Instructor Supported Elearning (CBT/CAI)	Computer Based Training; Print	Distributed instruction	0 min	Queen's Regulations and Orders for the Canadian Forces (QR&O) - Volume II - Disciplinary () [ch. 106.03; 107.03(2); 110.05], Military Police Policies and Technical Procedures Manual (A-SJ-100-004/AG-000), DMP Policy 002/00 Pre-Charge Screening () [para. 8], DMP Directive 003/00 Post-Charge Review () [paras. 5-8; 11-14], JAG Policy Directive 010/00 - Charge Screening Policy () [para. 10]
3.1	Circumstances giving rise for further legal advice	Reasonable prospect of conviction Duty to investigate	Face to Face Instruction (poss. CAI)	Instructor; Print	Centralized instruction	20 min	Queen's Regulations and Orders for the Canadian Forces (QR&O) - Volume II - Disciplinary () [ch. 106.03; 107.03(2); 110.05], Military Police Policies and Technical Procedures Manual (A-SJ-100-004/AG-000), DMP Policy 002/00 Pre-Charge Screening () [para. 8], DMP Directive 003/00 Post-Charge Review () [paras. 5-8; 11-14]

5. **TIME:**

Total class time	80 min
Instructional periods	1.6
Total Days	0.3

6. **Resources Required** a. CF supply documentation (electronic documentation preferred)

7. **Test Details:** See Annex B - Assessment Plan for details.

8. **Remarks:** Advice may be provided remotely.

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PO 017 PROVIDE PRE-CHARGE LEGAL ADVICE AT0040

1. **Performance:** (MJ0008) Provide pre-charge legal advice AT0040

2. **Conditions:**

   a. **Given:** References (including legal opinions, templates); resources as required; assistance as required.

   b. **Denied:** Direct supervision

   c. **Environmental:** CF unit, base or wing headquarters, deployed internationally or domestically, sometimes under austere conditions.

3. **Standard**: The Legal Officer shall provide pre-charge advice to include:

   a. Advise on the appropriate charge or charges and alternative charges

4. **Remarks:** The advice may be provided remotely

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ENABLING OBJECTIVES

EO 017.01 Advise on the appropriate charge or charges and alternative charges

1. **Performance:** Advise on the appropriate charge or charges and alternative charges

2. **Conditions**:

   a. **Given:** References (including legal opinions, templates); resources as required; assistance as required.

   b. **Denied:** Direct supervision.

   c. **Environmental:** CF unit, base or wing headquarters, deployed internationally or domestically, sometimes under austere conditions.

3. **Standard**: The Legal Officer shall provide pre-charge advice on the appropriate charge or charges and alternative charges

   a. (AT0005, AT0010, AT0020, AT0025, AT0030, AT0035, AT0040, AT0180, AT0185, AT0190, AT0200, AT0205) Review investigation IAW refs: LOQ-A5-2 http://www.admfincs.forces.gc.ca/qro-orf/vol-02/index-eng.asp, LOQ-C3 http://vcds.mil.ca/sites/intranet-eng.aspx?page=9288&title=Policies%20and%20Publications%20-%20Police%20Advisories&site=CFPM%20-%20Policies%20and%20Publications, LOQ-C4 http://jag.mil.ca/publications/directives/directive010-00.pdf

   b. (AT0005, AT0010, AT0020, AT0025, AT0030, AT0035, AT0040, AT0180, AT0185, AT0190, AT0200, AT0205) Advise on further investigative requirements, if any IAW refs: LOQ-A5-2 http://www.admfincs.forces.gc.ca/qro-orf/vol-02/index-eng.asp, LOQ-C4 http://http://jag.mil.ca/publications/CMPS-SCPM/policy-politiques-002-eng.pdf, LOQ-C4 http://jag.mil.ca/publications/directives/directive010-00.pdf

   c. (AT0035, AT0050, AT0040, AT0045, AT0180, AT0185, AT0190, AT0210, AT0065) Review draft RDP IAW refs: LOQ-A3 http://laws-lois.justice.gc.ca/eng/acts/N-5/index.html, LOQ-A5-2 http://www.admfincs.forces.gc.ca/qro-orf/vol-02/index-eng.asp, LOQ-D1 http://www.forces.gc.ca/en/about-reports-pubs-military-law-summary-trial-level/index.page?, LOQ-D1 http://

      i. Relevant jurisdiction IAW refs: LOQ-A3 http://laws-lois.justice.gc.ca/eng/acts/N-5/index.html, LOQ-A5-2 http://www.admfincs.forces.gc.ca/qro-orf/vol-02/index-eng.asp, LOQ-D1 http://www.forces.gc.ca/en/about-reports-pubs-military-law-summary-trial-level/index.page?, LOQ-B3a-2 http://www.canlii.org/en/ca/cm/doc/2012/2012cm2010/2012cm2010.html, LOQ-D1 http://

      ii. Drafting particulars IAW refs: LOQ-A3 http://laws-lois.justice.gc.ca/eng/acts/N-5/index.html, LOQ-A5-2 http://www.admfincs.forces.gc.ca/qro-orf/vol-02/index-eng.asp, LOQ-D1 http://www.forces.gc.ca/en/about-reports-pubs-military-law-summary-trial-level/index.page?, LOQ-D1 http://, LOQ-D1 http://

   d. (AT0005, AT0010, AT0025, AT0030, AT0035, AT0040, AT0055, AT0065, AT0075, AT0180, AT0185, AT0190, AT0205) Evaluate sufficiency & admissibility of evidence IAW refs: LOQ-A5-2 http://www.admfincs.forces.gc.ca/qro-orf/vol-02/index-eng.asp, LOQ-D1 http://www.forces.gc.ca/en/about-reports-pubs-military-law-summary-trial-level/index.page?, LOQ-C4 http://jag.mil.ca/publications/directives/directive010-00.pdf, LOQ-D1 http://

      i. Elements of the relevant offence(s) IAW refs: LOQ-A3 http://laws-lois.justice.gc.ca/eng/acts/N-5/index.html, LOQ-A5-2 http://www.admfincs.forces.gc.ca/qro-orf/vol-02/index-eng.asp, LOQ-D1 http://www.forces.gc.ca/en/about-reports-pubs-military-law-summary-trial-level/index.page?, LOQ-C4 http://jag.mil.ca/publications/directives/directive010-00.pdf, LOQ-D1 http://

   e. (AT0005, AT0010, AT0035, AT0040, AT0050, AT0170, AT0200, AT0205) Advise on suitability of laying charges IAW refs: LOQ-A3 http://laws-lois.justice.gc.ca/eng/acts/N-5/index.html, LOQ-D1 http://www.forces.gc.ca/en/about-reports-pubs-military-law-summary-trial-level/index.page?, LOQ-C4 http://jag.mil.ca/publications/directives/directive010-00.pdf, LOQ-D1 http://

      i. Rights of the accused IAW refs: LOQ-A1 http://laws-lois.justice.gc.ca/eng/CONST/page-1.html, LOQ-A2 http://laws-lois.justice.gc.ca/eng/CONST/page-15.html#h-38, LOQ-A5-2 http://www.admfincs.forces.gc.ca/qro-orf/vol-02/index-eng.asp, LOQ-D1 http://www.forces.gc.ca/en/about-reports-pubs-military-law-summary-trial-level/index.page?, LOQ-A3 Official Languages Act http://laws-lois.justice.gc.ca/eng/acts/O-3.01/index.html, LOQ-D1 http://, LOQ-D1 http://

      ii. Exercise of discretion IAW refs: LOQ-A5-2 http://www.admfincs.forces.gc.ca/qro-orf/vol-02/index-eng.asp, LOQ-D1 http://www.forces.gc.ca/en/about-reports-pubs-military-law-summary-trial-level/index.page?, LOQ-C4 http://http://jag.mil.ca/publications/CMPS-SCPM/policy-politiques-002-eng.pdf, LOQ-C4 http://jag.mil.ca/publications/directives/directive010-00.pdf, LOQ-D1 http://

      iii. Res Judicata as it pertains to pre-charge legal advice IAW refs: LOQ-A3 http://laws-lois.justice.gc.ca/eng/acts/N-5/index.html, LOQ-A5-2 http://www.admfincs.forces.gc.ca/qro-orf/vol-02/index-eng.asp, LOQ-D1 http://www.forces.gc.ca/en/about-reports-pubs-military-law-summary-trial-level/index.page?, LOQ-D1 http://

      iv. Impact of jurisdictional limitations resulting from types of charges laid IAW refs: LOQ-A3 http://laws-lois.justice.gc.ca/eng/acts/N-5/index.html, LOQ-A5-2 http://www.admfincs.forces.gc.ca/qro-orf/vol-02/index-eng.asp, LOQ-D1 http://www.forces.gc.ca/en/about-reports-pubs-military-law-summary-trial-level/index.page?, LOQ-D1 http://

   f. (AT0005, AT0020, AT0025, AT0030, AT0035, AT0040, AT0050, AT0055, AT0065, AT0075, AT0105, AT0170, AT0180, AT0185, AT0190) Advise on requirement for further legal advice IAW refs: LOQ-C4 http://, LOQ-A5 https://www.canlii.org/en/qc/laws/regu/cqlr-c-b-1-r-3/latest/cqlr-c-b-1-r-3.html

4. **Teaching Points:**

#	TEACHING POINT	DESCRIPTION	METHOD	MEDIA	ENVIRONMENT	TIME	REFERENCE

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1	Review investigation	Main parts of investigation report SAMPIS format Unit Disciplinary Investigation format	Face to Face Instruction (poss. CAI)	Instructor; Print	Centralized instruction	15 min	Queen's Regulations and Orders for the Canadian Forces (QR&O) - Volume II - Disciplinary () [ch 106.03], Military Police Policies and Technical Procedures Manual (A-SJ-100-004/AG-000), JAG Policy Directive 010/00 - Charge Screening Policy () [para. 3]
2	Advise on further investigative requirements, if any	Identify potential deficencies Duty to obtain all available information/evidence	Basic Elearning (CBT/WBT)	Web Based Training; Print	Distributed Learning	10 min	Queen's Regulations and Orders for the Canadian Forces (QR&O) - Volume II - Disciplinary () [ch. 107.02], DMP Policy 002/00 Pre-Charge Screening () [8-9, 11], JAG Policy Directive 010/00 - Charge Screening Policy () [para. 10]
3	Review draft RDP	Relevant Jurisdiction Drafting particulars Selection of Appropriate Charge Alternative Charges Drafting Particulars Essential Elements Record of Disciplinary Proceedings Surplusage	Face to Face Instruction (poss. CAI)	Instructor; Print	Centralized instruction	0 min	National Defence Act, R.S.C. 1985, c. N-5 () [Part III, Division 1 and 2], Queen's Regulations and Orders for the Canadian Forces (QR&O) - Volume II - Disciplinary () [ch. 102, 103, 107.04 to 107.075], B-GG-005-027/AF-011 Military Justice at the Summary Trial Level 2.2 (B-GG-005-027/AF-011) [ch. 8, section 3, paras. 19-45; Annexes B and O], Elements of the Offence ()
3.1	Relevant jurisdiction	Time Person Matter Location Authority	Face to Face Instruction (poss. CAI)	Instructor; Print	Centralized instruction	10 min	National Defence Act, R.S.C. 1985, c. N-5 () [Part III, division 1, ss. 60-65], Queen's Regulations and Orders for the Canadian Forces (QR&O) - Volume II - Disciplinary () [ch 102], B-GG-005-027/AF-011 Military Justice at the Summary Trial Level 2.2 (B-GG-005-027/AF-011) [ch. 8, paras. 3 to 8, 44-45; ch. 11, paras 1 to 16], R v Balint, 2012 CM 2010 (CanLII) (), JAG #162881 Military Law Digest Article - Laying of Charges () [paras. 3 to 8; 44-45]
3.2	Drafting particulars	Selection of Appropriate Charge Alternative Charges Drafting Particulars Essential Elements Record of Disciplinary Proceedings Surplusage	Face to Face Instruction (poss. CAI)	Instructor; Print	Centralized instruction	40 min	National Defence Act, R.S.C. 1985, c. N-5 () [Part III, division 2], Queen's Regulations and Orders for the Canadian Forces (QR&O) - Volume II - Disciplinary () [ch. 103, ch. 107.04 to 107.075], B-GG-005-027/AF-011 Military Justice at the Summary Trial Level 2.2 (B-GG-005-027/AF-011) [ch. 8, section 3, paras. 19-33; Annexes B and O], Elements of the Offence (), JAG #162881 Military Law Digest Article - Laying of Charges () [paras. 19 to 33]
4	Evaluate sufficiency & admissibility of evidence	Elements of the relevant offence(s) Objective test : reasonable belief Subjective test:: actual belief JAG Policy: Reasonable prospect of conviction	Face to Face Instruction (poss. CAI)	Instructor; Print	Centralized instruction	0 min	Queen's Regulations and Orders for the Canadian Forces (QR&O) - Volume II - Disciplinary () [ch. 107.02 Note], B-GG-005-027/AF-011 Military Justice at the Summary Trial Level 2.2 (B-GG-005-027/AF-011) [ch. 8, paras. 9-10], JAG Policy Directive 010/00 - Charge Screening Policy () [paras. 12 to 14], JAG #162881 Military Law Digest Article - Laying of Charges () [paras. 9-10]

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4.1	Elements of the relevant offence(s)	Suggested/ Potential offences	Basic Elearning (CBT/WBT)	Web Based Training; Print	Distributed instruction	20 min	National Defence Act, R.S.C. 1985, c. N-5 () [Part. III, division 2], Queen's Regulations and Orders for the Canadian Forces (QR&O) - Volume II - Disciplinary () [Ch. 103], B-GG-005-027/AF-011 Military Justice at the Summary Trial Level 2.2 (B-GG-005-027/AF-011) [ch. 8 paras. 34 to 42], JAG Policy Directive 010/00 - Charge Screening Policy () [paras. 12-13], JAG #162881 Military Law Digest Article - Laying of Charges () [paras. 34 to 42]
5	Advise on suitability of laying charges	Rights of the accused Exercise of discretion Res judicata as it pertains to pre-charge legal advice Impact of jurisdictional limitations on types of charges laid	Face to Face Instruction (poss. CAI)	Instructor; Print	Centralized instruction	0 min	National Defence Act, R.S.C. 1985, c. N-5 () [s. 66], B-GG-005-027/AF-011 Military Justice at the Summary Trial Level 2.2 (B-GG-005-027/AF-011) [Ch. 8 paras. 11 to 14], JAG Policy Directive 010/00 - Charge Screening Policy () [paras. 13 to 16], JAG #162881 Military Law Digest Article - Laying of Charges () [paras. 11 to 14]
5.1	Rights of the accused	Disclosure Counsel Silence Assisting officer Fundamental justice Procedural fairness Official Languages	Basic Elearning (CBT/WBT)	Web Based Training; Print	Distributed Instruction	15 min	Constitution Act, 1867, 30 & 31 Victoria, c. 3 (U.K.), R.S.C. 1985, App. II, No. 11. () [s. 133], Canadian Charter of Rights and Freedoms () [ss. 7, 11, 16(1), 19(1)], Queen's Regulations and Orders for the Canadian Forces (QR&O) - Volume II - Disciplinary () [ch. 108.14 and 108.15], B-GG-005-027/AF-011 Military Justice at the Summary Trial Level 2.2 (B-GG-005-027/AF-011) [Ch. 4, paras. 11 to 16; Ch. 9, paras. 1 to 12], Official Languages Act () [s. 14], JAG #162882 Military Law Digest Article - Assisting Officer () [paras. 1 to 12], JAG #162883 Military Law Digest Article - Disclosure to Accused () [paras. 1 to 15]
5.2	Exercise of discretion	Public interest Applicable JAG policies Military vs civilian Corrective measures vs disciplinary proceedings	Face to Face Instruction (poss. CAI)	Instructor; Print	Centralized Instruction	15 min	Queen's Regulations and Orders for the Canadian Forces (QR&O) - Volume II - Disciplinary () [ch 107.09, 107.11, 107.12], B-GG-005-027/AF-011 Military Justice at the Summary Trial Level 2.2 (B-GG-005-027/AF-011) [ch. 8 paras. 11-12], DMP Policy 002/00 Pre-Charge Screening () [paras. 19-20], JAG Policy Directive 010/00 - Charge Screening Policy () [paras. 5 to 9], JAG #162882 Military Law Digest Article - Assisting Officer () [paras. 1 to 12]
5.3	Res Judicata as it pertains to pre-charge legal advice	Double Jeopardy Autrefois acquit Autrefois convict	Basic Elearning (CBT/WBT)	Web based Training; Print	Distributed training	10 min	National Defence Act, R.S.C. 1985, c. N-5 () [s. 66], Queen's Regulations and Orders for the Canadian Forces (QR&O) - Volume II - Disciplinary () [ch. 102.17, 102.18], B-GG-005-027/AF-011 Military Justice at the Summary Trial Level 2.2 (B-GG-005-027/AF-011) [ch. 8 paras.13-14], JAG #162881 Military Law Digest Article - Laying of Charges () [paras. 13-14]

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5.4	Impact of jurisdictional limitations resulting from types of charges laid	Referral of charges Limitations on election Limitations on forum	Face to Face Instruction (poss. CAI)	Instructor; Print	Centralized instruction	10 min	National Defence Act, R.S.C. 1985, c. N-5 () [ss. 163 to 164.1], Queen's Regulations and Orders for the Canadian Forces (QR&O) - Volume II - Disciplinary () [ch. 108.07, 108.17], B-GG-005-027/AF-011 Military Justice at the Summary Trial Level 2.2 (B-GG-005-027/AF-011) [ch. 8 paras 46 to 57; ch. 11 paras. 31 to 48, 49 to 63], JAG #162884 Military Law Digest Article - Election for Court-Martial () [paras. 5 to 8]
6	Advise on requirement for further legal advice	Obligations of diligence and prudence Standard paragraph in legal opinions Legal opinion format (written/oral)	Instructor Supported Elearning (CBT/CAI)	Computer Based Training; Instructor; Print	Centralized instruction	5 min	JAG Policy Directive 006/00 - Professional Standards Review () [paras. 1 to 10], Code of ethics of advocates, CQLR c B-1, r 3 () [s. 3.00.01]

5. **TIME:**

Total class time	150 min
Instructional periods	3.0
Total Days	0.6

6. **Resources Required** a. CF supply documentation (electronic documentation preferred)

7. **Test Details:** See Annex B - Assessment Plan for details.

8. **Remarks:** The advice may be provided remotely

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PO 018 ADVISE ON CONDUCT OF CSD PROCEEDINGS AT0105

1. **Performance:** (MJ0011) Advise on conduct of CSD proceedings AT0105

2. **Conditions:**

   a. **Given:** Accused COC References Relevant documentation Relevant case law Other relevant law and policy Sufficient Telecommunications Consitution Act, 1867 Constitution Act, 1982 including Canadian Charter of Rights and Freedoms National Defence Act Criminal Code of Canada QR&O B-GG-005-027/AF011, Military Justice at the summary trial level. Vol. 2.2

   b. **Denied:** Direct Supervision

   c. **Environmental:** CF unit base or wing Headquarters Deployed internationally or domestically Under austere conditions

3. **Standard**: The Legal Officer shall advise on conduct of CSD proceedings to include:

   a. Provide advice on the conduct of summary trial

   b. Advise on sentencing and powers of punishment

   c. Advise on referral of charges to DMP

4. **Remarks:** Advice can be provided remotely

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ENABLING OBJECTIVES

EO 018.01 Provide advice on the conduct of summary trial

1. **Performance:** Provide advice on the conduct of summary trial

2. **Conditions:**

   a. **Given:** References; resources as required; assistance as required.

   b. **Denied:** Direct supervision

   c. **Environmental:** CF unit, base or wing headquarters, deployed internationally or domestically, sometimes under austere conditions.

3. **Standard:** The Legal Officer shall provide advice on the conduct of summary trial

   a. (AT0005-AT0035, AT0055-AT0085, AT0105-AT0110, AT0180-AT0220) Provide advice on the conduct of summary trial IAW refs: LOQ-A3 http://laws-lois.justice.gc.ca/eng/acts/N-5/index.html, LOQ-A5-2 http://www.admfincs.forces.gc.ca/qro-orf/vol-02/index-eng.asp, LOQ-D1 http://www.forces.gc.ca/en/about-reports-pubs-military-law-summary-trial-level/index.page?, LOQ-C4 http://jag.mil.ca/publications/directives/directive010-00.pdf, LOQ-D1 http://, LOQ-D1 http://

      i. Provide pre-trial advice IAW refs: LOQ-A5-2 http://www.admfincs.forces.gc.ca/qro-orf/vol-02/index-eng.asp, LOQ-D1 http://www.forces.gc.ca/en/about-reports-pubs-military-law-summary-trial-level/index.page?, LOQ-C4 http://jag.mil.ca/publications/directives/directive010-00.pdf

      ii. Requirements to receive advice under QR&O 107.11 IAW refs: LOQ-A5-2 http://www.admfincs.forces.gc.ca/qro-orf/vol-02/index-eng.asp, LOQ-D1 http://www.forces.gc.ca/en/about-reports-pubs-military-law-summary-trial-level/index.page?

      iii. The summary trial process QR&O chapter 108 IAW refs: LOQ-A5-2 http://www.admfincs.forces.gc.ca/qro-orf/vol-02/index-eng.asp, LOQ-D1 http://www.forces.gc.ca/en/about-reports-pubs-military-law-summary-trial-level/index.page?, LOQ-D1 http://

   b. (AT0005-AT0035, AT0055-AT0085, AT0105-AT0110, AT0180-AT0220) Provide legal advice during conduct of ST IAW refs: LOQ-A5-2 http://www.admfincs.forces.gc.ca/qro-orf/vol-02/index-eng.asp, LOQ-D1 http://www.forces.gc.ca/en/about-reports-pubs-military-law-summary-trial-level/index.page?

      i. Ongoing obligations and considerations arising during summary trial IAW refs: LOQ-A5-2 http://www.admfincs.forces.gc.ca/qro-orf/vol-02/index-eng.asp, LOQ-D1 http://www.forces.gc.ca/en/about-reports-pubs-military-law-summary-trial-level/index.page?, LOQ-D1 http://

      ii. Advise regarding the accused's right to elect court martial IAW refs: LOQ-A5-2 http://www.admfincs.forces.gc.ca/qro-orf/vol-02/index-eng.asp, LOQ-D1 http://www.forces.gc.ca/en/about-reports-pubs-military-law-summary-trial-level/index.page?, LOQ-D1 http://

4. **Teaching Points:**

#	TEACHING POINT	DESCRIPTION	METHOD	MEDIA	ENVIRONMENT	TIME	REFERENCE
1	Provide advice on the conduct of summary trial	Provide pre-trial advice Requirement to receive advice under QR&O 107.11 The summary trial process QR&O Chap 108	Face to Face Instruction (poss. CAI)	Instructor: Print	Centralized instruction	0 min	National Defence Act, R.S.C. 1985, c. N-5 () [ss. 139, 163 to 164.1], Queen's Regulations and Orders for the Canadian Forces (QR&O) - Volume II - Disciplinary () [ch. 107.08 to 107.12; 108.16 to 108.34], B-GG-005-027/AF-011 Military Justice at the Summary Trial Level 2.2 (B-GG-005-027/AF-011) [ch. 11 to 13], JAG Policy Directive 010/00 - Charge Screening Policy () [paras. 17 to 19], JAG #162884 Military Law Digest Article - Election for Court-Martial (), JAG #162885 Military Law Digest Article - Summary Trials ()
1.1	Provide pre-trial advice	Jurisdiction to try Right to elect Punishment powers Public interest	Face to Face Instruction (poss. CAI)	Instructor; Print	Centralized instruction	20 min	Queen's Regulations and Orders for the Canadian Forces (QR&O) - Volume II - Disciplinary () [ch. 107.09 and 107.11; 108.16 to 108.195], B-GG-005-027/AF-011 Military Justice at the Summary Trial Level 2.2 (B-GG-005-027/AF-011) [Ch. 11 and 12], JAG Policy Directive 010/00 - Charge Screening Policy () [paras. 12 to 15,17 to 19]

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1.2	Requirements to receive advice under QR&O 107.11	When charges are referred by units When charges are referred by CFNIS	Basic Elearning (CBT/WBT)	Web Based Training; Print	Distributed instruction	10 min	Queen's Regulations and Orders for the Canadian Forces (QR&O) - Volume II - Disciplinary () [ch. 107.11 and 107.12], B-GG-005-027/AF-011 Military Justice at the Summary Trial Level 2.2 (B-GG-005-027/AF-011) [ch. 11 paras 31 to 48]
1.3	The summary trial process QR&O chapter 108	Pre trial issues and procedures Trial procedures Evidentiary issues Determinations	Basic Elearning (CBT/WBT)	Web Based Training; Print	Distributed instruction	20 min	Queen's Regulations and Orders for the Canadian Forces (QR&O) - Volume II - Disciplinary () [ch. 107.08 to 107.12; 108.07, 108.08, 108.10 to 108.13, 108.16, 108.20], B-GG-005-027/AF-011 Military Justice at the Summary Trial Level 2.2 (B-GG-005-027/AF-011) [ch. 11 paras 49 to 66, 72 to 81; ch. 13], JAG #162885 Military Law Digest Article - Summary Trials () [paras. 1 to 168]
2	Provide legal advice during conduct of ST	Ongoing obligations and considerations arising during summary trial Advise regarding the accused's right to elect court martial	Face to Face Instruction (poss. CAI)	Instructor; Print	Centralized instruction	0 min	Queen's Regulations and Orders for the Canadian Forces (QR&O) - Volume II - Disciplinary () [ch. 101.07; 108.02, 108.04, 108.17, 108.20; 108.27 to 108.34], B-GG-005-027/AF-011 Military Justice at the Summary Trial Level 2.2 (B-GG-005-027/AF-011) [ch. 4; ch. 12, paras 25 to 29; ch. 13, paras 49-83]
2.1	Ongoing obligations and considerations arising during summary trial	Request for counsel Adjournment Unforeseen complexity affecting jurisdiction Video conferencing Irregularities Official languages requirements	Face to Face Instruction (poss. CAI)	Instructor; Print	Centralized instruction	20 min	Queen's Regulations and Orders for the Canadian Forces (QR&O) - Volume II - Disciplinary () [ch. 101.06, 101.07, 108.04,108.14 Note (B), 108.16 (1)(a)(iii), 108.16 Note (A), 108.17, 108.20, 108.20 Note (C), 108.21 Note (B), 108.33], B-GG-005-027/AF-011 Military Justice at the Summary Trial Level 2.2 (B-GG-005-027/AF-011) [ch. 13 paras 17 to 21; 33; 37 and 38; 46 to 48, 54, 57, 67, 75 to 79; 33; 81 to 83.], JAG #162885 Military Law Digest Article - Summary Trials () [paras. 17 to 21; 22; 37 to 38; 46 to 48, 54, 57, 67, 70, 75 to 79; 81 to 83]
2.2	Advise regarding the accused's right to elect court martial	Circumstances where right to elect might arise Process to be followed by presiding officer	Face to Face Instruction (poss. CAI)	Instructor; Print	Centralized instruction	10 min	Queen's Regulations and Orders for the Canadian Forces (QR&O) - Volume II - Disciplinary () [ch. 108.17(6), 108.18, 108.34 (1) b)], B-GG-005-027/AF-011 Military Justice at the Summary Trial Level 2.2 (B-GG-005-027/AF-011) [ch. 12, paras. 10 to 11, 25 to 29; paras. ch. 13, paras 71 to 74.], JAG #162885 Military Law Digest Article - Summary Trials () [paras. 70 to 74]

5. **TIME:**

Total class time	80 min
Instructional periods	1.6
Total Days	0.3

6. **Resources Required** a. CF supply documentation (electronic documentation preferred)

7. **Test Details:** See Annex B - Assessment Plan for details.

8. **Remarks:** The advice may be provided remotely.

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EO 018.02 Advise on sentencing and powers of punishment

1. **Performance:** Advise on sentencing and powers of punishment

2. **Conditions**:

   a. **Given:** References; resources as required; assistance as required.

   b. **Denied:** Direct supervision.

   c. **Environmental:** CF unit, base or wing headquarters, deployed internationally or domestically, sometimes under austere conditions.

3. **Standard**: The Legal Officer shall provide advice on the sentencing and powers of punishment.

   a. Issues arising from detention IAW refs: LOQ-A3 http://laws-lois.justice.gc.ca/eng/acts/N-5/index.html, LOQ-A5-2 http://www.admfincs.forces.gc.ca/qro-orf/vol-02/index-eng.asp, LOQ-D1 http://www.forces.gc.ca/en/about-reports-pubs-military-law-summary-trial-level/index.page?, LOQ-A5-4-1.4 Regulations on Detention Barracks http://www.admfincs-smafinsm.forces.gc.ca/qro-orf/vol-04/appendix-appendic-01-04-eng.asp, LOQ-D1 http://

   b. Purpose and principles of sentencing IAW refs: LOQ-A3 http://laws-lois.justice.gc.ca/eng/acts/N-5/index.html, LOQ-A5-2 http://www.admfincs.forces.gc.ca/qro-orf/vol-02/index-eng.asp, LOQ-A6-Bill C-15 http://www.parl.gc.ca/content/hoc/Bills/411/Government/C-15/C-15_4/C-15_4.PDF, LOQ-D1 http://www.forces.gc.ca/en/about-reports-pubs-military-law-summary-trial-level/index.page?, LOQ-D1 http://

   c. Punishments IAW refs: LOQ-A3 http://laws-lois.justice.gc.ca/eng/acts/N-5/index.html, LOQ-A5-2 http://www.admfincs.forces.gc.ca/qro-orf/vol-02/index-eng.asp, LOQ-D1 http://www.forces.gc.ca/en/about-reports-pubs-military-law-summary-trial-level/index.page?, LOQ-D1 http://

4. **Teaching Points:**

#	TEACHING POINT	DESCRIPTION	METHOD	MEDIA	ENVIRONMENT	TIME	REFERENCE
1	Issues arising from detention	Execution of sentence Suspension of sentence Temporal considerations Physical limitations	Face to Face Instruction (poss. CAI)	Instructor; Print	Centralized instruction	15 min	National Defence Act, R.S.C. 1985, c. N-5 () [ss. 139(1)(f), 142, 163(3)(a), 163(4)(a), 204, 205, 215 to 221, 223 to 226], Queen's Regulations and Orders for the Canadian Forces (QR&O) - Volume II - Disciplinary () [ch. 104.09, 104.14, 108.24, 108.25, 108.26, 114.01 to 114.04, 114.07 to 114.11], B-GG-005-027/AF-011 Military Justice at the Summary Trial Level 2.2 (B-GG-005-027/AF-011) [ch. 14 paras 21 to 28, 62 to 72, Annexes S, T, U], Regulations for Service Prisons and Detention Barracks (), JAG #162886 Military Law Digest Article - Powers of punishment at summary trial () [paras. 21 to 33]
2	Purpose and principles of sentencing	Purpose of sentencing General principles of sentencing Unique aspects of sentencing in the military environment Factors for sentencing Process at summary trial Process at court martial	Basic Elearning (CBT/WBT)	Web Based Training	Distributed instruction	20 min	National Defence Act, R.S.C. 1985, c. N-5 () [ss. 139, Part III, Division 7.1 (Not yet in force)], Queen's Regulations and Orders for the Canadian Forces (QR&O) - Volume II - Disciplinary () [ch 108.20, Notes (E) to (I)], Bill C-15, An Act to amend the National Defence Act and to make consequential amendments to other Acts, 1st Sess, 41st Parl, 2013 (assented to 19 June 2013), S.C. 2013, c 24. () [s. 62], B-GG-005-027/AF-011 Military Justice at the Summary Trial Level 2.2 (B-GG-005-027/AF-011) [ch. 14 paras 21 to 28, 62 to 72, Annexes S, T, U], JAG #162886 Military Law Digest Article - Powers of punishment at summary trial () [paras. 21 to 33]

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3	Punishments	Punishments generally Powers of different presiding officers Powers of various courts Types of punishments	Face to Face Instruction (poss. CAI)	Instructor; Print	Centralized instruction	20 min	National Defence Act, R.S.C. 1985, c. N-5 () [s. 165], Queen's Regulations and Orders for the Canadian Forces (QR&O) - Volume II - Disciplinary () [ch. 101.01, 108.09, 108.10, 108.11, 108.16, 108.19, 108.195], B-GG-005-027/AF-011 Military Justice at the Summary Trial Level 2.2 (B-GG-005-027/AF-011) [ch. 12 , paras. 15 to 18], JAG #162884 Military Law Digest Article - Election for Court-Martial () [paras. 15 to 18]

5. **TIME:**

Total class time	55 min
Instructional periods	1.1
Total Days	0.2

6. **Resources Required** a. CF supply documentation (electronic documentation preferred)

7. **Test Details:** See Annex B - Assessment Plan for details.

8. **Remarks:** The advice may be provided remotely.

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EO 018.03 Advise on referral of charges to DMP

1. **Performance:** Advise on referral of charges to DMP

2. **Conditions**:

   a. **Given:** References; resources as required; assistance as required.

   b. **Denied:** Direct supervision.

   c. **Environmental:** CF unit, base or wing headquarters, deployed internationally or domestically, sometimes under austere conditions.

3. **Standard**: The Legal Officer shall provide advice on referral of charges to DMP.

   a. Referral of charges for disposal under QR&O 108 IAW refs: LOQ-A3 http://laws-lois.justice.gc.ca/eng/acts/N-5/index.html, LOQ-A5-2 http://www.admfincs.forces.gc.ca/qro-orf/vol-02/index-eng.asp, LOQ-D1 http://www.forces.gc.ca/en/about-reports-pubs-military-law-summary-trial-level/index.page?, LOQ-D1 http://

   b. Process of referral of charges to DMP under QR&O 109 IAW refs: LOQ-A3 http://laws-lois.justice.gc.ca/eng/acts/N-5/index.html, LOQ-A5-2 http://www.admfincs.forces.gc.ca/qro-orf/vol-02/index-eng.asp, LOQ-D1 http://www.forces.gc.ca/en/about-reports-pubs-military-law-summary-trial-level/index.page?, LOQ-D1 http://

4. **Teaching Points:**

#	TEACHING POINT	DESCRIPTION	METHOD	MEDIA	ENVIRONMENT	TIME	REFERENCE
1	Referral of charges for disposal under QR&O 108	Referral by delegated officer to commanding officer Referral by commanding officer to superior commander Referral by commanding officer to delegated officer Referral by one presiding officer to another presiding officer Referral of charges originating from NIS	Basic Elearning (CBT/WBT)	Web Based Training; Print	Distributed instruction	20 min	National Defence Act, R.S.C. 1985, c. N-5 () [s. 165], Queen's Regulations and Orders for the Canadian Forces (QR&O) - Volume II - Disciplinary () [ch. 109], B-GG-005-027/AF-011 Military Justice at the Summary Trial Level 2.2 (B-GG-005-027/AF-011) [ch. 11, paras. 87 to 94; ch. 12 , paras. 15 to 18], JAG #162884 Military Law Digest Article - Election for Court-Martial () [paras. 15 to 18]
2	Process of referral of charges to DMP under QR&O 109	Process Documentary requirements Jurisdiction Potential outcomes Extent of discretion	Face to Face Instruction (poss. CAI)	Instructor	Centralized instruction	25 min	National Defence Act, R.S.C. 1985, c. N-5 () [s. 165], Queen's Regulations and Orders for the Canadian Forces (QR&O) - Volume II - Disciplinary () [ch. 109], B-GG-005-027/AF-011 Military Justice at the Summary Trial Level 2.2 (B-GG-005-027/AF-011) [ch. 11, paras. 87 to 94; ch. 12 , paras. 15 to 18], JAG #162884 Military Law Digest Article - Election for Court-Martial () [paras. 15 to 18]

5. **TIME:**

Total class time	45 min
Instructional periods	0.9
Total Days	0.2

6. **Resources Required** a. CF supply documentation (electronic documentation preferred)

7. **Test Details:** See Annex B - Assessment Plan for details.

8. **Remarks:** The advice may be provided remotely.

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PO 019 ADVISE WRT POST TRIAL ACTIVITIES

1. **Performance:** Advise wrt post trial activities

2. **Conditions:**

   a. **Given:** Disciplinary finding COC References Relevant documentation Relevant case law Other relevant law and policy Sufficient Telecommunications Consitution Act, 1867 Constitution Act, 1982 including Canadian Charter of Rights and Freedoms National Defence Act Criminal Code of Canada QR&O B-GG-005-027/AF011, Military Justice at the summary trial level. Vol. 2.2

   b. **Denied:** Direct Supervision

   c. **Environmental:** CF unit base or wing Headquarters Deployed internationally or domestically Under austere conditions

3. **Standard**: The Legal Officer shall advise wrt to post trial activities to include:

   a. Advise on summary trial reviews by review authority
   b. Advise on post-trial administration
   c. Advise on the legal issues related to detention

4. **Remarks:** Advice can be provided remotely

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ENABLING OBJECTIVES

EO 019.01 Advise on summary trial reviews by review authority

1. **Performance:** Advise on summary trial reviews by review authority
2. **Conditions**:
   a. **Given:** Relevant factual context, legislation, policy, case law, reference materials (including prior legal advice)
   b. **Denied:** Direct supervision
   c. **Environmental:** CF unit, base, or wing headquarters; deployed internationally or domestically; under austere conditions
3. **Standard**: The legal officer shall be capable of providing timely, solution-oriented advice to a summary trial review authority
   a. Review under QR&O 116.02 IAW refs: LOQ-A3 http://laws-lois.justice.gc.ca/eng/acts/N-5/index.html, LOQ-A5-2 http://www.admfincs.forces.gc.ca/qro-orf/vol-02/index-eng.asp, LOQ-D1 http://www.forces.gc.ca/en/about-reports-pubs-military-law-summary-trial-level/index.page?
   b. Reviews under QR&O 108.45 IAW refs: LOQ-A3 http://laws-lois.justice.gc.ca/eng/acts/N-5/index.html, LOQ-A5-2 http://www.admfincs.forces.gc.ca/qro-orf/vol-02/index-eng.asp, LOQ-D1 http://www.forces.gc.ca/en/about-reports-pubs-military-law-summary-trial-level/index.page?
4. **Teaching Points:**

#	TEACHING POINT	DESCRIPTION	METHOD	MEDIA	ENVIRONMENT	TIME	REFERENCE
1	Review under QR&O 116.02	Grounds for review Absence of tempporal limitations Possible outcomes Roles, responsibilities and powers of the review authority Roles and responsibilities of the legal advisor	Basic Elearning (CBT/WBT)	N/A	Combined (centralized and distributed)	20 min	National Defence Act, R.S.C. 1985, c. N-5 () [ss. 249 to 249.16], Queen's Regulations and Orders for the Canadian Forces (QR&O) - Volume II - Disciplinary () [Art. 116.02], B-GG-005-027/AF-011 Military Justice at the Summary Trial Level 2.2 (B-GG-005-027/AF-011) [ch. 15, paras. 1 to 4, 29 to 49]
2	Reviews under QR&O 108.45	Grounds for request Temporal limitations Roles responsibilities & authorities of the review authority Roles and responsibilities of the legal advisor possible outcomes Roles and responsibilities of assisting officer Roles and responsibilities of presiding officer	Face to Face Instruction (poss. CAI)	Instructor; Print	Combined (centralized and distributed)	20 min	National Defence Act, R.S.C. 1985, c. N-5 () [ss. 249 to 249.16], Queen's Regulations and Orders for the Canadian Forces (QR&O) - Volume II - Disciplinary () [Art. 116.02], B-GG-005-027/AF-011 Military Justice at the Summary Trial Level 2.2 (B-GG-005-027/AF-011) [ch. 15, paras. 1-28]

5. **TIME:**

Total class time	40 min
Instructional periods	0.8
Total Days	0.2

6. **Resources Required** a. CF supply documentation (electronic documentation preferred)
7. **Test Details:** See Annex B - Assessment Plan for details.

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8. **Remarks:** Advice can be provided remotely.

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EO 019.02 Advise on post-trial administration

1. **Performance:** Advise on post-trial administration

2. **Conditions**:

   a. **Given:** Relevant factual context, legislation, policy, case law, reference materials (including prior legal advice)

   b. **Denied:** Direct supervision

   c. **Environmental:** CF unit, base, or wing headquarters; deployed internationally or domestically; under austere conditions

3. **Standard**: The legal officer shall provide timely, solution-oriented advice to the chain of command regarding its obligations following the completion of a summary trial or court martial

   a. Unit post trial activities IAW refs: LOQ-A5-2 http://www.admfincs.forces.gc.ca/qro-orf/vol-02/index-eng.asp, LOQ-C4 http://admfincs.mil.ca/admfincs/subjects/daod/7006/0_e.asp, LOQ-C4 http://admfincs.mil.ca/admfincs/subjects/daod/7006/1_e.asp

4. **Teaching Points:**

#	TEACHING POINT	DESCRIPTION	METHOD	MEDIA	ENVIRONMENT	TIME	REFERENCE
1	Unit post trial activities	Unit registry of disciplinary proceedings Conduct sheet(s) Execution of sentence Court martial Updating RDP Removing CRO-imposed conditions Service record Bill C-10 amendments Bill C-15 amendments	Basic Elearning (CBT/WBT)	Web Based Training	Combined (centralized and distributed)	20 min	Queen's Regulations and Orders for the Canadian Forces (QR&O) - Volume II - Disciplinary () [ch. 107.13 to 107.16, 108.42 to 108.44, 112.81], DAOD 7006-0, Conduct Sheets (), DAOD 7006-1, Preparation and Maintenance of Conduct Sheets ()

5. **TIME:**

Total class time	20 min
Instructional periods	0.4
Total Days	0.1

6. **Resources Required** a. CF supply documentation (electronic documentation preferred)

7. **Test Details:** See Annex B - Assessment Plan for details.

8. **Remarks:** Include court martial and summary trial. Advice can be provided remotely.

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EO 019.03 Advise on the legal issues related to detention

1. **Performance:** Advise on the legal issues related to detention

2. **Conditions**:

   a. **Given:** Relevant factual context, legislation, policy, case law, reference materials (including prior legal advice)

   b. **Denied:** Direct supervision

   c. **Environmental:** CF unit, base, or wing headquarters; deployed internationally or domestically; under austere conditions

3. **Standard**: The legal officer shall provide timely and solution-oriented legal advice to the commanding officer and any other statutory decision-maker regarding the application and execution of the sentence of detention

   a. Grounds for suspension of detention IAW refs: LOQ-A5-2 http://www.admfincs.forces.gc.ca/qro-orf/vol-02/index-eng.asp

4. **Teaching Points:**

#	TEACHING POINT	DESCRIPTION	METHOD	MEDIA	ENVIRONMENT	TIME	REFERENCE
1	Grounds for suspension of detention	Roles and authorities of commander of a command Circumstances relating to suspension of detention	Face to Face Instruction (poss. CAI)	N/A	Combined (centralized and distributed)	20 min	Queen's Regulations and Orders for the Canadian Forces (QR&O) - Volume II - Disciplinary () [Art. 108.45(17) Chapter 114 - chapandAtilde;andreg;tre 114 Chapter 116 - chapandAtilde;andreg;tre 116 Chapter 118 - chapandAtilde;andreg;tre 118]

5. **TIME:**

Total class time	20 min
Instructional periods	0.4
Total Days	0.1

6. **Resources Required** a. CF supply documentation (electronic documentation preferred)

7. **Test Details:** See Annex B - Assessment Plan for details.

8. **Remarks:** Advice can be provided remotely.

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PO 020 EXPLAIN THE ROLE AND RESPONSIBILITIES OF COUNSEL BEFORE MILITARY AND APPELLATE COURTS

1. **Performance:** Explain the role and responsibilities of counsel before military and appellate courts

2. **Conditions:**

   a. **Given:** Matter refered to a court References Relevant documentation Relevant case law Other relevant law and policy Sufficient Telecommunications Consitution Act, 1867 Constitution Act, 1982 including Canadian Charter of Rights and Freedoms National Defence Act Criminal Code of Canada QR&O

   b. **Denied:** Nil

   c. **Environmental:** CF unit base or wing Headquarters Deployed internationally or domestically Under austere conditions

3. **Standard:** The Legal Officer shall act as counsel before military and appellate courts to include:

   a. Explain the roles and responsibilities of counsel at court martial
   b. Explain the roles and responsibilities of counsel at a show cause hearing
   c. Explain the process of appealing a court martial judgment

4. **Remarks:**

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ENABLING OBJECTIVES

EO 020.01 Explain the roles and responsibilities of counsel at court martial

1. **Performance:** Explain the roles and responsibilities of counsel at court martial

2. **Conditions**:

   a. **Given:** Relevant factual context, legislation, policy, case law, reference materials (including prior legal advice)

   b. **Denied:** Direct supervision

   c. **Environmental:** CF unit, base, or wing headquarters; deployed internationally or domestically; under austere conditions

3. **Standard**: The legal officer shall explain, in general terms, the roles and responsibilities of prosecution and defence counsel before military tribunals

   a. Military rules of evidence IAW refs: LOQ-A5-5 http://laws-lois.justice.gc.ca/eng/regulations/C.R.C.,_c._1049/

   b. Court martial process under QR&O 112 IAW refs: LOQ-A5-2 http://www.admfincs.forces.gc.ca/qro-orf/vol-02/index-eng.asp

   c. Convening courts martial under QR&O 111 IAW refs: LOQ-A5-2 http://www.admfincs.forces.gc.ca/qro-orf/vol-02/index-eng.asp

4. **Teaching Points:**

#	TEACHING POINT	DESCRIPTION	METHOD	MEDIA	ENVIRONMENT	TIME	REFERENCE
1	Military rules of evidence	N/A	Face to Face Instruction (poss. CAI)	Instructor; Print	Combined (centralized and distributed)	20 min	Military Rules of Evidence (C.R.C., c. 1049) ()
2	Court martial process under QR&O 112	N/A	Face to Face Instruction (poss. CAI)	Instructor; Print;	Combined (centralized and distributed)	20 min	Queen's Regulations and Orders for the Canadian Forces (QR&O) - Volume II - Disciplinary () [Chapter 112 - Chapitre 112]
3	Convening courts martial under QR&O 111	Role of DMP Role of CMA Assistance by units	Face to Face Instruction (poss. CAI)	Instructor; Print	Combined (centralized and distributed)	20 min	Queen's Regulations and Orders for the Canadian Forces (QR&O) - Volume II - Disciplinary () [Chapter 110 Chapter 111 - chapandAtilde;andreg;tre 111]

5. **TIME:**

Total class time	60 min
Instructional periods	1.2
Total Days	0.2

6. **Resources Required** a. CF supply documentation (electronic documentation preferred)

7. **Test Details:** See Annex B - Assessment Plan for details.

8. **Remarks:** Explanation can be provided remotely.

A-2015-01212--0146

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EO 020.02 Explain the roles and responsibilities of counsel at a show cause hearing

1. **Performance:** Explain the roles and responsibilities of counsel at a show cause hearing

2. **Conditions**:

   a. **Given:** Relevant factual context, legislation, policy, case law, reference materials (including prior legal advice)

   b. **Denied:** Direct supervision

   c. **Environmental:** CF unit, base, or wing headquarters; deployed internationally or domestically; under austere conditions

3. **Standard**: The legal officer shall describe, generally, the roles and responsibilities of prosecution and defence counsel at a show cause hearing before a military judge

   a. Show cause hearing under section 159 NDA QR&O 105 IAW refs: LOQ-A3 http://laws-lois.justice.gc.ca/eng/acts/N-5/index.html, LOQ-A5-2 http://www.admfincs.forces.gc.ca/qro-orf/vol-02/index-eng.asp

4. **Teaching Points:**

#	TEACHING POINT	DESCRIPTION	METHOD	MEDIA	ENVIRONMENT	TIME	REFERENCE
1	Show cause hearing under section 159 NDA QR&O 105	Role by DMP Role by defence counsel Role by judiciairy/CMA Assistance by DJA/Units	Face to Face Instruction (poss. CAI)	Istructor, Print	Combined (centralized and distributed)	20 min	National Defence Act, R.S.C. 1985, c. N-5 () [s. 159], Queen's Regulations and Orders for the Canadian Forces (QR&O) - Volume II - Disciplinary () [Chapter 105 - chapandAtilde;andreg;tre 105]

5. **TIME:**

Total class time	20 min
Instructional periods	0.4
Total Days	0.1

6. **Resources Required** a. CF supply documentation (electronic documentation preferred)

7. **Test Details:** See Annex B - Assessment Plan for details.

8. **Remarks:** Explanation can be provided remotely.

A-2015-01212--0147

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DND - MDN

EO 020.03 Explain the process of appealing a court martial judgment

1. **Performance:** Explain the process of appealing a court martial judgment

2. **Conditions**:

   a. **Given:** Relevant factual context, legislation, policy, case law, reference materials (including prior legal advice)

   b. **Denied:** Direct supervision

   c. **Environmental:** CF unit, base, or wing headquarters; deployed internationally or domestically; under austere conditions

3. **Standard**: The legal officer shall accurately describe the steps necessary to appeal a decision or finding at court martial

   a. Appeal process IAW refs: LOQ-A3 http://laws-lois.justice.gc.ca/eng/acts/N-5/index.html, LOQ-A5-2 http://www.admfincs.forces.gc.ca/qro-orf/vol-02/index-eng.asp, LOQ-D5 http://www.cmac-cacm.ca/business/rules-eng.shtml

4. **Teaching Points:**

#	TEACHING POINT	DESCRIPTION	METHOD	MEDIA	ENVIRONMENT	TIME	REFERENCE
1	Appeal process	NDA & QR&O 116 CMAC rules of court SCC rules of court	Basic Elearning (CBT/WBT)	Web Based Training	Combined (centralized and distributed)	20 min	National Defence Act, R.S.C. 1985, c. N-5 () [ss. 228 to 245], Queen's Regulations and Orders for the Canadian Forces (QR&O) - Volume II - Disciplinary () [Chapter 116 - chapandAtilde;andreg;tre 116], CMAC Rules of Court ()

5. **TIME:**

Total class time	20 min
Instructional periods	0.4
Total Days	0.1

6. **Resources Required** a. CF supply documentation (electronic documentation preferred)

7. **Test Details:** See Annex B - Assessment Plan for details.

8. **Remarks:** Explanation can be provided remotely.

A-2015-01212--0148

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DND - MDN

PO 021 ADVISE ON THE LEGAL BASES AND AUTHORITIES FOR CAF OPERATIONS

1. **Performance:** Advise on the legal bases and authorities for CAF operations

2. **Conditions:**

   a. **Given:** References including Legislative OIC Orders, directives and authorisations Functioning telecomunications and network Hardware

   b. **Denied:** Direct supervision

   c. **Environmental:** CAF unit base or wing Headquarters Deployed internationally or domestically Under austere or stressful conditions.

3. **Standard:** The legal officer shall advise on the legal bases and authorities for CAF operations including: international operations domestic operations continental operations

   a. Advise on legal bases and authorities pertaining to international CAF operations

   b. Advise on legal bases and authorities pertaining to domestic CAF operations

   c. Advise on legal bases and authorities pertaining to continental CAF operations

4. **Remarks:** bases = legal foundation authorities = jurisdiction of a particular level of government

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ENABLING OBJECTIVES

EO 021.01 Advise on legal bases and authorities pertaining to international CAF operations

1. **Performance:** Advise on legal bases and authorities pertaining to international CAF operations

2. **Conditions**:

   a. **Given:** References including Legislative OIC Orders, directives and authorisations Functioning telecommunications and network Hardware.

   b. **Denied:** Direct supervision.

   c. **Environmental:** CAF unit base or wing Headquarters Deployed internationally or domestically Under austere or stressful conditions.

3. **Standard**: The legal officer shall advise on the legal bases and authorities for CAF international operations.

   a. Application of public international law IAW refs: LOQ-A3 http://laws-lois.justice.gc.ca/eng/acts/N-5/index.html, LOQ-A3 http://laws-lois.justice.gc.ca/eng/a cij.org/documents/index.php?p1=4&p2=2&p3=0&, LOQ-A4 http://www.ohchr.org/EN/ProfessionalInterest/Pages/OPCCPR1.aspx, LOQ-A4- http://www.i 0a655eb30e16/0/rome_statute_english.pdf, LOQ-A4 http://laws-lois.justice.gc.ca/eng/acts/G-3/, LOQ-A4 http://laws-lois.justice.gc.ca/eng/acts/C-45.9/, L

   b. Roles and responsibilities of stakeholders in international operations IAW refs: LOQ-C1 http://sjs.mil.ca/dgoperations/_docs/CDS_Directives/CF%20C2%20Directive%202013/Eng/Annex%20C%20CF%20C2%20and%20the%20Delegation LOQ-D4 http://cjoc-coic.mil.ca/sites/intranet-eng.aspx?page=14540

   c. Crown prerogative and other aspects of the domestic legal regime IAW refs: LOQ-A1 http://laws-lois.justice.gc.ca/eng/CONST/page-1.html, LOQ-D1 http legal-paper-2-crown-prerogative.pdf, LOQ-D1 http://

4. **Teaching Points:**

#	TEACHING POINT	DESCRIPTION	METHOD	MEDIA	ENVIRONMENT	TIME	REFERENCE

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1	Application of public international law	Treaties, customary international law, general principles of law, subsidiary sources, subjects of international law, States and non-States actors, Enforcement of international legal obligations.	Face to Face Instruction (poss. CAI)	N/A	N/A	20 min	National Defence Act, R.S.C. 1985, c. N-5 (), Criminal Code, R.S.C., 1985, c. C-46 (), Statute of the International Court of Justice (), Optional Protocol to the International Covenant on Civil and Political Rights (), Rome Statute of the International Criminal Court (), Geneva Conventions Act (R.S.C., 1985, c. G-3) (), Crimes Against Humanity and War Crimes Act (S.C. 2000, c. 24) (), B-GJ-005-104/FP-024 The Operational Law Manual, Draft, version 4.1a (2007) (B-GJ-005-104/FP-024)
2	Roles and responsibilities of stakeholders in international operations	Main stakeholders (Canadian Joint Operations Command (CJOC), CJOC Expeditionary, Canadian Special Operations Forces Command (CANSOFCOM), Maritime Command (MARCOM), Land Force Command (LFC), Air Command (AIRCOM). CAF Command and Control framework for international operations (context, organization, Task Forces (TF), Command and Control (C2), National Command, Administrative Control, Liaison and Coordination, National Constraints and Assets, Maritime, Land and Air forces, Special Operations forces, Operational support, Military Personnel Command Forces, Military Police forces) United Nations Operations (Operational Framework, Administrative Considerations) Force Employment (Planning and Preparation, Initiation, Legal and policy considerations)	Face to Face Instruction (poss. CAI)	N/A	N/A	10 min	CDS Directive of CF Command and Control and Delegation of Authority for Force Employment, 28 April 2013 () [Annex E], Canadian Joint Operations Command website ()

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3	Crown prerogative and other aspects of the domestic legal regime	What is the Crown prerogative, Who exercises the Crown prerogative, The Crown prerogative and its use to deploy the CAF.	Face to Face Instruction (poss. CAI)	N/A	N/A	10 min	Constitution Act, 1867, 30 & 31 Victoria, c. 3 (U.K.), R.S.C. 1985, App. II, No. 11. (), A-LG-007-SLA/AF-002 The Crown prerogative in Canada and its use in the context of international military deployments (Office of the Judge Advocate General Strategic Legal Paper Series – Issue 2) (A-LG-007-SLA/AF-002), B-GJ-005-104/FP-024 The Operational Law Manual, Draft, version 4.1a (2007) (B-GJ-005-104/FP-024) [Chapter 5]

5. **TIME:**

Total class time	40 min
Instructional periods	0.8
Total Days	0.2

6. **Resources Required** a. CF supply documentation (electronic documentation preferred)

7. **Test Details:** See Annex B - Assessment Plan for details.

8. **Remarks:**

A-2015-01212--0152

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DND - MDN

EO 021.02 Advise on legal bases and authorities pertaining to domestic CAF operations

1. **Performance:** Advise on legal bases and authorities pertaining to domestic CAF operations

2. **Conditions**:

   a. **Given:** References including Legislative OIC Orders, directives and authorisations Functioning telecommunications and network Hardware.

   b. **Denied:** Direct supervision.

   c. **Environmental:** CAF unit base or wing Headquarters Deployed internationally or domestically Under austere or stressful conditions.

3. **Standard**: The legal officer shall advise on the legal bases and authorities for domestic CAF operations.

   a. Roles and responsibilities of stakeholders in CAF domestic operations IAW refs: LOQ-D1 http://, LOQ-C1 http://sjs.mil.ca/dgoperations/_docs/CDS_Directives/CF%20C2%20Directive%202013/Eng/Annex%20C%20CF%20C2%20and%20the%20Delegation LOQ-D4 http://cjoc-coic.mil.ca/sites/intranet-eng.aspx?page=14540

   b. Domestic legal regime IAW refs: LOQ-D1 http://, LOQ-D4 http://cjoc-coic.mil.ca/sites/intranet-eng.aspx?page=14540

4. **Teaching Points:**

#	TEACHING POINT	DESCRIPTION	METHOD	MEDIA	ENVIRONMENT	TIME	REFERENCE
1	Roles and responsibilities of stakeholders in CAF domestic operations	Roles and responsibilities (Chief of the Defence Staff, Canadian Joint Operations Command (CJOC), Canadian Special Operations Forces Command (CANSOFCOM), Commanders of Royal Canadian Navy (RCN), Canadian Army (CA) and Royal Canadian Air Force (RCAF), Commander Military Personnel Command, Chief of Defence Intelligence, Vice Chief of the Defence Staff I Commander Canadian Forces Military Police Group) CAF Command and Control framework for domestic operations (Maritime, Land and Air forces, Special Operations forces, Military Personnel Command Forces, Military Police Forces, Operational Support, Search and Rescue, Explosive Ordinance Disposal) Force Employment (Routine, Contingency and Rapid-Response Operations)	Face to Face Instruction (poss. CAI)	N/A	N/A	10 min	B-GJ-005-104/FP-024 The Operational Law Manual, Draft, version 4.1a (2007) (B-GJ-005-104/FP-024) [Chapters 6, 7], CDS Directive of CF Command and Control and Delegation of Authority for Force Employment, 28 April 2013 () [Annex C], Canadian Joint Operations Command website ()

A-2015-01212--0153

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2	Domestic legal regime	What is the Crown prerogative, the Crown prerogative in the defence of Canada and domestic operations, Constitution Act, 1867, Legal framework of DND and the CAF, Mandate, Exercising the mandate, Provision of Services, DND Provision of Services Policy (PSP), Non-Defence Use of DND Real Property, CAF Support as a Public Service. CAF Assistance to Law enforcement Agencies and Aid to the Civil Power (legal framework) CAF Assistance to Provincial Law Enforcement Agencies (CF Assistance to Provincial Police Forces Directions (CFAPPFD), Application of subsection 273.6(2) NDA to provincial policing). CAF Assistance to Federal Law Enforcement Agencies and Other Federal Government Departments (Assistance to Federal Penitentiaries Order, Canadian Forces Armed Assistance Directions (CFAAD), Application of NDA subsection 273.6(2) to federal law enforcement, CAF Assistance pursuant to Memoranda of Understanding (MOU), MOU for CAF assistance to RCMP counter drug operations, MOU for CAF assistance to the Department of Fisheries and Oceans (DFO), Legal protection for CAF members providing support to DFO).	Face to Face Instruction (poss. CAI)	N/A	N/A	30 min	B-GJ-005-104/FP-024 The Operational Law Manual, Draft, version 4.1a (2007) (B-GJ-005-104/FP-024) [Chapters 6, 7], Canadian Joint Operations Command website ()

5. **TIME:**

Total class time	40 min
Instructional periods	0.8
Total Days	0.2

6. **Resources Required** a. CF supply documentation (electronic documentation preferred)

7. **Test Details:** See Annex B - Assessment Plan for details.

8. **Remarks:**

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DIVULGUE EN VERTU DE LAI - RENSEIGNEMENTS NON CLASSIFIES
DND - MDN

EO 021.03 Advise on legal bases and authorities pertaining to continental CAF operations

1. **Performance:** Advise on legal bases and authorities pertaining to continental CAF operations

2. **Conditions**:

   a. **Given:** References including Legislative OIC Orders, directives and authorisations Functioning telecommunications and network Hardware

   b. **Denied:** Direct supervision.

   c. **Environmental:** CAF unit base or wing Headquarters Deployed internationally or domestically Under austere or stressful conditions.

3. **Standard**: The legal officer shall advise on the legal bases and authorities for CAF continental operations.

   a. Continental defence arrangements and agreements IAW refs: LOQ-D1 http://, LOQ-C1 http://sjs.mil.ca/dgoperations/_docs/CDS_Directives/CF%20C2%20Directive%202013/Eng/Annex%20C%20CF%20C2%20and%20the%20Delegation

4. **Teaching Points:**

#	TEACHING POINT	DESCRIPTION	METHOD	MEDIA	ENVIRONMENT	TIME	REFERENCE
1	Continental defence arrangements and agreements	CJOC responsibilities for CAF operations, roles of CJOC Deputy Commanders. North American Aerospace Defense Command (NORAD) (Background, Organisation, Operations, Air Defence Canadian Contribution, Counter-Drug Mission, Canada-U.S. Defence Cooperation). North Atlantic Treaty Organization (NATO) (Origins of the Alliance, The North Atlantic Treaty, NATO Military combat and enforcement operations, the process of NATO enlargement, NATO Headquarters, the North Atlantic Council (NAC), the NATO Secretary General) NATO Military Structure (The NATO Military Committee (MC), Allied Command Operations (ACO), Allied Command Transformation (ACT), Canada - United States Regional Planning Group (CUSRPG)). NATO Partnerships (Euro-Atlantic Partnership Council (EAPC), Partnership for Peace, NATO-Russia Council (NRC), Mediterranean Dialogue (MD), Istanbul Cooperation Initiative (ICI).	Face to Face Instruction (poss. CAI)	N/A	N/A	20 min	B-GJ-005-104/FP-024 The Operational Law Manual, Draft, version 4.1a (2007) (B-GJ-005-104/FP-024) [Chapter 25], CDS Directive of CF Command and Control and Delegation of Authority for Force Employment, 28 April 2013 () [Annex D]

5. **TIME:**

Total class time	20 min
Instructional periods	0.4
Total Days	0.1

6. **Resources Required** a. CF supply documentation (electronic documentation preferred)

7. **Test Details:** See Annex B - Assessment Plan for details.

8. **Remarks:**

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DIVULGUE EN VERTU DE LAI - RENSEIGNEMENTS NON CLASSIFIES
DND - MDN

PO 022 PROVIDE LEGAL SUPPORT DURING THE PLANNING OF OPERATIONS

1. **Performance:** Provide legal support during the planning of operations

2. **Conditions:**

   a. **Given:** References including description of the operational level planning as conducted by the CF, when and where it is used, Joint Operational Planning Group (JOPG), types and steps to be followed.

   b. **Denied:** Direct supervision.

   c. **Environmental:** CF unit base or wing Headquarters deployed internationally or domestically under austere or stressful conditions.

3. **Standard**: The legal officer shall advise on the legal bases for the planning of CF operations.

   a. Provide legal input to the Operational Planning Process (OPP)

   b. Provide legal advice on OPP products

4. **Remarks:**

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DND - MDN

ENABLING OBJECTIVES

EO 022.01 Provide legal input to the Operational Planning Process (OPP)

1. **Performance:** Provide legal input to the Operational Planning Process (OPP)

2. **Conditions**:

   a. **Given:** References including description of the operational level planning as conducted by the CF, when and where it is used, Joint Operational Planning Group (JOPG), types and steps to be followed.

   b. **Denied:** Direct supervision.

   c. **Environmental:** CF unit base or wing Headquarters deployed internationally or domestically under austere or stressful conditions.

3. **Standard**: The legal officer shall advise on the legal bases for the planning of CF operations.

   a. Operational planning process (OPP) IAW refs: LOQ-D1 http://, LOQ-D1 http://publications.gc.ca/collections/collection_2010/forces/D2-252-500-2008-eng.pdf

4. **Teaching Points:**

#	TEACHING POINT	DESCRIPTION	METHOD	MEDIA	ENVIRONMENT	TIME	REFERENCE
1	Operational planning process (OPP)	Categories of CAF Operations (Routine and Contingency Operations) Domestic Operations (Routine and Contingency Operations, Transitions) International Contingency Operations Principles of CAF Operations Phases of an operation (warning, preparation, deployment, employment, redeployment) Levels of planning (government policy, strategic, operational, tactical). Stages to the operational planning process (Initiation, Orientation, Course of Action development, Plan development, Plan review).	Face to Face Instruction (poss. CAI)	N/A	N/A	15 min	B-GJ-005-300/FP-001 Operations (B-GJ-005-300/FP-001), B-GJ-005-500/FP-000 The CF Operational Planning Process (B-GJ-005-500/FP-000)

5. **TIME:**

Total class time	15 min
Instructional periods	0.3
Total Days	0.1

6. **Resources Required** a. CF supply documentation (electronic documentation preferred)

7. **Test Details:** See Annex B - Assessment Plan for details.

8. **Remarks:**

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DND - MDN

EO 022.02 Provide legal advice on OPP products

1. **Performance:** Provide legal advice on OPP products

2. **Conditions**:

   a. **Given:** References including description of the operational level planning as conducted by the CF, when and where it is used, Joint Operational Planning Group (JOPG), types and steps to be followed.

   b. **Denied:** Direct supervision.

   c. **Environmental:** CF unit base or wing Headquarters deployed internationally or domestically under austere or stressful conditions.

3. **Standard**: The legal officer shall advise on the legal bases for the planning of CF operations.

   a. products reviewed by the legal officer IAW refs: LOQ-D1 http://, LOQ-D1 http://publications.gc.ca/collections/collection_2010/forces/D2-252-500-2008-eng.pdf

   b. Products produced by the legal officer IAW refs: LOQ-D1 http://, LOQ-D1 http://publications.gc.ca/collections/collection_2010/forces/D2-252-500-2008-eng.pdf

4. **Teaching Points:**

#	TEACHING POINT	DESCRIPTION	METHOD	MEDIA	ENVIRONMENT	TIME	REFERENCE
1	products reviewed by the legal officer	Role of the operational legal advisor (legal officer attendance at all planning sessions, reviewing all courses of action (COAs) developed by the team. Attendance at all briefings to the COMD (Mission analysis brief, info brief, and decision brief) to deal with any legal issues/questions that may arise during the briefing. Review all OPP products, especially the OPLAN and its annexes. Attendance to the planning sessions to ensure that if there are legal concerns with any of the COAs considered by the team that the legal concerns are made known before they are too far into the planning cycle.	Face to Face Instruction (poss. CAI)	N/A	N/A	15 min	B-GJ-005-300/FP-001 Operations (B-GJ-005-300/FP-001), B-GJ-005-500/FP-000 The CF Operational Planning Process (B-GJ-005-500/FP-000)
2	Products produced by the legal officer	Preparation of the legal annex to the operational plan (aim, legal framework, legal support, legal organization, general legal guidance (Code of Service Discipline, Aid to Law Enforcement Agencies (ALEA), Aid of the Civil Power, Peace Officer status, Use of Force, Summary Cards, Protection from Civil Liability, Information and Intelligence Collection and Sharing, Legal Support to Military Police and CF National Investigation Service (CFNIS), Claims By or Against the Crown, Contracts, Rental Vehicles, Military Administrative Investigations, Environmental Protection, Continuing Legal Consultation).	Face to Face Instruction (poss. CAI)	N/A	N/A	10 min	B-GJ-005-300/FP-001 Operations (B-GJ-005-300/FP-001), B-GJ-005-500/FP-000 The CF Operational Planning Process (B-GJ-005-500/FP-000)

5. **TIME:**

Total class time	25 min
Instructional periods	0.5
Total Days	0.1

6. **Resources Required** a. CF supply documentation (electronic documentation preferred)

7. **Test Details:** See Annex B - Assessment Plan for details.

8. **Remarks:**

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DND - MDN

PO 023 ADVISE ON THE USE OF FORCE

1. **Performance:** Advise on the use of force

2. **Conditions:**

   a. **Given:** References including ROE directives and authorizations, CF use of force manual, self defense doctrine, functioning telecommunications and network hardware.

   b. **Denied:** Direct supervision.

   c. **Environmental:** CF unit base or wing Headquarters, deployed internationally or domestically, sometimes under austere or stressful conditions.

3. **Standard**: The legal officer shall advise on the use of force.

   a. Advise on Rules of Engagement (ROE)

   b. Advise on self-defence

4. **Remarks:**

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DND - MDN

ENABLING OBJECTIVES

EO 023.01 Advise on Rules of Engagement (ROE)

1. **Performance:** Advise on Rules of Engagement (ROE)

2. **Conditions**:

   a. **Given:** References including ROE directives and authorizations, CF use of force manual.

   b. **Denied:** Direct supervison.

   c. **Environmental:** CF unit base or wing Headquarters, deployed internationally or domestically, sometimes under austere or stressful conditions.

3. **Standard**: The legal officer shall advise on the rules of engagement (ROE).

   a. (BT0030, BT0065, BT0060, BT0090) Advise on generation of ROE

      i. Legal sources for the use of force IAW refs: LOQ-A3 http://laws-lois.justice.gc.ca/eng/acts/C-46/index.html, LOQ-D1 http://cfd.mil.ca/websites/Resources/dgfda/Pubs/CF%20Joint%20Doctrine%20Publications/CF%20Joint%20Doctrine%20B-GJ-005-501%20FP-001%20Use%20of%20Force%20-%20EN%20(Aug%2008).pdf, LOQ-D1 http://cda.mil.ca/cfmlc-cdmfc/doc/LOACatOperationalandTacticalLevels.pdf

      ii. Roles and responsibilities of stakeholders in the generation of ROEs IAW refs: LOQ-D1 http://cfd.mil.ca/websites/Resources/dgfda/Pubs/CF%20Joint%20Doctrine%20Publications/CF%20Joint%20Doctrine%20B-GJ-005-501%20FP-001%20Use%20of%20Force%20-%20EN%20(Aug%2008).pdf, LOQ-D1 http://cda.mil.ca/cfmlc-cdmfc/doc/LOACatOperationalandTacticalLevels.pdf

      iii. ROE authorisation process IAW refs: LOQ-D1 http://cfd.mil.ca/websites/Resources/dgfda/Pubs/CF%20Joint%20Doctrine%20Publications/CF%20Joint%20Doctrine%20B-GJ-005-501%20FP-001%20Use%20of%20Force%20-%20EN%20(Aug%2008).pdf, LOQ-D1 http://cda.mil.ca/cfmlc-cdmfc/doc/LOACatOperationalandTacticalLevels.pdf

   b. Advise on application of ROE

      i. Principal components of ROE for international operations IAW refs: LOQ-D1 http://cfd.mil.ca/websites/Resources/dgfda/Pubs/CF%20Joint%20Doctrine%20Publications/CF%20Joint%20Doctrine%20B-GJ-005-501%20FP-001%20Use%20of%20Force%20-%20EN%20(Aug%2008).pdf, LOQ-D1 http://cda.mil.ca/cfmlc-cdmfc/doc/LOACatOperationalandTacticalLevels.pdf

      ii. Principal components of ROE for domestic operations IAW refs: LOQ-A3 http://laws-lois.justice.gc.ca/eng/acts/C-46/index.html, LOQ-D1 http://cfd.mil.ca/websites/Resources/dgfda/Pubs/CF%20Joint%20Doctrine%20Publications/CF%20Joint%20Doctrine%20B-GJ-005-501%20FP-001%20Use%20of%20Force%20-%20EN%20(Aug%2008).pdf, LOQ-D1 http://cda.mil.ca/cfmlc-cdmfc/doc/LOACatOperationalandTacticalLevels.pdf

4. **Teaching Points:**

#	TEACHING POINT	DESCRIPTION	METHOD	MEDIA	ENVIRONMENT	TIME	REFERENCE
1	Advise on generation of ROE	Process of developing ROE (amendment, amplification, implementation, request, cancelation process)	Face to Face Instruction (poss. CAI)	N/A	N/A	20 min	
1.1	Legal sources for the use of force	international context: Domestic context: Relevant foreign/ domestic law:	Face to Face Instruction (poss. CAI)	N/A	N/A	10 min	Criminal Code, R.S.C., 1985, c. C-46 () [Sections 26, 27, 30, 34, 37 to 42], B-GJ-005-501/FP-001 Use of Force for CF Operations (B-GJ-005-501/FP-001), B-GJ-005-104/FP-021 Law of Armed Conflict at the Operational and Tactical Level (B-GJ-005-104/FP-021)

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1.2	Roles and responsibilities of stakeholders in the generation of ROEs	CDS SJS and SJSLA CJOC and CJOC LA Subordinate units and formations and their legal advisors	Face to Face Instruction (poss. CAI)	N/A	N/A	10 min	B-GJ-005-501/FP-001 Use of Force for CF Operations (B-GJ-005-501/FP-001), B-GJ-005-104/FP-021 Law of Armed Conflict at the Operational and Tactical Level (B-GJ-005-104/FP-021)
1.3	ROE authorisation process	Roles of: CDS SJS and SJSLA CJOC and CJOC LA Subordinate formations and their LEGAD ROE development (request (ROEREQ), authorization (ROEAUTH imput), amendment, implementation (ROEIMP), cancelation (ROECX)	Face to Face Instruction (poss. CAI)	N/A	N/A	20 min	B-GJ-005-501/FP-001 Use of Force for CF Operations (B-GJ-005-501/FP-001), B-GJ-005-104/FP-021 Law of Armed Conflict at the Operational and Tactical Level (B-GJ-005-104/FP-021)
2	Advise on application of ROE	Principal components of ROE for international and domestic operations.	Face to Face Instruction (poss. CAI)	N/A	N/A	20 min	
2.1	Principal components of ROE for international operations	Definition, purposes and legal effects of ROE Deadly and non-deadly force ROE Excessive force Legal basis for operations (UN Charter, UNSCR) National constraints Multi-national operations ROE Development and communication of ROE	Face to Face Instruction (poss. CAI)	N/A	N/A	20 min	B-GJ-005-501/FP-001 Use of Force for CF Operations (B-GJ-005-501/FP-001), B-GJ-005-104/FP-021 Law of Armed Conflict at the Operational and Tactical Level (B-GJ-005-104/FP-021)
2.2	Principal components of ROE for domestic operations	CF Standing ROE Purpose of ROE Definition, purposes and legal effects of ROE Non-deadly force ROE Excessive force Legal basis for domestic operations National constraints Development and communication of ROE	Face to Face Instruction (poss. CAI)	N/A	N/A	20 min	Criminal Code, R.S.C., 1985, c. C-46 () [Sections 26, 27, 30, 34, 37 to 42], B-GJ-005-501/FP-001 Use of Force for CF Operations (B-GJ-005-501/FP-001), B-GJ-005-104/FP-021 Law of Armed Conflict at the Operational and Tactical Level (B-GJ-005-104/FP-021)

5. **TIME:**

Total class time	120 min
Instructional periods	2.4
Total Days	0.5

6. **Resources Required** a. CF supply documentation (electronic documentation preferred)

7. **Test Details:** See Annex B - Assessment Plan for details.

8. **Remarks:**

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DND - MDN

EO 023.02 Advise on self-defence

1. **Performance:** Advise on self-defence

2. **Conditions**:

   a. **Given:** References including CF use of force manual and self defense doctrine and types of self-defences.

   b. **Denied:** Direct supervision.

   c. **Environmental:** CF unit base or wing Headquarters, deployed internationally or domestically, sometimes under austere or stressful conditions.

3. **Standard**: The legal officer shall advise on self-defence.

   a. Legal regime relating to self defence IAW refs: LOQ-A3 http://laws-lois.justice.gc.ca/eng/acts/C-46/index.html, LOQ-D1 http://cfd.mil.ca/websites/Resources/dgfda/Pubs/CF%20Joint%20Doctrine%20Publications/CF%20Joint%20Doctrine%20B-GJ-005-501%20FP-001%20Use%20of%20Force%20-%20EN%20(Aug%2008).pdf, LOQ-D1 http://cda.mil.ca/cfmlc-cdmfc/doc/LOACatOperationalandTacticalLevels.pdf

4. **Teaching Points:**

#	TEACHING POINT	DESCRIPTION	METHOD	MEDIA	ENVIRONMENT	TIME	REFERENCE
1	Legal regime relating to self defence	Use of force and self-defence in domestic operations (Self-defence, Use of force to protect property, Use of force and maintenance of law and order, Unlawful use of force). Hostile acts and hostile intent (Hostile act against Canada, hostile act against CAF personnel, units or forces, hostile intent against Canada, hostile intent against CAF personnel, units or forces, determination of hostile intent against Canada and CAF personnel, units or forces). Categories of self-defence (National self-defence, Foreign violations of Canadian territory, territorial waters or airspace, personal, unit or force self-defence, exercising the right of self-defence, response to hostile intent, restriction on response to hostile intent, hold fire orders, self-defence during combined operations, cross-boundary or cross-border fire). Use of force and self-defence in international operations (Article 51 of the UN Charter; when Armed attack occurs, self-defence, anticipatory self-defence, and pre-emptive self-defence, defence of nationals outside the territory of the state, necessity and proportionality, geographic and temporal parameters, the Until clause of Article 51, the Reporting requirement of Article 51, Security Council Resolutions: enforcement action, self-defence or both, collective self-defence)).	Face to Face Instruction (poss. CAI)	N/A	N/A	40 min	Criminal Code, R.S.C., 1985, c. C-46 () [Sections 26, 27, 30, 34, 37 to 42], B-GJ-005-501/FP-001 Use of Force for CF Operations (B-GJ-005-501/FP-001), B-GJ-005-104/FP-021 Law of Armed Conflict at the Operational and Tactical Level (B-GJ-005-104/FP-021)

5. **TIME:**

Total class time	40 min
Instructional periods	0.8
Total Days	0.2

6. **Resources Required** a. CF supply documentation (electronic documentation preferred)

7. **Test Details:** See Annex B - Assessment Plan for details.

8. **Remarks:**

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DND - MDN

PO 024 ADVISE ON LEGAL ISSUES PERTAINING TO PW & DETAINEES

1. **Performance:** Advise on legal issues pertaining to PW & detainees

2. **Conditions:**

   a. **Given:** References including Geneva Conventions III & IV, Use of Force in CF Operations Manual, and PW Handling, Detainees and Interrogation and Tactical Questioning in International Operations Manual.

   b. **Denied:** Direct supervision.

   c. **Environmental:** CF unit base or wing Headquarters, deployed internationally or domestically, sometimes under austere or stressful conditions.

3. **Standard**: The legal officer shall advise on legal issues pertaining to PW & detainees.

   a. Advise on status
   b. Advise on status determination
   c. Advise on standard of treatment
   d. Advise on interrogation and questioning
   e. Advise on release, transfer or return

4. **Remarks:**

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DIVULGUE EN VERTU DE LAI - RENSEIGNEMENTS NON CLASSIFIES
DND - MDN

ENABLING OBJECTIVES

EO 024.01 Advise on status

1. **Performance:** Advise on status

2. **Conditions**:

   a. **Given:** References including Geneva Conventions III & IV, Use of Force in CF Operations Manual, and PW Handling, Detainees and Interrogation and Tactical Questioning in International Operations Manual.

   b. **Denied:** Direct supervision.

   c. **Environmental:** CF unit base or wing Headquarters, deployed internationally or domestically, sometimes under austere or stressful conditions.

3. **Standard**: The legal officer shall advise on the status pertaining to PW & detainees.

   a. Applicable legal regimes IAW refs: LOQ-D1 http://, LOQ-D1 http://cda.mil.ca/cfmlc-cdmfc/doc/LOACatOperationalandTacticalLevels.pdf, LOQ-A4 http://www.icrc.org/applic/ihl/ihl.nsf/Treaty.xsp?documentId=77CB9983BE01D004C12563CD002D6B3E&action=openDocument, LOQ-A4 http://www.icrc.org/applic/ihl/ihl.nsf/Treaty.xsp?documentId=AE2D398352C5B028C12563CD002D6B5C&action=openDocument, LOQ-A4 http://www.icrc.org/applic/ihl/ihl.nsf/Treaty.xsp?documentId=D9E6B6264D7723C3C12563CD002D6CE4&action=openDocument, LOQ-D1 http://cjoc-coic.mil.ca/sites/_resources/CFWC/Index/JD/CFJP%20-%20PDF/CFJP%203-14/CFJP%203-14%20-%20dated%201%20Aug%2004.pdf

4. **Teaching Points:**

#	TEACHING POINT	DESCRIPTION	METHOD	MEDIA	ENVIRONMENT	TIME	REFERENCE
1	Applicable legal regimes	Types of CAF International Operations and Detainees (Armed Conflict Operations in International Armed Conflict, Armed Conflict Not of an International Character, Non-Armed Conflict Operations, Combatant Status, Civilian Status, Unlawful Combatants / Unprivileged Belligerents, Categories of Detainees). Prisoners of War Status (Medical Personnel and Chaplains, Indeterminate Status, Persons Captured During Operations Outside Of Armed Conflict, PW in Coalition Operations).	Face to Face Instruction (poss. CAI)	N/A	N/A	10 min	B-GJ-005-104/FP-024 The Operational Law Manual, Draft, version 4.1a (2007) (B-GJ-005-104/FP-024) [Chapter 29], B-GJ-005-104/FP-021 Law of Armed Conflict at the Operational and Tactical Level (B-GJ-005-104/FP-021), Convention (III) relative to the Treatment of Prisoners of War. Geneva, 12 August 1949 (), Convention (IV) relative to the Protection of Civilian Persons in Time of War. Geneva, 12 August 1949 (), Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977. (), B-GJ-005-110/FP-020 PW Handling, Detainees and Interrogation and Tactical Questioning in International Operations Manual (B-GJ-005-110/FP-020)

5. **TIME:**

Total class time	10 min
Instructional periods	0.2
Total Days	0.0

6. **Resources Required** a. CF supply documentation (electronic documentation preferred)

7. **Test Details:** See Annex B - Assessment Plan for details.

8. **Remarks:**

RELEASED UNDER THE AIA - UNCLASSIFIED INFORMATION
DIVULGUE EN VERTU DE LAI - RENSEIGNEMENTS NON CLASSIFIES
DND - MDN

EO 024.02 Advise on status determination

1. **Performance:** Advise on status determination

2. **Conditions**:

   a. **Given:** References including Geneva Conventions III & IV, Use of Force in CF Operations Manual, and PW Handling, Detainees and Interrogation and Tactical Questioning in International Operations Manual.

   b. **Denied:** Direct supervision.

   c. **Environmental:** CF unit base or wing Headquarters, deployed internationally or domestically, sometimes under austere or stressful conditions.

3. **Standard**: The legal officer shall advise on status determination pertaining to PW & detainees.

   a. PW determination under GCIII IAW refs: LOQ-D1 http://, LOQ-D1 http://cda.mil.ca/cfmlc-cdmfc/doc/LOACatOperationalandTacticalLevels.pdf, LOQ-A4 http://www.icrc.org/applic/ihl/ihl.nsf/Treaty.xsp?documentId=77CB9983BE01D004C12563CD002D6B3E&action=openDocument, LOQ-A4 http://www.icrc.org/applic/ihl/ihl.nsf/Treaty.xsp?documentId=AE2D398352C5B028C12563CD002D6B5C&action=openDocument, LOQ-A4 http://www.icrc.org/applic/ihl/ihl.nsf/Treaty.xsp?documentId=D9E6B6264D7723C3C12563CD002D6CE4&action=openDocument, LOQ-D1 http://cjoc-coic.mil.ca/sites/_resources/CFWC/Index/JD/CFJP%20-%20PDF/CFJP%203-14/CFJP%203-14%20-%20dated%201%20Aug%2004.pdf, LOQ-A4 http://laws.justice.gc.ca/eng/regulations/SOR-91-134/FullText.html

4. **Teaching Points:**

#	TEACHING POINT	DESCRIPTION	METHOD	MEDIA	ENVIRONMENT	TIME	REFERENCE
1	PW determination under GCIII	PW Status Determination (legal status of a captured or detained person who has committed a belligerent act during an international armed conflict In accordance with the Prisoner of War Status Determination Regulations, SOR/91-13419, Persons entitled and not entitled to PW status, medical and religious personnel, procedure for determination of PW status).	Face to Face Instruction (poss. CAI)	N/A	N/A	10 min	B-GJ-005-104/FP-024 The Operational Law Manual, Draft, version 4.1a (2007) (B-GJ-005-104/FP-024) [Chapter 29], B-GJ-005-104/FP-021 Law of Armed Conflict at the Operational and Tactical Level (B-GJ-005-104/FP-021), Convention (III) relative to the Treatment of Prisoners of War. Geneva, 12 August 1949 (), Convention (IV) relative to the Protection of Civilian Persons in Time of War. Geneva, 12 August 1949 (), Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977. (), B-GJ-005-110/FP-020 PW Handling, Detainees and Interrogation and Tactical Questioning in International Operations Manual (B-GJ-005-110/FP-020), Prisoner-of-War Status Determination Regulations (SOR/91-134) ((SOR/91-134))

5. **TIME:**

Total class time	10 min
Instructional periods	0.2
Total Days	0.0

6. **Resources Required** a. CF supply documentation (electronic documentation preferred)

7. **Test Details:** See Annex B - Assessment Plan for details.

8. **Remarks:**

RELEASED UNDER THE AIA - UNCLASSIFIED INFORMATION
DIVULGUE EN VERTU DE LAI - RENSEIGNEMENTS NON CLASSIFIES
DND - MDN

EO 024.03 Advise on standard of treatment

1. **Performance:** Advise on standard of treatment

2. **Conditions**:

   a. **Given:** References including Geneva Conventions III & IV, Use of Force in CF Operations Manual, and PW Handling, Detainees and Interrogation and Tactical Questioning in International Operations Manual.

   b. **Denied:** Direct supervision.

   c. **Environmental:** CF unit base or wing Headquarters, deployed internationally or domestically, sometimes under austere or stressful conditions.

3. **Standard**: The legal officer shall advise on the standard of treatment pertaining to PW & detainees.

   a. Applicable legal regime and policy IAW refs: LOQ-D1 http://, LOQ-D1 http://cda.mil.ca/cfmlc-cdmfc/doc/LOACatOperationalandTacticalLevels.pdf, LOQ-A4 http://www.icrc.org/applic/ihl/ihl.nsf/Treaty.xsp?documentId=77CB9983BE01D004C12563CD002D6B3E&action=openDocument, LOQ-A4 http://www.icrc.org/applic/ihl/ihl.nsf/Treaty.xsp?documentId=AE2D398352C5B028C12563CD002D6B5C&action=openDocument, LOQ-A4 http://www.icrc.org/applic/ihl/ihl.nsf/Treaty.xsp?documentId=D9E6B6264D7723C3C12563CD002D6CE4&action=openDocument, LOQ-D1 http://cjoc-coic.mil.ca/sites/_resources/CFWC/Index/JD/CFJP%20-%20PDF/CFJP%203-14/CFJP%203-14%20-%20dated%201%20Aug%2004.pdf, LOQ-A4 http://laws.justice.gc.ca/eng/regulations/SOR-91-134/FullText.html

4. **Teaching Points:**

#	TEACHING POINT	DESCRIPTION	METHOD	MEDIA	ENVIRONMENT	TIME	REFERENCE
1	Applicable legal regime and policy	Treatment of Detainees, Restraints, Blindfolds, Hoods and Security, National responsibility of treatment of PWs, Protecting Power (Discharge of Responsibilities. Representatives, Delegates, Inspection Facilities, Passes for Representatives and Delegates), Persons who may not be made PWs, standard of treatment for male and female PWs.	Face to Face Instruction (poss. CAI)	N/A	N/A	5 min	B-GJ-005-104/FP-024 The Operational Law Manual, Draft, version 4.1a (2007) (B-GJ-005-104/FP-024) [Chapter 29], B-GJ-005-104/FP-021 Law of Armed Conflict at the Operational and Tactical Level (B-GJ-005-104/FP-021), Convention (III) relative to the Treatment of Prisoners of War. Geneva, 12 August 1949 (), Convention (IV) relative to the Protection of Civilian Persons in Time of War. Geneva, 12 August 1949 (), Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977. (), B-GJ-005-110/FP-020 PW Handling, Detainees and Interrogation and Tactical Questioning in International Operations Manual (B-GJ-005-110/FP-020), Prisoner-of-War Status Determination Regulations (SOR/91-134) ((SOR/91-134))

5. **TIME:**

Total class time	5 min
Instructional periods	0.1
Total Days	0.0

6. **Resources Required** a. CF supply documentation (electronic documentation preferred)

7. **Test Details:** See Annex B - Assessment Plan for details.

8. **Remarks:**

RELEASED UNDER THE AIA - UNCLASSIFIED INFORMATION
DIVULGUE EN VERTU DE LAI - RENSEIGNEMENTS NON CLASSIFIES
DND - MDN

EO 024.04 Advise on interrogation and questioning

1. **Performance:** Advise on interrogation and questioning

2. **Conditions**:

   a. **Given:** References including Geneva Conventions III & IV, Use of Force in CF Operations Manual, and PW Handling, Detainees and Interrogation and Tactical Questioning in International Operations Manual.

   b. **Denied:** Direct supervision.

   c. **Environmental:** CF unit base or wing Headquarters, deployed internationally or domestically, sometimes under austere or stressful conditions.

3. **Standard**: The legal officer shall advise on interrogation and questioning of PW & detainees.

   a. Applicable legal regime and policies IAW refs: LOQ-D1 http://, LOQ-D1 http://cda.mil.ca/cfmlc-cdmfc/doc/LOACatOperationalandTacticalLevels.pdf, LOQ-A4 http://www.icrc.org/applic/ihl/ihl.nsf/Treaty.xsp?documentId=77CB9983BE01D004C12563CD002D6B3E&action=openDocument, LOQ-A4 http://www.icrc.org/applic/ihl/ihl.nsf/Treaty.xsp?documentId=AE2D398352C5B028C12563CD002D6B5C&action=openDocument, LOQ-A4 http://www.icrc.org/applic/ihl/ihl.nsf/Treaty.xsp?documentId=D9E6B6264D7723C3C12563CD002D6CE4&action=openDocument, LOQ-D1 http://cjoc-coic.mil.ca/sites/_resources/CFWC/Index/JD/CFJP%20-%20PDF/CFJP%203-14/CFJP%203-14%20-%20dated%201%20Aug%2004.pdf, LOQ-A4 http://laws.justice.gc.ca/eng/regulations/SOR-91-134/FullText.html

4. **Teaching Points:**

#	TEACHING POINT	DESCRIPTION	METHOD	MEDIA	ENVIRONMENT	TIME	REFERENCE
1	Applicable legal regime and policies	Interrogation and Tactical Questioning of PW and Detainees (Definition, Purpose, Concept (Interrogation and TQ are Controlled and Systematic, Specified Personnel Conduct Interrogation and TQ), Principles) Interrogation and Tactical Questioning in special circumstances (Detainees, Suspicion of Criminal Offences) Conduct of interrogation and tactical questioning (organization, procedures, constraints)	Face to Face Instruction (poss. CAI)	N/A	N/A	5 min	B-GJ-005-104/FP-024 The Operational Law Manual, Draft, version 4.1a (2007) (B-GJ-005-104/FP-024) [Chapter 29], B-GJ-005-104/FP-021 Law of Armed Conflict at the Operational and Tactical Level (B-GJ-005-104/FP-021), Convention (III) relative to the Treatment of Prisoners of War. Geneva, 12 August 1949 (), Convention (IV) relative to the Protection of Civilian Persons in Time of War. Geneva, 12 August 1949 (), Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977. (), B-GJ-005-110/FP-020 PW Handling, Detainees and Interrogation and Tactical Questioning in International Operations Manual (B-GJ-005-110/FP-020), Prisoner-of-War Status Determination Regulations (SOR/91-134) ((SOR/91-134))

5. **TIME:**

Total class time	5 min
Instructional periods	0.1
Total Days	0.0

6. **Resources Required** a. CF supply documentation (electronic documentation preferred)

7. **Test Details:** See Annex B - Assessment Plan for details.

8. **Remarks:**

A-2015-01212--0167

RELEASED UNDER THE AIA - UNCLASSIFIED INFORMATION
DIVULGUE EN VERTU DE LAI - RENSEIGNEMENTS NON CLASSIFIES
DND - MDN

EO 024.05 Advise on release, transfer or return

1. **Performance:** Advise on release, transfer or return

2. **Conditions**:

   a. **Given:** References including Geneva Conventions III & IV, Use of Force in CF Operations Manual, and PW Handling, Detainees and Interrogation and Tactical Questioning in International Operations Manual.

   b. **Denied:** Direct supervision.

   c. **Environmental:** CF unit base or wing Headquarters, deployed internationally or domestically, sometimes under austere or stressful conditions.

3. **Standard**: The legal officer shall advise on release, transfer or return of PW & detainees.

   a. Applicable regime and policies IAW refs: LOQ-D1 http://, LOQ-D1 http://cda.mil.ca/cfmlc-cdmfc/doc/LOACatOperationalandTacticalLevels.pdf, LOQ-A4 http://www.icrc.org/applic/ihl/ihl.nsf/Treaty.xsp?documentId=77CB9983BE01D004C12563CD002D6B3E&action=openDocument, LOQ-A4 http://www.icrc.org/applic/ihl/ihl.nsf/Treaty.xsp?documentId=AE2D398352C5B028C12563CD002D6B5C&action=openDocument, LOQ-A4 http://www.icrc.org/applic/ihl/ihl.nsf/Treaty.xsp?documentId=D9E6B6264D7723C3C12563CD002D6CE4&action=openDocument, LOQ-D1 http://cjoc-coic.mil.ca/sites/_resources/CFWC/Index/JD/CFJP%20-%20PDF/CFJP%203-14/CFJP%203-14%20-%20dated%201%20Aug%2004.pdf, LOQ-A4 http://laws.justice.gc.ca/eng/regulations/SOR-91-134/FullText.html

4. **Teaching Points:**

#	TEACHING POINT	DESCRIPTION	METHOD	MEDIA	ENVIRONMENT	TIME	REFERENCE

RELEASED UNDER THE AIA - UNCLASSIFIED INFORMATION
DIVULGUE EN VERTU DE LAI - RENSEIGNEMENTS NON CLASSIFIES
DND - MDN

1	Applicable regime and policies	PW handling during Coalition Operations, Transfer of PWs, Transfers Between Canadian PW Establishments, International Transfers, Administrative Considerations (Notice of Transfer, Forwarding of Mail, Prisoner Lists, Movement of Personal Effects, PW Accounts), PW Exchange. Repatriation of sick and wounded PW (The Geneva Convention and Repatriation, Assessment of PW War for Repatriation - The Mixed Medical Commission), Eligibility for Repatriation (Criteria for Eligibility for Direct Repatriation, Criteria for Eligibility for Transfer to a Neutral Country, Criteria for Eligibility for Further Repatriation from a Neutral Country), Costs of Repatriation of Sick and Wounded PW, Further Military Employment of Repatriated PW, Release and repatriation at the end of hostilities (Guidelines for Release and Repatriation, Costs of Repatriation, Asylum for PW).	N/A	N/A	N/A	10 min	B-GJ-005-104/FP-024 The Operational Law Manual, Draft, version 4.1a (2007) (B-GJ-005-104/FP-024) [Chapter 29], B-GJ-005-104/FP-021 Law of Armed Conflict at the Operational and Tactical Level (B-GJ-005-104/FP-021), Convention (III) relative to the Treatment of Prisoners of War. Geneva, 12 August 1949 (), Convention (IV) relative to the Protection of Civilian Persons in Time of War. Geneva, 12 August 1949 (), Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977. (), B-GJ-005-110/FP-020 PW Handling, Detainees and Interrogation and Tactical Questioning in International Operations Manual (B-GJ-005-110/FP-020), Prisoner-of-War Status Determination Regulations (SOR/91-134) ((SOR/91-134))

5. **TIME:**

RELEASED UNDER THE AIA - UNCLASSIFIED INFORMATION
DIVULGUE EN VERTU DE LAI - RENSEIGNEMENTS NON CLASSIFIES
DND - MDN

Total class time	10 min
Instructional periods	0.2
Total Days	0.0

6. **Resources Required** a. CF supply documentation (electronic documentation preferred)

7. **Test Details:** See Annex B - Assessment Plan for details.

8. **Remarks:**

RELEASED UNDER THE AIA - UNCLASSIFIED INFORMATION
DIVULGUE EN VERTU DE LAI - RENSEIGNEMENTS NON CLASSIFIES
DND - MDN

PO 025 ADVISE ON TARGETING

1. **Performance:** (BT0110) Advise on targeting

2. **Conditions:**

   a. **Given:** References including the CF Targeting Framework and specific operational legal targeting issues (e.g. dual use targets, combatants, unprivileged belligerents and other persons who take part in hostilities, military objectives, target lists, collateral damages issues).

   b. **Denied:** Direct supervision.

   c. **Environmental:** CF unit base or wing Headquarters, CAOC deployed internationally or domestically, sometimes under austere or stressful conditions.

3. **Standard**: The legal officer shall advise on targeting.

   a. Advise on targeting doctrine and directives

   b. Advise during targeting process

4. **Remarks:**

RELEASED UNDER THE AIA - UNCLASSIFIED INFORMATION
DIVULGUE EN VERTU DE LAI - RENSEIGNEMENTS NON CLASSIFIES
DND - MDN

ENABLING OBJECTIVES

EO 025.01 Advise on targeting doctrine and directives

1. **Performance:** Advise on targeting doctrine and directives

2. **Conditions**:

   a. **Given:** References including the CF Targeting Framework and specific operational legal targeting issues (e.g. dual use targets, combatants, unprivileged belligerents and other persons who take part in hostilities, military objectives, target lists, collateral damages issues).

   b. **Denied:** Direct supervision.

   c. **Environmental:** CF unit base or wing Headquarters, CAOC deployed internationally or domestically, sometimes under austere or stressful conditions.

3. **Standard**: The legal officer shal advise on targeting doctrine and directives.

   a. CF targeting doctrine, framework and process IAW refs: LOQ-D1 http://, LOQ-D1 http://, LOQ-D1 http://cfd.mil.ca/websites/Resources/dgfda/Pubs/CF%20Joint%20Doctrine%20Publications/CF%20Joint%20Doctrine%20B-GJ-005-501%20FP-001%20Use%20of%20Force%20-%20EN%20(Aug%2008).pdf, LOQ-D1 http://cda.mil.ca/cfmlc-cdmfc/doc/LOACatOperationalandTacticalLevels.pdf, LOQ-A4 http://www.icrc.org/applic/ihl/ihl.nsf/Treaty.xsp?documentId=77CB9983BE01D004C12563CD002D6B3E&action=openDocument, LOQ-A4 http://www.icrc.org/applic/ihl/ihl.nsf/Treaty.xsp?documentId=D9E6B6264D7723C3C12563CD002D6CE4&action=openDocument, LOQ-D1 http://cfd.mil.ca/websites/Resources/dgfda/Pubs/CF%20Joint%20Doctrine%20Publications/CF%20Joint%20Doctrine%20-%20B-GJ-005-200%20FP-000%20-%20Joint%20Int%20-%20EN%20(21%20May%2003).pdf, LOQ-A4 http://www.icrc.org/applic/ihl/ihl.nsf/Treaty.xsp?documentId=F0628265ED4F2118412567BB003E0B0C&action=openDocument, LOQ-A4 http://www.icrc.org/applic/ihl/ihl.nsf/Treaty.xsp?documentId=79B801B4D23AEA95C12563CD002D6BE3&action=openDocument

   b. Applicable principles of Jus in Bello IAW refs: LOQ-D1 http://, LOQ-D1 http://, LOQ-D1 http://cfd.mil.ca/websites/Resources/dgfda/Pubs/CF%20Joint%20Doctrine%20Publications/CF%20Joint%20Doctrine%20B-GJ-005-501%20FP-001%20Use%20of%20Force%20-%20EN%20(Aug%2008).pdf, LOQ-D1 http://cda.mil.ca/cfmlc-cdmfc/doc/LOACatOperationalandTacticalLevels.pdf, LOQ-A4 http://www.icrc.org/applic/ihl/ihl.nsf/Treaty.xsp?documentId=77CB9983BE01D004C12563CD002D6B3E&action=openDocument, LOQ-A4 http://www.icrc.org/applic/ihl/ihl.nsf/Treaty.xsp?documentId=D9E6B6264D7723C3C12563CD002D6CE4&action=openDocument, LOQ-D1 http://cfd.mil.ca/websites/Resources/dgfda/Pubs/CF%20Joint%20Doctrine%20Publications/CF%20Joint%20Doctrine%20-%20B-GJ-005-200%20FP-000%20-%20Joint%20Int%20-%20EN%20(21%20May%2003).pdf, LOQ-A4 http://www.icrc.org/applic/ihl/ihl.nsf/Treaty.xsp?documentId=F0628265ED4F2118412567BB003E0B0C&action=openDocument, LOQ-A4 http://www.icrc.org/applic/ihl/ihl.nsf/Treaty.xsp?documentId=79B801B4D23AEA95C12563CD002D6BE3&action=openDocument

   c. Key distinctions in types of targeting IAW refs: LOQ-D1 http://, LOQ-D1 http://, LOQ-D1 http://cfd.mil.ca/websites/Resources/dgfda/Pubs/CF%20Joint%20Doctrine%20Publications/CF%20Joint%20Doctrine%20B-GJ-005-501%20FP-001%20Use%20of%20Force%20-%20EN%20(Aug%2008).pdf, LOQ-D1 http://cda.mil.ca/cfmlc-cdmfc/doc/LOACatOperationalandTacticalLevels.pdf, LOQ-A4 http://www.icrc.org/applic/ihl/ihl.nsf/Treaty.xsp?documentId=77CB9983BE01D004C12563CD002D6B3E&action=openDocument, LOQ-A4 http://www.icrc.org/applic/ihl/ihl.nsf/Treaty.xsp?documentId=D9E6B6264D7723C3C12563CD002D6CE4&action=openDocument, LOQ-D1 http://cfd.mil.ca/websites/Resources/dgfda/Pubs/CF%20Joint%20Doctrine%20Publications/CF%20Joint%20Doctrine%20-%20B-GJ-005-200%20FP-000%20-%20Joint%20Int%20-%20EN%20(21%20May%2003).pdf, LOQ-A4 http://www.icrc.org/applic/ihl/ihl.nsf/Treaty.xsp?documentId=F0628265ED4F2118412567BB003E0B0C&action=openDocument, LOQ-A4 http://www.icrc.org/applic/ihl/ihl.nsf/Treaty.xsp?documentId=79B801B4D23AEA95C12563CD002D6BE3&action=openDocument

4. **Teaching Points:**

#	TEACHING POINT	DESCRIPTION	METHOD	MEDIA	ENVIRONMENT	TIME	REFERENCE

RELEASED UNDER THE AIA - UNCLASSIFIED INFORMATION
DIVULGUE EN VERTU DE LAI - RENSEIGNEMENTS NON CLASSIFIES
DND - MDN

1	CF targeting doctrine, framework and process	CF targeting doctrine, CF targeting directives (generic & specific), Relevance of targeting in a coalition context, Key steps in the targeting process	Face to Face Instruction (poss. CAI)	N/A	N/A	20 min	B-GJ-005-104/FP-024 The Operational Law Manual, Draft, version 4.1a (2007) (B-GJ-005-104/FP-024) [Chapter 28], B-GJ-005-300/FP-001 Operations (B-GJ-005-300/FP-001), B-GJ-005-501/FP-001 Use of Force for CF Operations (B-GJ-005-501/FP-001) [Annexes D, E], B-GJ-005-104/FP-021 Law of Armed Conflict at the Operational and Tactical Level (B-GJ-005-104/FP-021) [Chapter 4], Convention (III) relative to the Treatment of Prisoners of War. Geneva, 12 August 1949 () [article 4 A(1), (2), (3) and (6)], Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977. () [articles 48, 49(1), 50, 43, 51, 52, 53, 54, 55, 56, 57], B-GJ-005-200/FP-000 Joint Intelligence Doctrine (B-GJ-005-200/FP-000), Second Protocol to the Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict The Hague, 26 March 1999 (), Protocol for the Protection of Cultural Property in the Event of Armed Conflict. The Hague, 14 May 1954 ()
2	Applicable principles of Jus in Bello	Humanity, Chivalry, Military necessity, Proportionality, distinction and the doubt rule, means and methods, precautions in attack, collateral damage	Face to Face Instruction (poss. CAI)	N/A	N/A	20 min	B-GJ-005-104/FP-024 The Operational Law Manual, Draft, version 4.1a (2007) (B-GJ-005-104/FP-024) [Chapter 28], B-GJ-005-300/FP-001 Operations (B-GJ-005-300/FP-001), B-GJ-005-501/FP-001 Use of Force for CF Operations (B-GJ-005-501/FP-001) [Annexes D, E], B-GJ-005-104/FP-021 Law of Armed Conflict at the Operational and Tactical Level (B-GJ-005-104/FP-021) [Chapter 4], Convention (III) relative to the Treatment of Prisoners of War. Geneva, 12 August 1949 () [article 4 A(1), (2), (3) and (6)], Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977. () [articles 48, 49(1), 50, 43, 51, 52, 53, 54, 55, 56, 57], B-GJ-005-200/FP-000 Joint Intelligence Doctrine (B-GJ-005-200/FP-000), Second Protocol to the Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict The Hague, 26 March 1999 (), Protocol for the Protection of Cultural Property in the Event of Armed Conflict. The Hague, 14 May 1954 ()
3	Key distinctions in types of targeting	Types of targeting: Kinetic, Non-kinetic, lethal, non-lethal dynamic, deliberate, time sensitive	Face to Face Instruction (poss. CAI)	N/A	N/A	20 min	B-GJ-005-104/FP-024 The Operational Law Manual, Draft, version 4.1a (2007) (B-GJ-005-104/FP-024) [Chapter 28], B-GJ-005-300/FP-001 Operations (B-GJ-005-300/FP-001), B-GJ-005-501/FP-001 Use of Force for CF Operations (B-GJ-005-501/FP-001) [Annexes D, E], B-GJ-005-104/FP-021 Law of Armed Conflict at the Operational and Tactical Level (B-GJ-005-104/FP-021) [Chapter 4], Convention (III) relative to the Treatment of Prisoners of War. Geneva, 12 August 1949 () [article 4 A(1), (2), (3) and (6)], Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977. () [articles 48, 49(1), 50, 43, 51, 52, 53, 54, 55, 56, 57], B-GJ-005-200/FP-000 Joint Intelligence Doctrine (B-GJ-005-200/FP-000), Second Protocol to the Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict The Hague, 26 March 1999 (), Protocol for the Protection of Cultural Property in the Event of Armed Conflict. The Hague, 14 May 1954 ()

5. **TIME:**

Total class time	60 min
Instructional periods	1.2

A-2015-01212--0173

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Total Days	0.2

6. **Resources Required** a. CF supply documentation (electronic documentation preferred)

7. **Test Details:** See Annex B - Assessment Plan for details.

8. **Remarks:**

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EO 025.02 Advise during targeting process

1. **Performance:** Advise during targeting process

2. **Conditions**:

   a. **Given:** References including the CF Targeting Framework and specific operational legal targeting issues (e.g. dual use targets, combatants, unprivileged belligerents and other persons who take part in hostilities, military objectives, target lists, collateral damages issues).

   b. **Denied:** Direct supervision.

   c. **Environmental:** CF unit base or wing Headquarters, CAOC deployed internationally or domestically, sometimes under austere or stressful conditions.

3. **Standard**: The legal officer shall advise on targeting process.

   a. The role of the legal advisor in the targeting process IAW refs: LOQ-D1 http://, LOQ-D1 http://cda.mil.ca/cfmlc-cdmfc/doc/LOACatOperationalandTacticalLevels.pdf

4. **Teaching Points:**

#	TEACHING POINT	DESCRIPTION	METHOD	MEDIA	ENVIRONMENT	TIME	REFERENCE
1	The role of the legal advisor in the targeting process	Role in the nomination process (Joint Targeting Working Group), Role in approval/ validation, Role in execution	Face to Face Instruction (poss. CAI)	N/A	N/A	20 min	B-GJ-005-104/FP-024 The Operational Law Manual, Draft, version 4.1a (2007) (B-GJ-005-104/FP-024) [Chapter 28], B-GJ-005-104/FP-021 Law of Armed Conflict at the Operational and Tactical Level (B-GJ-005-104/FP-021) [Chapter 4]

5. **TIME:**

Total class time	20 min
Instructional periods	0.4
Total Days	0.1

6. **Resources Required** a. CF supply documentation (electronic documentation preferred)

7. **Test Details:** See Annex B - Assessment Plan for details.

8. **Remarks:**

A-2015-01212--0175

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PO 026 ADVISE ON CAF OPERATIONS

1. **Performance:** Advise on CAF operations

2. **Conditions:**

   a. **Given:** On international operations, references including the UN Charter Chapters VI, VII and VIII, UN Security Council Resolutions, coalitions forces operations, UN peace support operations (e.g. legal bases for peacekeeping) humanitarian operations and non-combatant evacuation operations.
   On domestic operations, references including legal principles on defence of Canada, on sovereignty operations, on aid to the civil power, on peace officer status, on public service under 273.6(1) of NDA, on CF Armed Assistance Directives (CFAAD), on Provision of Service (POS), on search and rescue operations and on other governmental department (OGD) operations.
   On CAF operations of mixed international and domestic nature, references including legal principles on maritime operations at the international and domestic level (i.e. UNCLOS, maritime zones, controlled access zone orders, CAF support to RCMP counter drug operations, fisheries Act, Coastal Fisheries Protection Act), legal issues related to intelligence and information operations and on special operations.

   b. **Denied:** Direct supervision.

   c. **Environmental:** CAF unit base or wing Headquarters, CAOC deployed internationally or domestically, sometimes under austere or stressful conditions.

3. **Standard**: The legal officer shall advise on international and domestic CAF operations.

   a. Advise on international CAF operations
   b. Advise on domestic CAF operations
   c. Advise on CAF operations of mixed international and domestic nature

4. **Remarks:**

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ENABLING OBJECTIVES

EO 026.01 Advise on international CAF operations

1. **Performance:** Advise on international CAF operations

2. **Conditions**:

   a. **Given:** On international operations, references including the UN Charter Chapters VI, VII and VIII, UN Security Council Resolutions, coalitions forces operations, UN peace support operations (e.g. legal bases for peacekeeping) humanitarian operations and non-combatant evacuation operations.

   b. **Denied:** Direct supervision.

   c. **Environmental:** CAF unit base or wing Headquarters, CAOC deployed internationally or domestically, sometimes under austere or stressful conditions.

3. **Standard**: The legal officer shall advise on international CAF operations.

   a. Legal issues common to all international CAF operations IAW refs: LOQ-D1 http://
   b. Full spectrum ops
   c. Peace Support Operations IAW refs: LOQ-D1 http://, LOQ-A4 http://www.un.org/en/documents/charter/
   d. Humanitarian assistance operations IAW refs: LOQ-D1 http://, LOQ-A4 http://www.un.org/en/documents/charter/
   e. Non combatant evacuation operations (NEO) IAW refs: LOQ-D1 http://

4. **Teaching Points:**

#	TEACHING POINT	DESCRIPTION	METHOD	MEDIA	ENVIRONMENT	TIME	REFERENCE
1	Legal issues common to all international CAF operations	Principles of Jus in Bello (discrimination, proportionality) Environment, International crimes and war crimes, Refugees, internal displaced persons (IDP) and asylum seekers, Issues relating to private security military companies	Face to Face Instruction (poss. CAI)	N/A	N/A	10 min	B-GJ-005-104/FP-024 The Operational Law Manual, Draft, version 4.1a (2007) (B-GJ-005-104/FP-024) [Chapters 1, 10, 30]
2	Full spectrum ops	CAF doctrine and policy, Applicable legal regime, Distinction between domestic, International, and expeditionary operations	Face to Face Instruction (poss. CAI)	N/A	N/A	10 min	
3	Peace Support Operations	CAF doctrine and policy, Applicable legal regime UN Charter Chap VI, VIII (EU, AU, ECOWAS) UN Peace operations and mandate process	Face to Face Instruction (poss. CAI)	N/A	N/A	10 min	B-GJ-005-104/FP-024 The Operational Law Manual, Draft, version 4.1a (2007) (B-GJ-005-104/FP-024) [Chapters 14, 15], United Nations Charter () [Chapters Vi, VIII]

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4	Humanitarian assistance operations	CAF doctrine and policy, Applicable legal regime, DART components	Face to Face Instruction (poss. CAI)	N/A	N/A	5 min	B-GJ-005-104/FP-024 The Operational Law Manual, Draft, version 4.1a (2007) (B-GJ-005-104/FP-024) [Chapters 14, 15, 16], United Nations Charter () [Chapters VI, VIII]
5	Non combatant evacuation operations (NEO)	CAF doctrine and policy, Applicable legal regime (SOFA, MOU), Roles and responsibilities of DND and DFAIT	Face to Face Instruction (poss. CAI)	N/A	N/A	5 min	B-GJ-005-104/FP-024 The Operational Law Manual, Draft, version 4.1a (2007) (B-GJ-005-104/FP-024) [Chapter 16]

5. **TIME:**

Total class time	40 min
Instructional periods	0.8
Total Days	0.2

6. **Resources Required** a. CF supply documentation (electronic documentation preferred)

7. **Test Details:** See Annex B - Assessment Plan for details.

8. **Remarks:** null

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EO 026.02 Advise on domestic CAF operations

1. **Performance:** Advise on domestic CAF operations

2. **Conditions**:

   a. **Given:** On domestic operations, references including legal principles on defence of Canada, on sovereignty operations, on aid to the civil power, on peace officer status, on public service under 273.6(1) of NDA, on CF Armed Assistance Directives (CFAAD), on Provision of Service (POS), on search and rescue operations and on other governmental department (OGD) operations.

   b. **Denied:** Direct supervision.

   c. **Environmental:** CAF unit base or wing Headquarters, CAOC deployed internationally or domestically, sometimes under austere or stressful conditions.

3. **Standard**: The legal officer shall advise on domestic CAF operations.

   a. Legal issues common to all domestic CF operations IAW refs: LOQ-D1 http://
   b. Defence of Canada IAW refs: LOQ-D1 http://
   c. Sovereignty operations
   d. Aid of the civil power IAW refs: LOQ-A3 http://laws-lois.justice.gc.ca/eng/acts/N-5/index.html, LOQ-D1 http://
   e. ALEA IAW refs: LOQ-A3 http://laws-lois.justice.gc.ca/eng/acts/N-5/index.html, LOQ-D1 http://
   f. Public service under NDA IAW refs: LOQ-A3 http://laws-lois.justice.gc.ca/eng/acts/N-5/index.html, LOQ-D1 http://
   g. Provision of Service (POS) IAW refs: LOQ-D1 http://, LOQ-D1 http://admfincs.mil.ca/dfpp/101901_e.asp)
   h. Search and rescue operations IAW refs: LOQ-D1 http://
   i. Operations involving other governmental departments (OGD) IAW refs: LOQ-D1 http://

4. **Teaching Points:**

#	TEACHING POINT	DESCRIPTION	METHOD	MEDIA	ENVIRONMENT	TIME	REFERENCE
1	Legal issues common to all domestic CF operations	Mandates, use of force, ROE and self-defence in domestic context, criminal responsibility and civil liability, Command and control (MP jurisdiction and Peace officer status)	Face to Face Instruction (poss. CAI)	N/A	N/A	40 min	B-GJ-005-104/FP-024 The Operational Law Manual, Draft, version 4.1a (2007) (B-GJ-005-104/FP-024) [Chapters 7, 8, 9]
2	Defence of Canada	CAF directives and policies, Relevant legal regime, Interdepartmental considerations, Potential mixed (international and domestic) nature of the operation, NORAD (principal agreements MOUs,Missions & tasks)	Face to Face Instruction (poss. CAI)	N/A	N/A	10 min	B-GJ-005-104/FP-024 The Operational Law Manual, Draft, version 4.1a (2007) (B-GJ-005-104/FP-024) [Chapters 3, 5, 22 section 4, 25]
3	Sovereignty operations	CA directives and policies, Relevant legal regime, Interdepartmental considerations, Arctic operations (OP NANOOK, OP NUNALIVUT), RCN, RCAF and Canadian Rangers roles	Face to Face Instruction (poss. CAI)	N/A	N/A	5 min	

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4	Aid of the civil power	CAF directives and policies, Relevant legal regime	Face to Face Instruction (poss. CAI)	N/A	N/A	20 min	National Defence Act, R.S.C. 1985, c. N-5 () [Part VI, Sections 274 to 285], B-GJ-005-104/FP-024 The Operational Law Manual, Draft, version 4.1a (2007) (B-GJ-005-104/FP-024) [Chapter 7]
5	ALEA	Law enforcement assistance under NDA , Key OICs (CF Assistance to Provincial Police Directions CFAPPFD, CF Armed Assistance Directions CFAAD, Assistance to Correctional Services Federal Penitentiaries (OIC 175-131), Classes of support, Evidentiary issues arising during ALEA, Key MOUs (CF/RCMP Counter-Drug Ops, DFO Integrated National Security Enforcement Teams (INSET)), Integrated Border Enforcement Teams (IBETS), Exemples Operations (SABOT, RUGGED, PODIUM, CARIBBE),	Face to Face Instruction (poss. CAI)	N/A	N/A	40 min	National Defence Act, R.S.C. 1985, c. N-5 () [Section 273.6], B-GJ-005-104/FP-024 The Operational Law Manual, Draft, version 4.1a (2007) (B-GJ-005-104/FP-024) [Chapter 7]
6	Public service under NDA	CAF directives and policies, Relevant legal regime (section 273.6 (l) of the NDA), Interdepartmental considerations	Face to Face Instruction (poss. CAI)	N/A	N/A	5 min	National Defence Act, R.S.C. 1985, c. N-5 () [Section 273.6 (l)], B-GJ-005-104/FP-024 The Operational Law Manual, Draft, version 4.1a (2007) (B-GJ-005-104/FP-024) [Chapter 7]

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7	Provision of Service (POS)	CAF directives and policies, Relevant legal regime (Provision of Service Policy) PoS conditions, authorization, costs recovery. admin requirements Interdepartmental considerations	Face to Face Instruction (poss. CAI)	N/A	N/A	20 min	B-GJ-005-104/FP-024 The Operational Law Manual, Draft, version 4.1a (2007) (B-GJ-005-104/FP-024) [Chapter 6, section 4], Provision of Service Policy ()
8	Search and rescue operations	CAF directives and policies, Relevant legal regime, Command and control relationships relating to SAR, Interdepartmental considerations	Face to Face Instruction (poss. CAI)	N/A	N/A	5 min	B-GJ-005-104/FP-024 The Operational Law Manual, Draft, version 4.1a (2007) (B-GJ-005-104/FP-024) [Chapter 6]
9	Operations involving other governmental departments (OGD)	Presently applies to OP PALACI , DFO MOU, CAF directives and policies Relevant legal regime	Face to Face Instruction (poss. CAI)	N/A	N/A	10 min	B-GJ-005-104/FP-024 The Operational Law Manual, Draft, version 4.1a (2007) (B-GJ-005-104/FP-024) [Chapter 7]

5. **TIME:**

Total class time	155 min
Instructional periods	3.1
Total Days	0.6

6. **Resources Required** a. CF supply documentation (electronic documentation preferred)

7. **Test Details:** See Annex B - Assessment Plan for details.

8. **Remarks:**

A-2015-01212--0181

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EO 026.03 Advise on CAF operations of mixed international and domestic nature

1. **Performance:** Advise on CAF operations of mixed international and domestic nature

2. **Conditions**:

   a. **Given:** On CAF operations of mixed international and domestic nature, references including legal principles on maritime operations at the international and domestic level (i.e. UNCLOS, maritime zones, controlled access zone orders, CAF support to RCMP counter drug operations, fisheries Act, Coastal Fisheries Protection Act), legal issues related to intelligence and information operations and on special operations.

   b. **Denied:** Direct supervision.

   c. **Environmental:** CAF unit base or wing Headquarters, CAOC deployed internationally or domestically, sometimes under austere or stressful conditions.

3. **Standard**: The legal officer shall advise on mixed international and domestic CAF operations.

   a. Maritime ops IAW refs: LOQ-D1 http://, LOQ-A4 http://www.un.org/depts/los/convention_agreements/texts/unclos/unclos_e.pdf

   b. (BT0020) Legal issues related to intelligence operations IAW refs: LOQ-D1 http://, LOQ-A4 http://laws-lois.justice.gc.ca/eng/acts/P-21/, LOQ-A4 http://laws-lois.justice.gc.ca/eng/acts/C-23/, LOQ-A4 http://laws.justice.gc.ca/eng/acts/R-2/FullText.html

   c. (BT0025) Legal issues related to information operations IAW refs: LOQ-D1 http://

   d. (BT0115) Legal issues related to special operations (SOF) IAW refs: LOQ-D1 http://, LOQ-D4 http://cansofcom-comfoscan.mil.ca/index-eng.asp

4. **Teaching Points:**

#	TEACHING POINT	DESCRIPTION	METHOD	MEDIA	ENVIRONMENT	TIME	REFERENCE
1	Maritime ops	Applicable legal regime in particular law of the sea, Internal, territorial, national and international waters, coastal zones, contiguous and exclusive economic zones, baselines Jurisdiction, DFO, maritime enforcement operations, boarding and right of visit in peacetime, stateless vessels, piracy, proliferationi security initiative, interdiction operations. CAF doctrine and policy, Command control relationship for RCN, coalition considerations, interdepartmental considerations	Face to Face Instruction (poss. CAI)	N/A	N/A	40 min	B-GJ-005-104/FP-024 The Operational Law Manual, Draft, version 4.1a (2007) (B-GJ-005-104/FP-024) [Chapter 20], United Nations Convention on the Law of the Sea ()
2	Legal issues related to intelligence operations	CAF policy and directives pertaining to: international operations, domestic operations, legal regime relating to each of the two aforementioned types of operations, Info sharing including limitations and prohibitions, Allied and coalition considerations (especially US), release and disposal, Communications Security Establishment Commissioner, Types of intelligence (open sources, signals, imagery), CAF intelligence framework (defence, security, criminal) Privacy Act, CISIS Act, Radiocommunication Act	Face to Face Instruction (poss. CAI)	N/A	N/A	40 min	B-GJ-005-104/FP-024 The Operational Law Manual, Draft, version 4.1a (2007) (B-GJ-005-104/FP-024) [Chapter 23], Privacy Act (), Canadian Security Intelligence Service Act (), Radiocommunication Act ()
3	Legal issues related to information operations	CAF doctrine and policies, Applicable legal regime, Legal considerations pertaining offensive information operations, LOAC Issues, International law relating to information operations, distinction from intelligence operations	Face to Face Instruction (poss. CAI)	N/A	N/A	30 min	B-GJ-005-104/FP-024 The Operational Law Manual, Draft, version 4.1a (2007) (B-GJ-005-104/FP-024) [Chapter 24]

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4	Legal issues related to special operations (SOF)	Nature, structure and role of CANSOFCOM and its units, relation between CANSOFCOM and force generators/ employers, relation between OJAG and CANSOFCOM Definition, characteristics and types of SOF, Key players (CJOPC, JTF 2, 427 SOAS, CSOR, CJRU)	Face to Face Instruction (poss. CAI)	N/A	N/A	30 min	B-GJ-005-104/FP-024 The Operational Law Manual, Draft, version 4.1a (2007) (B-GJ-005-104/FP-024) [Chapters 2, 23, 29], Canadian Special Operations Forces Command Website ()

5. **TIME:**

Total class time	140 min
Instructional periods	2.8
Total Days	0.6

6. **Resources Required** a. CF supply documentation (electronic documentation preferred)

7. **Test Details:** See Annex B - Assessment Plan for details.

8. **Remarks:**

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PO 027 ADVISE ON ARRANGEMENTS AND AGREEMENTS

1. **Performance:** Advise on arrangements and agreements

2. **Conditions:**

   a. **Given:** References including legal principles on international/domestic arrangements and agreements in support of CAF operations, on operational documentation pertaining to the use of force on international operations, liaison with governmental authorities on legal issues related to international and domestic operations and on legal policy pertaining to operations.

   b. **Denied:** Direct supervision.

   c. **Environmental:** CAF unit base or wing Headquarters, deployed internationally or domestically, sometimes under austere or stressful conditions.

3. **Standard**: The legal officer shall advise on arrangements, agreements and legal policies.

   a. Advise on arrangements and agreements in support of domestic CAF operations

   b. Advise on arrangements & agreements in support international CAF operations

   c. Liaise with governmental and non-governmental authorities relating to international and domestic CAF operations

4. **Remarks:**

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ENABLING OBJECTIVES

EO 027.01 Advise on arrangements and agreements in support of domestic CAF operations

1. **Performance:** Advise on arrangements and agreements in support of domestic CAF operations
2. **Conditions**:
   a. **Given:** References including legal principles on arrangements and agreements in support of domestic CAF operations.
   b. **Denied:** Direct supervision.
   c. **Environmental:** CAF unit base or wing Headquarters, deployed internationally or domestically, sometimes under austere or stressful conditions.
3. **Standard**: The legal officer shall advise on arrangements, agreements in support of CAF domestic operations.
   a. Development of arrangements and agreements relating to domestic CAF operations IAW refs: LOQ-A3 http://laws-lois.justice.gc.ca/eng/acts/N-5/index.html, LOQ-D1 http://, LOQ-A4 http://laws-lois.justice.gc.ca/eng/acts/V-2/page-1.html, LOQ-A5 http://laws-lois.justice.gc.ca/eng/regulations/C.R.C._c._1597/, LOQ-A5 http://laws-lois.justice.gc.ca/eng/regulations/C.R.C._c._1598/page-1.html
   b. Domestic arrangements and agreements IAW refs: LOQ-A3 http://laws-lois.justice.gc.ca/eng/acts/N-5/index.html, LOQ-D1 http://, LOQ-A4 http://laws-lois.justice.gc.ca/eng/acts/V-2/page-1.html, LOQ-A5 http://laws-lois.justice.gc.ca/eng/regulations/C.R.C._c._1597/, LOQ-A5 http://laws-lois.justice.gc.ca/eng/regulations/C.R.C._c._1598/page-1.html
4. **Teaching Points:**

#	TEACHING POINT	DESCRIPTION	METHOD	MEDIA	ENVIRONMENT	TIME	REFERENCE
1	Development of arrangements and agreements relating to domestic CAF operations	Key legal regime including visiting forces act, NATO SOFA and NDA related to domestic CAF operations	Face to Face Instruction (poss. CAI)	N/A	N/A	10 min	National Defence Act, R.S.C. 1985, c. N-5 (), B-GJ-005-104/FP-024 The Operational Law Manual, Draft, version 4.1a (2007) (B-GJ-005-104/FP-024) [Chapters 26, 27], Visiting Forces Act (R.S.C., 1985, c. V-2) (), Visiting Forces Attachment and Serving Together Regulations (C.R.C., c. 1597) (), Visiting Forces Regulations (C.R.C., c. 1598) ()
2	Domestic arrangements and agreements	Key legal regime including visiting forces act, NATO SOFA and NDA related to domestic arrangements and agreements	Face to Face Instruction (poss. CAI)	N/A	N/A	10 min	National Defence Act, R.S.C. 1985, c. N-5 (), B-GJ-005-104/FP-024 The Operational Law Manual, Draft, version 4.1a (2007) (B-GJ-005-104/FP-024) [Chapters 26, 27], Visiting Forces Act (R.S.C., 1985, c. V-2) (), Visiting Forces Attachment and Serving Together Regulations (C.R.C., c. 1597) (), Visiting Forces Regulations (C.R.C., c. 1598) ()

5. **TIME:**

Total class time	20 min
Instructional periods	0.4
Total Days	0.1

6. **Resources Required** a. CF supply documentation (electronic documentation preferred)
7. **Test Details:** See Annex B - Assessment Plan for details.
8. **Remarks:**

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EO 027.02 Advise on arrangements & agreements in support international CAF operations

1. **Performance:** Advise on arrangements & agreements in support international CAF operations

2. **Conditions**:

   a. **Given:** References including legal principles on arrangements and agreements in support of international CAF operations.

   b. **Denied:** Direct supervision.

   c. **Environmental:** CAF unit base or wing Headquarters, deployed internationally or domestically, sometimes under austere or stressful conditions.

3. **Standard**: The legal officer shall advise on arrangements, agreements in support of international CAF operations.

   a. Development of arrangements and agreements relating to international CAF operations IAW refs: LOQ-D1 http://, LOQ-A4 http://laws-lois.justice.gc.ca/eng/acts/V-2/page-1.html, LOQ-A5 http://laws-lois.justice.gc.ca/eng/regulations/C.R.C._c._1597/, LOQ-A5 http://laws-lois.justice.gc.ca/eng/regulations/C.R.C._c._1598/page-1.html

4. **Teaching Points:**

#	TEACHING POINT	DESCRIPTION	METHOD	MEDIA	ENVIRONMENT	TIME	REFERENCE
1	Development of arrangements and agreements relating to international CAF operations	Key legal regime including visiting forces act, NATO SOFA and NDA related to the development of international arrangements and agreements	Face to Face Instruction (poss. CAI)	N/A	N/A	10 min	B-GJ-005-104/FP-024 The Operational Law Manual, Draft, version 4.1a (2007) (B-GJ-005-104/FP-024) [Chapters 26, 27], Visiting Forces Act (R.S.C., 1985, c. V-2) (), Visiting Forces Attachment and Serving Together Regulations (C.R.C., c. 1597) (), Visiting Forces Regulations (C.R.C., c. 1598) ()

5. **TIME:**

Total class time	10 min
Instructional periods	0.2
Total Days	0.0

6. **Resources Required** a. CF supply documentation (electronic documentation preferred)

7. **Test Details:** See Annex B - Assessment Plan for details.

8. **Remarks:**

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EO 027.03 Liaise with governmental and non-governmental authorities relating to international and domestic CAF operations

1. **Performance:** Liaise with governmental and non-governmental authorities relating to international and domestic CAF operations

2. **Conditions**:

   a. **Given:** References including legal principles on arrangements and agreements on liaison with governmental authorities on legal issues related to international and domestic operations and on legal policy pertaining to operations.

   b. **Denied:** Direct supervision.

   c. **Environmental:** CAF unit base or wing Headquarters, deployed internationally or domestically, sometimes under austere or stressful conditions.

3. **Standard**: The legal officer shall advise on arrangements, agreements pertining to liaison with governmental and non-governmental authorities relating to international and domestic operations.

   a. The role of the legal officer in liaison IAW refs: LOQ-D1 http://

4. **Teaching Points:**

#	TEACHING POINT	DESCRIPTION	METHOD	MEDIA	ENVIRONMENT	TIME	REFERENCE
1	The role of the legal officer in liaison	Influence of legal principles on policy development, Relationship with the OJAG and other government legal counsel, Canadian government structure (Federal, Provincial), international governmental/ diplomatic structure, UN, NATO/ NAC, ICRC, ICC	N/A	N/A	N/A	10 min	B-GJ-005-104/FP-024 The Operational Law Manual, Draft, version 4.1a (2007) (B-GJ-005-104/FP-024) [Chapter 40]

5. **TIME:**

Total class time	10 min
Instructional periods	0.2
Total Days	0.0

6. **Resources Required** a. CF supply documentation (electronic documentation preferred)

7. **Test Details:** See Annex B - Assessment Plan for details.

8. **Remarks:**

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ANNEX A - REFERENCES

Formal publications referred to in Task and PO Standards (both English and French reference titles, where they exist, must be provided in the table below):

PO 001 Explain the roles and responsibilities of the office of the JAG

Number	Reference
LOQ-A3	National Defence Act, R.S.C. 1985, c. N-5 http://laws-lois.justice.gc.ca/eng/acts/N-5/index.html
LOQ-A5-1	Queen's Regulations and Orders for the Canadian Forces (QR&O) - Volume I - Administration http://www.admfincs.forces.gc.ca/qro-orf/vol-01/index-eng.asp
LOQ-C1	Canadian Forces Organization Orders (CFOOs) http://vcds.mil.ca/sites/intranet-eng.aspx?page=4395
LOQ-C1	JAG Policy Directives http://jag.mil.ca/publications/directives-eng.asp
LOQ-C1	Ministerial Organization Orders

PO 002 Provide legal services IAW JAG policy directives

Number	Reference
LOQ-A3	Interpretation Act, R.S.C., 1985, c. I-21 http://laws-lois.justice.gc.ca/PDF/I-21.pdf
LOQ-A3	Statutory Instruments Act, R.S.C., 1985, c. S-22 http://laws-lois.justice.gc.ca/PDF/S-22.pdf
LOQ-A5-1	Queen's Regulations and Orders for the Canadian Forces (QR&O) - Volume I - Administration http://www.admfincs.forces.gc.ca/qro-orf/vol-01/index-eng.asp
LOQ-B1	Rizzo & Rizzo Shoes Ltd. (Re), [1998] 1 SCR 27
LOQ-C1	Canadian Forces Organization Orders (CFOOs) http://vcds.mil.ca/sites/intranet-eng.aspx?page=4395
LOQ-C1	JAG Policy Directives http://jag.mil.ca/publications/directives-eng.asp
LOQ-C1	Ministerial Organization Orders
LOQ-C4	CFAO 56-5 Legal Aid
LOQ-C4	JAG Policy Directive 008/00 - General instructions in respect of prosecutions
LOQ-C4	JAG Policy Directive 009/00 - General instructions concerning Defence Counsel Services
LOQ-C4	JAG Policy Directive 010/00 - Charge Screening Policy http://jag.mil.ca/publications/directives/directive010-00.pdf
LOQ-C4	JAG Policy Directive 023/02 - Ethics directive

PO 003 Resolve ethical issues arising from legal officer duties

Number	Reference
LOQ-A5-1	Queen's Regulations and Orders for the Canadian Forces (QR&O) - Volume I - Administration http://www.admfincs.forces.gc.ca/qro-orf/vol-01/index-eng.asp
LOQ-C1	JAG Policy Directives http://jag.mil.ca/publications/directives-eng.asp
LOQ-C4	CFAO 56-5 Legal Aid
LOQ-C4	DAOD 5012-0 Harassment Prevention and Resolution http://www.admfincs.forces.gc.ca/dao-doa/5000/5012-0-eng.asp
LOQ-C4	DAOD 7021-1 Conflict of Interest
LOQ-C4	JAG Policy Directive 006/00 - Professional Standards Review

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LOQ-C4	JAG Policy Directive 010/00 - Charge Screening Policy http://jag.mil.ca/publications/directives/directive010-00.pdf
LOQ-C4	JAG Policy Directive 023/02 - Ethics directive
LOQ-C4	JAG Policy Directive 042/12 - Requesting Approval to Submit Papers and Articles for Publication
LOQ-D2	CBA Code of Professional Conduct http://www.cba.org/CBA/activities/pdf/codeofconduct.pdf

PO 004 Advise on the application of admin law & principles in CF decision making

Number	Reference
LOQ-A1	Constitution Act, 1867, 30 & 31 Victoria, c. 3 (U.K.), R.S.C. 1985, App. II, No. 11. http://laws-lois.justice.gc.ca/eng/CONST/page-1.html
LOQ-A1	Constitution Act, 1982, Enacted as Schedule B to the Canada Act 1982, 1982, c. 11 (U.K.), which came into force on April 17, 1982. http://laws-lois.justice.gc.ca/eng/CONST/page-15.html#h-38
LOQ-A3	Federal Courts Act http://laws-lois.justice.gc.ca/eng/regulations/SOR-98-106/index.html
LOQ-A3	National Defence Act, R.S.C. 1985, c. N-5 http://laws-lois.justice.gc.ca/eng/acts/N-5/index.html
LOQ-A5-1	Queen's Regulations and Orders for the Canadian Forces (QR&O) - Volume I - Administration http://www.admfincs.forces.gc.ca/qro-orf/vol-01/index-eng.asp
LOQ-A8	Ontario Judicial Procedure Act http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_90j01_ev001.htm
LOQ-B1	Gayler v. Canada (Director Personnel Careers Administration Other Ranks, National Defence Headquarters), [1995] 1 FC 801 http://www.canlii.org/en/ca/fct/doc/1994/1994canlii3544/1994canlii3544.html
LOQ-B1	Hawco v. Canada (Attorney General), 1998 CanLII 7996 (FC) http://www.canlii.org/en/ca/fct/doc/1998/1998canlii7996/1998canlii7996.html
LOQ-B1	McLennan v. Canada (Minister of National Defence), 1998 CanLII 8010 (FC) http://www.canlii.org/en/ca/fct/doc/1998/1998canlii8010/1998canlii8010.html
LOQ-B1	Rockman v. Canada (Attorney General), 2000 CanLII 14976 (FC) http://www.canlii.org/en/ca/fct/doc/2000/2000canlii14976/2000canlii14976.html
LOQ-C1	CDS Directive of CF Command and Control and Delegation of Authority for Force Employment, 28 April 2013 http://sjs.mil.ca/dgoperations/_docs/CDS_Directives/CF%20C2%20Directive%202013/Eng/Annex%20C%20CF%20C2%20and%20the%20Delegatio
LOQ-C1	Canadian Forces Organization Orders (CFOOs) http://vcds.mil.ca/sites/intranet-eng.aspx?page=4395
LOQ-C4	DAOD 2017-1 Military Grievance Process http://www.admfincs.forces.gc.ca/dao-doa/2000/2017-1-eng.asp
LOQ-C4	DAOD 5012-0 Harassment Prevention and Resolution http://www.admfincs.forces.gc.ca/dao-doa/5000/5012-0-eng.asp
LOQ-C4	DAOD 5019-2 Administrative Review http://www.admfincs.forces.gc.ca/dao-doa/5000/5019-2-eng.asp
LOQ-C4	DAOD 5019-4 Remedial Measures http://www.admfincs.forces.gc.ca/dao-doa/5000/5019-4-eng.asp
LOQ-C4	DAOD 5046-0 Alternative Dispute Resolution
LOQ-C4	DAOD 7002-0 Boards of Inquiry and Summary Investigations http://www.admfincs.forces.gc.ca/dao-doa/7000/7002-0-eng.asp
LOQ-D1	A-LG-007-000/AF-010 Military Administrative Law Manual (2008) http://jag.mil.ca/publications/adminlaw-loiadmin/MilAdminlaw-DroitAdminMil-eng.pdf
LOQ-D1	Leadership in the Canadian Forces: Conceptual Foundations, http://airdriecadets.com/docs/PO%20025%20OUTDOOR%20LEADER/Leadership%20in%20the%20CF%20Conceptual%20Foundations.pdf

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LOQ-D1	Military Administrative Law Manual http://jag.mil.ca/publications/adminlaw-loiadmin/MilAdminlaw-DroitAdminMil-eng.pdf

PO 005 Advise on CAF organization and command

Number	Reference
LOQ-A3	National Defence Act, R.S.C. 1985, c. N-5 http://laws-lois.justice.gc.ca/eng/acts/N-5/index.html
LOQ-A5-1	Queen's Regulations and Orders for the Canadian Forces (QR&O) - Volume I - Administration http://www.admfincs.forces.gc.ca/qro-orf/vol-01/index-eng.asp
LOQ-C1	CDS Directive of CF Command and Control and Delegation of Authority for Force Employment, 28 April 2013 http://sjs.mil.ca/dgoperations/_docs/CDS_Directives/CF%20C2%20Directive%202013/Eng/Annex%20C%20CF%20C2%20and%20the%20Delegatio
LOQ-C1	Canadian Forces Organization Orders (CFOOs) http://vcds.mil.ca/sites/intranet-eng.aspx?page=4395
LOQ-D1	A-LG-007-000/AF-010 Military Administrative Law Manual (2008) http://jag.mil.ca/publications/adminlaw-loiadmin/MilAdminlaw-DroitAdminMil-eng.pdf

PO 006 Advise on general principles of CF service

Number	Reference
LOQ-A1	Constitution Act, 1867, 30 & 31 Victoria, c. 3 (U.K.), R.S.C. 1985, App. II, No. 11. http://laws-lois.justice.gc.ca/eng/CONST/page-1.html
LOQ-A1	Constitution Act, 1982, Enacted as Schedule B to the Canada Act 1982, 1982, c. 11 (U.K.), which came into force on April 17, 1982. http://laws-lois.justice.gc.ca/eng/CONST/page-15.html#h-38
LOQ-A2	Canadian Charter of Rights and Freedoms http://laws-lois.justice.gc.ca/eng/CONST/page-15.html#h-38
LOQ-A3	Canadian Human Rights Act http://laws-lois.justice.gc.ca/eng/acts/H-6/
LOQ-A3	National Defence Act, R.S.C. 1985, c. N-5 http://laws-lois.justice.gc.ca/eng/acts/N-5/index.html
LOQ-A5-1	Queen's Regulations and Orders for the Canadian Forces (QR&O) - Volume I - Administration http://www.admfincs.forces.gc.ca/qro-orf/vol-01/index-eng.asp
LOQ-B1- Canada (Attorney General) v. St Thomas, [1993] F.C.J. No. 1015, 109 D.L.R. (4th) 671 (C.A.).	Canada (Attorney-General) v. St. Thomas http://www.cdn-hr-reporter.ca/frontpage
LOQ-C4 DAOD 5002-1, Enrolment	DAOD 5002-1, Enrolment http://www.admfincs.forces.gc.ca/dao-doa/5000/5002-1-eng.asp
LOQ-C4 DAOD 5002-4, Supplementary Reserve	DAOD 5002-4, Supplementary Reserve http://www.admfincs.forces.gc.ca/dao-doa/5000/5002-4-eng.asp
LOQ-C4 DAOD 5023-0 Universality of Service	DAOD 5023-0 Universality of Service http://www.admfincs.forces.gc.ca/dao-doa/5000/5023-0-eng.asp
LOQ-C4 DAOD 5023-1, Minimum Operational Standards Related to Universality of Service	DAOD 5023-1, Minimum Operational Standards Related to Universality of Service http://www.admfincs-smafinsm.forces.gc.ca/dao-doa/5000/5023-1-eng.asp
LOQ-C4 DAOD 5023-1, Minimum Operational Standards Related to Universality of Service	DAOD 5023-1, Minimum Operational Standards Related to Universality of Service http://www.admfincs.forces.gc.ca/dao-doa/5000/5023-1-eng.asp
LOQ-C4 DAOD 5049-1, Obligatory Service	DAOD 5049-1, Obligatory Service http://www.admfincs.forces.gc.ca/dao-doa/5000/5049-1-eng.asp
LOQ-C4 DAOD 5516-0, Human Rights	DAOD 5516-0, Human Rights http://www.admfincs.forces.gc.ca/dao-doa/5000/5516-0-eng.asp

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LOQ-C4 DAOD 5516-1, Human Rights Complaints	DAOD 5516-1, Human Rights Complaints http://www.admfincs.forces.gc.ca/dao-doa/5000/5516-1-eng.asp
LOQ-D1	A-LG-007-000/AF-010 Military Administrative Law Manual (2008) http://jag.mil.ca/publications/adminlaw-loiadmin/MilAdminlaw-DroitAdminMil-eng.pdf

PO 007 Advise on the development and application of significant CF policies

Number	Reference
LOQ-A1	Constitution Act, 1982, Enacted as Schedule B to the Canada Act 1982, 1982, c. 11 (U.K.), which came into force on April 17, 198 http://laws-lois.justice.gc.ca/eng/CONST/page-15.html#h-38
LOQ-A2	Canadian Charter of Rights and Freedoms http://laws-lois.justice.gc.ca/eng/CONST/page-15.html#h-38
LOQ-A3	Canada Elections Act http://laws-lois.justice.gc.ca/eng/acts/E-2.01/FullText.html
LOQ-A3	National Defence Act, R.S.C. 1985, c. N-5 http://laws-lois.justice.gc.ca/eng/acts/N-5/index.html
LOQ-A5-1	Queen's Regulations and Orders for the Canadian Forces (QR&O) - Volume I - Administration http://www.admfincs.forces.gc.ca/qro-orf/vol-01/index-eng.asp
LOQ-B1-R. v. Oakes, [1986] 1 SCR 103	R. v. Oakes http://www.canlii.org/en/ca/scc/doc/1986/1986canlii46/1986canlii46.html
LOQ-C1	CDS Directive of CF Command and Control and Delegation of Authority for Force Employment, 28 April 2013 http://sjs.mil.ca/dgoperations/_docs/CDS_Directives/CF%20C2%20Directive%202013/Eng/Annex%20C%20CF%20C2%20and%
LOQ-C4 DAOD 2008-0, Public Affairs Policy	DAOD 2008-0, Public Affairs Policy http://www.admfincs.forces.gc.ca/dao-doa/2000/2008-0-eng.asp
LOQ-C4 DAOD 5019-3, Canadian Forces Drug Control Program	DAOD 5019-3, Canadian Forces Drug Control Program http://www.admfincs.forces.gc.ca/dao-doa/5000/5019-3-eng.asp
LOQ-C4 DAOD 5019-5, Sexual Misconduct and Sexual Disorders	DAOD 5019-5, Sexual Misconduct and Sexual Disorders http://www.admfincs.forces.gc.ca/dao-doa/5000/5019-5-eng.asp
LOQ-C4 DAOD 5019-7 Alcohol Misconduct	DAOD 5019-7 Alcohol Misconduct http://www.admfincs.forces.gc.ca/dao-doa/5000/5019-7-eng.asp
LOQ-C4 DAOD 7021-0, Conflict of Interest and Post-Employment	DAOD 7021-0, Conflict of Interest and Post-Employment http://www.admfincs.forces.gc.ca/dao-doa/7000/7021-0-eng.asp
LOQ-C4 DAOD 7021-1, Conflict of Interest	DAOD 7021-1, Conflict of Interest http://www.admfincs.forces.gc.ca/dao-doa/7000/7021-1-eng.asp
LOQ-C4 DAOD 7021-3, Acceptance of Gifts, Hospitality and Other Benefits	DAOD 7021-3, Acceptance of Gifts, Hospitality and Other Benefits http://www.admfincs.forces.gc.ca/dao-doa/7000/7021-3-eng.asp
LOQ-C4	DAOD 5019-4 Remedial Measures http://www.admfincs.forces.gc.ca/dao-doa/5000/5019-4-eng.asp
LOQ-D1 JAG Policy Directive-Media Relations	JAG Policy Directive-Media Relations http://jag.mil.ca/publications/directives/directive001-99.pdf
LOQ-D9 FEDERAL,PROVINCIAL AND TERRITORIALELECTORAL EVENTS	FEDERAL,PROVINCIAL AND TERRITORIALELECTORAL EVENTS http://www.forces.gc.ca/assets/FORCES_Internet/docs/en/jag/fed-prov-terr-electoral-events.pdf

PO 008 Advise on the administration of CAF service

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Number	Reference
LOQ-A2	Canadian Charter of Rights and Freedoms http://laws-lois.justice.gc.ca/eng/CONST/page-15.html#h-38
LOQ-A3 Garnishment, Attachment and Pension Diversion Act	Garnishment, Attachment ans Pension Diversion Act http://laws-lois.justice.gc.ca/eng/acts/G-2/index.html
LOQ-A3 Injured Military Members Compensation Act	Injured Military Members Compensation Act http://laws-lois.justice.gc.ca/eng/acts/I-9.8/page-1.html
LOQ-A3 Pension Benefits Division Act	Pension Benefits Division Act http://laws-lois.justice.gc.ca/eng/acts/P-6.7/index.html
LOQ-A3	Canada Pension Plan http://laws-lois.justice.gc.ca/eng/acts/C-8/index.html
LOQ-A3	Canadian Forces Members and Veterans Re-establishment and Compensation Act http://laws-lois.justice.gc.ca/eng/acts/C-16.8/
LOQ-A3	Canadian Forces Superannuation Act http://laws-lois.justice.gc.ca/eng/acts/C-17/
LOQ-A3	Canadian Human Rights Act http://laws-lois.justice.gc.ca/eng/acts/H-6/
LOQ-A3	Criminal Code, R.S.C., 1985, c. C-46 http://laws-lois.justice.gc.ca/eng/acts/C-46/index.html
LOQ-A3	National Defence Act, R.S.C. 1985, c. N-5 http://laws-lois.justice.gc.ca/eng/acts/N-5/index.html
LOQ-A4	Privacy Act http://laws-lois.justice.gc.ca/eng/acts/P-21/
LOQ-A5-1	Queen's Regulations and Orders for the Canadian Forces (QR&O) - Volume I - Administration http://www.admfincs.forces.gc.ca/qro-orf/vol-01/index-eng.asp
LOQ-A5-2	Queen's Regulations and Orders for the Canadian Forces (QR&O) - Volume II - Disciplinary http://www.admfincs.forces.gc.ca/qro-orf/vol-02/index-eng.asp
LOQ-A5-3	Queen's Regulations and Orders for the Canadian Forces (QRandÓ) - Volume III - Financial http://www.admfincs-smafinsm.forces.gc.ca/qro-orf/vol-03/index-eng.asp
LOQ-C4 DAOD 1002-1, Requests under the Privacy Act for Personal Information	DAOD 1002-1, Requests under the Privacy Act for Personal Information http://www.admfincs.forces.gc.ca/dao-doa/1000/1002-1-eng.asp
LOQ-C4 DAOD 5001-2, Maternity and Parental Benefits	DAOD 5001-2, Maternity and Parental Benefits http://www.admfincs.forces.gc.ca/dao-doa/5000/5001-2-eng.asp
LOQ-C4 DAOD 5002-0, Military Personnel Requirements and Production	DAOD 5002-0, Military Personnel Requirements and Production http://www.admfincs.forces.gc.ca/dao-doa/5000/5002-0-eng.asp
LOQ-C4 DAOD 5002-1, Enrolment	DAOD 5002-1, Enrolment http://www.admfincs.forces.gc.ca/dao-doa/5000/5002-1-eng.asp
LOQ-C4 DAOD 5002-2, Direct Entry Officer Plan - Regular Force	DAOD 5002-2, Direct Entry Officer Plan - Regular Force http://www.admfincs.forces.gc.ca/dao-doa/5000/5002-2-eng.asp
LOQ-C4 DAOD 5002-3, Component and Sub-Component Transfer	DAOD 5002-3, Component and Sub-Component Transfer http://www.admfincs.forces.gc.ca/dao-doa/5000/5002-3-eng.asp
LOQ-C4 DAOD 5003-1, Restrictions on Duty	DAOD 5003-1, Restrictions on Duty http://www.admfincs.forces.gc.ca/dao-doa/5000/5003-1-eng.asp
LOQ-C4 DAOD 5018-0, Injured Members and Military Casualties	DAOD 5018-0, Injured Members and Military Casualties http://www.admfincs.forces.gc.ca/dao-doa/5000/5018-0-eng.asp
LOQ-C4 DAOD 5018-2, Report of Injuries and Exposure to Toxic Substances	DAOD 5018-2, Report of Injuries and Exposure to Toxic Substances http://www.admfincs.forces.gc.ca/dao-doa/5000/5018-2-eng.asp

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LOQ-C4 DAOD 5019-0, Conduct and Performance Deficiencies	DAOD 5019-0, Conduct and Performance Deficiencies http://www.admfincs.forces.gc.ca/dao-doa/5000/5019-0-eng.asp
LOQ-C4 DAOD 5019-8, Private Debts	DAOD 5019-8, Private Debts http://www.admfincs.forces.gc.ca/dao-doa/5000/5019-8-eng.asp
LOQ-C4 DAOD 5023-0 Universality of Service	DAOD 5023-0 Universality of Service http://www.admfincs.forces.gc.ca/dao-doa/5000/5023-0-eng.asp
LOQ-C4 DAOD 5023-1, Minimum Operational Standards Related to Universality of Service	DAOD 5023-1, Minimum Operational Standards Related to Universality of Service http://www.admfincs.forces.gc.ca/dao-doa/5000/5023-1-eng.asp
LOQ-C4 DAOD 5049-1, Obligatory Service	DAOD 5049-1, Obligatory Service http://www.admfincs.forces.gc.ca/dao-doa/5000/5049-1-eng.asp
LOQ-C4 DAOD 5059-0, Performance Assessment of Canadian Forces Members	DAOD 5059-0, Performance Assessment of Canadian Forces Members http://www.admfincs.forces.gc.ca/dao-doa/5000/5059-0-eng.asp
LOQ-C4 DAOD 7001-0, Civil and Criminal Court Proceedings	DAOD 7001-0, Civil and Criminal Court Proceedings http://www.admfincs.forces.gc.ca/dao-doa/7000/7001-0-eng.asp
LOQ-C4 DAOD 7001-1, Attendance at Civil and Criminal Court Proceedings	DAOD 7001-1, Attendance at Civil and Criminal Court Proceedings http://www.admfincs.forces.gc.ca/dao-doa/7000/7001-1-eng.asp
LOQ-C4 DAOD 7001-2, Service of Legal Documents Concerning Civil and Criminal Court Proceedings	DAOD 7001-2, Service of Legal Documents Concerning Civil and Criminal Court Proceedings http://www.admfincs.forces.gc.ca/dao-doa/7000/7001-2-eng.asp
LOQ-C4 DAOD 7011-0, Service Estates and Personal Belongings	DAOD 7011-0, Service Estates and Personal Belongings http://www.admfincs.forces.gc.ca/dao-doa/7000/7011-0-eng.asp
LOQ-C4 DAOD 7011-1, Responsibilities for Service Estates and Personal Belongings	DAOD 7011-1, Responsibilities for Service Estates and Personal Belongings http://www.admfincs-smafinsm.forces.gc.ca/dao-doa/7000/7011-1-eng.asp
LOQ-C4 DAOD 7012-0, Wills	DAOD 7012-0, Wills http://www.admfincs.forces.gc.ca/dao-doa/7000/7012-0-eng.asp
LOQ-C4 DAOD 7012-1, Preparation and Administration of Wills	DAOD 7012-1, Preparation and Administration of Wills http://www.admfincs.forces.gc.ca/dao-doa/7000/7012-1-eng.asp
LOQ-C4 DAOD 7016-0, Pardons	DAOD 7016-0, Pardons http://www.admfincs.forces.gc.ca/dao-doa/7000/7016-0-eng.asp
LOQ-C4 DAOD 7016-1, Canadian Forces Administration in Respect of a Pardon	DAOD 7016-1, Canadian Forces Administration in Respect of a Pardon http://www.admfincs.forces.gc.ca/dao-doa/7000/7016-1-eng.asp
LOQ-C4	DAOD 5019-2 Administrative Review http://www.admfincs.forces.gc.ca/dao-doa/5000/5019-2-eng.asp
LOQ-C4	DAOD 5019-4 Remedial Measures http://www.admfincs.forces.gc.ca/dao-doa/5000/5019-4-eng.asp
LOQ-C4	DAOD 7002-0 Boards of Inquiry and Summary Investigations http://www.admfincs.forces.gc.ca/dao-doa/7000/7002-0-eng.asp
LOQ-C9 Compensation and Benefits Instruction	Compensation and Benefits Instruction http://www.forces.gc.ca/en/caf-community-benefits/cbi-benefits.page?
LOQ-C9 Supplementary Death Benefit Plan	Supplementary Death Benefit Plan http://www.forces.gc.ca/en/caf-community-pension-policy/supplementary-death-benefit-plan.page
LOQ-D1	A-LG-007-000/AF-010 Military Administrative Law Manual (2008) http://jag.mil.ca/publications/adminlaw-loiadmin/MilAdminlaw-DroitAdminMil-eng.pdf
LOQ-D9 The Guide to Benefits, Programs, and Services for Serving and Former Canadian Armed Forces Members and their Families	The Guide to Benefits, Programs, and Services for Serving and Former Canadian Armed Forces Members and their Families http://www.forces.gc.ca/en/caf-community-benefits-ill-injured-deceased/guide-toc.page?

PO 009 Advise on complaint resolution

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Number	Reference
LOQ-A3	National Defence Act, R.S.C. 1985, c. N-5 http://laws-lois.justice.gc.ca/eng/acts/N-5/index.html
LOQ-A5-1	Queen's Regulations and Orders for the Canadian Forces (QR&O) - Volume I - Administration http://www.admfincs.forces.gc.ca/qro-orf/vol-01/index-eng.asp
LOQ-C4 DAOD 2017-0, Military Grievances	DAOD 2017-0, Military Grievances http://www.admfincs.forces.gc.ca/dao-doa/2000/2017-0-eng.asp
LOQ-C4 DAOD 5047-1, Office of the Ombudsman	DAOD 5047-1, Office of the Ombudsman http://www.admfincs.forces.gc.ca/dao-doa/5000/5047-1-eng.asp
LOQ-C4	DAOD 2017-1 Military Grievance Process http://www.admfincs.forces.gc.ca/dao-doa/2000/2017-1-eng.asp
LOQ-C4	DAOD 5012-0 Harassment Prevention and Resolution http://www.admfincs.forces.gc.ca/dao-doa/5000/5012-0-eng.asp
LOQ-C4	DAOD 5046-0 Alternative Dispute Resolution
LOQ-C9 Policy on Harassment Prevention and Resolution	Policy on Harassment Prevention and Resolution http://www.tbs-sct.gc.ca/pol/doc-eng.aspx?id=26041

PO 010 Advising on admin investigations

Number	Reference
LOQ-A3	Aeronautics Act http://laws-lois.justice.gc.ca/eng/acts/A-2/index.html
LOQ-A3	National Defence Act, R.S.C. 1985, c. N-5 http://laws-lois.justice.gc.ca/eng/acts/N-5/index.html
LOQ-A5-1	Queen's Regulations and Orders for the Canadian Forces (QR&O) - Volume I - Administration http://www.admfincs.forces.gc.ca/qro-orf/vol-01/index-eng.asp
LOQ-A5-2	Queen's Regulations and Orders for the Canadian Forces (QR&O) - Volume II - Disciplinary http://www.admfincs.forces.gc.ca/qro-orf/vol-02/index-eng.asp
LOQ-C4 DAOD 7002-1, Boards of Inquiry	DAOD 7002-1, Boards of Inquiry http://www.admfincs.forces.gc.ca/dao-doa/7000/7002-1-eng.asp
LOQ-C4 DAOD 7002-2, Summary Investigations	DAOD 7002-2, Summary Investigations http://www.admfincs.forces.gc.ca/dao-doa/7000/7002-2-eng.asp
LOQ-C4 DAOD 7002-3, Subjects of Investigation and References	DAOD 7002-3, Subjects of Investigation and References http://www.admfincs.forces.gc.ca/dao-doa/7000/7002-3-eng.asp
LOQ-C4	DAOD 7002-0 Boards of Inquiry and Summary Investigations http://www.admfincs.forces.gc.ca/dao-doa/7000/7002-0-eng.asp
LOQ-C9 Complaints About The Conduct Of Members Of The Military Police Regulations	Complaints About The Conduct Of Members Of The Military Police Regulations http://www.mpcc-cppm.gc.ca/01/100/151-eng.aspx

PO 011 Advise on Crown liability issues

Number	Reference
LOQ-A3	Crown Liability and Proceedings Act http://laws-lois.justice.gc.ca/eng/acts/C-50/index.html
LOQ-A3	Financial Administration Act http://laws-lois.justice.gc.ca/eng/acts/F-11/
LOQ-A3	National Defence Act, R.S.C. 1985, c. N-5 http://laws-lois.justice.gc.ca/eng/acts/N-5/index.html
LOQ-A5-1	Queen's Regulations and Orders for the Canadian Forces (QR&O) - Volume I - Administration http://www.admfincs.forces.gc.ca/qro-orf/vol-01/index-eng.asp

RELEASED UNDER THE AIA - UNCLASSIFIED INFORMATION
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LOQ-C4 DAOD 7004-0, Claims By or Against the Crown and Ex gratia Payments	DAOD 7004-0, Claims By or Against the Crown and Ex gratia Payments http://www.admfincs.forces.gc.ca/dao-doa/7000/7004-0-eng.asp
LOQ-C4 DAOD 7004-1, Claims and Ex gratia Procedures	DAOD 7004-1, Claims and Ex gratia Procedures http://www.admfincs.forces.gc.ca/dao-doa/7000/7004-1-eng.asp
LOQ-C4 DOAD 7004-2, Compensation for Loss or Damage to Personal Property	DOAD 7004-2, Compensation for Loss or Damage to Personal Property http://www.admfincs.forces.gc.ca/dao-doa/7000/7004-2-eng.asp
LOQ-C9 Treasury Board Policy on Legal Assistance and Indemnification	Policy on Legal Assistance and Indemnification http://www.tbs-sct.gc.ca/pol/doc-eng.aspx?id=13937§ion=text

PO 012 Advise on agreements & arrangements

Number	Reference
LOQ-A3	Federal Real Property and Federal Immovables Act http://laws-lois.justice.gc.ca/eng/acts/F-8.4/index.html
LOQ-A3	Financial Administration Act http://laws-lois.justice.gc.ca/eng/acts/F-11/
LOQ-A4 Defence Materiel Loan Regulations	Defence Materiel Loan Regulations http://laws-lois.justice.gc.ca/eng/regulations/C.R.C.,_c._690/page-1.html
LOQ-A4 Public Property Loan Regulations	Public Property Loan Regulations http://laws-lois.justice.gc.ca/eng/regulations/SOR-92-745/page-1.html
LOQ-C4 DAOD 3000-0, Materiel Acquisition and Support	DAOD 3000-0, Materiel Acquisition and Support http://www.admfincs.forces.gc.ca/dao-doa/3000/3000-0-eng.asp
LOQ-C4 DAOD 3015-0, Green Procurement	DAOD 3015-0, Green Procurement http://www.admfincs.forces.gc.ca/dao-doa/3000/3015-0-eng.asp
LOQ-C4 DAOD 3015-1, Management of Green Procurement	DAOD 3015-1, Management of Green Procurement http://www.admfincs.forces.gc.ca/dao-doa/3000/3015-1-eng.asp
LOQ-C4 DAOD 7014-0, Memoranda of Understanding	DAOD 7014-0, Memoranda of Understanding http://www.admfincs.forces.gc.ca/dao-doa/7000/7014-0-eng.asp
LOQ-C4 DAOD 7014-1, Memoranda of Understanding Development	DAOD 7014-1, Memoranda of Understanding Development http://www.admfincs.forces.gc.ca/dao-doa/7000/7014-1-eng.asp
LOQ-C9 Treasury Board Contracting Policy	Treasury Board Contracting Policy http://www.tbs-sct.gc.ca/pol/doc-eng.aspx?id=14494§ion=text
LOQ-D1 Memoranda of Understanding (MoU) Writing Guidelines	JAG Memoranda of Understanding (MoU) Writing Guidelines http://www.forces.gc.ca/en/about-reports-pubs-military-law/daod-mou-writing-guidelines.page
LOQ-D1 PROVISION OF SERVICES POLICY	PROVISION OF SERVICES http://admfincs.mil.ca/dfpp/101901_e.asp

PO 013 Advise on matters in conjuction with Department of Justice and OGD

Number	Reference
LOQ-A1	Constitution Act, 1867, 30 & 31 Victoria, c. 3 (U.K.), R.S.C. 1985, App. II, No. 11. http://laws-lois.justice.gc.ca/eng/CONST/page-1.html
LOQ-A1	Constitution Act, 1982, Enacted as Schedule B to the Canada Act 1982, 1982, c. 11 (U.K.), which came into force on April 17, 1982. http://laws-lois.justice.gc.ca/eng/CONST/page-15.html#h-38
LOQ-A3 Fisheries Act	Fisheries Act http://laws-lois.justice.gc.ca/eng/acts/F-14/index.html
LOQ-A3 Indian Act	Indian Act http://laws-lois.justice.gc.ca/eng/acts/I-5/
LOQ-A3 Oceans Act	Oceans Act http://laws-lois.justice.gc.ca/eng/acts/O-2.4/index.html

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LOQ-A3 Official Languages Act	Official Languages Act http://laws-lois.justice.gc.ca/eng/acts/O-3.01/index.html
LOQ-A3	Access to Information Act http://laws-lois.justice.gc.ca/eng/acts/A-1/index.html
LOQ-A3	Canadian Environmental Protection Act, R.S.C. 1985, c. C-15 http://laws-lois.justice.gc.ca/eng/acts/C-15.31/
LOQ-A3	Canadian Human Rights Act http://laws-lois.justice.gc.ca/eng/acts/H-6/
LOQ-A3	Federal Real Property and Federal Immovables Act http://laws-lois.justice.gc.ca/eng/acts/F-8.4/index.html
LOQ-A3	Financial Administration Act http://laws-lois.justice.gc.ca/eng/acts/F-11/
LOQ-A3	National Defence Act, R.S.C. 1985, c. N-5 http://laws-lois.justice.gc.ca/eng/acts/N-5/index.html
LOQ-A4	Privacy Act http://laws-lois.justice.gc.ca/eng/acts/P-21/
LOQ-A5-1	Queen's Regulations and Orders for the Canadian Forces (QR&O) - Volume I - Administration http://www.admfincs.forces.gc.ca/qro-orf/vol-01/index-eng.asp
LOQ-A5-3	Queen's Regulations and Orders for the Canadian Forces (QRandO) - Volume III - Financial http://www.admfincs-smafinsm.forces.gc.ca/qro-orf/vol-03/index-eng.asp
LOQ-A5-4-3.2-DCAARS	Defence Controlled Access Area Regulations (SOR/86-957) http://laws-lois.justice.gc.ca/eng/regulations/SOR-86-957/
LOQ-C4 CFAO 35-5 -- DENTAL CARE AND SCREENING OF DEPENDANTS AND OTHER CIVILIANS	CFAO 35-5 -- DENTAL CARE AND SCREENING OF DEPENDANTS AND OTHER CIVILIANS http://admfincs.mil.ca/admfincs/subjects/cfao/035-05_e.asp
LOQ-C4 DAOD 1001-0, Access to Information	DAOD 1001-0, Access to Information http://www.admfincs.forces.gc.ca/dao-doa/1000/1001-0-eng.asp
LOQ-C4 DAOD 1001-1, Formal Requests for Access to Departmental Information	DAOD 1001-1, Formal Requests for Access to Departmental Information http://www.admfincs.forces.gc.ca/dao-doa/1000/1001-1-eng.asp
LOQ-C4 DAOD 1002-0, Personal Information	DAOD 1002-0, Personal Information http://www.admfincs.forces.gc.ca/dao-doa/1000/1002-0-eng.asp
LOQ-C4 DAOD 1002-1, Requests under the Privacy Act for Personal Information	DAOD 1002-1, Requests under the Privacy Act for Personal Information http://www.admfincs.forces.gc.ca/dao-doa/1000/1002-1-eng.asp
LOQ-C4 DAOD 1002-3, Management of Personal Information	DAOD 1002-3, Management of Personal Information http://www.admfincs.forces.gc.ca/dao-doa/1000/1002-3-eng.asp
LOQ-C4 DAOD 4003-0, Environmental Protection and Stewardship	DAOD 4003-0, Environmental Protection and Stewardship http://www.admfincs.forces.gc.ca/dao-doa/4000/4003-0-eng.asp
LOQ-C4 DAOD 4003-2, Environmental Assessment	DAOD 4003-2, Environmental Assessment http://www.admfincs-smafinsm.forces.gc.ca/dao-doa/4000/4003-2-eng.asp
LOQ-C4 DAOD 5003-1, Restrictions on Duty	DAOD 5003-1, Restrictions on Duty http://www.admfincs.forces.gc.ca/dao-doa/5000/5003-1-eng.asp
LOQ-C4 DAOD 5003-5, Pregnancy Administration	DAOD 5003-5, Pregnancy Administration http://www.admfincs.forces.gc.ca/dao-doa/5000/5003-5-eng.asp
LOQ-C4 DAOD 5039-0, Official Languages	DAOD 5039-0, Official Languages http://www.admfincs.forces.gc.ca/dao-doa/5000/5039-0-eng.asp
LOQ-C4 DAOD 9003-1, Non-Public Property Governance Framework, Chief of Military Personnel and the Non-Public Property Board	DAOD 9003-1, Non-Public Property Governance Framework, Chief of Military Personnel and the Non-Public Property Board http://www.admfincs.forces.gc.ca/dao-doa/9000/9003-1-eng.asp

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LOQ-C4	CFAO 34-28 -- DEPENDANTS -- MEDICAL SCREENING http://admfincs.mil.ca/admfincs/subjects/cfao/034-28_e.asp
LOQ-C5 CFAO 38-1 -- LIABILITY FOR PUBLIC AND NON-PUBLIC PROPERTY	CFAO 38-1 -- LIABILITY FOR PUBLIC AND NON-PUBLIC PROPERTY http://admfincs.mil.ca/admfincs/subjects/cfao/038-01_e.asp
LOQ-D1 CAF Health Serivces	CAF Health Services http://www.forces.gc.ca/en/caf-community-health-services/index.page

PO 014 Advise on disciplinary jurisdiction AT0035

Number	Reference
LOQ-A1	Constitution Act, 1867, 30 & 31 Victoria, c. 3 (U.K.), R.S.C. 1985, App. II, No. 11. http://laws-lois.justice.gc.ca/eng/CONST/page-1.html
LOQ-A2	Canadian Charter of Rights and Freedoms http://laws-lois.justice.gc.ca/eng/CONST/page-15.html#h-38
LOQ-A3	Criminal Code, R.S.C., 1985, c. C-46 http://laws-lois.justice.gc.ca/eng/acts/C-46/index.html
LOQ-A3	National Defence Act, R.S.C. 1985, c. N-5 http://laws-lois.justice.gc.ca/eng/acts/N-5/index.html
LOQ-A5-1	Queen's Regulations and Orders for the Canadian Forces (QR&O) - Volume I - Administration http://www.admfincs.forces.gc.ca/qro-orf/vol-01/index-eng.asp
LOQ-A5-2	Queen's Regulations and Orders for the Canadian Forces (QR&O) - Volume II - Disciplinary http://www.admfincs.forces.gc.ca/qro-orf/vol-02/index-eng.asp
LOQ-A5-4-3.2-DCAARS	Defence Controlled Access Area Regulations (SOR/86-957) http://laws-lois.justice.gc.ca/eng/regulations/SOR-86-957/
LOQ-A6-Bill C-15	Bill C-15, An Act to amend the National Defence Act and to make consequential amendments to other Acts, 1st Sess, 41st Parl, 2013 (assented to 19 June 2013), S.C. 2013, c 24. http://www.parl.gc.ca/content/hoc/Bills/411/Government/C-15/C-15_4/C-15_4.PDF
LOQ-B1-2-Nolan	R. v. Nolan, [1987] 1 S.C.R. 1212 http://scc-csc.lexum.com/scc-csc/scc-csc/en/item/229/index.do?r=AAAAAQAJciB2IG5vbGFuAAAAAAE
LOQ-B1-3-Grant	R. v. Grant, 2009 SCC 32, [2009] 2 S.C.R. 353 https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7799/index.do
LOQ-B2a-1-Moriarity	Moriarity v. R., 2014 CMAC 1, CMAC-560, CMAC-563 http://decisions.cmac-cacm.ca/cmac-cacm/cmac-cacm/en/item/66417/index.do
LOQ-B2a-2-Perrier	R v. Perrier, CMAC-434 http://decisions.cmac-cacm.ca/cmac-cacm/cmac-cacm/en/item/7828/index.do
LOQ-B2b-1-Haynes	R. v. Haynes, 1994 CanLII 4160 (NS CA); 130 NSR (2d) 311 http://www.canlii.org/en/ns/nsca/doc/1994/1994canlii4160/1994canlii4160.html
LOQ-C1	DPM Police Advisory 04/03 - Military Police Jurisdiction with Regard to Persons - 25 Dec 2003 http://vcds.mil.ca/sites/cfpm/resources/Advisories/2003/04-03_b.pdf
LOQ-C2	DPM Police Advisory 25/06 - Jurisdiction - 1 Dec 2006 http://vcds.mil.ca/sites/cfpm/resources/Advisories/2006/25-06.pdf
LOQ-C3	Military Police Policies and Technical Procedures Manual http://vcds.mil.ca/sites/intranet-eng.aspx?page=9288&title=Policies%20and%20Publications%20-%20Police%20Advisories&site=CFPM%20-%20Policies%20and%20Publications
LOQ-C4-DAOD-5016-0	DAOD 5016-0, Standards of Civilian Conduct and Discipline http://www.admfincs.forces.gc.ca/dao-doa/5000/5016-0-eng.asp
LOQ-C5-CFPM-DPM-PA- 16/08	DPM Police Advisory 16/08 MP Reports - Timeless - 8 July 2008 http://vcds.mil.ca/sites/cfpm/resources/Advisories/2008/16-08.pdf
LOQ-C6-JAG-Policy Directive-010/00	Charge Screening Policy, 10 Jul 00 http://jag.mil.ca/publications/directives/directive010-00.pdf

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LOQ-C7-JAG-Policy Directive 006/00	Professional Standars Review http://jag.mil.ca/publications/directives/directive006-00.pdf
LOQ-C8-CFPM	DPM Police Advisory 28/09 Investigative detention http://vcds.mil.ca/sites/cfpm/resources/Advisories/2009/28-09.pdf
LOQ-D1	B-GG-005-027/AF-011 Military Justice at the Summary Trial Level 2.2 http://www.forces.gc.ca/en/about-reports-pubs-military-law-summary-trial-level/index.page?
LOQ-D1	Guide for Referral Authorities http://cda.mil.ca/cfmlc-cdmfc/doc/GuideforCourtMartialReferralAuthorities-bil.pdf
LOQ-D2-Black Law Dictionary	Black Law Dictionary, 5th ed. St. Paul, Minnesota: West Publishing Company, 1979

PO 015 Advise on legal issues related to custody AT0010

Number	Reference
LOQ-A2	Canadian Charter of Rights and Freedoms http://laws-lois.justice.gc.ca/eng/CONST/page-15.html#h-38
LOQ-A3	Criminal Code, R.S.C., 1985, c. C-46 http://laws-lois.justice.gc.ca/eng/acts/C-46/index.html
LOQ-A3	National Defence Act, R.S.C. 1985, c. N-5 http://laws-lois.justice.gc.ca/eng/acts/N-5/index.html
LOQ-A5-1	Queen's Regulations and Orders for the Canadian Forces (QR&O) - Volume I - Administration http://www.admfincs.forces.gc.ca/qro-orf/vol-01/index-eng.asp
LOQ-A5-2	Queen's Regulations and Orders for the Canadian Forces (QR&O) - Volume II - Disciplinary http://www.admfincs.forces.gc.ca/qro-orf/vol-02/index-eng.asp
LOQ-A5-4-3.2-DCAARS	Defence Controlled Access Area Regulations (SOR/86-957) http://laws-lois.justice.gc.ca/eng/regulations/SOR-86-957/
LOQ-A6-Bill C-15	Bill C-15, An Act to amend the National Defence Act and to make consequential amendments to other Acts, 1st Sess, 41st Parl, 2013 (assented to 19 June 2013), S.C. 2013, c 24. http://www.parl.gc.ca/content/hoc/Bills/411/Government/C-15/C-15_4/C-15_4.PDF
LOQ-B1-2-Nolan	R. v. Nolan, [1987] 1 S.C.R. 1212 http://scc-csc.lexum.com/scc-csc/scc-csc/en/item/229/index.do?r=AAAAAQAJciB2IG5vbGFuAAAAAAE
LOQ-B2b-1-Haynes	R. v. Haynes, 1994 CanLII 4160 (NS CA); 130 NSR (2d) 311 http://www.canlii.org/en/ns/nsca/doc/1994/1994canlii4160/1994canlii4160.html
LOQ-C1	Canadian Forces Organization Orders (CFOOs) http://vcds.mil.ca/sites/intranet-eng.aspx?page=4395
LOQ-C3	Military Police Policies and Technical Procedures Manual http://vcds.mil.ca/sites/intranet-eng.aspx?page=9288&title=Policies%20and%20Publications%20-%20Police%20Advisories&site=CFPM%20-%20Policies%20and%20Publications
LOQ-D1	A-LG-007-000/AF-010 Military Administrative Law Manual (2008) http://jag.mil.ca/publications/adminlaw-loiadmin/MilAdminlaw-DroitAdminMil-eng.pdf
LOQ-D1	B-GG-005-027/AF-011 Military Justice at the Summary Trial Level 2.2 http://www.forces.gc.ca/en/about-reports-pubs-military-law-summary-trial-level/index.page?
LOQ-D1	JAG #162879 Military Law Digest Article - Arrest
LOQ-D1	JAG #162888 Military Law Digest Article - Pre-Trial Custody
LOQ-D2	Black's Law Dictionary, 8th ed. (St. Paul, MN: West Publishing, 2004)
LOQ-D2	The Dictionary of Canadian Law, 3d ed

PO 016 Advise on a disciplinary investigation AT0005

Number	Reference

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LOQ-A2	Canadian Charter of Rights and Freedoms http://laws-lois.justice.gc.ca/eng/CONST/page-15.html#h-38
LOQ-A3	Access to Information Act (R.S.C., 1985, c. A-1) http://laws-lois.justice.gc.ca/eng/acts/A-1/
LOQ-A3	Access to Information Act http://laws-lois.justice.gc.ca/eng/acts/A-1/index.html
LOQ-A3	Controlled Drugs and Substances Act (S.C. 1996, c. 19) http://laws-lois.justice.gc.ca/eng/acts/c-38.8/
LOQ-A3	Criminal Code, R.S.C., 1985, c. C-46 http://laws-lois.justice.gc.ca/eng/acts/C-46/index.html
LOQ-A3	National Defence Act, R.S.C. 1985, c. N-5 http://laws-lois.justice.gc.ca/eng/acts/N-5/index.html
LOQ-A3	Privacy Act (R.S.C., 1985, c. P-21 http://laws-lois.justice.gc.ca/eng/acts/P-21/
LOQ-A5-1	Queen's Regulations and Orders for the Canadian Forces (QR&O) - Volume I - Administration http://www.admfincs.forces.gc.ca/qro-orf/vol-01/index-eng.asp
LOQ-A5-2	Queen's Regulations and Orders for the Canadian Forces (QR&O) - Volume II - Disciplinary http://www.admfincs.forces.gc.ca/qro-orf/vol-02/index-eng.asp
LOQ-A5-5	Military Rules of Evidence (C.R.C., c. 1049) http://laws-lois.justice.gc.ca/eng/regulations/C.R.C._c._1049/
LOQ-A5	Access to Information Regulations (SOR/83-507) http://laws-lois.justice.gc.ca/eng/regulations/SOR-83-507/index.html
LOQ-A5	Inspection and Search Defence Regulations (SOR/86-958) http://laws-lois.justice.gc.ca/eng/regulations/SOR-86-958/FullText.html
LOQ-C2	DPM Police Advisory 12/04 Amendment Caution Non-Specific Charge http://vcds.mil.ca/sites/cfpm/resources/Advisories/2004/12-04_b.pdf
LOQ-C2	DPM Police Advisory 14\07 Preamble for Interviews http://vcds.mil.ca/sites/cfpm/resources/Advisories/2007/14-07.pdf
LOQ-C2	DPM Police Advisory 15/04 Audio/Video Recording (AV) of an interview http://vcds.mil.ca/sites/cfpm/resources/Advisories/2004/15-04_b.pdf
LOQ-C3	Military Police Policies and Technical Procedures Manual http://vcds.mil.ca/sites/intranet-eng.aspx?page=9288&title=Policies%20and%20Publications%20-%20Police%20Advisories&site=CFPM%20-%20Policies%20and%20Publications
LOQ-C4 DAOD 1001-0, Access to Information	DAOD 1001-0, Access to Information http://www.admfincs.forces.gc.ca/dao-doa/1000/1001-0-eng.asp
LOQ-C4 DAOD 1001-1, Formal Requests for Access to Departmental Information	DAOD 1001-1, Formal Requests for Access to Departmental Information http://www.admfincs.forces.gc.ca/dao-doa/1000/1001-1-eng.asp
LOQ-C4	DMP Directive 003/00 Post-Charge Review http://jag.mil.ca/publications/CMPS-SCPM/policy-politiques-003-eng.pdf
LOQ-C4	DMP Policy 002/00 Pre-Charge Screening http://http://jag.mil.ca/publications/CMPS-SCPM/policy-politiques-002-eng.pdf
LOQ-C4	JAG Policy Directive 010/00 - Charge Screening Policy http://jag.mil.ca/publications/directives/directive010-00.pdf
LOQ-D1	B-GG-005-027/AF-011 Military Justice at the Summary Trial Level 2.2 http://www.forces.gc.ca/en/about-reports-pubs-military-law-summary-trial-level/index.page?
LOQ-D1	Elements of the Offence
LOQ-D1	JAG #162877 Military Law Digest Article - Search and Seizure
LOQ-D1	JAG #162879 Military Law Digest Article - Arrest

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LOQ-D1	JAG #162880 Military Law Digest Article - Powers of Investigation
LOQ-D3	Cox's Criminal Evidence Handbook (2013-2014)

PO 017 Provide pre-charge legal advice AT0040

Number	Reference
LOQ-A1	Constitution Act, 1867, 30 & 31 Victoria, c. 3 (U.K.), R.S.C. 1985, App. II, No. 11. http://laws-lois.justice.gc.ca/eng/CONST/page-1.html
LOQ-A2	Canadian Charter of Rights and Freedoms http://laws-lois.justice.gc.ca/eng/CONST/page-15.html#h-38
LOQ-A3 Official Languages Act	Official Languages Act http://laws-lois.justice.gc.ca/eng/acts/O-3.01/index.html
LOQ-A3	National Defence Act, R.S.C. 1985, c. N-5 http://laws-lois.justice.gc.ca/eng/acts/N-5/index.html
LOQ-A5-2	Queen's Regulations and Orders for the Canadian Forces (QR&O) - Volume II - Disciplinary http://www.admfincs.forces.gc.ca/qro-orf/vol-02/index-eng.asp
LOQ-A5	Code of ethics of advocates, CQLR c B-1, r 3 https://www.canlii.org/en/qc/laws/regu/cqlr-c-b-1-r-3/latest/cqlr-c-b-1-r-3.html
LOQ-B3a-2	R v Balint, 2012 CM 2010 (CanLII) http://www.canlii.org/en/ca/cm/doc/2012/2012cm2010/2012cm2010.html
LOQ-C3	Military Police Policies and Technical Procedures Manual http://vcds.mil.ca/sites/intranet-eng.aspx?page=9288&title=Policies%20and%20Publications%20-%20Police%20Advisories&site=CFPM%20-%20Policies%20and%20Publications
LOQ-C4	DMP Policy 002/00 Pre-Charge Screening http://http://jag.mil.ca/publications/CMPS-SCPM/policy-politiques-002-eng.pdf
LOQ-C4	JAG Policy Directive 006/00 - Professional Standards Review
LOQ-C4	JAG Policy Directive 010/00 - Charge Screening Policy http://jag.mil.ca/publications/directives/directive010-00.pdf
LOQ-D1	B-GG-005-027/AF-011 Military Justice at the Summary Trial Level 2.2 http://www.forces.gc.ca/en/about-reports-pubs-military-law-summary-trial-level/index.page?
LOQ-D1	Elements of the Offence
LOQ-D1	JAG #162881 Military Law Digest Article - Laying of Charges
LOQ-D1	JAG #162882 Military Law Digest Article - Assisting Officer
LOQ-D1	JAG #162883 Military Law Digest Article - Disclosure to Accused
LOQ-D1	JAG #162884 Military Law Digest Article - Election for Court-Martial

PO 018 Advise on conduct of CSD proceedings AT0105

Number	Reference
LOQ-A3	National Defence Act, R.S.C. 1985, c. N-5 http://laws-lois.justice.gc.ca/eng/acts/N-5/index.html
LOQ-A5-2	Queen's Regulations and Orders for the Canadian Forces (QR&O) - Volume II - Disciplinary http://www.admfincs.forces.gc.ca/qro-orf/vol-02/index-eng.asp
LOQ-A5-4-1.4 Regulations on Detention Barracks	Regulations for Service Prisons and Detention Barracks http://www.admfincs-smafinsm.forces.gc.ca/qro-orf/vol-04/appendix-appendic-01-04-eng.asp
LOQ-A6-Bill C-15	Bill C-15, An Act to amend the National Defence Act and to make consequential amendments to other Acts, 1st Sess, 41st Parl, 2013 (assented to 19 June 2013), S.C. 2013, c 24. http://www.parl.gc.ca/content/hoc/Bills/411/Government/C-15/C-15_4/C-15_4.PDF
LOQ-C4	JAG Policy Directive 010/00 - Charge Screening Policy http://jag.mil.ca/publications/directives/directive010-00.pdf

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LOQ-D1	B-GG-005-027/AF-011 Military Justice at the Summary Trial Level 2.2 http://www.forces.gc.ca/en/about-reports-pubs-military-law-summary-trial-level/index.page?
LOQ-D1	JAG #162884 Military Law Digest Article - Election for Court-Martial
LOQ-D1	JAG #162885 Military Law Digest Article - Summary Trials
LOQ-D1	JAG #162886 Military Law Digest Article - Powers of punishment at summary trial

PO 019 Advise wrt post trial activities

Number	Reference
LOQ-A3	National Defence Act, R.S.C. 1985, c. N-5 http://laws-lois.justice.gc.ca/eng/acts/N-5/index.html
LOQ-A5-2	Queen's Regulations and Orders for the Canadian Forces (QR&O) - Volume II - Disciplinary http://www.admfincs.forces.gc.ca/qro-orf/vol-02/index-eng.asp
LOQ-C4	DAOD 7006-0, Conduct Sheets http://admfincs.mil.ca/admfincs/subjects/daod/7006/0_e.asp
LOQ-C4	DAOD 7006-1, Preparation and Maintenance of Conduct Sheets http://admfincs.mil.ca/admfincs/subjects/daod/7006/1_e.asp
LOQ-D1	B-GG-005-027/AF-011 Military Justice at the Summary Trial Level 2.2 http://www.forces.gc.ca/en/about-reports-pubs-military-law-summary-trial-level/index.page?

PO 020 Explain the role and responsibilities of counsel before military and appellate courts

Number	Reference
LOQ-A3	National Defence Act, R.S.C. 1985, c. N-5 http://laws-lois.justice.gc.ca/eng/acts/N-5/index.html
LOQ-A5-2	Queen's Regulations and Orders for the Canadian Forces (QR&O) - Volume II - Disciplinary http://www.admfincs.forces.gc.ca/qro-orf/vol-02/index-eng.asp
LOQ-A5-5	Military Rules of Evidence (C.R.C., c. 1049) http://laws-lois.justice.gc.ca/eng/regulations/C.R.C.,_c._1049/
LOQ-D5	CMAC Rules of Court http://www.cmac-cacm.ca/business/rules-eng.shtml

PO 021 Advise on the legal bases and authorities for CAF operations

Number	Reference
LOQ-A1	Constitution Act, 1867, 30 & 31 Victoria, c. 3 (U.K.), R.S.C. 1985, App. II, No. 11. http://laws-lois.justice.gc.ca/eng/CONST/page-1.html
LOQ-A3	Criminal Code, R.S.C., 1985, c. C-46 http://laws-lois.justice.gc.ca/eng/acts/C-46/index.html
LOQ-A3	National Defence Act, R.S.C. 1985, c. N-5 http://laws-lois.justice.gc.ca/eng/acts/N-5/index.html
LOQ-A4-	Rome Statute of the International Criminal Court http://www.icc-cpi.int/nr/rdonlyres/ea9aeff7-5752-4f84-be94-0a655eb30e16/0/rome_statute_english.pdf
LOQ-A4	Crimes Against Humanity and War Crimes Act (S.C. 2000, c. 24) http://laws-lois.justice.gc.ca/eng/acts/C-45.9/
LOQ-A4	Geneva Conventions Act (R.S.C., 1985, c. G-3) http://laws-lois.justice.gc.ca/eng/acts/G-3/
LOQ-A4	Optional Protocol to the International Covenant on Civil and Political Rights http://www.ohchr.org/EN/ProfessionalInterest/Pages/OPCCPR1.aspx
LOQ-A4	Statute of the International Court of Justice http://www.icj-cij.org/documents/index.php?p1=4&p2=2&p3=0&

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LOQ-C1	CDS Directive of CF Command and Control and Delegation of Authority for Force Employment, 28 April 2013 http://sjs.mil.ca/dgoperations/_docs/CDS_Directives/CF%20C2%20Directive%202013/Eng/Annex%20C%20CF%20C2%20and%20the%20Delegatio
LOQ-D1	A-LG-007-SLA/AF-002 The Crown prerogative in Canada and its use in the context of international military deployments (Office of the Judge Advocate http://www.forces.gc.ca/assets/FORCES_Internet/docs/en/jag/strategic-legal-paper-2-crown-prerogative.pdf
LOQ-D1	B-GJ-005-104/FP-024 The Operational Law Manual, Draft, version 4.1a (2007)
LOQ-D4	Canadian Joint Operations Command website http://cjoc-coic.mil.ca/sites/intranet-eng.aspx?page=14540

PO 022 Provide legal support during the planning of operations

Number	Reference
LOQ-D1	B-GJ-005-300/FP-001 Operations
LOQ-D1	B-GJ-005-500/FP-000 The CF Operational Planning Process http://publications.gc.ca/collections/collection_2010/forces/D2-252-500-2008-eng.pdf

PO 023 Advise on the use of force

Number	Reference
LOQ-A3	Criminal Code, R.S.C., 1985, c. C-46 http://laws-lois.justice.gc.ca/eng/acts/C-46/index.html
LOQ-D1	B-GJ-005-104/FP-021 Law of Armed Conflict at the Operational and Tactical Level http://cda.mil.ca/cfmlc-cdmfc/doc/LOACatOperationalandTacticalLevels.pdf
LOQ-D1	B-GJ-005-501/FP-001 Use of Force for CF Operations http://cfd.mil.ca/websites/Resources/dgfda/Pubs/CF%20Joint%20Doctrine%20Publications/CF%20Joint%20Doctrine%20B-GJ-005-501%20FP-001%20Use%20of%20Force%20-%20EN%20(Aug%2008).pdf

PO 024 Advise on legal issues pertaining to PW & detainees

Number	Reference
LOQ-A4	Convention (III) relative to the Treatment of Prisoners of War. Geneva, 12 August 1949 http://www.icrc.org/applic/ihl/ihl.nsf/Treaty.xsp?documentId=77CB9983BE01D004C12563CD002D6B3E&action=openDocument
LOQ-A4	Convention (IV) relative to the Protection of Civilian Persons in Time of War. Geneva, 12 August 1949 http://www.icrc.org/applic/ihl/ihl.nsf/Treaty.xsp?documentId=AE2D398352C5B028C12563CD002D6B5C&action=openDocument
LOQ-A4	Prisoner-of-War Status Determination Regulations (SOR/91-134) http://laws.justice.gc.ca/eng/regulations/SOR-91-134/FullText.html
LOQ-A4	Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977. http://www.icrc.org/applic/ihl/ihl.nsf/Treaty.xsp?documentId=D9E6B6264D7723C3C12563CD002D6CE4&action=openDocument
LOQ-D1	B-GJ-005-104/FP-021 Law of Armed Conflict at the Operational and Tactical Level http://cda.mil.ca/cfmlc-cdmfc/doc/LOACatOperationalandTacticalLevels.pdf
LOQ-D1	B-GJ-005-104/FP-024 The Operational Law Manual, Draft, version 4.1a (2007)
LOQ-D1	B-GJ-005-110/FP-020 PW Handling, Detainees and Interrogation and Tactical Questioning in International Operations Manual http://cjoc-coic.mil.ca/sites/_resources/CFWC/Index/JD/CFJP%20-%20PDF/CFJP%203-14/CFJP%203-14%20-%20dated%201%20Aug%2004.pdf

PO 025 Advise on targeting

Number	Reference
LOQ-A4	Convention (III) relative to the Treatment of Prisoners of War. Geneva, 12 August 1949 http://www.icrc.org/applic/ihl/ihl.nsf/Treaty.xsp?documentId=77CB9983BE01D004C12563CD002D6B3E&action=openDocument
LOQ-A4	Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977. http://www.icrc.org/applic/ihl/ihl.nsf/Treaty.xsp?documentId=D9E6B6264D7723C3C12563CD002D6CE4&action=openDocument

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LOQ-A4	Protocol for the Protection of Cultural Property in the Event of Armed Conflict. The Hague, 14 May 1954 http://www.icrc.org/applic/ihl/ihl.nsf/Treaty.xsp?documentId=79B801B4D23AEA95C12563CD002D6BE3&action=openDocument
LOQ-A4	Second Protocol to the Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict The Hague, 26 March 1999 http://www.icrc.org/applic/ihl/ihl.nsf/Treaty.xsp?documentId=F0628265ED4F2118412567BB003E0B0C&action=openDocument
LOQ-D1	B-GJ-005-104/FP-021 Law of Armed Conflict at the Operational and Tactical Level http://cda.mil.ca/cfmlc-cdmfc/doc/LOACatOperationalandTacticalLevels.pdf
LOQ-D1	B-GJ-005-104/FP-024 The Operational Law Manual, Draft, version 4.1a (2007)
LOQ-D1	B-GJ-005-200/FP-000 Joint Intelligence Doctrine http://cfd.mil.ca/websites/Resources/dgfda/Pubs/CF%20Joint%20Doctrine%20Publications/CF%20Joint%20Doctrine%20-%20B-GJ-005-200%20FP-000%20-%20Joint%20Int%20-%20EN%20(21%20May%2003).pdf
LOQ-D1	B-GJ-005-300/FP-001 Operations
LOQ-D1	B-GJ-005-501/FP-001 Use of Force for CF Operations http://cfd.mil.ca/websites/Resources/dgfda/Pubs/CF%20Joint%20Doctrine%20Publications/CF%20Joint%20Doctrine%20B-GJ-005-501%20FP-001%20Use%20of%20Force%20-%20EN%20(Aug%2008).pdf

PO 026 Advise on CAF operations

Number	Reference
LOQ-A3	National Defence Act, R.S.C. 1985, c. N-5 http://laws-lois.justice.gc.ca/eng/acts/N-5/index.html
LOQ-A4	Canadian Security Intelligence Service Act http://laws-lois.justice.gc.ca/eng/acts/C-23/
LOQ-A4	Privacy Act http://laws-lois.justice.gc.ca/eng/acts/P-21/
LOQ-A4	Radiocommunication Act http://laws.justice.gc.ca/eng/acts/R-2/FullText.html
LOQ-A4	United Nations Charter http://www.un.org/en/documents/charter/
LOQ-A4	United Nations Convention on the Law of the Sea http://www.un.org/depts/los/convention_agreements/texts/unclos/unclos_e.pdf
LOQ-D1	B-GJ-005-104/FP-024 The Operational Law Manual, Draft, version 4.1a (2007)
LOQ-D1	Provision of Service Policy http://admfincs.mil.ca/dfpp/101901_e.asp)
LOQ-D4	Canadian Special Operations Forces Command Website http://cansofcom-comfoscan.mil.ca/index-eng.asp

PO 027 Advise on arrangements and agreements

Number	Reference
LOQ-A3	National Defence Act, R.S.C. 1985, c. N-5 http://laws-lois.justice.gc.ca/eng/acts/N-5/index.html
LOQ-A4	Visiting Forces Act (R.S.C., 1985, c. V-2) http://laws-lois.justice.gc.ca/eng/acts/V-2/page-1.html
LOQ-A5	Visiting Forces Attachment and Serving Together Regulations (C.R.C., c. 1597) http://laws-lois.justice.gc.ca/eng/regulations/C.R.C._c._1597/
LOQ-A5	Visiting Forces Regulations (C.R.C., c. 1598) http://laws-lois.justice.gc.ca/eng/regulations/C.R.C._c._1598/page-1.html
LOQ-D1	B-GJ-005-104/FP-024 The Operational Law Manual, Draft, version 4.1a (2007)

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ANNEX B - ASSESSMENT PLAN

PC/EC	Scope	Purpose	How	When	TIME	Time (Other)	Resources	Limitations	Impact
EC 001	EO 001.01 Explain roles and responsibilities of the JAG PO 001 Explain the roles and responsibilities of the office of the JAG EO 001.02 Explain the organization of the Office of the JAG EO 001.03 Explain the relationships between the Office of the JAG and supported commands, formations, units, and other elements of the CAF.	Confirm candidates' understanding of material following instruction.	Instructor will administer a short answer quiz to students. The quiz will be marked by fellow students immediately after its completion.	Immediately following period of instruction.	10	N/A	Nil.	Candidates will not have access to student materials, on-line resources or printed references.	No fail. This is intended to determine comprehension of material. Elements of instruction will be incorporated into PC 001-003.
	EO 002.02.01 Explain general duties of a legal officer EO 002.01 Explain general duties of a legal officer EO 001.01 Explain roles and responsibilities of the JAG PO 001 Explain the roles and responsibilities of the office of the JAG EO 003.01 Identify the								

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PC 001-003	legal ethical issue(s) EO 001.02 Explain the organization of the Office of the JAG EO 003.02 Identify the applicable regime(s) PO 002 Provide legal services IAW JAG policy directives EO 002.02 Provide legal advice IAW JAG policy directives EO 002.02.02 Provide legal advice IAW JAG policy directives EO 003.03 Apply appropriate course(s) of action EO 001.03 Explain the relationships between the Office of the JAG and supported commands, formations, units, and other elements of the CAF. EO 002.03 Provide base and unit level legal services EO 002.02.03 Provide base- and unit-level legal services PO 003 Resolve ethical issues arising from legal officer	Confirm the candidates' understanding of the professional and ethical challenges of legal advisors in the CAF and how the dynamic between supported commanders and legal advisors can influence a legal advisor's role, responsibilities and functions.	Scenario-based 'take home' assignment presenting common issues and challeneges that unit-level legal advisors can face in the performance of their duties.	The evening following periods of instruction for PO 001, 002 and 003	180	N/A	Candidates will ahve access to a computer, student materials and DWAN.	Candidates must complete the assignment individually.	Failure will require retest. This PC will also satisfy annual CAF Ethics training requirement.

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	duties								
EC 002	EO 002.02.01 Explain general duties of a legal officer EO 002.01 Explain general duties of a legal officer PO 002 Provide legal services IAW JAG policy directives EO 002.02 Provide legal advice IAW JAG policy directives EO 002.02.02 Provide legal advice IAW JAG policy directives EO 002.03 Provide base and unit level legal services EO 002.02.03 Provide base- and unit-level legal services	Confirm candidates' understanding of material following instruction.	Instructor will administer a short answer quiz to students. The quiz will be marked by fellow students immediately after its completion.	Immediately following period of instruction.	10	N/A	Nil.	Candidates will not have access to student materials, on-line resources or printed references.	No fail. This is intended to determine comprehension of material. Elements of instruction will be incorporated into PC 001-003.

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EC 003	EO 003.01 Identify the legal ethical issue(s) EO 003.02 Identify the applicable regime(s) EO 003.03 Apply appropriate course(s) of action PO 003 Resolve ethical issues arising from legal officer duties	Confirm candidates' understanding of material following instruction.	Two-period syndicate discussion of at least 2 x scenarios.	Immediately following period of instruction.	80	N/A	Syndicate discussion materials plus syndicate of 4-8 candidates.	Nil.	No fail. This is intended to determine comprehension of material. Elements of instruction will be incorporated into PC 001-003.
PC 004-006	PO 004 Advise on the application of admin law & principles in CF decision making PO 005 Advise on CAF organization and command PO 006 Advise on general principles of CF service	Confirm candidates' understanding of the basic military administrative law 'building blocks'.	Written PC. Mix of multiple choice, short answer, fill-in-the-blanks.	Upon completion of PO 004, 005 and 006.	40	N/A	Student materials.	No on-line resources.	If unsuccessful, candidate will be counselled. A failing mark will not require a re-test or have permanent implications for passing the course.

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EC 004.01	EO 004.01 Advise on sources of authority EO 004.02 Advise on jurisdiction EO 004.03 Advise on procedural fairness EO 004.04 Advise on substantive elements of decision making EO 004.05 Advise on consequences of a failure of fairness	Confirm candidates' understanding of material following instruction.	Verbally. Instructor will randomly select candidates following period of instruction	Following each period of instruction.	20	N/A	Nil	No access to on-line or printed resources or student materials.	No fail. (Elements of instruction will be incorporated into subsequent PC).
EC 005.01	EO 005.01 Advise on the constitution of the CF EO 005.02 Advise on CF organisation EO 005.03 Advise on CF Command	Confirm candidates' understanding of material following instruction.	Verbally. Instructor will randomly select candidates following period of instruction.	Immediately following period of instruction.	10	N/A	Nil	Candidates will not have access to student materials, on-line resources or printed references.	No fail (elements of instruction will be incorporated into subsequent PC).
EC 006.01	EO 006.01 Advise on the nature of CF service EO 006.02 Advise on human rights issues affecting CF members	To confirm candidates' understanding of the material.	Verbally. Instructor will randomly select candidates following instruction.	Immediately following period of instruction.	10	N/A	Nil	Candidates will not have access to student materials, on-line resources or printed materials.	No fail. Elements of the EO will be confirmed in subsequent PC.

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PC 007	EO 007.01 Advise on drug/ alcohol policy EO 007.02 Advise on public comment and conflict of interest EO 007.03 Advise on sexual misconduct and sexual disorders EO 007.04 Advise on removal from command positions PO 007 Advise on the development and application of significant CF policies	Confirm candidates' understanding and application of materials.	Case study (common throughout MAL portion of course), Part I. Take-home assignment. (Possibly) final period of the day devoted to reading and asking questions on materials.	Assigned following completion of PO. Assignment handed in at start of following day.	120	N/A	Computer resources will be available during the evening.	No group work.	Failure will result in counselling.
EC 007.01	EO 007.01 Advise on drug/ alcohol policy	Confirm candidates' understanding of the CF Drug and Alcohol Policy.	Verbal confirmation of randomly selected candidates during instruction, followed by a short written quiz (multiple choice, true/false, short answer), in-class review.	Verbal confirmation throughout and following each period of instruction. Written quiz upon the completion of EO.	N/A	N/A	Verbal questions: nil. Quiz: Student materials only.	No on-line access.	Verbal questions: nil. Quiz: counselling if fail. No re-test.
EC 007.02	EO 007.02 Advise on public comment and conflict of interest	Confirm candidates' understanding of material.	Verbally; instructor will randomly select candidates for questions.	Following completion of EO.	10	N/A	Nil.	No access to materials or references.	No consequences if fail.
EC 007.03	EO 007.03 Advise on sexual misconduct and sexual disorders	Confirm candidates' understanding of material.	Verbally; instructor will randomly select canddiates.	End of period of instruction.	10	N/A	Nil.	No access to student materials.	No impact if fail.

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EC 007.04	EO 007.04 Advise on removal from command positions	Confirm candidates' understanding of material.	Verbally; instructor will randomly select candidates for questions.	Following period of instruction.	10	N/A	Nil.	No access to materials or references.	No fail if unsuccessful.
PC 008	EO 008.01 Advise on the enrolment of CAF members EO 008.02 Advise on legal issues pertaining to career EO 008.03 Advise on CF compensation and benefits issues EO 008.04 Advise on the release of CAF members PO 008 Advise on the administration of CAF service	Confirm candidates' understanding and application of the relevant administrative law and provisions.	Case Study, Part II.	Assigned upon completion of PO.	120	N/A	Student materials, on-line access will be provided in the classroom.	Nil.	Failure will result in counselling.
EC 008.01	EO 008.01 Advise on the enrolment of CAF members	Confirm candidates' understanding of material.	Verbally; instructor will randomly select candidates for questions.	Following period of instruction.	10	N/A	Nil.	No resources, student materials or references.	Nil.
EC 008.02	EO 008.02 Advise on legal issues pertaining to career	Confirm candidates' understanding of the material.	Verbal confirmation throughout 4-5 x periods of instruction; instructor will randomly select candidates for questions. Followed by a written test (short answer, multiple choice, fill-in-the-blank).	Upon completion of PO.	30	N/A	Student materials and written references.	No on-line resources.	Failure will result in counselling.
EC 008.03	EO 008.03 Advise on CF compensation and benefits issues	Confirm candidates' understanding of material.	Verbally; instructor will randomly select candidates for questions.	Upon completion of EO.	10	N/A	Nil.	No written or on-line resources.	Nil.
EC 008.04	EO 008.04 Advise on the release of CAF members	Confirm candidates' understanding of material.	Verbally; instructor will randomly select candidates for questions.	Following completion of EO.	10	N/A	Nil.	No access to references, on-line resources.	Nil.

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PC 009	EO 009.01 Advise on harassment prevention and resolution EO 009.02 Advise on grievances EO 009.03 Advise on other complaint resolution processes PO 009 Advise on complaint resolution	Confirm candidates' understanding and application of law and policies relating to complaints resolution and administrative investigations.	Case Study, Part III. Written assignment.	Handed out upon completion of both PO (ideally at end of day).	120	N/A	Student materials, references and on-line access will be provided during the evening.	No group work.	Failure will result in counselling.
EC 009.01	EO 009.01 Advise on harassment prevention and resolution	Confirm candidates' understanding of material.	Verbally; instructor will randomly select candidates for questions.	Upon completion of EO.	10	N/A	Nil	No materials or resources.	Nil
EC 009.02	EO 009.02 Advise on grievances	Confirm candidates' understanding of material.	Written quiz with a question on sequencing of grievance process plus short answer.	Upon completion of EO.	20	N/A	Written materials and references.	No access to on-line materials.	Failure will result in counselling.
EC 009.03	EO 009.03 Advise on other complaint resolution processes	Confirm the candidates' understanding of the material.	Verbally; instructor will randomly select candidates for questions.	Upon completion of EO	15	N/A	Nil	No access to resources or materials.	Nil
EC 010.01	EO 010.01 Advise on the appropriate type of investigation EO 010.02 Advise on the convening orders for BOIs and terms of reference for SIs and informal investigations	Confirm candidates' understanding of material	Verbally; instructor will randomly select candidates for questions. Plus, document hand-out for candidates to identify errors and omissions.	Upon completion of EOs	N/A	N/A	Written materials and references only.	No on-line resources.	Nil

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EC 010.03	EO 010.03 Advise on the conduct of administrative investigations EO 010.04 Advise on the administrative investigation report EO 010.05 Advise on post report action	Confirm candidates' understanding of material	Verbally; instructor will randomly select candidates for questions.	Upon completion of each EO.	10	N/A	Nil	No resources	Nil
PC 014	EO 014.01 Advise on jurisdiction issues related to disciplinary investigations EO 014.02 Advise on disciplinary jurisdiction related to custody EO 014.03 Advise on jurisdictional considerations relating to trial PO 014 Advise on disciplinary jurisdiction AT0035	Confirm understanding of jurisdictional issues	Written test on DLN, mix of multiple choice and short answers	Within 24 hours of receiving instruction of PO 014.	40	N/A	QR&Os, Laptop with DWAN access.	Nil	Failure to successfully complete PC will result in mandatory remedial training. PC will only be retested during final PC for LOQ.
EC 014.01	EO 014.01 Advise on jurisdiction issues related to disciplinary investigations EO 014.02 Advise on disciplinary jurisdiction related to custody EO 014.03 Advise on jurisdictional considerations relating to trial	Verify comprehension of each EO	Verbally, classroom setting, Instructor will randomly select candidates for responses.	upon completion of each EO respectively and collectively at the end of all three EO's	40	N/A	Nil	Student cannot use references	No impact if failed

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PC 015	EO 015.01 Advise on arrest EO 015.02 Review unit delegation, designations and authorisations EO 015.03 Review custody related documents EO 015.04 Advise on the requirements of custody EO 015.05 Advise the Custody Review Officer (CRO) on the decision to be made EO 015.06 Support the hearing before military judge PO 015 Advise on legal issues related to custody AT0010	Confirm candidates' ability to advise on legal issues related to custody	Scenario-based written test: Students will be required to answer various questions pertaining to the scenario.	Within 24 hours of completing PO 015.	40	N/A	Computer with DWAN access	Nil	If a student fails the PC, mandatory remedial training will be required. Retest will occur in Final LOQ PC.

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EC 015.01	EO 015.01 Advise on arrest EO 015.02 Review unit delegation, designations and authorisations EO 015.03 Review custody related documents EO 015.04 Advise on the requirements of custody EO 015.05 Advise the Custody Review Officer (CRO) on the decision to be made EO 015.06 Support the hearing before military judge	confirm understanding of each EO	Verbal confirmation questions at the end of each EO. Instructor will randomly select candidates	upon completion of each respective EO.	N/A	N/A	nil	students can't access references	nil
PC 016	EO 016.01 Advise on types of investigations EO 016.02 Advise on legal issues related to search & seizure EO 016.03 Advise on conduct of interviews EO 016.04 Advise on the sufficiency of the investigation PO 016 Advise on a disciplinary investigation AT0005	Confirm candidates' ability to advise on a disciplinary investigation.	Scenario based: Student will provide short answers based on the scenario.	within 24hrs of having completed PO 016	40	N/A	Computer with DWAN access	Nil	If thestudent fails the PC, remedial training will be provided. Retest will occur during LOQ PC.

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EC 016.02	EO 016.02 Advise on legal issues related to search & seizure EO 016.03 Advise on conduct of interviews	confirm comprehension of each EO.	verbal confirmation questions. Instructor will randomly select candidates for answers	upon completion of each EO.	10	N/A	nil	Student cannot access ressources	nil
PC 017	EO 017.01 Advise on the appropriate charge or charges and alternative charges PO 017 Provide pre-charge legal advice AT0040	Verify candidates' ability to provide pre-charge legal advice	As an independent, individually-completed assignment, candidates will provide properly formated pre-charge legal advice based on a common scenario, submitted electronically to the instructor. The test will be conducted in the classroom under instructor supervision	within 24 hrs of completing PO 017	120	N/A	Computer with DWAN access + all material handed out in class	Test must be completed individually.	Failure will result in remedial training followed by a retest.
EC 017.01	EO 017.01 Advise on the appropriate charge or charges and alternative charges	Confirm the ability of candidates to identify potential charges under the Code of Service Discipline, and consequences for legal advice.	Instructor led syndicate discussions based upon written scenarios, providing candidates with the context for identifying charges and charge related issues.	Upon completion of EO 017.01	80	N/A	1 instructor per syndicate (8 candidates max per syndicate). 1 computer with DWAN access per syndicate. Flip chart or white board, scenarios (min 4). Seperate rooms for each syndicate. Capacity for syndicates in each official language.	Nil	Candidates who are identified having shortcomings or weaknesses in this EC, will recieve remedial training prior to PC 004.

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PC 018	EO 018.01 Provide advice on the conduct of summary trial EO 018.02 Advise on sentencing and powers of punishment EO 018.03 Advise on referral of charges to DMP PO 018 Advise on conduct of CSD proceedings AT0105	Confirm candidates' ability to provide advice on CSD proceedings, based principaly on pre-trial advice.	Individual and independently prepared legal advice based upon a common scenario. To be submitted to the instructor electronically. completed in the classroom under instructor supervision	Within 24hrs of completing PO 018.	80	N/A	Computer with DWAN access, materials provided in class, scenario, and advice template. Presence of an instructor during assessment.	Nil	Failure will result in remedial training as well as a retest for PC 005.
EC 018.01	EO 018.01 Provide advice on the conduct of summary trial EO 018.02 Advise on sentencing and powers of punishment EO 018.03 Advise on referral of charges to DMP	Confirm candidates' knowledge and understanding of the summary trial process, sentencing and powers of punishement and referal of charges.	Individual written test. short answers required.	Upon completion of all three EOs. done in class.	20	N/A	Computer with DWAN access	Closed book	Failure will result in remedial training prior attempting PC 018
PC 019	EO 019.01 Advise on summary trial reviews by review authority EO 019.02 Advise on post-trial administration EO 019.03 Advise on the legal issues related to detention PO 019 Advise wrt post trial activities	Confirm candidates' ability to advise on post-trial legal issues	Short answers and multiple choice. On DLN.	Within 24hrs of completing PO 019.	40	N/A	Computer with DWAN access. materials provided in class including any relevant scenarios.	Nil	Failure to successfuly complete PC will result in remedial training. Retest will occur within LOQ PC

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EC 019.01	EO 019.01 Advise on summary trial reviews by review authority EO 019.02 Advise on post-trial administration EO 019.03 Advise on the legal issues related to detention	Confirm candidates' understanding of each EO.	Verbal questions. Instructor will randomly select candidates for responses.	Upon completion of each EO individually	10	N/A	Nil	Closed book	Nil
PC 020	EO 020.01 Explain the roles and responsibilities of counsel at court martial EO 020.02 Explain the roles and responsibilities of counsel at a show cause hearing EO 020.03 Explain the process of appealing a court martial judgment PO 020 Explain the role and responsibilities of counsel before military and appellate courts	Confirm candidates' ability to explain the role and responsibiilties of counsel before military and appelate court.	Written short answer and multiple choice test on DLN	Within 24hrs of completing PO 007	40	N/A	Computer with DWAN access, all materials handed in class,	Nil	Candidates who fail will be reassessed within the context of LOQ PC.

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EC 020.01	EO 020.01 Explain the roles and responsibilities of counsel at court martial EO 020.02 Explain the roles and responsibilities of counsel at a show cause hearing EO 020.03 Explain the process of appealing a court martial judgment	Confirm general knowledge of the roles and responsibilities of counsel before military and appelate courts	Verbal confirmation questions in class. Instructor will randomly select candidates for answers.	Upon completion of each EO.	10	N/A	Nil	Closed book	Nil
PC 021	EO 021.01 Advise on legal bases and authorities pertaining to international CAF operations EO 021.02 Advise on legal bases and authorities pertaining to domestic CAF operations EO 021.03 Advise on legal bases and authorities pertaining to continental CAF operations PO 021 Advise on the legal bases and authorities for CAF operations	Confirm candidates's understanding of the material.	Written quiz, multiple choice, short answer, fill in the blanks.	After completion of PO	20	N/A	Nil	Candidates will not have access to student materials, online resources or printed materials.	If unsuccessful, students will receive remedial training, no re-test required, subsequent confirmation in subsequent PC.

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EC 021.01	EO 021.01 Advise on legal bases and authorities pertaining to international CAF operations EO 021.02 Advise on legal bases and authorities pertaining to domestic CAF operations EO 021.03 Advise on legal bases and authorities pertaining to continental CAF operations	Confirm candidates' understanding of the legal principles relating to the legal bases for CF Operations.	Verbally, intructor will randomly select candidates following period of instruction.	Following immediately period of instruction.	10	N/A	Nil	Candidates will not have access to student materials online resoures or printed materials.	No fail, elements of EO will be confirmed in subsequent PC.
EC 022.01	EO 022.01 Provide legal input to the Operational Planning Process (OPP) EO 022.02 Provide legal advice on OPP products	Confirm candidates' understanding of the role of LEGAD during OPP.	Written quiz	Upon completion of EOs' at end of day.	20	N/A	Nil resources	Candidates will not have access to student materials, online resources or printed references.	If unsuccessful, students will receive remedial training, elements of EOs' will be confirmed in subsequent PC.
EC 023.01	EO 023.01 Advise on Rules of Engagement (ROE) EO 023.02 Advise on self-defence	Confirm candidates' understanding of legal principles relating to use of force.	Written quiz, multiple choices, short answers and scenario based long answers.	Upon completion of all EOs'.	30	N/A	Students will have access to printed materials and additionnal resources included in the written test (e.g. scenario based ROE and use of force directives)	No online resources will be used.	Unsuccessful completion will result in remedial training, EOs' will be evaluated in subsequent PC.

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EC 024.01	EO 024.01 Advise on status EO 024.02 Advise on status determination EO 024.03 Advise on standard of treatment EO 024.04 Advise on interrogation and questioning EO 024.05 Advise on release, transfer or return	Confirm candidates' understanding of legal principles relating to combatant status, PW an d detainees.	Written test, multiple choices, short answers, scenario based long answers.	Following completion of all EOs'.	30	N/A	Printed materials, additionnal resources in the written test.	No online resources.	Unsuccessful completion will result in remedial training, EOs' will be confirmed in subsequent PC.
EC 025.01	EO 025.01 Advise on targeting doctrine and directives EO 025.02 Advise during targeting process	Confirm candidates' understanding of legal principles related to targeting.	Written test, multiple choices, short answers, scenario based long answers.	Upon ciompletion of EOs',	30	N/A	Printed materials, additionnal materials included in written test.	No online resources.	Unsuccessful completion will result in remedial training, EOs' will be confirmed in subsequent PC.
EC 026.01	EO 026.01 Advise on international CAF operations	Confirm candidates' understanding of legal principles related to international CF operations.	Written test, multiple choices, short answers, scenario based long answers.	Upon completion of EO.	20	N/A	Printed materials, subsequent information provided in the test.	No online resources.	Unsuccessful completion will result in remedial training, EO will be confirmed in subsequent PC.
EC 026.02	EO 026.02 Advise on domestic CAF operations	Confirm candidates' understanding of legal principles related to domestic CF operations.	Written test, multiple choices, short answers, scenario based long answers.	Upon completion of EO.	20	N/A	Printed materials, materials included in written test.	No online resources.	Unsuccessful completion will result in remedial training, EO will be confirmed in subsequent PC.

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EC 026.03	EO 026.03 Advise on CAF operations of mixed international and domestic nature	Confirm candidates' understanding of legal principles related to mixed domestic and international CF operations..	Written test, multiple choices, short answers, scenario based long answers.	Upon completion of EO.	20	N/A	Printed materials, materials included in written test.	No online resources.	Unsuccessful completion will result in remedial training, EO will be confirmed in subsequent PC
PC 026A	EO 027.01 Advise on arrangements and agreements in support of domestic CAF operations EO 021.02 Advise on legal bases and authorities pertaining to domestic CAF operations EO 026.02 Advise on domestic CAF operations EO 026.03 Advise on CAF operations of mixed international and domestic nature EO 021.03 Advise on legal bases and authorities pertaining to continental CAF operations EO 027.03 Liaise with governmental and non-governmental authorities relating to international and domestic CAF operations PO 021 Advise on the legal	Validate candidates' understanding and application of legal principles and doctrine on domestic and continental CF operations and CF operations of a mixed international and domestic nature.	Written test, short answers, multiple choices, scenario based long answers.	Upon completion of all EOs' and prior to exercise based PC.	120	N/A	Printed materials.	No online resources.	Failure will require re-test.

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	bases and authorities for CAF operations PO 022 Provide legal support during the planning of operations PO 023 Advise on the use of force PO 026 Advise on CAF operations PO 027 Advise on arrangements and agreements								

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PC 026B	EO 021.01 Advise on legal bases and authorities pertaining to international CAF operations EO 026.01 Advise on international CAF operations EO 027.02 Advise on arrangements & agreements in support international CAF operations PO 021 Advise on the legal bases and authorities for CAF operations PO 022 Provide legal support during the planning of operations PO 023 Advise on the use of force PO 024 Advise on legal issues pertaining to PW & detainees PO 025 Advise on targeting PO 026 Advise on CAF operations PO 027 Advise on arrangements and agreements	Validate candidates' understanding and application of legal principles and doctrine during CF international operations. Also validate candidates' ability to apply all three pillars of military law on operations.	Practical exercise with multiple scenarios requiring verbal and written legal advice.	Upon completion of all POs'.	4320	N/A	Printed materials,online resources.	Interruption of online capability.	Failure will result in re-course.

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EC 027.01	EO 027.01 Advise on arrangements and agreements in support of domestic CAF operations EO 027.02 Advise on arrangements & agreements in support international CAF operations EO 027.03 Liaise with governmental and non-governmental authorities relating to international and domestic CAF operations	Confirm candidates' understanding of the proper use of agreements and arrangements in support of CF operations.	Written test, multiple choices, short answers, long answers.	Upon completion of all EOs'.	30	N/A	Nil	No printed or online resources.	Unsuccessful completion will result in remedial training, EOs' will be confirmed in subsequent PC.

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ANNEX B APPENDIX 1 - PC/EC CHECKLIST

EC 001

Instructions to the Staff:

1. N/A
2. Personnel, Material and Facility Requirements:
   a. Personnel requirements:

      N/A

   b. Material and Facility requirements. Items required to perform the PC:

      N/A
3. Ensure the serviceability of all equipment prior to the PC.
4. N/A
5. N/A
6. Brief candidates one day prior to the PC and ensure they understand the "INSTRUCTIONS TO BE GIVEN TO CANDIDATES"

Instructions to the Candidates:

7. The following instructions are to be given to candidates one day prior to the administration of each PC:

   N/A

8. The PC will be conducted as an open book practical application IAW MG B1-1. Candidates will work in syndicates, but each candidate will staff their own ECP.
9. Should you fail the PC, a supplemental test may be granted at the discretion of a Progress Review.
10. **Are there any questions?**

Marking Guide
EC 001

EC 001 CHECK LIST - Explain the relationships between the Office of the JAG and supported commands, formations, units, and other elements of the CAF.

Serial	TASK/TASK ELEMENTS	P/F	Remarks
	Nature of commands, formations, units and other elements of the CAF		Establishment of units, formations and commands under s. 17 of the National Defence Act. MOOs and CFOOs (very cursory review as this is covered in MAL in detail)
	Nature of the independance of the JAG in relation to Commands, formations, units and other elements of the CAF		Describe the application of QR&O Art. 4.081 Describe the command structure of the CAF (cursory overview as this is covered in detail in MAL)
Comments: N/A			

EC 001 CHECK LIST - Explain the organization of the Office of the JAG

Serial	TASK/TASK ELEMENTS	P/F	Remarks

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	Command relationships within the office of the JAG		Mechanism by which units, headquarters and formations are created. Distinction between units, formations and other elements. Command relationships established under QR&O Chapter 3. Role of legal officer and Command responsibility established under QR&O Art. 4.081. Organization of the Office of the JAG. Relationship between unit leagl advisors and DMP. JAG Policy Directive 008/00 General instructions in respect to prosecutions. Relationship detween DCS and other legal officers. JAG Policy Directive 009/00 General instructions in respect of Defence counsel services.
Comments: N/A			

EC 001 CHECK LIST - Explain roles and responsibilities of the JAG

Serial	TASK/TASK ELEMENTS	P/F	Remarks
	Legislative roles and responsibilities of the JAG		Statutory Role and Responsibilities of the JAG Relationship Between JAG and DND/CF LA (DoJ) Role and Responsibilities of DMP Role and responsibilities of DCS Role and Responsibilities of Military Judges, including the Chief Military judge Ministeriel direction regarding legal advice to DND and CF
Comments: N/A			

EC 001 CHECK LIST - Explain the roles and responsibilities of the office of the JAG

Serial	TASK/TASK ELEMENTS	P/F	Remarks
	Legislative roles and responsibilities of the JAG		Statutory Role and Responsibilities of the JAG Relationship Between JAG and DND/CF LA (DoJ) Role and Responsibilities of DMP Role and responsibilities of DCS Role and Responsibilities of Military Judges, including the Chief Military judge Ministeriel direction regarding legal advice to DND and CF
	Command relationships within the office of the JAG		Mechanism by which units, headquarters and formations are created. Distinction between units, formations and other elements. Command relationships established under QR&O Chapter 3. Role of legal officer and Command responsibility established under QR&O Art. 4.081. Organization of the Office of the JAG. Relationship between unit leagl advisors and DMP. JAG Policy Directive 008/00 General instructions in respect to prosecutions. Relationship detween DCS and other legal officers. JAG Policy Directive 009/00 General instructions in respect of Defence counsel services.
	Nature of commands, formations, units and other elements of the CAF		Establishment of units, formations and commands under s. 17 of the National Defence Act. MOOs and CFOOs (very cursory review as this is covered in MAL in detail)

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	Nature of the independance of the JAG in relation to Commands, formations, units and other elements of the CAF		Describe the application of QR&O Art. 4.081 Describe the command structure of the CAF (cursory overview as this is covered in detail in MAL)
Comments: N/A			

NOTES: Unsuccessful attempts in a specific task/task element result in failure of the task/task elements being assessed. Candidate must successfully complete all applicable checklist items in order to achieve minimum standard.

N/A

Candidate Signature _____ **DATE** _____

Assessor Signature _____ **DATE** _____

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EC 002

Instructions to the Staff:

1. N/A
2. Personnel, Material and Facility Requirements:
   a. Personnel requirements:

      N/A

   b. Material and Facility requirements. Items required to perform the PC:

      N/A

3. Ensure the serviceability of all equipment prior to the PC.
4. N/A
5. N/A
6. Brief candidates one day prior to the PC and ensure they understand the "INSTRUCTIONS TO BE GIVEN TO CANDIDATES"

Instructions to the Candidates:

7. The following instructions are to be given to candidates one day prior to the administration of each PC:

   N/A

8. The PC will be conducted as an open book practical application IAW MG B1-1. Candidates will work in syndicates, but each candidate will staff their own ECP.
9. Should you fail the PC, a supplemental test may be granted at the discretion of a Progress Review.
10. **Are there any questions?**

Marking Guide
EC 002

EC 002 CHECK LIST - Provide base and unit level legal services

Serial	TASK/TASK ELEMENTS	P/F	Remarks
	Provide other legal support		
	Provide legal education and training to unit.		
Comments: N/A			

EC 002 CHECK LIST - Provide base- and unit-level legal services

Serial	TASK/TASK ELEMENTS	P/F	Remarks
	Duties of a Deputy Judge Advocate/ Base legal advisor		Know and establish relationthips with all Commands, formations, units, and other elements within the scope of advisory responsibilities Be prepared to provide legal advice across the spectrum of legal issues Seek and accept assistance from other legal advisors within the Office of the JAG and DND/CFLA as appropriate Provide timely operationally focused, solution oriented legal advice to supported commands formations and units

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Comments: N/A

EC 002 CHECK LIST - Provide legal advice IAW JAG policy directives

Serial	TASK/TASK ELEMENTS	P/F	Remarks
	Principles of statutory interpretation		Interpretation Act Statutory Instruments Act Key jurisprudence
	Duties as legal advisor within a directorate of the Office of the JAG		Nature of corporate legal advice Nature of advising on policy development
	Duties of a legal officer posted to DND/CFLA		Compare and constrast with legal officers posted to a directorate within the office of the JAG Nature of relationship between the office of the JAG and DND/CFLA, and between DND/CFLA and the DND/CAF
Comments: N/A			

EC 002 CHECK LIST - Explain general duties of a legal officer

Serial	TASK/TASK ELEMENTS	P/F	Remarks
	Generic legal officer duties		Perform duties common to all CAF officers (IBTS) Be familiar with all JAG policies and directives Maintain currency with applicable law society law obligations Provide instruction on legal issues Provide legal advice IAW JAG policy directives Report to supervisor any problems, issues or irregularities relating to provision of legal services
	Duties of a prosecutor		DMP's direction to prosectutors Relationship between DMP, prosecutors and unit legal advisors
	Duties of defence counsel		Direction from DDCS Nature of relationship with accused Role as duty defence counsel
Comments: N/A			

EC 002 CHECK LIST - Provide legal advice IAW JAG policy directives

Serial	TASK/TASK ELEMENTS	P/F	Remarks
DT0055	Provide verbal legal advice IAW JAG Policy Directives		
	Generic legal officer duties		Perform duties common to all CAF officers (IBTS) Be familiar with all JAG policies and directives Maintain currency with applicable law society law obligations Provide instruction on legal issues Provide legal advice IAW JAG policy directives Report to supervisor any problems, issues or irregularities relating to provision of legal services

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	Duties of a prosecutor		DMP's direction to prosectutors Relationship between DMP, prosecutors and unit legal advisors
	Duties of defence counsel		Direction from DDCS Nature of relationship with accused Role as duty defence counsel
DT0050	Provide written legal advice IAW JAG Policy Directives		
	Principles of statutory interpretation		Interpretation Act Statutory Instruments Act Key jurisprudence
	Duties as legal advisor within a directorate of the Office of the JAG		Nature of corporate legal advice Nature of advising on policy development
	Duties of a legal officer posted to DND/CFLA		Compare and constrast with legal officers posted to a directorate within the office of the JAG Nature of relationship between the office of the JAG and DND/CFLA, and between DND/CFLA and the DND/CAF
	Duties of a Deputy Judge Advocate/ Base legal advisor		Know and establish relationthips with all Commands, formations, units, and other elements within the scope of advisory responsibilities Be prepared to provide legal advice across the spectrum of legal issues Seek and accept assistance from other legal advisors within the Office of the JAG and DND/CFLA as appropriate Provide timely operationally focused, solution oriented legal advice to supported commands formations and units
Comments: N/A			

EC 002 CHECK LIST - Explain general duties of a legal officer

Serial	TASK/TASK ELEMENTS	P/F	Remarks
	Duties of a base or unit legal advisor		
	Roles and responsibilities of a prosecutor within the CMPS		
	Role and responsibilities of defence counsel within DCS.		
Comments: N/A			

EC 002 CHECK LIST - Provide legal services IAW JAG policy directives

Serial	TASK/TASK ELEMENTS	P/F	Remarks
	Duties of a base or unit legal advisor		
	Roles and responsibilities of a prosecutor within the CMPS		
	Role and responsibilities of defence counsel within DCS.		
DT0055	Provide verbal legal advice IAW JAG Policy Directives		

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	Generic legal officer duties		Perform duties common to all CAF officers (IBTS) Be familiar with all JAG policies and directives Maintain currency with applicable law society law obligations Provide instruction on legal issues Provide legal advice IAW JAG policy directives Report to supervisor any problems, issues or irregularities relating to provision of legal services
	Duties of a prosecutor		DMP's direction to prosectutors Relationship between DMP, prosecutors and unit legal advisors
	Duties of defence counsel		Direction from DDCS Nature of relationship with accused Role as duty defence counsel
DT0050	Provide written legal advice IAW JAG Policy Directives		
	Principles of statutory interpretation		Interpretation Act Statutory Instruments Act Key jurisprudence
	Duties as legal advisor within a directorate of the Office of the JAG		Nature of corporate legal advice Nature of advising on policy development
	Duties of a legal officer posted to DND/CFLA		Compare and constrast with legal officers posted to a directorate within the office of the JAG Nature of relationship between the office of the JAG and DND/CFLA, and between DND/CFLA and the DND/CAF
	Duties of a Deputy Judge Advocate/ Base legal advisor		Know and establish relationthips with all Commands, formations, units, and other elements within the scope of advisory responsibilities Be prepared to provide legal advice across the spectrum of legal issues Seek and accept assistance from other legal advisors within the Office of the JAG and DND/CFLA as appropriate Provide timely operationally focused, solution oriented legal advice to supported commands formations and units
	Provide other legal support		
	Provide legal education and training to unit.		
Comments: N/A			

NOTES: Unsuccessful attempts in a specific task/task element result in failure of the task/task elements being assessed. Candidate must successfully complete all applicable checklist items in order to achieve minimum standard.

N/A

Candidate Signature _____ **DATE** _____

Assessor Signature _____ **DATE** _____

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EC 003

Instructions to the Staff:

1. N/A
2. Personnel, Material and Facility Requirements:
   a. Personnel requirements:

      N/A

   b. Material and Facility requirements. Items required to perform the PC:

      N/A
3. Ensure the serviceability of all equipment prior to the PC.
4. N/A
5. N/A
6. Brief candidates one day prior to the PC and ensure they understand the "INSTRUCTIONS TO BE GIVEN TO CANDIDATES"

Instructions to the Candidates:

7. The following instructions are to be given to candidates one day prior to the administration of each PC:

   N/A

8. The PC will be conducted as an open book practical application IAW MG B1-1. Candidates will work in syndicates, but each candidate will staff their own ECP.
9. Should you fail the PC, a supplemental test may be granted at the discretion of a Progress Review.
10. **Are there any questions?**

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EC 003 CHECK LIST - Apply appropriate course(s) of action

Serial	TASK/TASK ELEMENTS	P/F	Remarks
	Identify potential harm(s) arising from circumstances		
	Identify the regime(s) best suited to prevent the harm(s)		
	Evaluate compatiblity of regimes		
	Identify consequences of the application of the regime		Confirm if the "best suited regime(s)" is superceeded by any other regime(s)
	Apply the appropriate regime to the circumstances in order to resolve dilemma.		
Comments: N/A			

EC 003 CHECK LIST - Identify the applicable regime(s)

Serial	TASK/TASK ELEMENTS	P/F	Remarks

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	Identify applicable regimes		Cursory review of provincial/ territorial rules of professional conduct CBA code of conduct JAG policy directives: 006/00 Professional standards review 010/00 Charge screening policy 023/02 Ethics directive 045/12 Requesting approval to submit papers and articles for publication DAOD 7021-1 Conflict of interest DAOD 5012-0 Harassment prevention and resolution Legal framework for solicior client conferences CFAO 56-5
	Identify resources for assistance		Supervisor or mentor Collegue from the same provincial or teritorial law society Office of the JAG website Provincial or teritorial law society website
Comments: N/A			

EC 003 CHECK LIST - Identify the legal ethical issue(s)

Serial	TASK/TASK ELEMENTS	P/F	Remarks
	Identify characteristics of legal ethical issues		Nature of solicitor client relationships Existence of a solicitor client relationship (within the context of the CAF) Two or more applicable obligations on the legal officer Conflict between two or more of these obligations
	Examples of common or likely legal ethical dilemmas		Supported commander/ CO declines to follow legal advice Legal offcier disagrees with institutional legal positions Member of CAF seeks legal advice under false pretences "shopping" for legal advice Commander/ CO relies on "previous legal advice" Recipient of legal advice withholds information when seeking legal advice Legal officer is "correctly" called upon to provide legal advice on a matter that was previously subject to legal advice Inadvertent admisssions in personal or non legal communications. Legal officer required to provide legal advice where department of justice counsel have provided legal advice.
Comments: N/A			

EC 003 CHECK LIST - Resolve ethical issues arising from legal officer duties

Serial	TASK/TASK ELEMENTS	P/F	Remarks
	Identify characteristics of legal ethical issues		Nature of solicitor client relationships Existence of a solicitor client relationship (within the context of the CAF) Two or more applicable obligations on the legal officer Conflict between two or more of these obligations

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	Examples of common or likely legal ethical dilemmas		Supported commander/ CO declines to follow legal advice Legal offcier disagrees with institutional legal positions Member of CAF seeks legal advice under false pretences "shopping" for legal advice Commander/ CO relies on "previous legal advice" Recipient of legal advice withholds information when seeking legal advice Legal officer is "correctly" called upon to provide legal advice on a matter that was previously subject to legal advice Inadvertent admisssions in personal or non legal communications. Legal officer required to provide legal advice where department of justice counsel have provided legal advice.
	Identify applicable regimes		Cursory review of provincial/ territorial rules of professional conduct CBA code of conduct JAG policy directives: 006/00 Professional standards review 010/00 Charge screening policy 023/02 Ethics directive 045/12 Requesting approval to submit papers and articles for publication DAOD 7021-1 Conflict of interest DAOD 5012-0 Harassment prevention and resolution Legal framework for solicior client conferences CFAO 56-5
	Identify resources for assistance		Supervisor or mentor Collegue from the same provincial or teritorial law society Office of the JAG website Provincial or teritorial law society website
	Identify potential harm(s) arising from circumstances		
	Identify the regime(s) best suited to prevent the harm(s)		
	Evaluate compatiblity of regimes		
	Identify consequences of the application of the regime		Confirm if the "best suited regime(s)" is superceeded by any other regime(s)
	Apply the appropriate regime to the circumstances in order to resolve dilemma.		
Comments: N/A			

NOTES: Unsuccessful attempts in a specific task/task element result in failure of the task/task elements being assessed. Candidate must successfully complete all applicable checklist items in order to achieve minimum standard.

N/A

Candidate Signature _____ **DATE** _____

Assessor Signature _____ **DATE** _____

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EC 004.01

Instructions to the Staff:

1. N/A
2. Personnel, Material and Facility Requirements:
   a. Personnel requirements:

      N/A

   b. Material and Facility requirements. Items required to perform the PC:

      N/A
3. Ensure the serviceability of all equipment prior to the PC.
4. N/A
5. N/A
6. Brief candidates one day prior to the PC and ensure they understand the "INSTRUCTIONS TO BE GIVEN TO CANDIDATES"

Instructions to the Candidates:

7. The following instructions are to be given to candidates one day prior to the administration of each PC:

   N/A

8. The PC will be conducted as an open book practical application IAW MG B1-1. Candidates will work in syndicates, but each candidate will staff their own ECP.
9. Should you fail the PC, a supplemental test may be granted at the discretion of a Progress Review.
10. **Are there any questions?**

Marking Guide
EC 004.01

EC 004.01 CHECK LIST - Advise on consequences of a failure of fairness

Serial	TASK/TASK ELEMENTS	P/F	Remarks
	Informal corrective mechanisms		
	Formal corrective measures		
	External corrective measures		
Comments: N/A			

EC 004.01 CHECK LIST - Advise on substantive elements of decision making

Serial	TASK/TASK ELEMENTS	P/F	Remarks
	Steps in decision making		jurisdiction/ vires Scope of authority
	Determine content of fairness for the particular decision		
	Identification of the appropriate decision making mechanism		

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Comments: N/A

EC 004.01 CHECK LIST - Advise on procedural fairness

Serial	TASK/TASK ELEMENTS	P/F	Remarks
	Elements of procedural fairness		Rights interests or privileges, Right to know the case, Right to be heard, Right to an impartial decision maker
	Content of fairness		Notice Disclosure Opportunity to make informed representations (to an impartial decision maker) Sufficiency of reasons
Comments: N/A			

EC 004.01 CHECK LIST - Advise on jurisdiction

Serial	TASK/TASK ELEMENTS	P/F	Remarks
	Principle of vires		
	Types of administrative decisions		who makes the decision when is the decision made What decisions can be made
Comments: N/A			

EC 004.01 CHECK LIST - Advise on sources of authority

Serial	TASK/TASK ELEMENTS	P/F	Remarks
	Hierarchy of sources of authority		constitutional statutory other legislative (regulations, CBIs, OICs, Ministeriel orders) common law (and other binding precedent) policy (orders, directives, instructions)
	Key sources of authority for the CF		Powers of GIC, treasury board, minister, deputy minister, CDS , JAG and other decision makers. Constituion: i.e. section 15, 91(7) CA1867 Crown prerogative NDA: SS.4, 12, 14, 17, 35
	Methods of authorisation		Delegation, Devolution, Designation, Authorization, Description of mechanisms for the above forms of authorization
Comments: N/A			

NOTES: Unsuccessful attempts in a specific task/task element result in failure of the task/task elements being assessed. Candidate must successfully complete all applicable checklist items in order to achieve minimum standard.

N/A

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EC 005.01

Instructions to the Staff:

1. N/A
2. Personnel, Material and Facility Requirements:
   a. Personnel requirements:

      N/A

   b. Material and Facility requirements. Items required to perform the PC:

      N/A
3. Ensure the serviceability of all equipment prior to the PC.
4. N/A
5. N/A
6. Brief candidates one day prior to the PC and ensure they understand the "INSTRUCTIONS TO BE GIVEN TO CANDIDATES"

Instructions to the Candidates:

7. The following instructions are to be given to candidates one day prior to the administration of each PC:

   N/A

8. The PC will be conducted as an open book practical application IAW MG B1-1. Candidates will work in syndicates, but each candidate will staff their own ECP.
9. Should you fail the PC, a supplemental test may be granted at the discretion of a Progress Review.
10. **Are there any questions?**

Marking Guide
EC 005.01

EC 005.01 CHECK LIST - Advise on CF Command

Serial	TASK/TASK ELEMENTS	P/F	Remarks
	Sources of command		QR&O Designation
	Command relationships		distinction between the exercise of ministeriel power and operational doctrine
Comments: N/A			

EC 005.01 CHECK LIST - Advise on CF organisation

Serial	TASK/TASK ELEMENTS	P/F	Remarks
	Building blocks of the CF		elements commands formations units
	Instruments to create the building blocks of the CF		MOOs CFOOs TO&Es CFTPOs Deployed units or elements
Comments: N/A			

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EC 005.01 CHECK LIST - Advise on the constitution of the CF

Serial	TASK/TASK ELEMENTS	P/F	Remarks
	Legal basis for CF structure		constitution of the CF components of the CF sub components of the CF
Comments: N/A			

NOTES: Unsuccessful attempts in a specific task/task element result in failure of the task/task elements being assessed. Candidate must successfully complete all applicable checklist items in order to achieve minimum standard.

N/A

Candidate Signature _____ **DATE** _____

Assessor Signature _____ **DATE** _____

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DND - MDN

EC 006.01

Instructions to the Staff:

1. N/A
2. Personnel, Material and Facility Requirements:
   a. Personnel requirements:

      N/A

   b. Material and Facility requirements. Items required to perform the PC:

      N/A
3. Ensure the serviceability of all equipment prior to the PC.
4. N/A
5. N/A
6. Brief candidates one day prior to the PC and ensure they understand the "INSTRUCTIONS TO BE GIVEN TO CANDIDATES"

Instructions to the Candidates:

7. The following instructions are to be given to candidates one day prior to the administration of each PC:

   N/A

8. The PC will be conducted as an open book practical application IAW MG B1-1. Candidates will work in syndicates, but each candidate will staff their own ECP.
9. Should you fail the PC, a supplemental test may be granted at the discretion of a Progress Review.
10. **Are there any questions?**

Marking Guide
EC 006.01

EC 006.01 CHECK LIST - Advise on human rights issues affecting CF members

Serial	TASK/TASK ELEMENTS	P/F	Remarks
	Key grounds relevant to CF policy development		religion gender sexual orientation pregnancy language family status
	Relevant human rights legislation		CHRA, Case Law
Comments: N/A			

EC 006.01 CHECK LIST - Advise on the nature of CF service

Serial	TASK/TASK ELEMENTS	P/F	Remarks
	Advise on the Crown-CF member relationship		legal basis of Crown-CAF member relationship characteristics of the Crown-CAF member relationship
	Legal basis of Crown- CF member relationship		constitution crown prerogative statutory case law
	characteristics of the Crown- CF member relationship		
	Advise on liability to serve		nature of liability

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	Nature of liability		Reg Force Primary Reserve Supplementary Reserve Other subcomponents classes of service (A, B, C) Active service Component & sub component transfer
CT0275	Advise on universality of service		legal sources and nature of the principle impact of the principle on CAF policy development
	Legal sources and nature of the principle		section 33 NDA CHRA section 15(9) Case Law DAOD 5023 QR&O 15 (medical release) MND exemption employability, deployability, fitness
	Impact of the principle on CF policy development		Cannot be applied arbitrarily Impact on release policies Impact on fitness policies Impact on deployment policies Impact on career development policies Impact on postings
Comments: N/A			

NOTES: Unsuccessful attempts in a specific task/task element result in failure of the task/task elements being assessed. Candidate must successfully complete all applicable checklist items in order to achieve minimum standard.

N/A

Candidate Signature _____ **DATE** _____

Assessor Signature _____ **DATE** _____

A-2015-01212--0241

RELEASED UNDER THE AIA - UNCLASSIFIED INFORMATION
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DND - MDN

EC 007.01

Instructions to the Staff:

1. N/A
2. Personnel, Material and Facility Requirements:
   a. Personnel requirements:

      N/A

   b. Material and Facility requirements. Items required to perform the PC:

      N/A
3. Ensure the serviceability of all equipment prior to the PC.
4. N/A
5. N/A
6. Brief candidates one day prior to the PC and ensure they understand the "INSTRUCTIONS TO BE GIVEN TO CANDIDATES"

Instructions to the Candidates:

7. The following instructions are to be given to candidates one day prior to the administration of each PC:

   N/A

8. The PC will be conducted as an open book practical application IAW MG B1-1. Candidates will work in syndicates, but each candidate will staff their own ECP.
9. Should you fail the PC, a supplemental test may be granted at the discretion of a Progress Review.
10. **Are there any questions?**

Marking Guide
EC 007.01

EC 007.01 CHECK LIST - Advise on drug/ alcohol policy

Serial	TASK/TASK ELEMENTS	P/F	Remarks
	relevant regulations and policies		Constitutional issues CF drug control program (QR&O ch.20, CF drug control manual, DAOD 5091-3) Alcohol misconduct policy (DAOD 5091-7) Administrative measures Criminal Code DUI Provincial road side screening
	CF Alcohol policy		Alcohol misconduct Conduct deficieny involving alcohol Triggers for application of DAOD Policies relating to the serving of alcohol Measures taken as a consequence of these policies
	CF Drug policy		Drug use and other drug involvment Drug testing Post testing actions
Comments: N/A			

NOTES: Unsuccessful attempts in a specific task/task element result in failure of the task/task elements being assessed. Candidate must successfully complete all applicable checklist items in order to achieve minimum standard.

N/A

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Candidate Signature _____ **DATE** _____

Assessor Signature _____ **DATE** _____

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DND - MDN

EC 007.02

Instructions to the Staff:

1. N/A
2. Personnel, Material and Facility Requirements:
   a. Personnel requirements:

      N/A

   b. Material and Facility requirements. Items required to perform the PC:

      N/A
3. Ensure the serviceability of all equipment prior to the PC.
4. N/A
5. N/A
6. Brief candidates one day prior to the PC and ensure they understand the "INSTRUCTIONS TO BE GIVEN TO CANDIDATES"

Instructions to the Candidates:

7. The following instructions are to be given to candidates one day prior to the administration of each PC:

   N/A

8. The PC will be conducted as an open book practical application IAW MG B1-1. Candidates will work in syndicates, but each candidate will staff their own ECP.
9. Should you fail the PC, a supplemental test may be granted at the discretion of a Progress Review.
10. **Are there any questions?**

Marking Guide
EC 007.02

EC 007.02 CHECK LIST - Advise on public comment and conflict of interest

Serial	TASK/TASK ELEMENTS	P/F	Remarks
CT0320	Advise on public comment by CAF members		include information pertaining to disclosure of information, QR&O 19.36 Whistle blower
	Applicable regulations and policies		publication policies policies on interaction with the media Improper comment release of information
CT0035	Advise on conflict of interest		
	Applicable regulations and policies on conflict of interest		
CT0045	Advise on political activities		election issues pertaining to CAF CAF regulations and policies pertaining to political activities
CT0125	Election issues pertaining to the CAF		
	CAF regulations and policies pertaining to political activities		Candidature for office membership and political parties Political advertising and activities on defence establishments Civilian polling stations on defence establishments
Comments: N/A			

NOTES: Unsuccessful attempts in a specific task/task element result in failure of the task/task elements being assessed. Candidate must successfully

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complete all applicable checklist items in order to achieve minimum standard.

N/A

Candidate Signature _____ **DATE** _____

Assessor Signature _____ **DATE** _____

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EC 007.03

Instructions to the Staff:

1. N/A
2. Personnel, Material and Facility Requirements:
   a. Personnel requirements:

      N/A

   b. Material and Facility requirements. Items required to perform the PC:

      N/A
3. Ensure the serviceability of all equipment prior to the PC.
4. N/A
5. N/A
6. Brief candidates one day prior to the PC and ensure they understand the "INSTRUCTIONS TO BE GIVEN TO CANDIDATES"

Instructions to the Candidates:

7. The following instructions are to be given to candidates one day prior to the administration of each PC:

   N/A

8. The PC will be conducted as an open book practical application IAW MG B1-1. Candidates will work in syndicates, but each candidate will staff their own ECP.
9. Should you fail the PC, a supplemental test may be granted at the discretion of a Progress Review.
10. **Are there any questions?**

Marking Guide
EC 007.03

EC 007.03 CHECK LIST - Advise on sexual misconduct and sexual disorders

Serial	TASK/TASK ELEMENTS	P/F	Remarks
	Relevant regulations and CF policies		prohibited conduct Disorders Consequences
Comments: N/A			

NOTES: Unsuccessful attempts in a specific task/task element result in failure of the task/task elements being assessed. Candidate must successfully complete all applicable checklist items in order to achieve minimum standard.

N/A

Candidate Signature _____ **DATE** _____

Assessor Signature _____ **DATE** _____

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DND - MDN

EC 007.04

Instructions to the Staff:

1. N/A
2. Personnel, Material and Facility Requirements:
   a. Personnel requirements:

      N/A

   b. Material and Facility requirements. Items required to perform the PC:

      N/A
3. Ensure the serviceability of all equipment prior to the PC.
4. N/A
5. N/A
6. Brief candidates one day prior to the PC and ensure they understand the "INSTRUCTIONS TO BE GIVEN TO CANDIDATES"

Instructions to the Candidates:

7. The following instructions are to be given to candidates one day prior to the administration of each PC:

   N/A

8. The PC will be conducted as an open book practical application IAW MG B1-1. Candidates will work in syndicates, but each candidate will staff their own ECP.
9. Should you fail the PC, a supplemental test may be granted at the discretion of a Progress Review.
10. **Are there any questions?**

Marking Guide
EC 007.04

EC 007.04 CHECK LIST - Advise on removal from command positions

Serial	TASK/TASK ELEMENTS	P/F	Remarks
	Relevant regulations and CF policies		commanders of commands / formations commanding officers designated Commanders and commanding officers Other appointments and positions Removal from command Distinguish from relief of performance of military duty
Comments: N/A			

NOTES: Unsuccessful attempts in a specific task/task element result in failure of the task/task elements being assessed. Candidate must successfully complete all applicable checklist items in order to achieve minimum standard.

N/A

Candidate Signature _____ **DATE** _____

Assessor Signature _____ **DATE** _____

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DND - MDN

EC 008.01

Instructions to the Staff:

1. N/A
2. Personnel, Material and Facility Requirements:
   a. Personnel requirements:

      N/A

   b. Material and Facility requirements. Items required to perform the PC:

      N/A
3. Ensure the serviceability of all equipment prior to the PC.
4. N/A
5. N/A
6. Brief candidates one day prior to the PC and ensure they understand the "INSTRUCTIONS TO BE GIVEN TO CANDIDATES"

Instructions to the Candidates:

7. The following instructions are to be given to candidates one day prior to the administration of each PC:

   N/A

8. The PC will be conducted as an open book practical application IAW MG B1-1. Candidates will work in syndicates, but each candidate will staff their own ECP.
9. Should you fail the PC, a supplemental test may be granted at the discretion of a Progress Review.
10. **Are there any questions?**

Marking Guide
EC 008.01

EC 008.01 CHECK LIST - Advise on the enrolment of CAF members

Serial	TASK/TASK ELEMENTS	P/F	Remarks
	Relevant regulations and policies		
Comments: N/A			

NOTES: Unsuccessful attempts in a specific task/task element result in failure of the task/task elements being assessed. Candidate must successfully complete all applicable checklist items in order to achieve minimum standard.

N/A

Candidate Signature _____ **DATE** _____

Assessor Signature _____ **DATE** _____

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EC 008.02

Instructions to the Staff:

1. N/A
2. Personnel, Material and Facility Requirements:
   a. Personnel requirements:

      N/A

   b. Material and Facility requirements. Items required to perform the PC:

      N/A
3. Ensure the serviceability of all equipment prior to the PC.
4. N/A
5. N/A
6. Brief candidates one day prior to the PC and ensure they understand the "INSTRUCTIONS TO BE GIVEN TO CANDIDATES"

Instructions to the Candidates:

7. The following instructions are to be given to candidates one day prior to the administration of each PC:

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8. The PC will be conducted as an open book practical application IAW MG B1-1. Candidates will work in syndicates, but each candidate will staff their own ECP.
9. Should you fail the PC, a supplemental test may be granted at the discretion of a Progress Review.
10. **Are there any questions?**

Marking Guide
EC 008.02

EC 008.02 CHECK LIST - Advise on legal issues pertaining to career

Serial	TASK/TASK ELEMENTS	P/F	Remarks
	Advise on rank, promotion and succession planning		
	Relevant regulations and policies		Relationship to CHRA Authorities to promote Appointments Conditions and standards Retroactivity
	Advise on conduct and performance deficiencies		
	Relevant regulations and policies		DAOD 5019 series overview
CT0015	Advise on administrative actions WRT CF members		
	Relevant regulations and policies		Remedial measures Admin review Administrative actions Administrative interventions
CT0205	Advise on legal issues arising out of injury of CAF members		
	legal issues relating to injuries attributable or arising out of military service and duty		
CT0290	Advise on civil and criminal court proceedings		
	Applicable regulations and policies		Duty to report arrest by civil authority Attending officer Sureties Certificate of conviction Action following conviction Attendance at trial Civil proceedings Service of documents Jury summons Subpoenas, production orders and summons

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Comments: N/A

NOTES: Unsuccessful attempts in a specific task/task element result in failure of the task/task elements being assessed. Candidate must successfully complete all applicable checklist items in order to achieve minimum standard.

N/A

Candidate Signature _____ **DATE** _____

Assessor Signature _____ **DATE** _____

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EC 008.03

Instructions to the Staff:

1. N/A
2. Personnel, Material and Facility Requirements:
   a. Personnel requirements:

      N/A

   b. Material and Facility requirements. Items required to perform the PC:

      N/A

3. Ensure the serviceability of all equipment prior to the PC.
4. N/A
5. N/A
6. Brief candidates one day prior to the PC and ensure they understand the "INSTRUCTIONS TO BE GIVEN TO CANDIDATES"

Instructions to the Candidates:

7. The following instructions are to be given to candidates one day prior to the administration of each PC:

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9. Should you fail the PC, a supplemental test may be granted at the discretion of a Progress Review.
10. **Are there any questions?**

Marking Guide
EC 008.03

EC 008.03 CHECK LIST - Advise on CF compensation and benefits issues

Serial	TASK/TASK ELEMENTS	P/F	Remarks
	Sources of authority relating to compensations and benefits		Roles and responsibilities of Treasury Board Statutory authorities for regulations Statutory authorities for CBIs and related instructions Limitations regarding compensations and benefits
	Garnishments and forfeitures		Financial support orders Compulsory payments Judgment debts Forfeitures arising from CF regulations Recovery of overpayments Impact of relief of performance of military duty Role of CBP&E
	Significant issues regarding compensations and benefits		seperation expense Distinction between pensions and anuities Leave Impact of TD vice attached posting
	Common law partnerships		Requirements to establish a CLP required documentation Impacts upon benefits
Comments: N/A			

NOTES: Unsuccessful attempts in a specific task/task element result in failure of the task/task elements being assessed. Candidate must successfully complete all applicable checklist items in order to achieve minimum standard.

N/A

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Candidate Signature _____ **DATE** _____

Assessor Signature _____ **DATE** _____

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DND - MDN

EC 008.04

Instructions to the Staff:

1. N/A
2. Personnel, Material and Facility Requirements:
   a. Personnel requirements:

      N/A

   b. Material and Facility requirements. Items required to perform the PC:

      N/A
3. Ensure the serviceability of all equipment prior to the PC.
4. N/A
5. N/A
6. Brief candidates one day prior to the PC and ensure they understand the "INSTRUCTIONS TO BE GIVEN TO CANDIDATES"

Instructions to the Candidates:

7. The following instructions are to be given to candidates one day prior to the administration of each PC:

   N/A
8. The PC will be conducted as an open book practical application IAW MG B1-1. Candidates will work in syndicates, but each candidate will staff their own ECP.
9. Should you fail the PC, a supplemental test may be granted at the discretion of a Progress Review.
10. **Are there any questions?**

Marking Guide
EC 008.04

EC 008.04 CHECK LIST - Advise on the release of CAF members

Serial	TASK/TASK ELEMENTS	P/F	Remarks
	Advise on release issues		
	Applicable legislation and policy		Reasons for release Authority for release Release authorities items of release and its consequences release processes reinstatement
CT0195	Advise on pension and annuity related issues		
	Applicable legislation and policies		annuities and annual allowances pensions other entitlements supplementary death benefit Role of VAC Role of SISIP
	Advise on legal issues arising out of death of CAF members		
	Significant issues arising from death		impact on compensation including under CFSA Processes relating to service estates Funeral issues Triggering of release Admin investigation Role of CBP&E as director of estates
	Issues best addressed prior to death		Wills & Will certificates (including privileged wills) SDB forms PEN form Next of Kin form (distinguishable from personal representative of estate) Memorial Cross forms

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Comments: N/A

NOTES: Unsuccessful attempts in a specific task/task element result in failure of the task/task elements being assessed. Candidate must successfully complete all applicable checklist items in order to achieve minimum standard.

N/A

Candidate Signature _____ **DATE** _____

Assessor Signature _____ **DATE** _____

A-2015-01212--0254

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DND - MDN

EC 009.01

Instructions to the Staff:

1. N/A
2. Personnel, Material and Facility Requirements:
   a. Personnel requirements:

      N/A

   b. Material and Facility requirements. Items required to perform the PC:

      N/A
3. Ensure the serviceability of all equipment prior to the PC.
4. N/A
5. N/A
6. Brief candidates one day prior to the PC and ensure they understand the "INSTRUCTIONS TO BE GIVEN TO CANDIDATES"

Instructions to the Candidates:

7. The following instructions are to be given to candidates one day prior to the administration of each PC:

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8. The PC will be conducted as an open book practical application IAW MG B1-1. Candidates will work in syndicates, but each candidate will staff their own ECP.
9. Should you fail the PC, a supplemental test may be granted at the discretion of a Progress Review.
10. **Are there any questions?**

Marking Guide
EC 009.01

EC 009.01 CHECK LIST - Advise on harassment prevention and resolution

Serial	TASK/TASK ELEMENTS	P/F	Remarks
	Applicable policies		definition of harrassment responsible officer rights and responsibilities of complainant rights and responsibilities of respondent Harrassment prevention and resolution process Legal issues
Comments: N/A			

NOTES: Unsuccessful attempts in a specific task/task element result in failure of the task/task elements being assessed. Candidate must successfully complete all applicable checklist items in order to achieve minimum standard.

N/A

Candidate Signature _____ **DATE** _____

Assessor Signature _____ **DATE** _____

A-2015-01212--0255

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DND - MDN

EC 009.02

Instructions to the Staff:

1. N/A
2. Personnel, Material and Facility Requirements:
   a. Personnel requirements:

      N/A

   b. Material and Facility requirements. Items required to perform the PC:

      N/A
3. Ensure the serviceability of all equipment prior to the PC.
4. N/A
5. N/A
6. Brief candidates one day prior to the PC and ensure they understand the "INSTRUCTIONS TO BE GIVEN TO CANDIDATES"

Instructions to the Candidates:

7. The following instructions are to be given to candidates one day prior to the administration of each PC:

   N/A

8. The PC will be conducted as an open book practical application IAW MG B1-1. Candidates will work in syndicates, but each candidate will staff their own ECP.
9. Should you fail the PC, a supplemental test may be granted at the discretion of a Progress Review.
10. **Are there any questions?**

Marking Guide
EC 009.02

EC 009.02 CHECK LIST - Advise on grievances

Serial	TASK/TASK ELEMENTS	P/F	Remarks
	Framework for the grievance process		entitlement to grieve submission of grievance assisting member Determination(s) at the IA level Determination(s) at the FA level Role of the MGERC Implementation of the decision and available redress Litigation considerations
Comments: N/A			

NOTES: Unsuccessful attempts in a specific task/task element result in failure of the task/task elements being assessed. Candidate must successfully complete all applicable checklist items in order to achieve minimum standard.

N/A

Candidate Signature _____ **DATE** _____

Assessor Signature _____ **DATE** _____

A-2015-01212--0256

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DIVULGUE EN VERTU DE LAI - RENSEIGNEMENTS NON CLASSIFIES
DND - MDN

EC 009.03

Instructions to the Staff:

1. N/A
2. Personnel, Material and Facility Requirements:
   a. Personnel requirements:

      N/A

   b. Material and Facility requirements. Items required to perform the PC:

      N/A
3. Ensure the serviceability of all equipment prior to the PC.
4. N/A
5. N/A
6. Brief candidates one day prior to the PC and ensure they understand the "INSTRUCTIONS TO BE GIVEN TO CANDIDATES"

Instructions to the Candidates:

7. The following instructions are to be given to candidates one day prior to the administration of each PC:

   N/A
8. The PC will be conducted as an open book practical application IAW MG B1-1. Candidates will work in syndicates, but each candidate will staff their own ECP.
9. Should you fail the PC, a supplemental test may be granted at the discretion of a Progress Review.
10. **Are there any questions?**

Marking Guide
EC 009.03

EC 009.03 CHECK LIST - Advise on other complaint resolution processes

Serial	TASK/TASK ELEMENTS	P/F	Remarks
	Functions of other complaint resolution mechanism		relation to CF decision makers Informal complaint (QR&O 19.12) ADR MP complaints CRS Ombudsman litigation (complaints under other Acts) Interaction between the various processes
Comments: N/A			

NOTES: Unsuccessful attempts in a specific task/task element result in failure of the task/task elements being assessed. Candidate must successfully complete all applicable checklist items in order to achieve minimum standard.

N/A

Candidate Signature _____ **DATE** _____

Assessor Signature _____ **DATE** _____

RELEASED UNDER THE AIA - UNCLASSIFIED INFORMATION
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DND - MDN

EC 010.01

Instructions to the Staff:

1. N/A
2. Personnel, Material and Facility Requirements:
   a. Personnel requirements:

      N/A

   b. Material and Facility requirements. Items required to perform the PC:

      N/A
3. Ensure the serviceability of all equipment prior to the PC.
4. N/A
5. N/A
6. Brief candidates one day prior to the PC and ensure they understand the "INSTRUCTIONS TO BE GIVEN TO CANDIDATES"

Instructions to the Candidates:

7. The following instructions are to be given to candidates one day prior to the administration of each PC:

   N/A

8. The PC will be conducted as an open book practical application IAW MG B1-1. Candidates will work in syndicates, but each candidate will staff their own ECP.
9. Should you fail the PC, a supplemental test may be granted at the discretion of a Progress Review.
10. **Are there any questions?**

Marking Guide
EC 010.01

EC 010.01 CHECK LIST - Advise on the convening orders for BOIs and terms of reference for SIs and informal investigations

Serial	TASK/TASK ELEMENTS	P/F	Remarks
	Authorities to convene BOIs and order SIs		Applicable regulations and policies Role of AISC
	Convening of BOI		Scope of investigation Composition of the board Selection of advisors Issues related to concurrent investigations/ proceedings Direction wrt to attendance/ openess to the public
	Ordering an SI		Scope of investigation Selection of an investigator(s) Role of advisors Issues related to concurrent investigations
Comments: N/A			

EC 010.01 CHECK LIST - Advise on the appropriate type of investigation

Serial	TASK/TASK ELEMENTS	P/F	Remarks
	subjects of investigations and reasons to investigate		
	Options for investigating		mandated investigations discretionary investigations factors to consider, including role of AISC

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Comments: N/A

NOTES: Unsuccessful attempts in a specific task/task element result in failure of the task/task elements being assessed. Candidate must successfully complete all applicable checklist items in order to achieve minimum standard.

N/A

Candidate Signature _____ **DATE** _____

Assessor Signature _____ **DATE** _____

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DND - MDN

EC 010.03

Instructions to the Staff:

1. N/A
2. Personnel, Material and Facility Requirements:
   a. Personnel requirements:

      N/A

   b. Material and Facility requirements. Items required to perform the PC:

      N/A
3. Ensure the serviceability of all equipment prior to the PC.
4. N/A
5. N/A
6. Brief candidates one day prior to the PC and ensure they understand the "INSTRUCTIONS TO BE GIVEN TO CANDIDATES"

Instructions to the Candidates:

7. The following instructions are to be given to candidates one day prior to the administration of each PC:

   N/A

8. The PC will be conducted as an open book practical application IAW MG B1-1. Candidates will work in syndicates, but each candidate will staff their own ECP.
9. Should you fail the PC, a supplemental test may be granted at the discretion of a Progress Review.
10. **Are there any questions?**

Marking Guide
EC 010.03

EC 010.03 CHECK LIST - Advise on post report action

Serial	TASK/TASK ELEMENTS	P/F	Remarks
	Post BOI report actions		Required actions (DAOD 7002-1) Legal advice to the convening authority Legal advice to the reviewing and approving authority Board Consultation with the family, when required Letters of closure for NOAE Release of the report
	Post SI report actions		Required actions Advice to officer who ordered the SI Advice to the reviewing or approving authority Letters of closure for NOAE
Comments: N/A			

EC 010.03 CHECK LIST - Advise on the administrative investigation report

Serial	TASK/TASK ELEMENTS	P/F	Remarks
	BOI report		Legal requirements Analysis Attributability Findings and recommendations Role of legal advisor in report preparation

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	SI report		Legal requirements Analysis Findings and recommendations Role of legal advisor in report
Comments: N/A			

EC 010.03 CHECK LIST - Advise on the conduct of administrative investigations

Serial	TASK/TASK ELEMENTS	P/F	Remarks
	Conduct of a BOI		Logistical matters Role of the legal advisor Role of legal counsel Notice of adverse evidence powers to compel preparation of questions for witness Witness preparation Witness testimony Other evidentiary matters
	Conduct of an SI		Powers of an SI Legal support to the investigator Gathering of evidence NOAE Absence of powers to compell
	Conduct of other investigations		Informal investigations Flight safety Military police complaints MSE Other accident investigations Limited legal involvment
Comments: N/A			

NOTES: Unsuccessful attempts in a specific task/task element result in failure of the task/task elements being assessed. Candidate must successfully complete all applicable checklist items in order to achieve minimum standard.

N/A

Candidate Signature _____ **DATE** _____

Assessor Signature _____ **DATE** _____

A-2015-01212--0261

RELEASED UNDER THE AIA - UNCLASSIFIED INFORMATION
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DND - MDN

EC 014.01

Instructions to the Staff:

1. N/A
2. Personnel, Material and Facility Requirements:
   a. Personnel requirements:

      N/A

   b. Material and Facility requirements. Items required to perform the PC:

      N/A
3. Ensure the serviceability of all equipment prior to the PC.
4. N/A
5. N/A
6. Brief candidates one day prior to the PC and ensure they understand the "INSTRUCTIONS TO BE GIVEN TO CANDIDATES"

Instructions to the Candidates:

7. The following instructions are to be given to candidates one day prior to the administration of each PC:

   N/A

8. The PC will be conducted as an open book practical application IAW MG B1-1. Candidates will work in syndicates, but each candidate will staff their own ECP.
9. Should you fail the PC, a supplemental test may be granted at the discretion of a Progress Review.
10. **Are there any questions?**

Marking Guide
EC 014.01

EC 014.01 CHECK LIST - Advise on jurisdictional considerations relating to trial

Serial	TASK/TASK ELEMENTS	P/F	Remarks
AT0035, AT0040, AT0045, AT0050, AT0055, AT0065, AT0075, AT0105, AT0180, AT0185, AT0190	Advise on jurisdictional considerations relating to Trial		
	Limitations pertaining to the right to elect court martial		Rank of the accused person Seriousness of the offence Potential sentence
AT0040, AT0045, AT0035, AT0050, AT0065, AT0180, AT0185, AT0190	Advise on jurisdictional considerations relating to charge laying		

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	Authority to lay charges		Who could lay charges: CO; CFNIS; officer or NCM authorized; Factors to be considered for who would be authorized; Uniformed standard in drafting charges to be maintained; Laying charges is one aspect of maintenance of discipline.
AT0035, AT0060, AT0065, AT0105, AT0180, AT0185, AT0190, AT0210, AT0220	Advise on jurisdictional considerations relating to charge referral		
	Limitations on jurisdiction of person making referral		Temporal Personal Arising from conflict of interest, seriousness of offence, Inadequate powers of punishment
	Types of referral		Referral by charge layer to a presiding officer; Referral by a delegated officer to a commanding officer; Referral by a commanding officer to a superior officer; Referral to an alternate presiding officer; Submission by a commanding officer to a referral authority; Referral by a referral authority to DMP; Refferal by a commanding officer to a delgated officer; Refferal by NIS to a commanding officer;
AT0035, AT0055, AT0065, AT0075, AT0090, AT0180, AT0185, AT0190,	Advise on jurisdictional considerations relating to Trial & Punishment		
	Limitations on powers of trial and punishment		Alleged offence Rank of alleged offender Temporal limitations Powers of punishment Rank or position of presiding officer Consequence of absence of election to court martial Location of unit Nature of delegation of powers where applicable
AT0035, AT0050, AT0080, AT0085, AT0100, AT0105, AT0180, AT0185, AT0190, AT0220	Advise on jurisdictinal considerations relating to the review of a summary trial		
	Types of review		Authority to review Temporal limitations Standing to request Judicial review
Comments: N/A			

EC 014.01 CHECK LIST - Advise on disciplinary jurisdiction related to custody

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Serial	TASK/TASK ELEMENTS	P/F	Remarks
	Limitations arising from circumstances of custody		Custody in general; Legal authorities to put in custody; Conditions for custody; Location of custody
	Applicable military policy policies.		Beginning of jurisdiction End of jurisdiction Transfer
Comments: N/A			

EC 014.01 CHECK LIST - Advise on jurisdiction issues related to disciplinary investigations

Serial	TASK/TASK ELEMENTS	P/F	Remarks
	Limitations arising from disciplinary investigations		By whom: authorities to investigate; Who: Jurisdiction limited over the persons; Where: Jurisdiction limited in space; What: Jurisdiction limited over the matters; Until when: Jurisdiction limited by time;
	Applicable Military Police Policies on investigations		Sub-divisions of investigative jurisdiction: CFNIS, MP Dets, Units; Description of civilian-military police cooperation; Legal Advisor - CFNIS/MP/Units Relationships;
	Canadian Forces Command and Organisation		Unit Discipline Investigations Legal Advisor Units Relationships Interaction between chain-of-command and conduct of investigations
Comments: N/A			

NOTES: Unsuccessful attempts in a specific task/task element result in failure of the task/task elements being assessed. Candidate must successfully complete all applicable checklist items in order to achieve minimum standard.

N/A

Candidate Signature _____ **DATE** _____

Assessor Signature _____ **DATE** _____

A-2015-01212--0264

RELEASED UNDER THE AIA - UNCLASSIFIED INFORMATION
DIVULGUE EN VERTU DE LAI - RENSEIGNEMENTS NON CLASSIFIES
DND - MDN

EC 015.01

Instructions to the Staff:

1. N/A
2. Personnel, Material and Facility Requirements:
   a. Personnel requirements:

      N/A

   b. Material and Facility requirements. Items required to perform the PC:

      N/A
3. Ensure the serviceability of all equipment prior to the PC.
4. N/A
5. N/A
6. Brief candidates one day prior to the PC and ensure they understand the "INSTRUCTIONS TO BE GIVEN TO CANDIDATES"

Instructions to the Candidates:

7. The following instructions are to be given to candidates one day prior to the administration of each PC:

   N/A
8. The PC will be conducted as an open book practical application IAW MG B1-1. Candidates will work in syndicates, but each candidate will staff their own ECP.
9. Should you fail the PC, a supplemental test may be granted at the discretion of a Progress Review.
10. **Are there any questions?**

Marking Guide
EC 015.01

EC 015.01 CHECK LIST - Support the hearing before military judge

Serial	TASK/TASK ELEMENTS	P/F	Remarks
	Evidentiary requirements		When not charged with a designated offence When charged with a designated offence
	Roles and responsibilities		Military posecutor Defence counsel Military judge Unit DJA Unit personnel
Comments: N/A			

EC 015.01 CHECK LIST - Advise the Custody Review Officer (CRO) on the decision to be made

Serial	TASK/TASK ELEMENTS	P/F	Remarks
	Powers of custody review officer		Release without conditions Release with conditions 'Reasonable conditions'
	Duties of custody review officer		Review the account in writing and accompanying documents Determination why a charge has not been laid Duty to release when no sufficient grounds Duty to maintain if charged with designated offence Time considerations

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	Process of review of direction to release		By a CRO By a military judge, if necessary
Comments: N/A			

EC 015.01 CHECK LIST - Advise on the requirements of custody

Serial	TASK/TASK ELEMENTS	P/F	Remarks
	Distinction between power and duty to retain in custody		Designated Offences Duty to retain Power to retain
	Rights of detained person		Performance and Duties Visitors Correspondence Exercise Mess Privileges Hospitalization while in Custory In Custody of Civil Authorities
	Reasons for retention		Designated Offences Reasonable grounds Circumstances to be considered
Comments: N/A			

EC 015.01 CHECK LIST - Review custody related documents

Serial	TASK/TASK ELEMENTS	P/F	Remarks
	Types of custody related documents		Account in writing Report of custody Request custody related documents from unit Direction on release from custody Guard report Civil court reports Arrest warrants
	Military Police Policies		
Comments: N/A			

EC 015.01 CHECK LIST - Review unit delegation, designations and authorisations

Serial	TASK/TASK ELEMENTS	P/F	Remarks
	CF command and organisation		MOOs CFOOs QR&Os related to command organisation and delegation, designation and authorisations
	Distinguish between power, authority, duty and responsibilities		Power Authority Duty Responsibilities
	What can be delegated, designated or authorised		Powers of arrest Charge laying authority Designation of Custody Review Officers Delegation of powers of trial and punishment Specific designations pertaining to custody (visitors, correspondance) Jurisdictional concerns (continuity)
	Who can receive a delegation, be designated or authorised		Prerequisites and limitations with regard to delegations, designations and authorisations (from the delegatee/designated point of view)
	Who can delegate, designate or authorise		Limitations and prerequisites for delegation, designations and authorisations (from the delegator/designator point of view)

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Comments: N/A

EC 015.01 CHECK LIST - Advise on arrest

Serial	TASK/TASK ELEMENTS	P/F	Remarks
	Persons subject to arrest		Who can be arrested and why
	Basis for arrest		Circumstances that could justify arrest Exercise of discretion
	Persons empowered to arrest		Peace officers (military police) Peace officers (civilian police) Officers and NCMs Security Guard Any CF member Anyone
	Conditions of arrest		Detention before arrest Requirement to submit to arrest Lawful use of force Indicators of arrest Powers incidental to arrest Rights to be informed of the reason for arrest Right to counsel Special reporting requirements in certain cases
	Types of arrest		With warrant Without warrant Types of warrants
Comments: N/A			

NOTES: Unsuccessful attempts in a specific task/task element result in failure of the task/task elements being assessed. Candidate must successfully complete all applicable checklist items in order to achieve minimum standard.

N/A

Candidate Signature _____ **DATE** _____

Assessor Signature _____ **DATE** _____

A-2015-01212--0267

RELEASED UNDER THE AIA - UNCLASSIFIED INFORMATION
DIVULGUE EN VERTU DE LAI - RENSEIGNEMENTS NON CLASSIFIES
DND - MDN

EC 016.02

Instructions to the Staff:

1. N/A
2. Personnel, Material and Facility Requirements:
   a. Personnel requirements:

      N/A

   b. Material and Facility requirements. Items required to perform the PC:

      N/A
3. Ensure the serviceability of all equipment prior to the PC.
4. N/A
5. N/A
6. Brief candidates one day prior to the PC and ensure they understand the "INSTRUCTIONS TO BE GIVEN TO CANDIDATES"

Instructions to the Candidates:

7. The following instructions are to be given to candidates one day prior to the administration of each PC:

   N/A

8. The PC will be conducted as an open book practical application IAW MG B1-1. Candidates will work in syndicates, but each candidate will staff their own ECP.
9. Should you fail the PC, a supplemental test may be granted at the discretion of a Progress Review.
10. **Are there any questions?**

Marking Guide
EC 016.02

EC 016.02 CHECK LIST - Advise on conduct of interviews

Serial	TASK/TASK ELEMENTS	P/F	Remarks
	Types of interviews		Interviews of witnesses Interviews of persons of interest Recording of interviews Subject(s) of the investigation Supplementary interviews
	Rights of interview subjects		Rights of persons of interest Rights of witnesses Rights of suspects or subjects of investigation
	Roles of interviewers		Powers Duties Authorities Responsibilities
	Cautions		Types of cautions Applicability of cautions Timing and sequencing of cautions Documentation pertaining to cautions
Comments: N/A			

EC 016.02 CHECK LIST - Advise on legal issues related to search & seizure

Serial	TASK/TASK ELEMENTS	P/F	Remarks

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	Advise on search without warrant (AT0030)		Basis for search without warrant Persons who may conduct or authorise searches without warrant Limitations on searches without warrant
	Basis for search without warrant		Search incidental to lawful arrest Consent searches
	Persons who may conduct or authorise searches without warrant		Military Police officers Unit investigators Civilian police officers Designated authorities
	Limitations on searches without warrant		Geographic Temporal Personal Reasonable fashion
AT0205	Advise on preparation of search warrants.		Types of search warrants. Evidentiary requirements.
	Types of search warrants		Civilian search warrants Commanding officer search warrants Production orders (DNA)
	Evidentiary requirements.		Specified premises or objects Reasonable grounds to believe Information to Obtain a Search Warrant
AT0030	Advise on search without warrant		
	basis for search without warrant		
	Persons who may conduct or authorise searches without warrant		
	limitations on searches without warrant		Geographic Temporal Personal
	Advise on issues related to integrity of evidence		Types of evidence Chain of custody
	Types of evidence.		Testimonial Documentary Real evidence
	Chain of custody		Handling of evidence Military police procedures Physical security of evidence
Comments: N/A			

NOTES: Unsuccessful attempts in a specific task/task element result in failure of the task/task elements being assessed. Candidate must successfully complete all applicable checklist items in order to achieve minimum standard.

N/A

Candidate Signature _____ **DATE** _____

Assessor Signature _____ **DATE** _____

A-2015-01212--0269

RELEASED UNDER THE AIA - UNCLASSIFIED INFORMATION
DIVULGUE EN VERTU DE LAI - RENSEIGNEMENTS NON CLASSIFIES
DND - MDN

EC 017.01

Instructions to the Staff:

1. N/A
2. Personnel, Material and Facility Requirements:
   a. Personnel requirements:

      N/A

   b. Material and Facility requirements. Items required to perform the PC:

      N/A
3. Ensure the serviceability of all equipment prior to the PC.
4. N/A
5. N/A
6. Brief candidates one day prior to the PC and ensure they understand the "INSTRUCTIONS TO BE GIVEN TO CANDIDATES"

Instructions to the Candidates:

7. The following instructions are to be given to candidates one day prior to the administration of each PC:

   N/A

8. The PC will be conducted as an open book practical application IAW MG B1-1. Candidates will work in syndicates, but each candidate will staff their own ECP.
9. Should you fail the PC, a supplemental test may be granted at the discretion of a Progress Review.
10. **Are there any questions?**

Marking Guide
EC 017.01

EC 017.01 CHECK LIST - Advise on the appropriate charge or charges and alternative charges

Serial	TASK/TASK ELEMENTS	P/F	Remarks
AT0005, AT0010, AT0020, AT0025, AT0030, AT0035, AT0040, AT0180, AT0185, AT0190, AT0200, AT0205	Review investigation		Main parts of investigation report SAMPIS format Unit Disciplinary Investigation format

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AT0005, AT0010, AT0020, AT0025, AT0030, AT0035, AT0040, AT0180, AT0185, AT0190, AT0200, AT0205	Advise on further investigative requirements, if any		Identify potential deficencies Duty to obtain all available information/evidence
AT0035, AT0050, AT0040, AT0045, AT0180, AT0185, AT0190, AT0210, AT0065	Review draft RDP		Relevant Jurisdiction Drafting particulars Selection of Appropriate Charge Alternative Charges Drafting Particulars Essential Elements Record of Disciplinary Proceedings Surplusage
	Relevant jurisdiction		Time Person Matter Location Authority
	Drafting particulars		Selection of Appropriate Charge Alternative Charges Drafting Particulars Essential Elements Record of Disciplinary Proceedings Surplusage
AT0005, AT0010, AT0025, AT0030, AT0035, AT0040, AT0055, AT0065, AT0075, AT0180, AT0185, AT0190, AT0205	Evaluate sufficiency & admissibility of evidence		Elements of the relevant offence(s) Objective test : reasonable belief Subjective test:: actual belief JAG Policy: Reasonable prospect of conviction
	Elements of the relevant offence(s)		Suggested/ Potential offences
AT0005, AT0010, AT0035, AT0040, AT0050, AT0170, AT0200, AT0205	Advise on suitability of laying charges		Rights of the accused Exercise of discretion Res judicata as it pertains to pre-charge legal advice Impact of jurisdictional limitations on types of charges laid
	Rights of the accused		Disclosure Counsel Silence Assisting officer Fundamental justice Procedural fairness Official Languages
	Exercise of discretion		Public interest Applicable JAG policies Military vs civilian Corrective measures vs disciplinary proceedings
	Res Judicata as it pertains to pre-charge legal advice		Double Jeopardy Autrefois acquit Autrefois convict
	Impact of jurisdictional limitations resulting from types of charges laid		Referral of charges Limitations on election Limitations on forum

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AT0005, AT0020, AT0025, AT0030, AT0035, AT0040, AT0050, AT0055, AT0065, AT0075, AT0105, AT0170, AT0180, AT0185, AT0190	Advise on requirement for further legal advice		Obligations of diligence and prudence Standard paragraph in legal opinions Legal opinion format (written/oral)
Comments: N/A			

NOTES: Unsuccessful attempts in a specific task/task element result in failure of the task/task elements being assessed. Candidate must successfully complete all applicable checklist items in order to achieve minimum standard.

N/A

Candidate Signature _____ **DATE** _____

Assessor Signature _____ **DATE** _____

A-2015-01212--0272

RELEASED UNDER THE AIA - UNCLASSIFIED INFORMATION
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DND - MDN

EC 018.01

Instructions to the Staff:

1. N/A
2. Personnel, Material and Facility Requirements:
   a. Personnel requirements:

      N/A

   b. Material and Facility requirements. Items required to perform the PC:

      N/A
3. Ensure the serviceability of all equipment prior to the PC.
4. N/A
5. N/A
6. Brief candidates one day prior to the PC and ensure they understand the "INSTRUCTIONS TO BE GIVEN TO CANDIDATES"

Instructions to the Candidates:

7. The following instructions are to be given to candidates one day prior to the administration of each PC:

   N/A
8. The PC will be conducted as an open book practical application IAW MG B1-1. Candidates will work in syndicates, but each candidate will staff their own ECP.
9. Should you fail the PC, a supplemental test may be granted at the discretion of a Progress Review.
10. **Are there any questions?**

Marking Guide
EC 018.01

EC 018.01 CHECK LIST - Advise on referral of charges to DMP

Serial	TASK/TASK ELEMENTS	P/F	Remarks
	Referral of charges for disposal under QR&O 108		Referral by delegated officer to commanding officer Referral by commanding officer to superior commander Referral by commanding officer to delegated officer Referral by one presiding officer to another presiding officer Referral of charges originating from NIS
	Process of referral of charges to DMP under QR&O 109		Process Documentary requirements Jurisdiction Potential outcomes Extent of discretion
Comments: N/A			

EC 018.01 CHECK LIST - Advise on sentencing and powers of punishment

Serial	TASK/TASK ELEMENTS	P/F	Remarks
	Issues arising from detention		Execution of sentence Suspension of sentence Temporal considerations Physical limitations

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	Purpose and principles of sentencing		Purpose of sentencing General principles of sentencing Unique aspects of sentencing in the military environment Factors for sentencing Process at summary trial Process at court martial
	Punishments		Punishments generally Powers of different presiding officers Powers of various courts Types of punishments
Comments: N/A			

EC 018.01 CHECK LIST - Provide advice on the conduct of summary trial

Serial	TASK/TASK ELEMENTS	P/F	Remarks
AT0005-AT0035, AT0055-AT0085, AT0105-AT0110, AT0180-AT0220	Provide advice on the conduct of summary trial		Provide pre-trial advice Requirement to receive advice under QR&O 107.11 The summary trial process QR&O Chap 108
	Provide pre-trial advice		Jurisdiction to try Right to elect Punishment powers Public interest
	Requirements to receive advice under QR&O 107.11		When charges are referred by units When charges are referred by CFNIS
	The summary trial process QR&O chapter 108		Pre trial issues and procedures Trial procedures Evidentiary issues Determinations
AT0005-AT0035, AT0055-AT0085, AT0105-AT0110, AT0180-AT0220	Provide legal advice during conduct of ST		Ongoing obligations and considerations arising during summary trial Advise regarding the accused's right to elect court martial
	Ongoing obligations and considerations arising during summary trial		Request for counsel Adjournment Unforeseen complexity affecting jurisdiction Video conferencing Irregularities Official languages requirements
	Advise regarding the accused's right to elect court martial		Circumstances where right to elect might arise Process to be followed by presiding officer
Comments: N/A			

NOTES: Unsuccessful attempts in a specific task/task element result in failure of the task/task elements being assessed. Candidate must successfully complete all applicable checklist items in order to achieve minimum standard.

N/A

Candidate Signature _____ **DATE** _____

Assessor Signature _____ **DATE** _____

A-2015-01212--0274

RELEASED UNDER THE AIA - UNCLASSIFIED INFORMATION
DIVULGUE EN VERTU DE LAI - RENSEIGNEMENTS NON CLASSIFIES
DND - MDN

EC 019.01

Instructions to the Staff:

1. N/A
2. Personnel, Material and Facility Requirements:
   a. Personnel requirements:

      N/A

   b. Material and Facility requirements. Items required to perform the PC:

      N/A

3. Ensure the serviceability of all equipment prior to the PC.
4. N/A
5. N/A
6. Brief candidates one day prior to the PC and ensure they understand the "INSTRUCTIONS TO BE GIVEN TO CANDIDATES"

Instructions to the Candidates:

7. The following instructions are to be given to candidates one day prior to the administration of each PC:

   N/A

8. The PC will be conducted as an open book practical application IAW MG B1-1. Candidates will work in syndicates, but each candidate will staff their own ECP.
9. Should you fail the PC, a supplemental test may be granted at the discretion of a Progress Review.
10. **Are there any questions?**

Marking Guide
EC 019.01

EC 019.01 CHECK LIST - Advise on the legal issues related to detention

Serial	TASK/TASK ELEMENTS	P/F	Remarks
	Grounds for suspension of detention		Roles and authorities of commander of a command Circumstances relating to suspension of detention
Comments: N/A			

EC 019.01 CHECK LIST - Advise on post-trial administration

Serial	TASK/TASK ELEMENTS	P/F	Remarks
	Unit post trial activities		Unit registry of disciplinary proceedings Conduct sheet(s) Execution of sentence Court martial Updating RDP Removing CRO- imposed conditions Service record Bill C-10 amendments Bill C-15 amendments
Comments: N/A			

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DND - MDN

EC 019.01 CHECK LIST - Advise on summary trial reviews by review authority

Serial	TASK/TASK ELEMENTS	P/F	Remarks
	Review under QR&O 116.02		Grounds for review Absence of tempporal limitations Possible outcomes Roles, responsibilities and powers of the review authority Roles and responsibilities of the legal advisor
	Reviews under QR&O 108.45		Grounds for request Temporal limitations Roles responsibilities & authorities of the review authority Roles and responsibilities of the legal advisor possible outcomes Roles and responsibilities of assisting officer Roles and responsibilities of presiding officer
Comments: N/A			

NOTES: Unsuccessful attempts in a specific task/task element result in failure of the task/task elements being assessed. Candidate must successfully complete all applicable checklist items in order to achieve minimum standard.

N/A

Candidate Signature _____ **DATE** _____

Assessor Signature _____ **DATE** _____

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DND - MDN

EC 020.01

Instructions to the Staff:

1. N/A
2. Personnel, Material and Facility Requirements:
   a. Personnel requirements:

      N/A

   b. Material and Facility requirements. Items required to perform the PC:

      N/A
3. Ensure the serviceability of all equipment prior to the PC.
4. N/A
5. N/A
6. Brief candidates one day prior to the PC and ensure they understand the "INSTRUCTIONS TO BE GIVEN TO CANDIDATES"

Instructions to the Candidates:

7. The following instructions are to be given to candidates one day prior to the administration of each PC:

   N/A

8. The PC will be conducted as an open book practical application IAW MG B1-1. Candidates will work in syndicates, but each candidate will staff their own ECP.
9. Should you fail the PC, a supplemental test may be granted at the discretion of a Progress Review.
10. **Are there any questions?**

Marking Guide
EC 020.01

EC 020.01 CHECK LIST - Explain the process of appealing a court martial judgment

Serial	TASK/TASK ELEMENTS	P/F	Remarks
	Appeal process		NDA & QR&O 116 CMAC rules of court SCC rules of court
Comments: N/A			

EC 020.01 CHECK LIST - Explain the roles and responsibilities of counsel at a show cause hearing

Serial	TASK/TASK ELEMENTS	P/F	Remarks
	Show cause hearing under section 159 NDA QR&O 105		Role by DMP Role by defence counsel Role by judiciairy/CMA Assistance by DJA/Units
Comments: N/A			

EC 020.01 CHECK LIST - Explain the roles and responsibilities of counsel at court martial

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Serial	TASK/TASK ELEMENTS	P/F	Remarks
	Military rules of evidence		
	Court martial process under QR&O 112		
	Convening courts martial under QR&O 111		Role of DMP Role of CMA Assistance by units
Comments: N/A			

NOTES: Unsuccessful attempts in a specific task/task element result in failure of the task/task elements being assessed. Candidate must successfully complete all applicable checklist items in order to achieve minimum standard.

N/A

Candidate Signature _____ **DATE** _____

Assessor Signature _____ **DATE** _____

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DND - MDN

EC 021.01

Instructions to the Staff:

1. N/A
2. Personnel, Material and Facility Requirements:
   a. Personnel requirements:

      N/A

   b. Material and Facility requirements. Items required to perform the PC:

      N/A
3. Ensure the serviceability of all equipment prior to the PC.
4. N/A
5. N/A
6. Brief candidates one day prior to the PC and ensure they understand the "INSTRUCTIONS TO BE GIVEN TO CANDIDATES"

Instructions to the Candidates:

7. The following instructions are to be given to candidates one day prior to the administration of each PC:

   N/A

8. The PC will be conducted as an open book practical application IAW MG B1-1. Candidates will work in syndicates, but each candidate will staff their own ECP.
9. Should you fail the PC, a supplemental test may be granted at the discretion of a Progress Review.
10. **Are there any questions?**

Marking Guide
EC 021.01

EC 021.01 CHECK LIST - Advise on legal bases and authorities pertaining to continental CAF operations

Serial	TASK/TASK ELEMENTS	P/F	Remarks
	Continental defence arrangements and agreements		CJOC responsibilities for CAF operations, roles of CJOC Deputy Commanders. North American Aerospace Defense Command (NORAD) (Background, Organisation, Operations, Air Defence Canadian Contribution, Counter-Drug Mission, Canada-U.S. Defence Cooperation). North Atlantic Treaty Organization (NATO) (Origins of the Alliance, The North Atlantic Treaty, NATO Military combat and enforcement operations, the process of NATO enlargement, NATO Headquarters, the North Atlantic Council (NAC), the NATO Secretary General) NATO Military Structure (The NATO Military Committee (MC), Allied Command Operations (ACO), Allied Command Transformation (ACT), Canada - United States Regional Planning Group (CUSRPG)). NATO Partnerships (Euro-Atlantic Partnership Council (EAPC), Partnership for Peace, NATO-Russia Council (NRC), Mediterranean Dialogue (MD), Istanbul Cooperation Initiative (ICI).
Comments: N/A			

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EC 021.01 CHECK LIST - Advise on legal bases and authorities pertaining to domestic CAF operations

Serial	TASK/TASK ELEMENTS	P/F	Remarks
	Roles and responsibilities of stakeholders in CAF domestic operations		Roles and responsibilities (Chief of the Defence Staff, Canadian Joint Operations Command (CJOC), Canadian Special Operations Forces Command (CANSOFCOM), Commanders of Royal Canadian Navy (RCN), Canadian Army (CA) and Royal Canadian Air Force (RCAF), Commander Military Personnel Command, Chief of Defence Intelligence, Vice Chief of the Defence Staff I Commander Canadian Forces Military Police Group) CAF Command and Control framework for domestic operations (Maritime, Land and Air forces, Special Operations forces, Military Personnel Command Forces, Military Police Forces, Operational Support, Search and Rescue, Explosive Ordinance Disposal) Force Employment (Routine, Contingency and Rapid-Response Operations)
	Domestic legal regime		What is the Crown prerogative, the Crown prerogative in the defence of Canada and domestic operations, Constitution Act, 1867, Legal framework of DND and the CAF, Mandate, Exercising the mandate, Provision of Services, DND Provision of Services Policy (PSP), Non-Defence Use of DND Real Property, CAF Support as a Public Service. CAF Assistance to Law enforcement Agencies and Aid to the Civil Power (legal framework) CAF Assistance to Provincial Law Enforcement Agencies (CF Assistance to Provincial Police Forces Directions (CFAPPFD), Application of subsection 273.6(2) NDA to provincial policing). CAF Assistance to Federal Law Enforcement Agencies and Other Federal Government Departments (Assistance to Federal Penitentiaries Order, Canadian Forces Armed Assistance Directions (CFAAD), Application of NDA subsection 273.6(2) to federal law enforcement, CAF Assistance pursuant to Memoranda of Understanding (MOU), MOU for CAF assistance to RCMP counter drug operations, MOU for CAF assistance to the Department of Fisheries and Oceans (DFO), Legal protection for CAF members providing support to DFO).
Comments: N/A			

EC 021.01 CHECK LIST - Advise on legal bases and authorities pertaining to international CAF operations

Serial	TASK/TASK ELEMENTS	P/F	Remarks
	Application of public international law		Treaties, customary international law, general principles of law, subsidiary sources, subjects of international law, States and non-States actors, Enforcement of international legal obligations.

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	Roles and responsibilities of stakeholders in international operations		Main stakeholders (Canadian Joint Operations Command (CJOC), CJOC Expeditionary, Canadian Special Operations Forces Command (CANSOFCOM), Maritime Command (MARCOM), Land Force Command (LFC), Air Command (AIRCOM). CAF Command and Control framework for international operations (context, organization, Task Forces (TF), Command and Control (C2), National Command, Administrative Control, Liaison and Coordination, National Constraints and Assets, Maritime, Land and Air forces, Special Operations forces, Operational support, Military Personnel Command Forces, Military Police forces) United Nations Operations (Operational Framework, Administrative Considerations) Force Employment (Planning and Preparation, Initiation, Legal and policy considerations)
	Crown prerogative and other aspects of the domestic legal regime		What is the Crown prerogative, Who exercises the Crown prerogative, The Crown prerogative and its use to deploy the CAF.
Comments: N/A			

NOTES: Unsuccessful attempts in a specific task/task element result in failure of the task/task elements being assessed. Candidate must successfully complete all applicable checklist items in order to achieve minimum standard.

N/A

Candidate Signature _____ **DATE** _____

Assessor Signature _____ **DATE** _____

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DND - MDN

EC 022.01

Instructions to the Staff:

1. N/A
2. Personnel, Material and Facility Requirements:
   a. Personnel requirements:

      N/A

   b. Material and Facility requirements. Items required to perform the PC:

      N/A
3. Ensure the serviceability of all equipment prior to the PC.
4. N/A
5. N/A
6. Brief candidates one day prior to the PC and ensure they understand the "INSTRUCTIONS TO BE GIVEN TO CANDIDATES"

Instructions to the Candidates:

7. The following instructions are to be given to candidates one day prior to the administration of each PC:

   N/A

8. The PC will be conducted as an open book practical application IAW MG B1-1. Candidates will work in syndicates, but each candidate will staff their own ECP.
9. Should you fail the PC, a supplemental test may be granted at the discretion of a Progress Review.
10. **Are there any questions?**

Marking Guide
EC 022.01

EC 022.01 CHECK LIST - Provide legal advice on OPP products

Serial	TASK/TASK ELEMENTS	P/F	Remarks
	products reviewed by the legal officer		Role of the operational legal advisor (legal officer attendance at all planning sessions, reviewing all courses of action (COAs) developed by the team. Attendance at all briefings to the COMD (Mission analysis brief, info brief, and decision brief) to deal with any legal issues/questions that may arise during the briefing. Review all OPP products, especially the OPLAN and its annexes. Attendance to the planning sessions to ensure that if there are legal concerns with any of the COAs considered by the team that the legal concerns are made known before they are too far into the planning cycle.

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	Products produced by the legal officer		Preparation of the legal annex to the operational plan (aim, legal framework, legal support, legal organization, general legal guidance (Code of Service Discipline, Aid to Law Enforcement Agencies (ALEA), Aid of the Civil Power, Peace Officer status, Use of Force, Summary Cards, Protection from Civil Liability, Information and Intelligence Collection and Sharing, Legal Support to Military Police and CF National Investigation Service (CFNIS), Claims By or Against the Crown, Contracts, Rental Vehicles, Military Administrative Investigations, Environmental Protection, Continuing Legal Consultation).
Comments: N/A			

EC 022.01 CHECK LIST - Provide legal input to the Operational Planning Process (OPP)

Serial	TASK/TASK ELEMENTS	P/F	Remarks
	Operational planning process (OPP)		Categories of CAF Operations (Routine and Contingency Operations) Domestic Operations (Routine and Contingency Operations, Transitions) International Contingency Operations Principles of CAF Operations Phases of an operation (warning, preparation, deployment, employment, redeployment) Levels of planning (government policy, strategic, operational, tactical). Stages to the operational planning process (Initiation, Orientation, Course of Action development, Plan development, Plan review).
Comments: N/A			

NOTES: Unsuccessful attempts in a specific task/task element result in failure of the task/task elements being assessed. Candidate must successfully complete all applicable checklist items in order to achieve minimum standard.

N/A

Candidate Signature _____ **DATE** _____

Assessor Signature _____ **DATE** _____

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EC 023.01

Instructions to the Staff:

1. N/A
2. Personnel, Material and Facility Requirements:
   a. Personnel requirements:

      N/A

   b. Material and Facility requirements. Items required to perform the PC:

      N/A
3. Ensure the serviceability of all equipment prior to the PC.
4. N/A
5. N/A
6. Brief candidates one day prior to the PC and ensure they understand the "INSTRUCTIONS TO BE GIVEN TO CANDIDATES"

Instructions to the Candidates:

7. The following instructions are to be given to candidates one day prior to the administration of each PC:

   N/A

8. The PC will be conducted as an open book practical application IAW MG B1-1. Candidates will work in syndicates, but each candidate will staff their own ECP.
9. Should you fail the PC, a supplemental test may be granted at the discretion of a Progress Review.
10. **Are there any questions?**

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EC 023.01

EC 023.01 CHECK LIST - Advise on self-defence

Serial	TASK/TASK ELEMENTS	P/F	Remarks

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	Legal regime relating to self defence		Use of force and self-defence in domestic operations (Self-defence, Use of force to protect property, Use of force and maintenance of law and order, Unlawful use of force). Hostile acts and hostile intent (Hostile act against Canada, hostile act against CAF personnel, units or forces, hostile intent against Canada, hostile intent against CAF personnel, units or forces, determination of hostile intent against Canada and CAF personnel, units or forces). Categories of self-defence (National self-defence, Foreign violations of Canadian territory, territorial waters or airspace, personal, unit or force self-defence, exercising the right of self-defence, response to hostile intent, restriction on response to hostile intent, hold fire orders, self-defence during combined operations, cross-boundary or cross-border fire). Use of force and self-defence in international operations (Article 51 of the UN Charter; when Armed attack occurs, self-defence, anticipatory self-defence, and pre-emptive self-defence, defence of nationals outside the territory of the state, necessity and proportionality, geographic and temporal parameters, the Until clause of Article 51, the Reporting requirement of Article 51, Security Council Resolutions: enforcement action, self-defence or both, collective self-defence)).
Comments: N/A			

EC 023.01 CHECK LIST - Advise on Rules of Engagement (ROE)

Serial	TASK/TASK ELEMENTS	P/F	Remarks
BT0030, BT0065, BT0060, BT0090	Advise on generation of ROE		Process of developing ROE (amendment, amplification, implementation, request, cancelation process)
	Legal sources for the use of force		international context: Domestic context: Relevant foreign/ domestic law:
	Roles and responsibilities of stakeholders in the generation of ROEs		CDS SJS and SJSLA CJOC and CJOC LA Subordinate units and formations and their legal advisors
	ROE authorisation process		Roles of: CDS SJS and SJSLA CJOC and CJOC LA Subordinate formations and their LEGAD ROE development (request (ROEREQ), authorization (ROEAUTH imput), amendment, implementation (ROEIMP), cancelation (ROECX)
	Advise on application of ROE		Principal components of ROE for international and domestic operations.
	Principal components of ROE for international operations		Definition, purposes and legal effects of ROE Deadly and non-deadly force ROE Excessive force Legal basis for operations (UN Charter, UNSCR) National constraints Multi-national operations ROE Development and communication of ROE

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	Principal components of ROE for domestic operations		CF Standing ROE Purpose of ROE Definition, purposes and legal effects of ROE Non-deadly force ROE Excessive force Legal basis for domestic operations National constraints Development and communication of ROE
Comments: N/A			

NOTES: Unsuccessful attempts in a specific task/task element result in failure of the task/task elements being assessed. Candidate must successfully complete all applicable checklist items in order to achieve minimum standard.

N/A

Candidate Signature _____ **DATE** _____

Assessor Signature _____ **DATE** _____

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DND - MDN

EC 024.01

Instructions to the Staff:

1. N/A
2. Personnel, Material and Facility Requirements:
   a. Personnel requirements:

      N/A

   b. Material and Facility requirements. Items required to perform the PC:

      N/A
3. Ensure the serviceability of all equipment prior to the PC.
4. N/A
5. N/A
6. Brief candidates one day prior to the PC and ensure they understand the "INSTRUCTIONS TO BE GIVEN TO CANDIDATES"

Instructions to the Candidates:

7. The following instructions are to be given to candidates one day prior to the administration of each PC:

   N/A

8. The PC will be conducted as an open book practical application IAW MG B1-1. Candidates will work in syndicates, but each candidate will staff their own ECP.
9. Should you fail the PC, a supplemental test may be granted at the discretion of a Progress Review.
10. **Are there any questions?**

Marking Guide
EC 024.01

EC 024.01 CHECK LIST - Advise on release, transfer or return

Serial	TASK/TASK ELEMENTS	P/F	Remarks
	Applicable regime and policies		PW handling during Coalition Operations, Transfer of PWs, Transfers Between Canadian PW Establishments, International Transfers, Administrative Considerations (Notice of Transfer, Forwarding of Mail, Prisoner Lists, Movement of Personal Effects, PW Accounts), PW Exchange. Repatriation of sick and wounded PW (The Geneva Convention and Repatriation, Assessment of PW War for Repatriation - The Mixed Medical Commission), Eligibility for Repatriation (Criteria for Eligibility for Direct Repatriation, Criteria for Eligibility for Transfer to a Neutral Country, Criteria for Eligibility for Further Repatriation from a Neutral Country), Costs of Repatriation of Sick and Wounded PW, Further Military Employment of Repatriated PW, Release and repatriation at the end of hostilities (Guidelines for Release and Repatriation, Costs of Repatriation, Asylum for PW).
Comments: N/A			

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EC 024.01 CHECK LIST - Advise on interrogation and questioning

Serial	TASK/TASK ELEMENTS	P/F	Remarks
	Applicable legal regime and policies		Interrogation and Tactical Questioning of PW and Detainees (Definition, Purpose, Concept (Interrogation and TQ are Controlled and Systematic, Specified Personnel Conduct Interrogation and TQ), Principles) Interrogation and Tactical Questioning in special circumstances (Detainees, Suspicion of Criminal Offences) Conduct of interrogation and tactical questioning (organization, procedures, constraints)
Comments: N/A			

EC 024.01 CHECK LIST - Advise on standard of treatment

Serial	TASK/TASK ELEMENTS	P/F	Remarks
	Applicable legal regime and policy		Treatment of Detainees, Restraints, Blindfolds, Hoods and Security, National responsibility of treatment of PWs, Protecting Power (Discharge of Responsibilities. Representatives, Delegates, Inspection Facilities, Passes for Representatives and Delegates), Persons who may not be made PWs, standard of treatment for male and female PWs.
Comments: N/A			

EC 024.01 CHECK LIST - Advise on status determination

Serial	TASK/TASK ELEMENTS	P/F	Remarks
	PW determination under GCIII		PW Status Determination (legal status of a captured or detained person who has committed a belligerent act during an international armed conflict In accordance with the Prisoner of War Status Determination Regulations, SOR/91-13419, Persons entitled and not entitled to PW status, medical and religious personnel, procedure for determination of PW status).
Comments: N/A			

EC 024.01 CHECK LIST - Advise on status

Serial	TASK/TASK ELEMENTS	P/F	Remarks

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	Applicable legal regimes		Types of CAF International Operations and Detainees (Armed Conflict Operations in International Armed Conflict, Armed Conflict Not of an International Character, Non-Armed Conflict Operations, Combatant Status, Civilian Status, Unlawful Combatants / Unprivileged Belligerents, Categories of Detainees). Prisoners of War Status (Medical Personnel and Chaplains, Indeterminate Status, Persons Captured During Operations Outside Of Armed Conflict, PW in Coalition Operations).
Comments: N/A			

NOTES: Unsuccessful attempts in a specific task/task element result in failure of the task/task elements being assessed. Candidate must successfully complete all applicable checklist items in order to achieve minimum standard.

N/A

Candidate Signature _____ **DATE** _____

Assessor Signature _____ **DATE** _____

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EC 025.01

Instructions to the Staff:

1. N/A
2. Personnel, Material and Facility Requirements:
   a. Personnel requirements:

      N/A

   b. Material and Facility requirements. Items required to perform the PC:

      N/A
3. Ensure the serviceability of all equipment prior to the PC.
4. N/A
5. N/A
6. Brief candidates one day prior to the PC and ensure they understand the "INSTRUCTIONS TO BE GIVEN TO CANDIDATES"

Instructions to the Candidates:

7. The following instructions are to be given to candidates one day prior to the administration of each PC:

   N/A

8. The PC will be conducted as an open book practical application IAW MG B1-1. Candidates will work in syndicates, but each candidate will staff their own ECP.
9. Should you fail the PC, a supplemental test may be granted at the discretion of a Progress Review.
10. **Are there any questions?**

Marking Guide
EC 025.01

EC 025.01 CHECK LIST - Advise during targeting process

Serial	TASK/TASK ELEMENTS	P/F	Remarks
	The role of the legal advisor in the targeting process		Role in the nomination process (Joint Targeting Working Group), Role in approval/ validation, Role in execution
Comments: N/A			

EC 025.01 CHECK LIST - Advise on targeting doctrine and directives

Serial	TASK/TASK ELEMENTS	P/F	Remarks
	CF targeting doctrine, framework and process		CF targeting doctrine, CF targeting directives (generic & specific), Relevance of targeting in a coalition context, Key steps in the targeting process
	Applicable principles of Jus in Bello		Humanity, Chivalry, Military necessity, Proportionality, distinction and the doubt rule, means and methods, precautions in attack, collateral damage
	Key distinctions in types of targeting		Types of targeting: Kinetic, Non-kinetic, lethal, non-lethal dynamic, deliberate, time sensitive

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Comments: N/A

NOTES: Unsuccessful attempts in a specific task/task element result in failure of the task/task elements being assessed. Candidate must successfully complete all applicable checklist items in order to achieve minimum standard.

N/A

Candidate Signature _____ **DATE** _____

Assessor Signature _____ **DATE** _____

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DND - MDN

EC 026.01

Instructions to the Staff:

1. N/A
2. Personnel, Material and Facility Requirements:
   a. Personnel requirements:

      N/A

   b. Material and Facility requirements. Items required to perform the PC:

      N/A

3. Ensure the serviceability of all equipment prior to the PC.
4. N/A
5. N/A
6. Brief candidates one day prior to the PC and ensure they understand the "INSTRUCTIONS TO BE GIVEN TO CANDIDATES"

Instructions to the Candidates:

7. The following instructions are to be given to candidates one day prior to the administration of each PC:

   N/A

8. The PC will be conducted as an open book practical application IAW MG B1-1. Candidates will work in syndicates, but each candidate will staff their own ECP.
9. Should you fail the PC, a supplemental test may be granted at the discretion of a Progress Review.
10. **Are there any questions?**

Marking Guide
EC 026.01

EC 026.01 CHECK LIST - Advise on international CAF operations

Serial	TASK/TASK ELEMENTS	P/F	Remarks
	Legal issues common to all international CAF operations		Principles of Jus in Bello (discrimination, proportionality) Environment, International crimes and war crimes, Refugees, internal displaced persons (IDP) and asylum seekers, Issues relating to private security military companies
	Full spectrum ops		CAF doctrine and policy, Applicable legal regime, Distinction between domestic, International, and expeditionary operations
	Peace Support Operations		CAF doctrine and policy, Applicable legal regime UN Charter Chap VI, VIII (EU, AU, ECOWAS) UN Peace operations and mandate process
	Humanitarian assistance operations		CAF doctrine and policy, Applicable legal regime, DART components
	Non combatant evacuation operations (NEO)		CAF doctrine and policy, Applicable legal regime (SOFA, MOU), Roles and responsibilities of DND and DFAIT
Comments: N/A			

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NOTES: Unsuccessful attempts in a specific task/task element result in failure of the task/task elements being assessed. Candidate must successfully complete all applicable checklist items in order to achieve minimum standard.

N/A

Candidate Signature _____ **DATE** _____

Assessor Signature _____ **DATE** _____

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DND - MDN

EC 026.02

Instructions to the Staff:

1. N/A
2. Personnel, Material and Facility Requirements:
   a. Personnel requirements:

      N/A

   b. Material and Facility requirements. Items required to perform the PC:

      N/A
3. Ensure the serviceability of all equipment prior to the PC.
4. N/A
5. N/A
6. Brief candidates one day prior to the PC and ensure they understand the "INSTRUCTIONS TO BE GIVEN TO CANDIDATES"

Instructions to the Candidates:

7. The following instructions are to be given to candidates one day prior to the administration of each PC:

   N/A
8. The PC will be conducted as an open book practical application IAW MG B1-1. Candidates will work in syndicates, but each candidate will staff their own ECP.
9. Should you fail the PC, a supplemental test may be granted at the discretion of a Progress Review.
10. **Are there any questions?**

Marking Guide
EC 026.02

EC 026.02 CHECK LIST - Advise on domestic CAF operations

Serial	TASK/TASK ELEMENTS	P/F	Remarks
	Legal issues common to all domestic CF operations		Mandates, use of force, ROE and self-defence in domestic context, criminal responsibility and civil liability, Command and control (MP jurisdiction and Peace officer status)
	Defence of Canada		CAF directives and policies, Relevant legal regime, Interdepartmental considerations, Potential mixed (international and domestic) nature of the operation, NORAD (principal agreements MOUs,Missions & tasks)
	Sovereignty operations		CA directives and policies, Relevant legal regime, Interdepartmental considerations, Arctic operations (OP NANOOK, OP NUNALIVUT), RCN, RCAF and Canadian Rangers roles
	Aid of the civil power		CAF directives and policies, Relevant legal regime

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	ALEA		Law enforcement assistance under NDA , Key OICs (CF Assistance to Provincial Police Directions CFAPPFD, CF Armed Assistance Directions CFAAD, Assistance to Correctional Services Federal Penitentiaries (OIC 175-131), Classes of support, Evidentiary issues arising during ALEA, Key MOUs (CF/RCMP Counter-Drug Ops, DFO Integrated National Security Enforcement Teams (INSET)), Integrated Border Enforcement Teams (IBETS), Exemples Operations (SABOT, RUGGED, PODIUM, CARIBBE),
	Public service under NDA		CAF directives and policies, Relevant legal regime (section 273.6 (l) of the NDA), Interdepartmental considerations
	Provision of Service (POS)		CAF directives and policies, Relevant legal regime (Provision of Service Policy) PoS conditions, authorization, costs recovery. admin requirements Interdepartmental considerations
	Search and rescue operations		CAF directives and policies, Relevant legal regime, Command and control relationships relating to SAR, Interdepartmental considerations
	Operations involving other governmental departments (OGD)		Presently applies to OP PALACI , DFO MOU, CAF directives and policies Relevant legal regime
Comments: N/A			

NOTES: Unsuccessful attempts in a specific task/task element result in failure of the task/task elements being assessed. Candidate must successfully complete all applicable checklist items in order to achieve minimum standard.

N/A

Candidate Signature _____ **DATE** _____

Assessor Signature _____ **DATE** _____

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DND - MDN

EC 026.03

Instructions to the Staff:

1. N/A
2. Personnel, Material and Facility Requirements:
   a. Personnel requirements:

      N/A

   b. Material and Facility requirements. Items required to perform the PC:

      N/A
3. Ensure the serviceability of all equipment prior to the PC.
4. N/A
5. N/A
6. Brief candidates one day prior to the PC and ensure they understand the "INSTRUCTIONS TO BE GIVEN TO CANDIDATES"

Instructions to the Candidates:

7. The following instructions are to be given to candidates one day prior to the administration of each PC:

   N/A

8. The PC will be conducted as an open book practical application IAW MG B1-1. Candidates will work in syndicates, but each candidate will staff their own ECP.
9. Should you fail the PC, a supplemental test may be granted at the discretion of a Progress Review.
10. **Are there any questions?**

Marking Guide
EC 026.03

EC 026.03 CHECK LIST - Advise on CAF operations of mixed international and domestic nature

Serial	TASK/TASK ELEMENTS	P/F	Remarks
	Maritime ops		Applicable legal regime in particular law of the sea, Internal, territorial, national and international waters, coastal zones, contiguous and exclusive economic zones, baselines Jurisdiction, DFO, maritime enforcement operations, boarding and right of visit in peacetime, stateless vessels, piracy, proliferationi security initiative, interdiction operations. CAF doctrine and policy, Command control relationship for RCN, coalition considerations, interdepartmental considerations
BT0020	Legal issues related to intelligence operations		CAF policy and directives pertaining to: international operations, domestic operations, legal regime relating to each of the two aforementioned types of operations, Info sharing including limitations and prohibitions, Allied and coalition considerations (especially US), release and disposal, Communications Security Establishment Commissioner, Types of intelligence (open sources, signals, imagery), CAF intelligence framework (defence, security, criminal) Privacy Act, CISIS Act, Radiocommunication Act

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BT0025	Legal issues related to information operations		CAF doctrine and policies, Applicable legal regime, Legal considerations pertaining offensive information operations, LOAC Issues, International law relating to information operations, distinction from intelligence operations
BT0115	Legal issues related to special operations (SOF)		Nature, structure and role of CANSOFCOM and its units, relation between CANSOFCOM and force generators/ employers, relation between OJAG and CANSOFCOM Definition, characteristics and types of SOF, Key players (CJOPC, JTF 2, 427 SOAS, CSOR, CJRU)
Comments: N/A			

NOTES: Unsuccessful attempts in a specific task/task element result in failure of the task/task elements being assessed. Candidate must successfully complete all applicable checklist items in order to achieve minimum standard.

N/A

Candidate Signature _____ **DATE** _____

Assessor Signature _____ **DATE** _____

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EC 027.01

Instructions to the Staff:

1. N/A
2. Personnel, Material and Facility Requirements:
   a. Personnel requirements:

      N/A

   b. Material and Facility requirements. Items required to perform the PC:

      N/A
3. Ensure the serviceability of all equipment prior to the PC.
4. N/A
5. N/A
6. Brief candidates one day prior to the PC and ensure they understand the "INSTRUCTIONS TO BE GIVEN TO CANDIDATES"

Instructions to the Candidates:

7. The following instructions are to be given to candidates one day prior to the administration of each PC:

   N/A

8. The PC will be conducted as an open book practical application IAW MG B1-1. Candidates will work in syndicates, but each candidate will staff their own ECP.
9. Should you fail the PC, a supplemental test may be granted at the discretion of a Progress Review.
10. **Are there any questions?**

Marking Guide
EC 027.01

EC 027.01 CHECK LIST - Liaise with governmental and non-governmental authorities relating to international and domestic CAF operations

Serial	TASK/TASK ELEMENTS	P/F	Remarks
	The role of the legal officer in liaison		Influence of legal principles on policy development, Relationship with the OJAG and other government legal counsel, Canadian government structure (Federal, Provincial), international governmental/ diplomatic structure, UN, NATO/ NAC, ICRC, ICC
Comments: N/A			

EC 027.01 CHECK LIST - Advise on arrangements & agreements in support international CAF operations

Serial	TASK/TASK ELEMENTS	P/F	Remarks
	Development of arrangements and agreements relating to international CAF operations		Key legal regime including visiting forces act, NATO SOFA and NDA related to the development of international arrangements and agreements

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Comments: N/A

EC 027.01 CHECK LIST - Advise on arrangements and agreements in support of domestic CAF operations

Serial	TASK/TASK ELEMENTS	P/F	Remarks
	Development of arrangements and agreements relating to domestic CAF operations		Key legal regime including visiting forces act, NATO SOFA and NDA related to domestic CAF operations
	Domestic arrangements and agreements		Key legal regime including visiting forces act, NATO SOFA and NDA related to domestic arrangements and agreements
Comments: N/A			

NOTES: Unsuccessful attempts in a specific task/task element result in failure of the task/task elements being assessed. Candidate must successfully complete all applicable checklist items in order to achieve minimum standard.

N/A

Candidate Signature _____ **DATE** _____

Assessor Signature _____ **DATE** _____

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PC 001-003

Instructions to the Staff:

1. N/A
2. Personnel, Material and Facility Requirements:
   a. Personnel requirements:

      N/A

   b. Material and Facility requirements. Items required to perform the PC:

      N/A
3. Ensure the serviceability of all equipment prior to the PC.
4. N/A
5. N/A
6. Brief candidates one day prior to the PC and ensure they understand the "INSTRUCTIONS TO BE GIVEN TO CANDIDATES"

Instructions to the Candidates:

7. The following instructions are to be given to candidates one day prior to the administration of each PC:

   N/A

8. The PC will be conducted as an open book practical application IAW MG B1-1. Candidates will work in syndicates, but each candidate will staff their own ECP.
9. Should you fail the PC, a supplemental test may be granted at the discretion of a Progress Review.
10. **Are there any questions?**

Marking Guide
PC 001-003

PC 001-003 CHECK LIST - Explain the organization of the Office of the JAG

Serial	TASK/TASK ELEMENTS	P/F	Remarks
	Command relationships within the office of the JAG		Mechanism by which units, headquarters and formations are created. Distinction between units, formations and other elements. Command relationships established under QR&O Chapter 3. Role of legal officer and Command responsibility established under QR&O Art. 4.081. Organization of the Office of the JAG. Relationship between unit leagl advisors and DMP. JAG Policy Directive 008/00 General instructions in respect to prosecutions. Relationship detween DCS and other legal officers. JAG Policy Directive 009/00 General instructions in respect of Defence counsel services.
Comments: N/A			

PC 001-003 CHECK LIST - Explain roles and responsibilities of the JAG

Serial	TASK/TASK ELEMENTS	P/F	Remarks

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	Legislative roles and responsibilities of the JAG		Statutory Role and Responsibilities of the JAG Relationship Between JAG and DND/CF LA (DoJ) Role and Responsibilities of DMP Role and responsibilities of DCS Role and Responsibilities of Military Judges, including the Chief Military judge Ministeriel direction regarding legal advice to DND and CF
Comments: N/A			

PC 001-003 CHECK LIST - Explain the roles and responsibilities of the office of the JAG

Serial	TASK/TASK ELEMENTS	P/F	Remarks
	Legislative roles and responsibilities of the JAG		Statutory Role and Responsibilities of the JAG Relationship Between JAG and DND/CF LA (DoJ) Role and Responsibilities of DMP Role and responsibilities of DCS Role and Responsibilities of Military Judges, including the Chief Military judge Ministeriel direction regarding legal advice to DND and CF
	Command relationships within the office of the JAG		Mechanism by which units, headquarters and formations are created. Distinction between units, formations and other elements. Command relationships established under QR&O Chapter 3. Role of legal officer and Command responsibility established under QR&O Art. 4.081. Organization of the Office of the JAG. Relationship between unit leagl advisors and DMP. JAG Policy Directive 008/00 General instructions in respect to prosecutions. Relationship between DCS and other legal officers. JAG Policy Directive 009/00 General instructions in respect of Defence counsel services.
	Nature of commands, formations, units and other elements of the CAF		Establishment of units, formations and commands under s. 17 of the National Defence Act. MOOs and CFOOs (very cursory review as this is covered in MAL in detail)
	Nature of the independance of the JAG in relation to Commands, formations, units and other elements of the CAF		Describe the application of QR&O Art. 4.081 Describe the command structure of the CAF (cursory overview as this is covered in detail in MAL)
Comments: N/A			

PC 001-003 CHECK LIST - Explain the relationships between the Office of the JAG and supported commands, formations, units, and other elements of the CAF.

Serial	TASK/TASK ELEMENTS	P/F	Remarks
	Nature of commands, formations, units and other elements of the CAF		Establishment of units, formations and commands under s. 17 of the National Defence Act. MOOs and CFOOs (very cursory review as this is covered in MAL in detail)
	Nature of the independance of the JAG in relation to Commands, formations, units and other elements of the CAF		Describe the application of QR&O Art. 4.081 Describe the command structure of the CAF (cursory overview as this is covered in detail in MAL)

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Comments: N/A

PC 001-003 CHECK LIST - Provide legal services IAW JAG policy directives

Serial	TASK/TASK ELEMENTS	P/F	Remarks
	Duties of a base or unit legal advisor		
	Roles and responsibilities of a prosecutor within the CMPS		
	Role and responsibilities of defence counsel within DCS.		
DT0055	Provide verbal legal advice IAW JAG Policy Directives		
	Generic legal officer duties		Perform duties common to all CAF officers (IBTS) Be familiar with all JAG policies and directives Maintain currency with applicable law society law obligations Provide instruction on legal issues Provide legal advice IAW JAG policy directives Report to supervisor any problems, issues or irregularities relating to provision of legal services
	Duties of a prosecutor		DMP's direction to prosectutors Relationship between DMP, prosecutors and unit legal advisors
	Duties of defence counsel		Direction from DDCS Nature of relationship with accused Role as duty defence counsel
DT0050	Provide written legal advice IAW JAG Policy Directives		
	Principles of statutory interpretation		Interpretation Act Statutory Instruments Act Key jurisprudence
	Duties as legal advisor within a directorate of the Office of the JAG		Nature of corporate legal advice Nature of advising on policy development
	Duties of a legal officer posted to DND/CFLA		Compare and constrast with legal officers posted to a directorate within the office of the JAG Nature of relationship between the office of the JAG and DND/CFLA, and between DND/CFLA and the DND/CAF
	Duties of a Deputy Judge Advocate/ Base legal advisor		Know and establish relationthips with all Commands, formations, units, and other elements within the scope of advisory responsibilities Be prepared to provide legal advice across the spectrum of legal issues Seek and accept assistance from other legal advisors within the Office of the JAG and DND/CFLA as appropriate Provide timely operationally focused, solution oriented legal advice to supported commands formations and units
	Provide other legal support		
	Provide legal education and training to unit.		
Comments: N/A			

PC 001-003 CHECK LIST - Explain general duties of a legal officer

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Serial	TASK/TASK ELEMENTS	P/F	Remarks
	Duties of a base or unit legal advisor		
	Roles and responsibilities of a prosecutor within the CMPS		
	Role and responsibilities of defence counsel within DCS.		
Comments: N/A			

PC 001-003 CHECK LIST - Provide legal advice IAW JAG policy directives

Serial	TASK/TASK ELEMENTS	P/F	Remarks
DT0055	Provide verbal legal advice IAW JAG Policy Directives		
	Generic legal officer duties		Perform duties common to all CAF officers (IBTS) Be familiar with all JAG policies and directives Maintain currency with applicable law society law obligations Provide instruction on legal issues Provide legal advice IAW JAG policy directives Report to supervisor any problems, issues or irregularities relating to provision of legal services
	Duties of a prosecutor		DMP's direction to prosectutors Relationship between DMP, prosecutors and unit legal advisors
	Duties of defence counsel		Direction from DDCS Nature of relationship with accused Role as duty defence counsel
DT0050	Provide written legal advice IAW JAG Policy Directives		
	Principles of statutory interpretation		Interpretation Act Statutory Instruments Act Key jurisprudence
	Duties as legal advisor within a directorate of the Office of the JAG		Nature of corporate legal advice Nature of advising on policy development
	Duties of a legal officer posted to DND/CFLA		Compare and constrast with legal officers posted to a directorate within the office of the JAG Nature of relationship between the office of the JAG and DND/CFLA, and between DND/CFLA and the DND/CAF
	Duties of a Deputy Judge Advocate/ Base legal advisor		Know and establish relationthips with all Commands, formations, units, and other elements within the scope of advisory responsibilities Be prepared to provide legal advice across the spectrum of legal issues Seek and accept assistance from other legal advisors within the Office of the JAG and DND/CFLA as appropriate Provide timely operationally focused, solution oriented legal advice to supported commands formations and units
Comments: N/A			

PC 001-003 CHECK LIST - Explain general duties of a legal officer

Serial	TASK/TASK ELEMENTS	P/F	Remarks

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	Generic legal officer duties		Perform duties common to all CAF officers (IBTS) Be familiar with all JAG policies and directives Maintain currency with applicable law society law obligations Provide instruction on legal issues Provide legal advice IAW JAG policy directives Report to supervisor any problems, issues or irregularities relating to provision of legal services
	Duties of a prosecutor		DMP's direction to prosectutors Relationship between DMP, prosecutors and unit legal advisors
	Duties of defence counsel		Direction from DDCS Nature of relationship with accused Role as duty defence counsel
Comments: N/A			

PC 001-003 CHECK LIST - Provide legal advice IAW JAG policy directives

Serial	TASK/TASK ELEMENTS	P/F	Remarks
	Principles of statutory interpretation		Interpretation Act Statutory Instruments Act Key jurisprudence
	Duties as legal advisor within a directorate of the Office of the JAG		Nature of corporate legal advice Nature of advising on policy development
	Duties of a legal officer posted to DND/CFLA		Compare and constrast with legal officers posted to a directorate within the office of the JAG Nature of relationship between the office of the JAG and DND/CFLA, and between DND/CFLA and the DND/CAF
Comments: N/A			

PC 001-003 CHECK LIST - Provide base- and unit-level legal services

Serial	TASK/TASK ELEMENTS	P/F	Remarks
	Duties of a Deputy Judge Advocate/ Base legal advisor		Know and establish relationthips with all Commands, formations, units, and other elements within the scope of advisory responsibilities Be prepared to provide legal advice across the spectrum of legal issues Seek and accept assistance from other legal advisors within the Office of the JAG and DND/CFLA as appropriate Provide timely operationally focused, solution oriented legal advice to supported commands formations and units
Comments: N/A			

PC 001-003 CHECK LIST - Provide base and unit level legal services

Serial	TASK/TASK ELEMENTS	P/F	Remarks
	Provide other legal support		

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	Provide legal education and training to unit.		
Comments: N/A			

PC 001-003 CHECK LIST - Resolve ethical issues arising from legal officer duties

Serial	TASK/TASK ELEMENTS	P/F	Remarks
	Identify characteristics of legal ethical issues		Nature of solicitor client relationships Existence of a solicitor client relationship (within the context of the CAF) Two or more applicable obligations on the legal officer Conflict between two or more of these obligations
	Examples of common or likely legal ethical dilemmas		Supported commander/ CO declines to follow legal advice Legal offcier disagrees with institutional legal positions Member of CAF seeks legal advice under false pretences "shopping" for legal advice Commander/ CO relies on "previous legal advice" Recipient of legal advice withholds information when seeking legal advice Legal officer is "correctly" called upon to provide legal advice on a matter that was previously subject to legal advice Inadvertent admisssions in personal or non legal communications. Legal officer required to provide legal advice where department of justice counsel have provided legal advice.
	Identify applicable regimes		Cursory review of provincial/ territorial rules of professional conduct CBA code of conduct JAG policy directives: 006/00 Professional standards review 010/00 Charge screening policy 023/02 Ethics directive 045/12 Requesting approval to submit papers and articles for publication DAOD 7021-1 Conflict of interest DAOD 5012-0 Harassment prevention and resolution Legal framework for solicior client conferences CFAO 56-5
	Identify resources for assistance		Supervisor or mentor Collegue from the same provincial or teritorial law society Office of the JAG website Provincial or teritorial law society website
	Identify potential harm(s) arising from circumstances		
	Identify the regime(s) best suited to prevent the harm(s)		
	Evaluate compatiblity of regimes		
	Identify consequences of the application of the regime		Confirm if the "best suited regime(s)" is superceeded by any other regime(s)
	Apply the appropriate regime to the circumstances in order to resolve dilemma.		
Comments: N/A			

PC 001-003 CHECK LIST - Identify the legal ethical issue(s)

Serial	TASK/TASK ELEMENTS	P/F	Remarks

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	Identify characteristics of legal ethical issues		Nature of solicitor client relationships Existence of a solicitor client relationship (within the context of the CAF) Two or more applicable obligations on the legal officer Conflict between two or more of these obligations
	Examples of common or likely legal ethical dilemmas		Supported commander/ CO declines to follow legal advice Legal offcier disagrees with institutional legal positions Member of CAF seeks legal advice under false pretences "shopping" for legal advice Commander/ CO relies on "previous legal advice" Recipient of legal advice withholds information when seeking legal advice Legal officer is "correctly" called upon to provide legal advice on a matter that was previously subject to legal advice Inadvertent admisssions in personal or non legal communications. Legal officer required to provide legal advice where department of justice counsel have provided legal advice.
Comments: N/A			

PC 001-003 CHECK LIST - Identify the applicable regime(s)

Serial	TASK/TASK ELEMENTS	P/F	Remarks
	Identify applicable regimes		Cursory review of provincial/ territorial rules of professional conduct CBA code of conduct JAG policy directives: 006/00 Professional standards review 010/00 Charge screening policy 023/02 Ethics directive 045/12 Requesting approval to submit papers and articles for publication DAOD 7021-1 Conflict of interest DAOD 5012-0 Harassment prevention and resolution Legal framework for solicior client conferences CFAO 56-5
	Identify resources for assistance		Supervisor or mentor Collegue from the same provincial or teritorial law society Office of the JAG website Provincial or teritorial law society website
Comments: N/A			

PC 001-003 CHECK LIST - Apply appropriate course(s) of action

Serial	TASK/TASK ELEMENTS	P/F	Remarks
	Identify potential harm(s) arising from circumstances		
	Identify the regime(s) best suited to prevent the harm(s)		
	Evaluate compatiblity of regimes		
	Identify consequences of the application of the regime		Confirm if the "best suited regime(s)" is superceeded by any other regime(s)
	Apply the appropriate regime to the circumstances in order to resolve dilemma.		

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Comments: N/A

NOTES: Unsuccessful attempts in a specific task/task element result in failure of the task/task elements being assessed. Candidate must successfully complete all applicable checklist items in order to achieve minimum standard.

N/A

Candidate Signature _____ **DATE** _____

Assessor Signature _____ **DATE** _____

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PC 004-006

Instructions to the Staff:

1. N/A
2. Personnel, Material and Facility Requirements:
   a. Personnel requirements:

      N/A

   b. Material and Facility requirements. Items required to perform the PC:

      N/A

3. Ensure the serviceability of all equipment prior to the PC.
4. N/A
5. N/A
6. Brief candidates one day prior to the PC and ensure they understand the "INSTRUCTIONS TO BE GIVEN TO CANDIDATES"

Instructions to the Candidates:

7. The following instructions are to be given to candidates one day prior to the administration of each PC:

   N/A

8. The PC will be conducted as an open book practical application IAW MG B1-1. Candidates will work in syndicates, but each candidate will staff their own ECP.
9. Should you fail the PC, a supplemental test may be granted at the discretion of a Progress Review.
10. **Are there any questions?**

Marking Guide
PC 004-006

PC 004-006 CHECK LIST - Advise on general principles of CF service

Serial	TASK/TASK ELEMENTS	P/F	Remarks
	Advise on the Crown-CF member relationship		legal basis of Crown-CAF member relationship characteristics of the Crown-CAF member relationship
	Legal basis of Crown- CF member relationship		constitution crown prerogative statutory case law
	characteristics of the Crown- CF member relationship		
	Advise on liability to serve		nature of liability
	Nature of liability		Reg Force Primary Reserve Supplementary Reserve Other subcomponents classes of service (A, B, C) Active service Component & sub component transfer
CT0275	Advise on universality of service		legal sources and nature of the principle impact of the principle on CAF policy development
	Legal sources and nature of the principle		section 33 NDA CHRA section 15(9) Case Law DAOD 5023 QR&O 15 (medical release) MND exemption employability, deployability, fitness
	Impact of the principle on CF policy development		Cannot be applied arbitrarily Impact on release policies Impact on fitness policies Impact on deployment policies Impact on career development policies Impact on postings
	Key grounds relevant to CF policy development		religion gender sexual orientation pregnancy language family status

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	Relevant human rights legislation		CHRA, Case Law
Comments: N/A			

PC 004-006 CHECK LIST - Advise on CAF organization and command

Serial	TASK/TASK ELEMENTS	P/F	Remarks
	Legal basis for CF structure		constitution of the CF components of the CF sub components of the CF
	Building blocks of the CF		elements commands formations units
	Instruments to create the building blocks of the CF		MOOs CFOOs TO&Es CFTPOs Deployed units or elements
	Sources of command		QR&O Designation
	Command relationships		distinction between the exercise of ministeriel power and operational doctrine
Comments: N/A			

PC 004-006 CHECK LIST - Advise on the application of admin law & principles in CF decision making

Serial	TASK/TASK ELEMENTS	P/F	Remarks
	Hierarchy of sources of authority		constitutional statutory other legislative (regulations, CBIs, OICs, Ministeriel orders) common law (and other binding precedent) policy (orders, directives, instructions)
	Key sources of authority for the CF		Powers of GIC, treasury board, minister, deputy minister, CDS , JAG and other decision makers. Constituion: i.e. section 15, 91(7) CA1867 Crown prerogative NDA: SS.4, 12, 14, 17, 35
	Methods of authorisation		Delegation, Devolution, Designation, Authorization, Description of mechanisms for the above forms of authorization
	Principle of vires		
	Types of administrative decisions		who makes the decision when is the decision made What decisions can be made
	Elements of procedural fairness		Rights interests or privileges, Right to know the case, Right to be heard, Right to an impartial decision maker
	Content of fairness		Notice Disclosure Opportunity to make informed representations (to an impartial decision maker) Sufficiency of reasons
	Steps in decision making		jurisdiction/ vires Scope of authority
	Determine content of fairness for the particular decision		
	Identification of the appropriate decision making mechanism		
	Informal corrective mechanisms		
	Formal corrective measures		

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	External corrective measures		
Comments: N/A			

NOTES: Unsuccessful attempts in a specific task/task element result in failure of the task/task elements being assessed. Candidate must successfully complete all applicable checklist items in order to achieve minimum standard.

N/A

Candidate Signature _____ **DATE** _____

Assessor Signature _____ **DATE** _____

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DND - MDN

PC 007

Instructions to the Staff:

1. N/A
2. Personnel, Material and Facility Requirements:
   a. Personnel requirements:

      N/A

   b. Material and Facility requirements. Items required to perform the PC:

      N/A
3. Ensure the serviceability of all equipment prior to the PC.
4. N/A
5. N/A
6. Brief candidates one day prior to the PC and ensure they understand the "INSTRUCTIONS TO BE GIVEN TO CANDIDATES"

Instructions to the Candidates:

7. The following instructions are to be given to candidates one day prior to the administration of each PC:

   N/A

8. The PC will be conducted as an open book practical application IAW MG B1-1. Candidates will work in syndicates, but each candidate will staff their own ECP.
9. Should you fail the PC, a supplemental test may be granted at the discretion of a Progress Review.
10. **Are there any questions?**

Marking Guide
PC 007

PC 007 CHECK LIST - Advise on the development and application of significant CF policies

Serial	TASK/TASK ELEMENTS	P/F	Remarks
	relevant regulations and policies		Constitutional issues CF drug control program (QR&O ch.20, CF drug control manual, DAOD 5091-3) Alcohol misconduct policy (DAOD 5091-7) Administrative measures Criminal Code DUI Provincial road side screening
	CF Alcohol policy		Alcohol misconduct Conduct deficieny involving alcohol Triggers for application of DAOD Policies relating to the serving of alcohol Measures taken as a consequence of these policies
	CF Drug policy		Drug use and other drug involvment Drug testing Post testing actions
CT0320	Advise on public comment by CAF members		include information pertaining to disclosure of information, QR&O 19.36 Whistle blower
	Applicable regulations and policies		publication policies policies on interaction with the media Improper comment release of information
CT0035	Advise on conflict of interest		
	Applicable regulations and policies on conflict of interest		
CT0045	Advise on political activities		election issues pertaining to CAF CAF regulations and policies pertaining to political activities

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CT0125	Election issues pertaining to the CAF		
	CAF regulations and policies pertaining to political activities		Candidature for office membership and political parties Political advertising and activities on defence establishments Civilian polling stations on defence establishments
	Relevant regulations and CF policies		prohibited conduct Disorders Consequences
	Relevant regulations and CF policies		commanders of commands / formations commanding officers designated Commanders and commanding officers Other appointments and positions Removal from command Distinguish from relief of performance of military duty
Comments: N/A			

PC 007 CHECK LIST - Advise on drug/ alcohol policy

Serial	TASK/TASK ELEMENTS	P/F	Remarks
	relevant regulations and policies		Constitutional issues CF drug control program (QR&O ch.20, CF drug control manual, DAOD 5091-3) Alcohol misconduct policy (DAOD 5091-7) Administrative measures Criminal Code DUI Provincial road side screening
	CF Alcohol policy		Alcohol misconduct Conduct deficieny involving alcohol Triggers for application of DAOD Policies relating to the serving of alcohol Measures taken as a consequence of these policies
	CF Drug policy		Drug use and other drug involvment Drug testing Post testing actions
Comments: N/A			

PC 007 CHECK LIST - Advise on public comment and conflict of interest

Serial	TASK/TASK ELEMENTS	P/F	Remarks
CT0320	Advise on public comment by CAF members		include information pertaining to disclosure of information, QR&O 19.36 Whistle blower
	Applicable regulations and policies		publication policies policies on interaction with the media Improper comment release of information
CT0035	Advise on conflict of interest		
	Applicable regulations and policies on conflict of interest		
CT0045	Advise on political activities		election issues pertaining to CAF CAF regulations and policies pertaining to political activities
CT0125	Election issues pertaining to the CAF		
	CAF regulations and policies pertaining to political activities		Candidature for office membership and political parties Political advertising and activities on defence establishments Civilian polling stations on defence establishments

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Comments: N/A

PC 007 CHECK LIST - Advise on sexual misconduct and sexual disorders

Serial	TASK/TASK ELEMENTS	P/F	Remarks
	Relevant regulations and CF policies		prohibited conduct Disorders Consequences
Comments: N/A			

PC 007 CHECK LIST - Advise on removal from command positions

Serial	TASK/TASK ELEMENTS	P/F	Remarks
	Relevant regulations and CF policies		commanders of commands / formations commanding officers designated Commanders and commanding officers Other appointments and positions Removal from command Distinguish from relief of performance of military duty
Comments: N/A			

NOTES: Unsuccessful attempts in a specific task/task element result in failure of the task/task elements being assessed. Candidate must successfully complete all applicable checklist items in order to achieve minimum standard.

N/A

Candidate Signature _____ **DATE** _____

Assessor Signature _____ **DATE** _____

A-2015-01212--0313

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PC 008

Instructions to the Staff:

1. N/A
2. Personnel, Material and Facility Requirements:
   a. Personnel requirements:

      N/A

   b. Material and Facility requirements. Items required to perform the PC:

      N/A
3. Ensure the serviceability of all equipment prior to the PC.
4. N/A
5. N/A
6. Brief candidates one day prior to the PC and ensure they understand the "INSTRUCTIONS TO BE GIVEN TO CANDIDATES"

Instructions to the Candidates:

7. The following instructions are to be given to candidates one day prior to the administration of each PC:

   N/A

8. The PC will be conducted as an open book practical application IAW MG B1-1. Candidates will work in syndicates, but each candidate will staff their own ECP.
9. Should you fail the PC, a supplemental test may be granted at the discretion of a Progress Review.
10. **Are there any questions?**

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PC 008

PC 008 CHECK LIST - Advise on the administration of CAF service

Serial	TASK/TASK ELEMENTS	P/F	Remarks
	Relevant regulations and policies		
	Advise on rank, promotion and succession planning		
	Relevant regulations and policies		Relationship to CHRA Authorities to promote Appointments Conditions and standards Retroactivity
	Advise on conduct and performance deficiencies		
	Relevant regulations and policies		DAOD 5019 series overview
CT0015	Advise on administrative actions WRT CF members		
	Relevant regulations and policies		Remedial measures Admin review Administrative actions Administrative interventions
CT0205	Advise on legal issues arising out of injury of CAF members		
	legal issues relating to injuries attributable or arising out of military service and duty		
CT0290	Advise on civil and criminal court proceedings		

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	Applicable regulations and policies		Duty to report arrest by civil authority Attending officer Sureties Certificate of conviction Action following conviction Attendance at trial Civil proceedings Service of documents Jury summons Subpoenas, production orders and summons
	Sources of authority relating to compensations and benefits		Roles and responsibilities of Treasury Board Statutory authorities for regulations Statutory authorities for CBIs and related instructions Limitations regarding compensations and benefits
	Garnishments and forfeitures		Financial support orders Compulsory payments Judgment debts Forfeitures arising from CF regulations Recovery of overpayments Impact of relief of performance of military duty Role of CBP&E
	Significant issues regarding compensations and benefits		seperation expense Distinction between pensions and anuities Leave Impact of TD vice attached posting
	Common law partnerships		Requirements to establish a CLP required documentation Impacts upon benefits
	Advise on release issues		
	Applicable legislation and policy		Reasons for release Authority for release Release authorities items of release and its consequences release processes reinstatement
CT0195	Advise on pension and annuity related issues		
	Applicable legislation and policies		annuities and annual allowances pensions other entitlements supplementary death benefit Role of VAC Role of SISIP
	Advise on legal issues arising out of death of CAF members		
	Significant issues arising from death		impact on compensation including under CFSA Processes relating to service estates Funeral issues Triggering of release Admin investigation Role of CBP&E as director of estates
	Issues best addressed prior to death		Wills & Will certificates (including privileged wills) SDB forms PEN form Next of Kin form (distinguishable from personal representative of estate) Memorial Cross forms
Comments: N/A			

PC 008 CHECK LIST - Advise on the enrolment of CAF members

Serial	TASK/TASK ELEMENTS	P/F	Remarks
	Relevant regulations and policies		
Comments: N/A			

PC 008 CHECK LIST - Advise on legal issues pertaining to career

Serial	TASK/TASK ELEMENTS	P/F	Remarks

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	Advise on rank, promotion and succession planning		
	Relevant regulations and policies		Relationship to CHRA Authorities to promote Appointments Conditions and standards Retroactivity
	Advise on conduct and performance deficiencies		
	Relevant regulations and policies		DAOD 5019 series overview
CT0015	Advise on administrative actions WRT CF members		
	Relevant regulations and policies		Remedial measures Admin review Administrative actions Administrative interventions
CT0205	Advise on legal issues arising out of injury of CAF members		
	legal issues relating to injuries attributable or arising out of military service and duty		
CT0290	Advise on civil and criminal court proceedings		
	Applicable regulations and policies		Duty to report arrest by civil authority Attending officer Sureties Certificate of conviction Action following conviction Attendance at trial Civil proceedings Service of documents Jury summons Subpoenas, production orders and summons
Comments: N/A			

PC 008 CHECK LIST - Advise on CF compensation and benefits issues

Serial	TASK/TASK ELEMENTS	P/F	Remarks
	Sources of authority relating to compensations and benefits		Roles and responsibilities of Treasury Board Statutory authorities for regulations Statutory authorities for CBIs and related instructions Limitations regarding compensations and benefits
	Garnishments and forfeitures		Financial support orders Compulsory payments Judgment debts Forfeitures arising from CF regulations Recovery of overpayments Impact of relief of performance of military duty Role of CBP&E
	Significant issues regarding compensations and benefits		seperation expense Distinction between pensions and anuities Leave Impact of TD vice attached posting
	Common law partnerships		Requirements to establish a CLP required documentation Impacts upon benefits
Comments: N/A			

PC 008 CHECK LIST - Advise on the release of CAF members

Serial	TASK/TASK ELEMENTS	P/F	Remarks
	Advise on release issues		
	Applicable legislation and policy		Reasons for release Authority for release Release authorities items of release and its consequences release processes reinstatement

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CT0195	Advise on pension and annuity related issues		
	Applicable legislation and policies		annuities and annual allowances pensions other entitlements supplementary death benefit Role of VAC Role of SISIP
	Advise on legal issues arising out of death of CAF members		
	Significant issues arising from death		impact on compensation including under CFSA Processes relating to service estates Funeral issues Triggering of release Admin investigation Role of CBP&E as director of estates
	Issues best addressed prior to death		Wills & Will certificates (including privileged wills) SDB forms PEN form Next of Kin form (distinguishable from personal representative of estate) Memorial Cross forms
Comments: N/A			

NOTES: Unsuccessful attempts in a specific task/task element result in failure of the task/task elements being assessed. Candidate must successfully complete all applicable checklist items in order to achieve minimum standard.

N/A

Candidate Signature _____ **DATE** _____

Assessor Signature _____ **DATE** _____

A-2015-01212--0317

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DND - MDN

PC 009

Instructions to the Staff:

1. N/A
2. Personnel, Material and Facility Requirements:
   a. Personnel requirements:

      N/A

   b. Material and Facility requirements. Items required to perform the PC:

      N/A
3. Ensure the serviceability of all equipment prior to the PC.
4. N/A
5. N/A
6. Brief candidates one day prior to the PC and ensure they understand the "INSTRUCTIONS TO BE GIVEN TO CANDIDATES"

Instructions to the Candidates:

7. The following instructions are to be given to candidates one day prior to the administration of each PC:

   N/A
8. The PC will be conducted as an open book practical application IAW MG B1-1. Candidates will work in syndicates, but each candidate will staff their own ECP.
9. Should you fail the PC, a supplemental test may be granted at the discretion of a Progress Review.
10. **Are there any questions?**

Marking Guide
PC 009

PC 009 CHECK LIST - Advise on complaint resolution

Serial	TASK/TASK ELEMENTS	P/F	Remarks
	Applicable policies		definition of harrassment responsible officer rights and responsibilities of complainant rights and responsibilities of respondent Harrassment prevention and resolution process Legal issues
	Framework for the grievance process		entitlement to grieve submission of grievance assisting member Determination(s) at the IA level Determination(s) at the FA level Role of the MGERC Implementation of the decision and available redress Litigation considerations
	Functions of other complaint resolution mechanism		relation to CF decision makers Informal complaint (QR&O 19.12) ADR MP complaints CRS Ombudsman litigation (complaints under other Acts) Interaction between the various processes
Comments: N/A			

PC 009 CHECK LIST - Advise on harassment prevention and resolution

Serial	TASK/TASK ELEMENTS	P/F	Remarks

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	Applicable policies		definition of harrassment responsible officer rights and responsibilities of complainant rights and responsibilities of respondent Harrassment prevention and resolution process Legal issues
Comments: N/A			

PC 009 CHECK LIST - Advise on grievances

Serial	TASK/TASK ELEMENTS	P/F	Remarks
	Framework for the grievance process		entitlement to grieve submission of grievance assisting member Determination(s) at the IA level Determination(s) at the FA level Role of the MGERC Implementation of the decision and available redress Litigation considerations
Comments: N/A			

PC 009 CHECK LIST - Advise on other complaint resolution processes

Serial	TASK/TASK ELEMENTS	P/F	Remarks
	Functions of other complaint resolution mechanism		relation to CF decision makers Informal complaint (QR&O 19.12) ADR MP complaints CRS Ombudsman litigation (complaints under other Acts) Interaction between the various processes
Comments: N/A			

NOTES: Unsuccessful attempts in a specific task/task element result in failure of the task/task elements being assessed. Candidate must successfully complete all applicable checklist items in order to achieve minimum standard.

N/A

Candidate Signature _____ **DATE** _____

Assessor Signature _____ **DATE** _____

A-2015-01212--0319

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DND - MDN

PC 014

Instructions to the Staff:

1. N/A
2. Personnel, Material and Facility Requirements:
   a. Personnel requirements:

      N/A

   b. Material and Facility requirements. Items required to perform the PC:

      N/A
3. Ensure the serviceability of all equipment prior to the PC.
4. N/A
5. N/A
6. Brief candidates one day prior to the PC and ensure they understand the "INSTRUCTIONS TO BE GIVEN TO CANDIDATES"

Instructions to the Candidates:

7. The following instructions are to be given to candidates one day prior to the administration of each PC:

   N/A
8. The PC will be conducted as an open book practical application IAW MG B1-1. Candidates will work in syndicates, but each candidate will staff their own ECP.
9. Should you fail the PC, a supplemental test may be granted at the discretion of a Progress Review.
10. **Are there any questions?**

Marking Guide
PC 014

PC 014 CHECK LIST - Advise on disciplinary jurisdiction AT0035

Serial	TASK/TASK ELEMENTS	P/F	Remarks
	Limitations arising from disciplinary investigations		By whom: authorities to investigate; Who: Jurisdiction limited over the persons; Where: Jurisdiction limited in space; What: Jurisdiction limited over the matters; Until when: Jurisdiction limited by time;
	Applicable Military Police Policies on investigations		Sub-divisions of investigative jurisdiction: CFNIS, MP Dets, Units; Description of civilian-military police cooperation; Legal Advisor - CFNIS/MP/Units Relationships;
	Canadian Forces Command and Organisation		Unit Discipline Investigations Legal Advisor Units Relationships Interaction between chain-of-command and conduct of investigations
	Limitations arising from circumstances of custody		Custody in general; Legal authorities to put in custody; Conditions for custody; Location of custody
	Applicable military policy policies.		Beginning of jurisdiction End of jurisdiction Transfer

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AT0035, AT0040, AT0045, AT0050, AT0055, AT0065, AT0075, AT0105, AT0180, AT0185, AT0190	Advise on jurisdictional considerations relating to Trial		
	Limitations pertaining to the right to elect court martial		Rank of the accused person Seriousness of the offence Potential sentence
AT0040, AT0045, AT0035, AT0050, AT0065, AT0180, AT0185, AT0190	Advise on jurisdictional considerations relating to charge laying		
	Authority to lay charges		Who could lay charges: CO; CFNIS; officer or NCM authorized; Factors to be considered for who would be authorized; Uniformed standard in drafting charges to be maintained; Laying charges is one aspect of maintenance of discipline.
AT0035, AT0060, AT0065, AT0105, AT0180, AT0185, AT0190, AT0210, AT0220	Advise on jurisdictional considerations relating to charge referral		
	Limitations on jurisdiction of person making referral		Temporal Personal Arising from conflict of interest, seriousness of offence, Inadequate powers of punishment
	Types of referral		Referral by charge layer to a presiding officer; Referral by a delegated officer to a commanding officer; Referral by a commanding officer to a superior officer; Referral to an alternate presiding officer; Submission by a commanding officer to a referral authority; Referral by a referral authority to DMP; Refferal by a commanding officer to a delgated officer; Refferal by NIS to a commanding officer;
AT0035, AT0055, AT0065, AT0075, AT0090, AT0180, AT0185, AT0190,	Advise on jurisdictional considerations relating to Trial & Punishment		

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	Limitations on powers of trial and punishment		Alleged offence Rank of alleged offender Temporal limitations Powers of punishment Rank or position of presiding officer Consequence of absence of election to court martial Location of unit Nature of delegation of powers where applicable
AT0035, AT0050, AT0080, AT0085, AT0100, AT0105, AT0180, AT0185, AT0190, AT0220	Advise on jurisdictinal considerations relating to the review of a summary trial		
	Types of review		Authority to review Temporal limitations Standing to request Judicial review
Comments: N/A			

PC 014 CHECK LIST - Advise on jurisdiction issues related to disciplinary investigations

Serial	TASK/TASK ELEMENTS	P/F	Remarks
	Limitations arising from disciplinary investigations		By whom: authorities to investigate; Who: Jurisdiction limited over the persons; Where: Jurisdiction limited in space; What: Jurisdiction limited over the matters; Until when: Jurisdiction limited by time;
	Applicable Military Police Policies on investigations		Sub-divisions of investigative jurisdiction: CFNIS, MP Dets, Units; Description of civilian-military police cooperation; Legal Advisor - CFNIS/MP/Units Relationships;
	Canadian Forces Command and Organisation		Unit Discipline Investigations Legal Advisor Units Relationships Interaction between chain-of-command and conduct of investigations
Comments: N/A			

PC 014 CHECK LIST - Advise on disciplinary jurisdiction related to custody

Serial	TASK/TASK ELEMENTS	P/F	Remarks
	Limitations arising from circumstances of custody		Custody in general; Legal authorities to put in custody; Conditions for custody; Location of custody
	Applicable military policy policies.		Beginning of jurisdiction End of jurisdiction Transfer
Comments: N/A			

PC 014 CHECK LIST - Advise on jurisdictional considerations relating to trial

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Serial	TASK/TASK ELEMENTS	P/F	Remarks
AT0035, AT0040, AT0045, AT0050, AT0055, AT0065, AT0075, AT0105, AT0180, AT0185, AT0190	Advise on jurisdictional considerations relating to Trial		
	Limitations pertaining to the right to elect court martial		Rank of the accused person Seriousness of the offence Potential sentence
AT0040, AT0045, AT0035, AT0050, AT0065, AT0180, AT0185, AT0190	Advise on jurisdictional considerations relating to charge laying		
	Authority to lay charges		Who could lay charges: CO; CFNIS; officer or NCM authorized; Factors to be considered for who would be authorized; Uniformed standard in drafting charges to be maintained; Laying charges is one aspect of maintenance of discipline.
AT0035, AT0060, AT0065, AT0105, AT0180, AT0185, AT0190, AT0210, AT0220	Advise on jurisdictional considerations relating to charge referral		
	Limitations on jurisdiction of person making referral		Temporal Personal Arising from conflict of interest, seriousness of offence, Inadequate powers of punishment
	Types of referral		Referral by charge layer to a presiding officer; Referral by a delegated officer to a commanding officer; Referral by a commanding officer to a superior officer; Referral to an alternate presiding officer; Submission by a commanding officer to a referral authority; Referral by a referral authority to DMP; Refferal by a commanding officer to a delgated officer; Refferal by NIS to a commanding officer;
AT0035, AT0055, AT0065, AT0075, AT0090, AT0180, AT0185, AT0190,	Advise on jurisdictional considerations relating to Trial & Punishment		

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	Limitations on powers of trial and punishment		Alleged offence Rank of alleged offender Temporal limitations Powers of punishment Rank or position of presiding officer Consequence of absence of election to court martial Location of unit Nature of delegation of powers where applicable
AT0035, AT0050, AT0080, AT0085, AT0100, AT0105, AT0180, AT0185, AT0190, AT0220	Advise on jurisdictinal considerations relating to the review of a summary trial		
	Types of review		Authority to review Temporal limitations Standing to request Judicial review
Comments: N/A			

NOTES: Unsuccessful attempts in a specific task/task element result in failure of the task/task elements being assessed. Candidate must successfully complete all applicable checklist items in order to achieve minimum standard.

N/A

Candidate Signature _____ **DATE** _____

Assessor Signature _____ **DATE** _____

A-2015-01212--0324

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DND - MDN

PC 015

Instructions to the Staff:

1. N/A
2. Personnel, Material and Facility Requirements:
   a. Personnel requirements:

      N/A

   b. Material and Facility requirements. Items required to perform the PC:

      N/A

3. Ensure the serviceability of all equipment prior to the PC.
4. N/A
5. N/A
6. Brief candidates one day prior to the PC and ensure they understand the "INSTRUCTIONS TO BE GIVEN TO CANDIDATES"

Instructions to the Candidates:

7. The following instructions are to be given to candidates one day prior to the administration of each PC:

   N/A

8. The PC will be conducted as an open book practical application IAW MG B1-1. Candidates will work in syndicates, but each candidate will staff their own ECP.
9. Should you fail the PC, a supplemental test may be granted at the discretion of a Progress Review.
10. **Are there any questions?**

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PC 015

PC 015 CHECK LIST - Advise on legal issues related to custody AT0010

Serial	TASK/TASK ELEMENTS	P/F	Remarks
	Persons subject to arrest		Who can be arrested and why
	Basis for arrest		Circumstances that could justify arrest Exercise of discretion
	Persons empowered to arrest		Peace officers (military police) Peace officers (civilian police) Officers and NCMs Security Guard Any CF member Anyone
	Conditions of arrest		Detention before arrest Requirement to submit to arrest Lawful use of force Indicators of arrest Powers incidental to arrest Rights to be informed of the reason for arrest Right to counsel Special reporting requirements in certain cases
	Types of arrest		With warrant Without warrant Types of warrants
	CF command and organisation		MOOs CFOOs QR&Os related to command organisation and delegation, designation and authorisations
	Distinguish between power, authority, duty and responsibilities		Power Authority Duty Responsibilities

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	What can be delegated, designated or authorised		Powers of arrest Charge laying authority Designation of Custody Review Officers Delegation of powers of trial and punishment Specific designations pertaining to custody (visitors, correspondance) Jurisdictional concerns (continuity)
	Who can receive a delegation, be designated or authorised		Prerequisites and limitations with regard to delegations, designations and authorisations (from the delegatee/designated point of view)
	Who can delegate, designate or authorise		Limitations and prerequisites for delegation, designations and authorisations (from the delegator/designator point of view)
	Types of custody related documents		Account in writing Report of custody Request custody related documents from unit Direction on release from custody Guard report Civil court reports Arrest warrants
	Military Police Policies		
	Distinction between power and duty to retain in custody		Designated Offences Duty to retain Power to retain
	Rights of detained person		Performance and Duties Visitors Correspondence Exercise Mess Privileges Hospitalization while in Custory In Custody of Civil Authorities
	Reasons for retention		Designated Offences Reasonable grounds Circumstances to be considered
	Powers of custody review officer		Release without conditions Release with conditions 'Reasonable conditions'
	Duties of custody review officer		Review the account in writing and accompanying documents Determination why a charge has not been laid Duty to release when no sufficient grounds Duty to maintain if charged with designated offence Time considerations
	Process of review of direction to release		By a CRO By a military judge, if necessary
	Evidentiary requirements		When not charged with a designated offence When charged with a designated offence
	Roles and responsibilities		Military posecutor Defence counsel Military judge Unit DJA Unit personnel
Comments: N/A			

PC 015 CHECK LIST - Advise on arrest

Serial	TASK/TASK ELEMENTS	P/F	Remarks
	Persons subject to arrest		Who can be arrested and why
	Basis for arrest		Circumstances that could justify arrest Exercise of discretion
	Persons empowered to arrest		Peace officers (military police) Peace officers (civilian police) Officers and NCMs Security Guard Any CF member Anyone

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	Conditions of arrest		Detention before arrest Requirement to submit to arrest Lawful use of force Indicators of arrest Powers incidental to arrest Rights to be informed of the reason for arrest Right to counsel Special reporting requirements in certain cases
	Types of arrest		With warrant Without warrant Types of warrants
Comments: N/A			

PC 015 CHECK LIST - Review unit delegation, designations and authorisations

Serial	TASK/TASK ELEMENTS	P/F	Remarks
	CF command and organisation		MOOs CFOOs QR&Os related to command organisation and delegation, designation and authorisations
	Distinguish between power, authority, duty and responsibilities		Power Authority Duty Responsibilities
	What can be delegated, designated or authorised		Powers of arrest Charge laying authority Designation of Custody Review Officers Delegation of powers of trial and punishment Specific designations pertaining to custody (visitors, correspondance) Jurisdictional concerns (continuity)
	Who can receive a delegation, be designated or authorised		Prerequisites and limitations with regard to delegations, designations and authorisations (from the delegatee/designated point of view)
	Who can delegate, designate or authorise		Limitations and prerequisites for delegation, designations and authorisations (from the delegator/designator point of view)
Comments: N/A			

PC 015 CHECK LIST - Review custody related documents

Serial	TASK/TASK ELEMENTS	P/F	Remarks
	Types of custody related documents		Account in writing Report of custody Request custody related documents from unit Direction on release from custody Guard report Civil court reports Arrest warrants
	Military Police Policies		
Comments: N/A			

PC 015 CHECK LIST - Advise on the requirements of custody

Serial	TASK/TASK ELEMENTS	P/F	Remarks
	Distinction between power and duty to retain in custody		Designated Offences Duty to retain Power to retain

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	Rights of detained person		Performance and Duties Visitors Correspondence Exercise Mess Privileges Hospitalization while in Custory In Custody of Civil Authorities
	Reasons for retention		Designated Offences Reasonable grounds Circumstances to be considered
Comments: N/A			

PC 015 CHECK LIST - Advise the Custody Review Officer (CRO) on the decision to be made

Serial	TASK/TASK ELEMENTS	P/F	Remarks
	Powers of custody review officer		Release without conditions Release with conditions 'Reasonable conditions'
	Duties of custody review officer		Review the account in writing and accompanying documents Determination why a charge has not been laid Duty to release when no sufficient grounds Duty to maintain if charged with designated offence Time considerations
	Process of review of direction to release		By a CRO By a military judge, if necessary
Comments: N/A			

PC 015 CHECK LIST - Support the hearing before military judge

Serial	TASK/TASK ELEMENTS	P/F	Remarks
	Evidentiary requirements		When not charged with a designated offence When charged with a designated offence
	Roles and responsibilities		Military posecutor Defence counsel Military judge Unit DJA Unit personnel
Comments: N/A			

NOTES: Unsuccessful attempts in a specific task/task element result in failure of the task/task elements being assessed. Candidate must successfully complete all applicable checklist items in order to achieve minimum standard.

N/A

Candidate Signature _____ **DATE** _____

Assessor Signature _____ **DATE** _____

A-2015-01212--0328

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DND - MDN

PC 016

Instructions to the Staff:

1. N/A
2. Personnel, Material and Facility Requirements:
   a. Personnel requirements:

      N/A

   b. Material and Facility requirements. Items required to perform the PC:

      N/A
3. Ensure the serviceability of all equipment prior to the PC.
4. N/A
5. N/A
6. Brief candidates one day prior to the PC and ensure they understand the "INSTRUCTIONS TO BE GIVEN TO CANDIDATES"

Instructions to the Candidates:

7. The following instructions are to be given to candidates one day prior to the administration of each PC:

   N/A

8. The PC will be conducted as an open book practical application IAW MG B1-1. Candidates will work in syndicates, but each candidate will staff their own ECP.
9. Should you fail the PC, a supplemental test may be granted at the discretion of a Progress Review.
10. **Are there any questions?**

Marking Guide
PC 016

PC 016 CHECK LIST - Advise on a disciplinary investigation AT0005

Serial	TASK/TASK ELEMENTS	P/F	Remarks
	Distinction between investigations that could lead to Code of Service Discipline action and those that do not.		Disciplinary / criminal investigations Administrative investigations Inspections
	Types of criminal and disciplinary investigations		NIS Military police investigations Civilian police investigations Unit disciplinary investigations
	Advise on rights to access.		Disclosure of information relating to investigations Military Police Policies
	Disclosure of information relating to investigations		Access to information Privacy act
	Advise on search without warrant (AT0030)		Basis for search without warrant Persons who may conduct or authorise searches without warrant Limitations on searches without warrant
	Basis for search without warrant		Search incidental to lawful arrest Consent searches
	Persons who may conduct or authorise searches without warrant		Military Police officers Unit investigators Civilian police officers Designated authorities
	Limitations on searches without warrant		Geographic Temporal Personal Reasonable fashion
AT0205	Advise on preparation of search warrants.		Types of search warrants. Evidentiary requirements.
	Types of search warrants		Civilian search warrants Commanding officer search warrants Production orders (DNA)

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	Evidentiary requirements.		Specified premises or objects Reasonable grounds to believe Information to Obtain a Search Warrant
AT0030	Advise on search without warrant		
	basis for search without warrant		
	Persons who may conduct or authorise searches without warrant		
	limitations on searches without warrant		Geographic Temporal Personal
	Advise on issues related to integrity of evidence		Types of evidence Chain of custody
	Types of evidence.		Testimonial Documentary Real evidence
	Chain of custody		Handling of evidence Military police procedures Physical security of evidence
	Types of interviews		Interviews of witnesses Interviews of persons of interest Recording of interviews Subject(s) of the investigation Supplementary interviews
	Rights of interview subjects		Rights of persons of interest Rights of witnesses Rights of suspects or subjects of investigation
	Roles of interviewers		Powers Duties Authorities Responsibilities
	Cautions		Types of cautions Applicability of cautions Timing and sequencing of cautions Documentation pertaining to cautions
	Advise on elements of offences relevant to the investigation		Elements of the relevant offence(s)
	Elements of the pertinent offence(s)		Identify the relevant offence (s) Identify the element (s)
	Advise on evidentiary issues		Rules of admissibility of evidence Inculpatory evidence
	Rules of admissibility of evidence		Testimony Real evidence Documents Opinions Hearsay
	Inculpatory evidence		Confessions Persons in authority Hearsay exception - Res gestae
	Advise on the requirement for further legal advice		Circumstances giving rise for further legal advice
	Circumstances giving rise for further legal advice		Reasonable prospect of conviction Duty to investigate
Comments: N/A			

PC 016 CHECK LIST - Advise on types of investigations

Serial	TASK/TASK ELEMENTS	P/F	Remarks
	Distinction between investigations that could lead to Code of Service Discipline action and those that do not.		Disciplinary / criminal investigations Administrative investigations Inspections
	Types of criminal and disciplinary investigations		NIS Military police investigations Civilian police investigations Unit disciplinary investigations
	Advise on rights to access.		Disclosure of information relating to investigations Military Police Policies
	Disclosure of information relating to investigations		Access to information Privacy act

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Comments: N/A

PC 016 CHECK LIST - Advise on legal issues related to search & seizure

Serial	TASK/TASK ELEMENTS	P/F	Remarks
	Advise on search without warrant (AT0030)		Basis for search without warrant Persons who may conduct or authorise searches without warrant Limitations on searches without warrant
	Basis for search without warrant		Search incidental to lawful arrest Consent searches
	Persons who may conduct or authorise searches without warrant		Military Police officers Unit investigators Civilian police officers Designated authorities
	Limitations on searches without warrant		Geographic Temporal Personal Reasonable fashion
AT0205	Advise on preparation of search warrants.		Types of search warrants. Evidentiary requirements.
	Types of search warrants		Civilian search warrants Commanding officer search warrants Production orders (DNA)
	Evidentiary requirements.		Specified premises or objects Reasonable grounds to believe Information to Obtain a Search Warrant
AT0030	Advise on search without warrant		
	basis for search without warrant		
	Persons who may conduct or authorise searches without warrant		
	limitations on searches without warrant		Geographic Temporal Personal
	Advise on issues related to integrity of evidence		Types of evidence Chain of custody
	Types of evidence.		Testimonial Documentary Real evidence
	Chain of custody		Handling of evidence Military police procedures Physical security of evidence
Comments: N/A			

PC 016 CHECK LIST - Advise on conduct of interviews

Serial	TASK/TASK ELEMENTS	P/F	Remarks
	Types of interviews		Interviews of witnesses Interviews of persons of interest Recording of interviews Subject(s) of the investigation Supplementary interviews
	Rights of interview subjects		Rights of persons of interest Rights of witnesses Rights of suspects or subjects of investigation
	Roles of interviewers		Powers Duties Authorities Responsibilities
	Cautions		Types of cautions Applicability of cautions Timing and sequencing of cautions Documentation pertaining to cautions

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Comments: N/A

PC 016 CHECK LIST - Advise on the sufficiency of the investigation

Serial	TASK/TASK ELEMENTS	P/F	Remarks
	Advise on elements of offences relevant to the investigation		Elements of the relevant offence(s)
	Elements of the pertinent offence(s)		Identify the relevant offence (s) Identify the element (s)
	Advise on evidentiary issues		Rules of admissibility of evidence Inculpatory evidence
	Rules of admissibility of evidence		Testimony Real evidence Documents Opinions Hearsay
	Inculpatory evidence		Confessions Persons in authority Hearsay exception - Res gestae
	Advise on the requirement for further legal advice		Circumstances giving rise for further legal advice
	Circumstances giving rise for further legal advice		Reasonable prospect of conviction Duty to investigate
Comments: N/A			

NOTES: Unsuccessful attempts in a specific task/task element result in failure of the task/task elements being assessed. Candidate must successfully complete all applicable checklist items in order to achieve minimum standard.

N/A

Candidate Signature _____ **DATE** _____

Assessor Signature _____ **DATE** _____

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PC 017

Instructions to the Staff:

1. N/A
2. Personnel, Material and Facility Requirements:
   a. Personnel requirements:

      N/A

   b. Material and Facility requirements. Items required to perform the PC:

      N/A
3. Ensure the serviceability of all equipment prior to the PC.
4. N/A
5. N/A
6. Brief candidates one day prior to the PC and ensure they understand the "INSTRUCTIONS TO BE GIVEN TO CANDIDATES"

Instructions to the Candidates:

7. The following instructions are to be given to candidates one day prior to the administration of each PC:

   N/A

8. The PC will be conducted as an open book practical application IAW MG B1-1. Candidates will work in syndicates, but each candidate will staff their own ECP.
9. Should you fail the PC, a supplemental test may be granted at the discretion of a Progress Review.
10. **Are there any questions?**

Marking Guide
PC 017

PC 017 CHECK LIST - Provide pre-charge legal advice AT0040

Serial	TASK/TASK ELEMENTS	P/F	Remarks
AT0005, AT0010, AT0020, AT0025, AT0030, AT0035, AT0040, AT0180, AT0185, AT0190, AT0200, AT0205	Review investigation		Main parts of investigation report SAMPIS format Unit Disciplinary Investigation format

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AT0005, AT0010, AT0020, AT0025, AT0030, AT0035, AT0040, AT0180, AT0185, AT0190, AT0200, AT0205	Advise on further investigative requirements, if any		Identify potential deficencies Duty to obtain all available information/evidence
AT0035, AT0050, AT0040, AT0045, AT0180, AT0185, AT0190, AT0210, AT0065	Review draft RDP		Relevant Jurisdiction Drafting particulars Selection of Appropriate Charge Alternative Charges Drafting Particulars Essential Elements Record of Disciplinary Proceedings Surplusage
	Relevant jurisdiction		Time Person Matter Location Authority
	Drafting particulars		Selection of Appropriate Charge Alternative Charges Drafting Particulars Essential Elements Record of Disciplinary Proceedings Surplusage
AT0005, AT0010, AT0025, AT0030, AT0035, AT0040, AT0055, AT0065, AT0075, AT0180, AT0185, AT0190, AT0205	Evaluate sufficiency & admissibility of evidence		Elements of the relevant offence(s) Objective test : reasonable belief Subjective test:: actual belief JAG Policy: Reasonable prospect of conviction
	Elements of the relevant offence(s)		Suggested/ Potential offences
AT0005, AT0010, AT0035, AT0040, AT0050, AT0170, AT0200, AT0205	Advise on suitability of laying charges		Rights of the accused Exercise of discretion Res judicata as it pertains to pre-charge legal advice Impact of jurisdictional limitations on types of charges laid
	Rights of the accused		Disclosure Counsel Silence Assisting officer Fundamental justice Procedural fairness Official Languages
	Exercise of discretion		Public interest Applicable JAG policies Military vs civilian Corrective measures vs disciplinary proceedings
	Res Judicata as it pertains to pre-charge legal advice		Double Jeopardy Autrefois acquit Autrefois convict
	Impact of jurisdictional limitations resulting from types of charges laid		Referral of charges Limitations on election Limitations on forum

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AT0005, AT0020, AT0025, AT0030, AT0035, AT0040, AT0050, AT0055, AT0065, AT0075, AT0105, AT0170, AT0180, AT0185, AT0190	Advise on requirement for further legal advice		Obligations of diligence and prudence Standard paragraph in legal opinions Legal opinion format (written/oral)
Comments: N/A			

PC 017 CHECK LIST - Advise on the appropriate charge or charges and alternative charges

Serial	TASK/TASK ELEMENTS	P/F	Remarks
AT0005, AT0010, AT0020, AT0025, AT0030, AT0035, AT0040, AT0180, AT0185, AT0190, AT0200, AT0205	Review investigation		Main parts of investigation report SAMPIS format Unit Disciplinary Investigation format
AT0005, AT0010, AT0020, AT0025, AT0030, AT0035, AT0040, AT0180, AT0185, AT0190, AT0200, AT0205	Advise on further investigative requirements, if any		Identify potential deficencies Duty to obtain all available information/evidence
AT0035, AT0050, AT0040, AT0045, AT0180, AT0185, AT0190, AT0210, AT0065	Review draft RDP		Relevant Jurisdiction Drafting particulars Selection of Appropriate Charge Alternative Charges Drafting Particulars Essential Elements Record of Disciplinary Proceedings Surplusage
	Relevant jurisdiction		Time Person Matter Location Authority

	Drafting particulars		Selection of Appropriate Charge Alternative Charges Drafting Particulars Essential Elements Record of Disciplinary Proceedings Surplusage
AT0005, AT0010, AT0025, AT0030, AT0035, AT0040, AT0055, AT0065, AT0075, AT0180, AT0185, AT0190, AT0205	Evaluate sufficiency & admissibility of evidence		Elements of the relevant offence(s) Objective test : reasonable belief Subjective test:: actual belief JAG Policy: Reasonable prospect of conviction
	Elements of the relevant offence(s)		Suggested/ Potential offences
AT0005, AT0010, AT0035, AT0040, AT0050, AT0170, AT0200, AT0205	Advise on suitability of laying charges		Rights of the accused Exercise of discretion Res judicata as it pertains to pre-charge legal advice Impact of jurisdictional limitations on types of charges laid
	Rights of the accused		Disclosure Counsel Silence Assisting officer Fundamental justice Procedural fairness Official Languages
	Exercise of discretion		Public interest Applicable JAG policies Military vs civilian Corrective measures vs disciplinary proceedings
	Res Judicata as it pertains to pre-charge legal advice		Double Jeopardy Autrefois acquit Autrefois convict
	Impact of jurisdictional limitations resulting from types of charges laid		Referral of charges Limitations on election Limitations on forum
AT0005, AT0020, AT0025, AT0030, AT0035, AT0040, AT0050, AT0055, AT0065, AT0075, AT0105, AT0170, AT0180, AT0185, AT0190	Advise on requirement for further legal advice		Obligations of diligence and prudence Standard paragraph in legal opinions Legal opinion format (written/oral)
Comments: N/A			

NOTES: Unsuccessful attempts in a specific task/task element result in failure of the task/task elements being assessed. Candidate must successfully complete all applicable checklist items in order to achieve minimum standard.

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N/A

Candidate Signature _____ **DATE** _____

Assessor Signature _____ **DATE** _____

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PC 018

Instructions to the Staff:

1. N/A
2. Personnel, Material and Facility Requirements:
   a. Personnel requirements:

      N/A

   b. Material and Facility requirements. Items required to perform the PC:

      N/A
3. Ensure the serviceability of all equipment prior to the PC.
4. N/A
5. N/A
6. Brief candidates one day prior to the PC and ensure they understand the "INSTRUCTIONS TO BE GIVEN TO CANDIDATES"

Instructions to the Candidates:

7. The following instructions are to be given to candidates one day prior to the administration of each PC:

   N/A
8. The PC will be conducted as an open book practical application IAW MG B1-1. Candidates will work in syndicates, but each candidate will staff their own ECP.
9. Should you fail the PC, a supplemental test may be granted at the discretion of a Progress Review.
10. **Are there any questions?**

Marking Guide
PC 018

PC 018 CHECK LIST - Advise on conduct of CSD proceedings AT0105

Serial	TASK/TASK ELEMENTS	P/F	Remarks
AT0005-AT0035, AT0055-AT0085, AT0105-AT0110, AT0180-AT0220	Provide advice on the conduct of summary trial		Provide pre-trial advice Requirement to receive advice under QR&O 107.11 The summary trial process QR&O Chap 108
	Provide pre-trial advice		Jurisdiction to try Right to elect Punishment powers Public interest
	Requirements to receive advice under QR&O 107.11		When charges are referred by units When charges are referred by CFNIS
	The summary trial process QR&O chapter 108		Pre trial issues and procedures Trial procedures Evidentiary issues Determinations

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AT0005-AT0035, AT0055-AT0085, AT0105-AT0110, AT0180-AT0220	Provide legal advice during conduct of ST		Ongoing obligations and considerations arising during summary trial Advise regarding the accused's right to elect court martial
	Ongoing obligations and considerations arising during summary trial		Request for counsel Adjournment Unforeseen complexity affecting jurisdiction Video conferencing Irregularities Official languages requirements
	Advise regarding the accused's right to elect court martial		Circumstances where right to elect might arise Process to be followed by presiding officer
	Issues arising from detention		Execution of sentence Suspension of sentence Temporal considerations Physical limitations
	Purpose and principles of sentencing		Purpose of sentencing General principles of sentencing Unique aspects of sentencing in the military environment Factors for sentencing Process at summary trial Process at court martial
	Punishments		Punishments generally Powers of different presiding officers Powers of various courts Types of punishments
	Referral of charges for disposal under QR&O 108		Referral by delegated officer to commanding officer Referral by commanding officer to superior commander Referral by commanding officer to delegated officer Referral by one presiding officer to another presiding officer Referral of charges originating from NIS
	Process of referral of charges to DMP under QR&O 109		Process Documentary requirements Jurisdiction Potential outcomes Extent of discretion
Comments: N/A			

PC 018 CHECK LIST - Provide advice on the conduct of summary trial

Serial	TASK/TASK ELEMENTS	P/F	Remarks
AT0005-AT0035, AT0055-AT0085, AT0105-AT0110, AT0180-AT0220	Provide advice on the conduct of summary trial		Provide pre-trial advice Requirement to receive advice under QR&O 107.11 The summary trial process QR&O Chap 108
	Provide pre-trial advice		Jurisdiction to try Right to elect Punishment powers Public interest
	Requirements to receive advice under QR&O 107.11		When charges are referred by units When charges are referred by CFNIS
	The summary trial process QR&O chapter 108		Pre trial issues and procedures Trial procedures Evidentiary issues Determinations

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AT0005-AT0035, AT0055-AT0085, AT0105-AT0110, AT0180-AT0220	Provide legal advice during conduct of ST		Ongoing obligations and considerations arising during summary trial Advise regarding the accused's right to elect court martial
	Ongoing obligations and considerations arising during summary trial		Request for counsel Adjournment Unforeseen complexity affecting jurisdiction Video conferencing Irregularities Official languages requirements
	Advise regarding the accused's right to elect court martial		Circumstances where right to elect might arise Process to be followed by presiding officer
Comments: N/A			

PC 018 CHECK LIST - Advise on sentencing and powers of punishment

Serial	TASK/TASK ELEMENTS	P/F	Remarks
	Issues arising from detention		Execution of sentence Suspension of sentence Temporal considerations Physical limitations
	Purpose and principles of sentencing		Purpose of sentencing General principles of sentencing Unique aspects of sentencing in the military environment Factors for sentencing Process at summary trial Process at court martial
	Punishments		Punishments generally Powers of different presiding officers Powers of various courts Types of punishments
Comments: N/A			

PC 018 CHECK LIST - Advise on referral of charges to DMP

Serial	TASK/TASK ELEMENTS	P/F	Remarks
	Referral of charges for disposal under QR&O 108		Referral by delegated officer to commanding officer Referral by commanding officer to superior commander Referral by commanding officer to delegated officer Referral by one presiding officer to another presiding officer Referral of charges originating from NIS
	Process of referral of charges to DMP under QR&O 109		Process Documentary requirements Jurisdiction Potential outcomes Extent of discretion
Comments: N/A			

NOTES: Unsuccessful attempts in a specific task/task element result in failure of the task/task elements being assessed. Candidate must successfully complete all applicable checklist items in order to achieve minimum standard.

N/A

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Candidate Signature _____ **DATE** _____

Assessor Signature _____ **DATE** _____

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PC 019

Instructions to the Staff:

1. N/A
2. Personnel, Material and Facility Requirements:
   a. Personnel requirements:

      N/A

   b. Material and Facility requirements. Items required to perform the PC:

      N/A
3. Ensure the serviceability of all equipment prior to the PC.
4. N/A
5. N/A
6. Brief candidates one day prior to the PC and ensure they understand the "INSTRUCTIONS TO BE GIVEN TO CANDIDATES"

Instructions to the Candidates:

7. The following instructions are to be given to candidates one day prior to the administration of each PC:

   N/A

8. The PC will be conducted as an open book practical application IAW MG B1-1. Candidates will work in syndicates, but each candidate will staff their own ECP.
9. Should you fail the PC, a supplemental test may be granted at the discretion of a Progress Review.
10. **Are there any questions?**

Marking Guide
PC 019

PC 019 CHECK LIST - Advise on the legal issues related to detention

Serial	TASK/TASK ELEMENTS	P/F	Remarks
	Grounds for suspension of detention		Roles and authorities of commander of a command Circumstances relating to suspension of detention
Comments: N/A			

PC 019 CHECK LIST - Advise on post-trial administration

Serial	TASK/TASK ELEMENTS	P/F	Remarks
	Unit post trial activities		Unit registry of disciplinary proceedings Conduct sheet(s) Execution of sentence Court martial Updating RDP Removing CRO- imposed conditions Service record Bill C-10 amendments Bill C-15 amendments
Comments: N/A			

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PC 019 CHECK LIST - Advise on summary trial reviews by review authority

Serial	TASK/TASK ELEMENTS	P/F	Remarks
	Review under QR&O 116.02		Grounds for review Absence of tempporal limitations Possible outcomes Roles, responsibilities and powers of the review authority Roles and responsibilities of the legal advisor
	Reviews under QR&O 108.45		Grounds for request Temporal limitations Roles responsibilities & authorities of the review authority Roles and responsibilities of the legal advisor possible outcomes Roles and responsibilities of assisting officer Roles and responsibilities of presiding officer
Comments: N/A			

PC 019 CHECK LIST - Advise wrt post trial activities

Serial	TASK/TASK ELEMENTS	P/F	Remarks
	Review under QR&O 116.02		Grounds for review Absence of tempporal limitations Possible outcomes Roles, responsibilities and powers of the review authority Roles and responsibilities of the legal advisor
	Reviews under QR&O 108.45		Grounds for request Temporal limitations Roles responsibilities & authorities of the review authority Roles and responsibilities of the legal advisor possible outcomes Roles and responsibilities of assisting officer Roles and responsibilities of presiding officer
	Unit post trial activities		Unit registry of disciplinary proceedings Conduct sheet(s) Execution of sentence Court martial Updating RDP Removing CRO- imposed conditions Service record Bill C-10 amendments Bill C-15 amendments
	Grounds for suspension of detention		Roles and authorities of commander of a command Circumstances relating to suspension of detention
Comments: N/A			

NOTES: Unsuccessful attempts in a specific task/task element result in failure of the task/task elements being assessed. Candidate must successfully complete all applicable checklist items in order to achieve minimum standard.

N/A

Candidate Signature _____ **DATE** _____

Assessor Signature _____ **DATE** _____

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PC 020

Instructions to the Staff:

1. N/A
2. Personnel, Material and Facility Requirements:
   a. Personnel requirements:

      N/A

   b. Material and Facility requirements. Items required to perform the PC:

      N/A
3. Ensure the serviceability of all equipment prior to the PC.
4. N/A
5. N/A
6. Brief candidates one day prior to the PC and ensure they understand the "INSTRUCTIONS TO BE GIVEN TO CANDIDATES"

Instructions to the Candidates:

7. The following instructions are to be given to candidates one day prior to the administration of each PC:

   N/A

8. The PC will be conducted as an open book practical application IAW MG B1-1. Candidates will work in syndicates, but each candidate will staff their own ECP.
9. Should you fail the PC, a supplemental test may be granted at the discretion of a Progress Review.
10. **Are there any questions?**

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PC 020

PC 020 CHECK LIST - Explain the role and responsibilities of counsel before military and appellate courts

Serial	TASK/TASK ELEMENTS	P/F	Remarks
	Military rules of evidence		
	Court martial process under QR&O 112		
	Convening courts martial under QR&O 111		Role of DMP Role of CMA Assistance by units
	Show cause hearing under section 159 NDA QR&O 105		Role by DMP Role by defence counsel Role by judiciairy/CMA Assistance by DJA/Units
	Appeal process		NDA & QR&O 116 CMAC rules of court SCC rules of court
Comments: N/A			

PC 020 CHECK LIST - Explain the roles and responsibilities of counsel at court martial

Serial	TASK/TASK ELEMENTS	P/F	Remarks
	Military rules of evidence		
	Court martial process under QR&O 112		
	Convening courts martial under QR&O 111		Role of DMP Role of CMA Assistance by units

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Comments: N/A

PC 020 CHECK LIST - Explain the roles and responsibilities of counsel at a show cause hearing

Serial	TASK/TASK ELEMENTS	P/F	Remarks
	Show cause hearing under section 159 NDA QR&O 105		Role by DMP Role by defence counsel Role by judiciairy/CMA Assistance by DJA/Units
Comments: N/A			

PC 020 CHECK LIST - Explain the process of appealing a court martial judgment

Serial	TASK/TASK ELEMENTS	P/F	Remarks
	Appeal process		NDA & QR&O 116 CMAC rules of court SCC rules of court
Comments: N/A			

NOTES: Unsuccessful attempts in a specific task/task element result in failure of the task/task elements being assessed. Candidate must successfully complete all applicable checklist items in order to achieve minimum standard.

N/A

Candidate Signature _____ **DATE** _____

Assessor Signature _____ **DATE** _____

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PC 021

Instructions to the Staff:

1. N/A
2. Personnel, Material and Facility Requirements:
   a. Personnel requirements:

      N/A

   b. Material and Facility requirements. Items required to perform the PC:

      N/A
3. Ensure the serviceability of all equipment prior to the PC.
4. N/A
5. N/A
6. Brief candidates one day prior to the PC and ensure they understand the "INSTRUCTIONS TO BE GIVEN TO CANDIDATES"

Instructions to the Candidates:

7. The following instructions are to be given to candidates one day prior to the administration of each PC:

   N/A

8. The PC will be conducted as an open book practical application IAW MG B1-1. Candidates will work in syndicates, but each candidate will staff their own ECP.
9. Should you fail the PC, a supplemental test may be granted at the discretion of a Progress Review.
10. **Are there any questions?**

Marking Guide
PC 021

PC 021 CHECK LIST - Advise on the legal bases and authorities for CAF operations

Serial	TASK/TASK ELEMENTS	P/F	Remarks
	Application of public international law		Treaties, customary international law, general principles of law, subsidiary sources, subjects of international law, States and non-States actors, Enforcement of international legal obligations.
	Roles and responsibilities of stakeholders in international operations		Main stakeholders (Canadian Joint Operations Command (CJOC), CJOC Expeditionary, Canadian Special Operations Forces Command (CANSOFCOM), Maritime Command (MARCOM), Land Force Command (LFC), Air Command (AIRCOM). CAF Command and Control framework for international operations (context, organization, Task Forces (TF), Command and Control (C2), National Command, Administrative Control, Liaison and Coordination, National Constraints and Assets, Maritime, Land and Air forces, Special Operations forces, Operational support, Military Personnel Command Forces, Military Police forces) United Nations Operations (Operational Framework, Administrative Considerations) Force Employment (Planning and Preparation, Initiation, Legal and policy considerations)
	Crown prerogative and other aspects of the domestic legal regime		What is the Crown prerogative, Who exercises the Crown prerogative, The Crown prerogative and its use to deploy the CAF.

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	Roles and responsibilities of stakeholders in CAF domestic operations		Roles and responsibilities (Chief of the Defence Staff, Canadian Joint Operations Command (CJOC), Canadian Special Operations Forces Command (CANSOFCOM), Commanders of Royal Canadian Navy (RCN), Canadian Army (CA) and Royal Canadian Air Force (RCAF), Commander Military Personnel Command, Chief of Defence Intelligence, Vice Chief of the Defence Staff I Commander Canadian Forces Military Police Group) CAF Command and Control framework for domestic operations (Maritime, Land and Air forces, Special Operations forces, Military Personnel Command Forces, Military Police Forces, Operational Support, Search and Rescue, Explosive Ordinance Disposal) Force Employment (Routine, Contingency and Rapid-Response Operations)
	Domestic legal regime		What is the Crown prerogative, the Crown prerogative in the defence of Canada and domestic operations, Constitution Act, 1867, Legal framework of DND and the CAF, Mandate, Exercising the mandate, Provision of Services, DND Provision of Services Policy (PSP), Non-Defence Use of DND Real Property, CAF Support as a Public Service. CAF Assistance to Law enforcement Agencies and Aid to the Civil Power (legal framework) CAF Assistance to Provincial Law Enforcement Agencies (CF Assistance to Provincial Police Forces Directions (CFAPPFD), Application of subsection 273.6(2) NDA to provincial policing). CAF Assistance to Federal Law Enforcement Agencies and Other Federal Government Departments (Assistance to Federal Penitentiaries Order, Canadian Forces Armed Assistance Directions (CFAAD), Application of NDA subsection 273.6(2) to federal law enforcement, CAF Assistance pursuant to Memoranda of Understanding (MOU), MOU for CAF assistance to RCMP counter drug operations, MOU for CAF assistance to the Department of Fisheries and Oceans (DFO), Legal protection for CAF members providing support to DFO).
	Continental defence arrangements and agreements		CJOC responsibilities for CAF operations, roles of CJOC Deputy Commanders. North American Aerospace Defense Command (NORAD) (Background, Organisation, Operations, Air Defence Canadian Contribution, Counter-Drug Mission, Canada-U.S. Defence Cooperation). North Atlantic Treaty Organization (NATO) (Origins of the Alliance, The North Atlantic Treaty, NATO Military combat and enforcement operations, the process of NATO enlargement, NATO Headquarters, the North Atlantic Council (NAC), the NATO Secretary General) NATO Military Structure (The NATO Military Committee (MC), Allied Command Operations (ACO), Allied Command Transformation (ACT), Canada - United States Regional Planning Group (CUSRPG)). NATO Partnerships (Euro-Atlantic Partnership Council (EAPC), Partnership for Peace, NATO-Russia Council (NRC), Mediterranean Dialogue (MD), Istanbul Cooperation Initiative (ICI).
Comments: N/A			

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Serial	TASK/TASK ELEMENTS	P/F	Remarks
	Application of public international law		Treaties, customary international law, general principles of law, subsidiary sources, subjects of international law, States and non-States actors, Enforcement of international legal obligations.
	Roles and responsibilities of stakeholders in international operations		Main stakeholders (Canadian Joint Operations Command (CJOC), CJOC Expeditionary, Canadian Special Operations Forces Command (CANSOFCOM), Maritime Command (MARCOM), Land Force Command (LFC), Air Command (AIRCOM). CAF Command and Control framework for international operations (context, organization, Task Forces (TF), Command and Control (C2), National Command, Administrative Control, Liaison and Coordination, National Constraints and Assets, Maritime, Land and Air forces, Special Operations forces, Operational support, Military Personnel Command Forces, Military Police forces) United Nations Operations (Operational Framework, Administrative Considerations) Force Employment (Planning and Preparation, Initiation, Legal and policy considerations)
	Crown prerogative and other aspects of the domestic legal regime		What is the Crown prerogative, Who exercises the Crown prerogative, The Crown prerogative and its use to deploy the CAF.
Comments: N/A			

PC 021 CHECK LIST - Advise on legal bases and authorities pertaining to domestic CAF operations

Serial	TASK/TASK ELEMENTS	P/F	Remarks
	Roles and responsibilities of stakeholders in CAF domestic operations		Roles and responsibilities (Chief of the Defence Staff, Canadian Joint Operations Command (CJOC), Canadian Special Operations Forces Command (CANSOFCOM), Commanders of Royal Canadian Navy (RCN), Canadian Army (CA) and Royal Canadian Air Force (RCAF), Commander Military Personnel Command, Chief of Defence Intelligence, Vice Chief of the Defence Staff I Commander Canadian Forces Military Police Group) CAF Command and Control framework for domestic operations (Maritime, Land and Air forces, Special Operations forces, Military Personnel Command Forces, Military Police Forces, Operational Support, Search and Rescue, Explosive Ordinance Disposal) Force Employment (Routine, Contingency and Rapid-Response Operations)

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	Domestic legal regime		What is the Crown prerogative, the Crown prerogative in the defence of Canada and domestic operations, Constitution Act, 1867, Legal framework of DND and the CAF, Mandate, Exercising the mandate, Provision of Services, DND Provision of Services Policy (PSP), Non-Defence Use of DND Real Property, CAF Support as a Public Service. CAF Assistance to Law enforcement Agencies and Aid to the Civil Power (legal framework) CAF Assistance to Provincial Law Enforcement Agencies (CF Assistance to Provincial Police Forces Directions (CFAPPFD), Application of subsection 273.6(2) NDA to provincial policing). CAF Assistance to Federal Law Enforcement Agencies and Other Federal Government Departments (Assistance to Federal Penitentiaries Order, Canadian Forces Armed Assistance Directions (CFAAD), Application of NDA subsection 273.6(2) to federal law enforcement, CAF Assistance pursuant to Memoranda of Understanding (MOU), MOU for CAF assistance to RCMP counter drug operations, MOU for CAF assistance to the Department of Fisheries and Oceans (DFO), Legal protection for CAF members providing support to DFO).
Comments: N/A			

PC 021 CHECK LIST - Advise on legal bases and authorities pertaining to continental CAF operations

Serial	TASK/TASK ELEMENTS	P/F	Remarks
	Continental defence arrangements and agreements		CJOC responsibilities for CAF operations, roles of CJOC Deputy Commanders. North American Aerospace Defense Command (NORAD) (Background, Organisation, Operations, Air Defence Canadian Contribution, Counter-Drug Mission, Canada-U.S. Defence Cooperation). North Atlantic Treaty Organization (NATO) (Origins of the Alliance, The North Atlantic Treaty, NATO Military combat and enforcement operations, the process of NATO enlargement, NATO Headquarters, the North Atlantic Council (NAC), the NATO Secretary General) NATO Military Structure (The NATO Military Committee (MC), Allied Command Operations (ACO), Allied Command Transformation (ACT), Canada - United States Regional Planning Group (CUSRPG)). NATO Partnerships (Euro-Atlantic Partnership Council (EAPC), Partnership for Peace, NATO-Russia Council (NRC), Mediterranean Dialogue (MD), Istanbul Cooperation Initiative (ICI).
Comments: N/A			

NOTES: Unsuccessful attempts in a specific task/task element result in failure of the task/task elements being assessed. Candidate must successfully complete all applicable checklist items in order to achieve minimum standard.

N/A

Candidate Signature _____ **DATE** _____

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Assessor Signature _____ **DATE** _____

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PC 026A

Instructions to the Staff:

1. N/A
2. Personnel, Material and Facility Requirements:
   a. Personnel requirements:

      N/A

   b. Material and Facility requirements. Items required to perform the PC:

      N/A
3. Ensure the serviceability of all equipment prior to the PC.
4. N/A
5. N/A
6. Brief candidates one day prior to the PC and ensure they understand the "INSTRUCTIONS TO BE GIVEN TO CANDIDATES"

Instructions to the Candidates:

7. The following instructions are to be given to candidates one day prior to the administration of each PC:

   N/A

8. The PC will be conducted as an open book practical application IAW MG B1-1. Candidates will work in syndicates, but each candidate will staff their own ECP.
9. Should you fail the PC, a supplemental test may be granted at the discretion of a Progress Review.
10. **Are there any questions?**

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PC 026A

PC 026A CHECK LIST - Liaise with governmental and non-governmental authorities relating to international and domestic CAF operations

Serial	TASK/TASK ELEMENTS	P/F	Remarks
	The role of the legal officer in liaison		Influence of legal principles on policy development, Relationship with the OJAG and other government legal counsel, Canadian government structure (Federal, Provincial), international governmental/ diplomatic structure, UN, NATO/ NAC, ICRC, ICC
Comments: N/A			

PC 026A CHECK LIST - Advise on arrangements and agreements in support of domestic CAF operations

Serial	TASK/TASK ELEMENTS	P/F	Remarks
	Development of arrangements and agreements relating to domestic CAF operations		Key legal regime including visiting forces act, NATO SOFA and NDA related to domestic CAF operations
	Domestic arrangements and agreements		Key legal regime including visiting forces act, NATO SOFA and NDA related to domestic arrangements and agreements

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Comments: N/A

PC 026A CHECK LIST - Advise on arrangements and agreements

Serial	TASK/TASK ELEMENTS	P/F	Remarks
	Development of arrangements and agreements relating to domestic CAF operations		Key legal regime including visiting forces act, NATO SOFA and NDA related to domestic CAF operations
	Domestic arrangements and agreements		Key legal regime including visiting forces act, NATO SOFA and NDA related to domestic arrangements and agreements
	Development of arrangements and agreements relating to international CAF operations		Key legal regime including visiting forces act, NATO SOFA and NDA related to the development of international arrangements and agreements
	The role of the legal officer in liaison		Influence of legal principles on policy development, Relationship with the OJAG and other government legal counsel, Canadian government structure (Federal, Provincial), international governmental/ diplomatic structure, UN, NATO/ NAC, ICRC, ICC
Comments: N/A			

PC 026A CHECK LIST - Advise on CAF operations of mixed international and domestic nature

Serial	TASK/TASK ELEMENTS	P/F	Remarks
	Maritime ops		Applicable legal regime in particular law of the sea, Internal, territorial, national and international waters, coastal zones, contiguous and exclusive economic zones, baselines Jurisdiction, DFO, maritime enforcement operations, boarding and right of visit in peacetime, stateless vessels, piracy, proliferationi security initiative, interdiction operations. CAF doctrine and policy, Command control relationship for RCN, coalition considerations, interdepartmental considerations
BT0020	Legal issues related to intelligence operations		CAF policy and directives pertaining to: international operations, domestic operations, legal regime relating to each of the two aforementioned types of operations, Info sharing including limitations and prohibitions, Allied and coalition considerations (especially US), release and disposal, Communications Security Establishment Commissioner, Types of intelligence (open sources, signals, imagery), CAF intelligence framework (defence, security, criminal) Privacy Act, CISIS Act, Radiocommunication Act
BT0025	Legal issues related to information operations		CAF doctrine and policies, Applicable legal regime, Legal considerations pertaining offensive information operations, LOAC Issues, International law relating to information operations, distinction from intelligence operations

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BT0115	Legal issues related to special operations (SOF)		Nature, structure and role of CANSOFCOM and its units, relation between CANSOFCOM and force generators/ employers, relation between OJAG and CANSOFCOM Definition, characteristics and types of SOF, Key players (CJOPC, JTF 2, 427 SOAS, CSOR, CJRU)
Comments: N/A			

PC 026A CHECK LIST - Advise on domestic CAF operations

Serial	TASK/TASK ELEMENTS	P/F	Remarks
	Legal issues common to all domestic CF operations		Mandates, use of force, ROE and self-defence in domestic context, criminal responsibility and civil liability, Command and control (MP jurisdiction and Peace officer status)
	Defence of Canada		CAF directives and policies, Relevant legal regime, Interdepartmental considerations, Potential mixed (international and domestic) nature of the operation, NORAD (principal agreements MOUs,Missions & tasks)
	Sovereignty operations		CA directives and policies, Relevant legal regime, Interdepartmental considerations, Arctic operations (OP NANOOK, OP NUNALIVUT), RCN, RCAF and Canadian Rangers roles
	Aid of the civil power		CAF directives and policies, Relevant legal regime
	ALEA		Law enforcement assistance under NDA , Key OICs (CF Assistance to Provincial Police Directions CFAPPFD, CF Armed Assistance Directions CFAAD, Assistance to Correctional Services Federal Penitentiaries (OIC 175-131), Classes of support, Evidentiary issues arising during ALEA, Key MOUs (CF/RCMP Counter-Drug Ops, DFO Integrated National Security Enforcement Teams (INSET)), Integrated Border Enforcement Teams (IBETS), Exemples Operations (SABOT, RUGGED, PODIUM, CARIBBE),
	Public service under NDA		CAF directives and policies, Relevant legal regime (section 273.6 (l) of the NDA), Interdepartmental considerations
	Provision of Service (POS)		CAF directives and policies, Relevant legal regime (Provision of Service Policy) PoS conditions, authorization, costs recovery. admin requirements Interdepartmental considerations
	Search and rescue operations		CAF directives and policies, Relevant legal regime, Command and control relationships relating to SAR, Interdepartmental considerations
	Operations involving other governmental departments (OGD)		Presently applies to OP PALACI , DFO MOU, CAF directives and policies Relevant legal regime
Comments: N/A			

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PC 026A CHECK LIST - Advise on CAF operations

Serial	TASK/TASK ELEMENTS	P/F	Remarks
	Legal issues common to all international CAF operations		Principles of Jus in Bello (discrimination, proportionality) Environment, International crimes and war crimes, Refugees, internal displaced persons (IDP) and asylum seekers, Issues relating to private security military companies
	Full spectrum ops		CAF doctrine and policy, Applicable legal regime, Distinction between domestic, International, and expeditionary operations
	Peace Support Operations		CAF doctrine and policy, Applicable legal regime UN Charter Chap VI, VIII (EU, AU, ECOWAS) UN Peace operations and mandate process
	Humanitarian assistance operations		CAF doctrine and policy, Applicable legal regime, DART components
	Non combatant evacuation operations (NEO)		CAF doctrine and policy, Applicable legal regime (SOFA, MOU), Roles and responsibilities of DND and DFAIT
	Legal issues common to all domestic CF operations		Mandates, use of force, ROE and self-defence in domestic context, criminal responsibility and civil liability, Command and control (MP jurisdiction and Peace officer status)
	Defence of Canada		CAF directives and policies, Relevant legal regime, Interdepartmental considerations, Potential mixed (international and domestic) nature of the operation, NORAD (principal agreements MOUs,Missions & tasks)
	Sovereignty operations		CA directives and policies, Relevant legal regime, Interdepartmental considerations, Arctic operations (OP NANOOK, OP NUNALIVUT), RCN, RCAF and Canadian Rangers roles
	Aid of the civil power		CAF directives and policies, Relevant legal regime
	ALEA		Law enforcement assistance under NDA , Key OICs (CF Assistance to Provincial Police Directions CFAPPFD, CF Armed Assistance Directions CFAAD, Assistance to Correctional Services Federal Penitentiaries (OIC 175-131), Classes of support, Evidentiary issues arising during ALEA, Key MOUs (CF/RCMP Counter-Drug Ops, DFO Integrated National Security Enforcement Teams (INSET)), Integrated Border Enforcement Teams (IBETS), Exemples Operations (SABOT, RUGGED, PODIUM, CARIBBE),
	Public service under NDA		CAF directives and policies, Relevant legal regime (section 273.6 (l) of the NDA), Interdepartmental considerations
	Provision of Service (POS)		CAF directives and policies, Relevant legal regime (Provision of Service Policy) PoS conditions, authorization, costs recovery. admin requirements Interdepartmental considerations
	Search and rescue operations		CAF directives and policies, Relevant legal regime, Command and control relationships relating to SAR, Interdepartmental considerations
	Operations involving other governmental departments (OGD)		Presently applies to OP PALACI , DFO MOU, CAF directives and policies Relevant legal regime

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	Maritime ops		Applicable legal regime in particular law of the sea, Internal, territorial, national and international waters, coastal zones, contiguous and exclusive economic zones, baselines Jurisdiction, DFO, maritime enforcement operations, boarding and right of visit in peacetime, stateless vessels, piracy, proliferationi security initiative, interdiction operations. CAF doctrine and policy, Command control relationship for RCN, coalition considerations, interdepartmental considerations
BT0020	Legal issues related to intelligence operations		CAF policy and directives pertaining to: international operations, domestic operations, legal regime relating to each of the two aforementioned types of operations, Info sharing including limitations and prohibitions, Allied and coalition considerations (especially US), release and disposal, Communications Security Establishment Commissioner, Types of intelligence (open sources, signals, imagery), CAF intelligence framework (defence, security, criminal) Privacy Act, CISIS Act, Radiocommunication Act
BT0025	Legal issues related to information operations		CAF doctrine and policies, Applicable legal regime, Legal considerations pertaining offensive information operations, LOAC Issues, International law relating to information operations, distinction from intelligence operations
BT0115	Legal issues related to special operations (SOF)		Nature, structure and role of CANSOFCOM and its units, relation between CANSOFCOM and force generators/ employers, relation between OJAG and CANSOFCOM Definition, characteristics and types of SOF, Key players (CJOPC, JTF 2, 427 SOAS, CSOR, CJRU)
Comments: N/A			

PC 026A CHECK LIST - Advise on the use of force

Serial	TASK/TASK ELEMENTS	P/F	Remarks
BT0030, BT0065, BT0060, BT0090	Advise on generation of ROE		Process of developing ROE (amendment, amplification, implementation, request, cancelation process)
	Legal sources for the use of force		international context: Domestic context: Relevant foreign/ domestic law:
	Roles and responsibilities of stakeholders in the generation of ROEs		CDS SJS and SJSLA CJOC and CJOC LA Subordinate units and formations and their legal advisors
	ROE authorisation process		Roles of: CDS SJS and SJSLA CJOC and CJOC LA Subordinate formations and their LEGAD ROE development (request (ROEREQ), authorization (ROEAUTH imput), amendment, implementation (ROEIMP), cancelation (ROECX)
	Advise on application of ROE		Principal components of ROE for international and domestic operations.

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	Principal components of ROE for international operations		Definition, purposes and legal effects of ROE Deadly and non-deadly force ROE Excessive force Legal basis for operations (UN Charter, UNSCR) National constraints Multi-national operations ROE Development and communication of ROE
	Principal components of ROE for domestic operations		CF Standing ROE Purpose of ROE Definition, purposes and legal effects of ROE Non-deadly force ROE Excessive force Legal basis for domestic operations National constraints Development and communication of ROE
	Legal regime relating to self defence		Use of force and self-defence in domestic operations (Self-defence, Use of force to protect property, Use of force and maintenance of law and order, Unlawful use of force). Hostile acts and hostile intent (Hostile act against Canada, hostile act against CAF personnel, units or forces, hostile intent against Canada, hostile intent against CAF personnel, units or forces, determination of hostile intent against Canada and CAF personnel, units or forces). Categories of self-defence (National self-defence, Foreign violations of Canadian territory, territorial waters or airspace, personal, unit or force self-defence, exercising the right of self-defence, response to hostile intent, restriction on response to hostile intent, hold fire orders, self-defence during combined operations, cross-boundary or cross-border fire). Use of force and self-defence in international operations (Article 51 of the UN Charter; when Armed attack occurs, self-defence, anticipatory self-defence, and pre-emptive self-defence, defence of nationals outside the territory of the state, necessity and proportionality, geographic and temporal parameters, the Until clause of Article 51, the Reporting requirement of Article 51, Security Council Resolutions: enforcement action, self-defence or both, collective self-defence)).
Comments: N/A			

PC 026A CHECK LIST - Provide legal support during the planning of operations

Serial	TASK/TASK ELEMENTS	P/F	Remarks
	Operational planning process (OPP)		Categories of CAF Operations (Routine and Contingency Operations) Domestic Operations (Routine and Contingency Operations, Transitions) International Contingency Operations Principles of CAF Operations Phases of an operation (warning, preparation, deployment, employment, redeployment) Levels of planning (government policy, strategic, operational, tactical). Stages to the operational planning process (Initiation, Orientation, Course of Action development, Plan development, Plan review).

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	products reviewed by the legal officer		Role of the operational legal advisor (legal officer attendance at all planning sessions, reviewing all courses of action (COAs) developed by the team. Attendance at all briefings to the COMD (Mission analysis brief, info brief, and decision brief) to deal with any legal issues/questions that may arise during the briefing. Review all OPP products, especially the OPLAN and its annexes. Attendance to the planning sessions to ensure that if there are legal concerns with any of the COAs considered by the team that the legal concerns are made known before they are too far into the planning cycle.
	Products produced by the legal officer		Preparation of the legal annex to the operational plan (aim, legal framework, legal support, legal organization, general legal guidance (Code of Service Discipline, Aid to Law Enforcement Agencies (ALEA), Aid of the Civil Power, Peace Officer status, Use of Force, Summary Cards, Protection from Civil Liability, Information and Intelligence Collection and Sharing, Legal Support to Military Police and CF National Investigation Service (CFNIS), Claims By or Against the Crown, Contracts, Rental Vehicles, Military Administrative Investigations, Environmental Protection, Continuing Legal Consultation).
Comments: N/A			

PC 026A CHECK LIST - Advise on legal bases and authorities pertaining to continental CAF operations

Serial	TASK/TASK ELEMENTS	P/F	Remarks
	Continental defence arrangements and agreements		CJOC responsibilities for CAF operations, roles of CJOC Deputy Commanders. North American Aerospace Defense Command (NORAD) (Background, Organisation, Operations, Air Defence Canadian Contribution, Counter-Drug Mission, Canada-U.S. Defence Cooperation). North Atlantic Treaty Organization (NATO) (Origins of the Alliance, The North Atlantic Treaty, NATO Military combat and enforcement operations, the process of NATO enlargement, NATO Headquarters, the North Atlantic Council (NAC), the NATO Secretary General) NATO Military Structure (The NATO Military Committee (MC), Allied Command Operations (ACO), Allied Command Transformation (ACT), Canada - United States Regional Planning Group (CUSRPG)). NATO Partnerships (Euro-Atlantic Partnership Council (EAPC), Partnership for Peace, NATO-Russia Council (NRC), Mediterranean Dialogue (MD), Istanbul Cooperation Initiative (ICI).
Comments: N/A			

PC 026A CHECK LIST - Advise on legal bases and authorities pertaining to domestic CAF operations

Serial	TASK/TASK ELEMENTS	P/F	Remarks

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	Roles and responsibilities of stakeholders in CAF domestic operations		Roles and responsibilities (Chief of the Defence Staff, Canadian Joint Operations Command (CJOC), Canadian Special Operations Forces Command (CANSOFCOM), Commanders of Royal Canadian Navy (RCN), Canadian Army (CA) and Royal Canadian Air Force (RCAF), Commander Military Personnel Command, Chief of Defence Intelligence, Vice Chief of the Defence Staff I Commander Canadian Forces Military Police Group) CAF Command and Control framework for domestic operations (Maritime, Land and Air forces, Special Operations forces, Military Personnel Command Forces, Military Police Forces, Operational Support, Search and Rescue, Explosive Ordinance Disposal) Force Employment (Routine, Contingency and Rapid-Response Operations)
	Domestic legal regime		What is the Crown prerogative, the Crown prerogative in the defence of Canada and domestic operations, Constitution Act, 1867, Legal framework of DND and the CAF, Mandate, Exercising the mandate, Provision of Services, DND Provision of Services Policy (PSP), Non-Defence Use of DND Real Property, CAF Support as a Public Service. CAF Assistance to Law enforcement Agencies and Aid to the Civil Power (legal framework) CAF Assistance to Provincial Law Enforcement Agencies (CF Assistance to Provincial Police Forces Directions (CFAPPFD), Application of subsection 273.6(2) NDA to provincial policing). CAF Assistance to Federal Law Enforcement Agencies and Other Federal Government Departments (Assistance to Federal Penitentiaries Order, Canadian Forces Armed Assistance Directions (CFAAD), Application of NDA subsection 273.6(2) to federal law enforcement, CAF Assistance pursuant to Memoranda of Understanding (MOU), MOU for CAF assistance to RCMP counter drug operations, MOU for CAF assistance to the Department of Fisheries and Oceans (DFO), Legal protection for CAF members providing support to DFO).
Comments: N/A			

PC 026A CHECK LIST - Advise on the legal bases and authorities for CAF operations

Serial	TASK/TASK ELEMENTS	P/F	Remarks
	Application of public international law		Treaties, customary international law, general principles of law, subsidiary sources, subjects of international law, States and non-States actors, Enforcement of international legal obligations.

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	Roles and responsibilities of stakeholders in international operations		Main stakeholders (Canadian Joint Operations Command (CJOC), CJOC Expeditionary, Canadian Special Operations Forces Command (CANSOFCOM), Maritime Command (MARCOM), Land Force Command (LFC), Air Command (AIRCOM). CAF Command and Control framework for international operations (context, organization, Task Forces (TF), Command and Control (C2), National Command, Administrative Control, Liaison and Coordination, National Constraints and Assets, Maritime, Land and Air forces, Special Operations forces, Operational support, Military Personnel Command Forces, Military Police forces) United Nations Operations (Operational Framework, Administrative Considerations) Force Employment (Planning and Preparation, Initiation, Legal and policy considerations)
	Crown prerogative and other aspects of the domestic legal regime		What is the Crown prerogative, Who exercises the Crown prerogative, The Crown prerogative and its use to deploy the CAF.
	Roles and responsibilities of stakeholders in CAF domestic operations		Roles and responsibilities (Chief of the Defence Staff, Canadian Joint Operations Command (CJOC), Canadian Special Operations Forces Command (CANSOFCOM), Commanders of Royal Canadian Navy (RCN), Canadian Army (CA) and Royal Canadian Air Force (RCAF), Commander Military Personnel Command, Chief of Defence Intelligence, Vice Chief of the Defence Staff I Commander Canadian Forces Military Police Group) CAF Command and Control framework for domestic operations (Maritime, Land and Air forces, Special Operations forces, Military Personnel Command Forces, Military Police Forces, Operational Support, Search and Rescue, Explosive Ordinance Disposal) Force Employment (Routine, Contingency and Rapid-Response Operations)
	Domestic legal regime		What is the Crown prerogative, the Crown prerogative in the defence of Canada and domestic operations, Constitution Act, 1867, Legal framework of DND and the CAF, Mandate, Exercising the mandate, Provision of Services, DND Provision of Services Policy (PSP), Non-Defence Use of DND Real Property, CAF Support as a Public Service. CAF Assistance to Law enforcement Agencies and Aid to the Civil Power (legal framework) CAF Assistance to Provincial Law Enforcement Agencies (CF Assistance to Provincial Police Forces Directions (CFAPPFD), Application of subsection 273.6(2) NDA to provincial policing). CAF Assistance to Federal Law Enforcement Agencies and Other Federal Government Departments (Assistance to Federal Penitentiaries Order, Canadian Forces Armed Assistance Directions (CFAAD), Application of NDA subsection 273.6(2) to federal law enforcement, CAF Assistance pursuant to Memoranda of Understanding (MOU), MOU for CAF assistance to RCMP counter drug operations, MOU for CAF assistance to the Department of Fisheries and Oceans (DFO), Legal protection for CAF members providing support to DFO).

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	Continental defence arrangements and agreements		CJOC responsibilities for CAF operations, roles of CJOC Deputy Commanders. North American Aerospace Defense Command (NORAD) (Background, Organisation, Operations, Air Defence Canadian Contribution, Counter-Drug Mission, Canada-U.S. Defence Cooperation). North Atlantic Treaty Organization (NATO) (Origins of the Alliance, The North Atlantic Treaty, NATO Military combat and enforcement operations, the process of NATO enlargement, NATO Headquarters, the North Atlantic Council (NAC), the NATO Secretary General) NATO Military Structure (The NATO Military Committee (MC), Allied Command Operations (ACO), Allied Command Transformation (ACT), Canada - United States Regional Planning Group (CUSRPG)). NATO Partnerships (Euro-Atlantic Partnership Council (EAPC), Partnership for Peace, NATO-Russia Council (NRC), Mediterranean Dialogue (MD), Istanbul Cooperation Initiative (ICI).
Comments: N/A			

NOTES: Unsuccessful attempts in a specific task/task element result in failure of the task/task elements being assessed. Candidate must successfully complete all applicable checklist items in order to achieve minimum standard.

N/A

Candidate Signature _____ **DATE** _____

Assessor Signature _____ **DATE** _____

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PC 026B

Instructions to the Staff:

1. N/A
2. Personnel, Material and Facility Requirements:
   a. Personnel requirements:

      N/A

   b. Material and Facility requirements. Items required to perform the PC:

      N/A
3. Ensure the serviceability of all equipment prior to the PC.
4. N/A
5. N/A
6. Brief candidates one day prior to the PC and ensure they understand the "INSTRUCTIONS TO BE GIVEN TO CANDIDATES"

Instructions to the Candidates:

7. The following instructions are to be given to candidates one day prior to the administration of each PC:

   N/A

8. The PC will be conducted as an open book practical application IAW MG B1-1. Candidates will work in syndicates, but each candidate will staff their own ECP.
9. Should you fail the PC, a supplemental test may be granted at the discretion of a Progress Review.
10. **Are there any questions?**

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PC 026B CHECK LIST - Advise on arrangements & agreements in support international CAF operations

Serial	TASK/TASK ELEMENTS	P/F	Remarks
	Development of arrangements and agreements relating to international CAF operations		Key legal regime including visiting forces act, NATO SOFA and NDA related to the development of international arrangements and agreements
Comments: N/A			

PC 026B CHECK LIST - Advise on arrangements and agreements

Serial	TASK/TASK ELEMENTS	P/F	Remarks
	Development of arrangements and agreements relating to domestic CAF operations		Key legal regime including visiting forces act, NATO SOFA and NDA related to domestic CAF operations
	Domestic arrangements and agreements		Key legal regime including visiting forces act, NATO SOFA and NDA related to domestic arrangements and agreements
	Development of arrangements and agreements relating to international CAF operations		Key legal regime including visiting forces act, NATO SOFA and NDA related to the development of international arrangements and agreements

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	The role of the legal officer in liaison		Influence of legal principles on policy development, Relationship with the OJAG and other government legal counsel, Canadian government structure (Federal, Provincial), international governmental/ diplomatic structure, UN, NATO/ NAC, ICRC, ICC
Comments: N/A			

PC 026B CHECK LIST - Advise on international CAF operations

Serial	TASK/TASK ELEMENTS	P/F	Remarks
	Legal issues common to all international CAF operations		Principles of Jus in Bello (discrimination, proportionality) Environment, International crimes and war crimes, Refugees, internal displaced persons (IDP) and asylum seekers, Issues relating to private security military companies
	Full spectrum ops		CAF doctrine and policy, Applicable legal regime, Distinction between domestic, International, and expeditionary operations
	Peace Support Operations		CAF doctrine and policy, Applicable legal regime UN Charter Chap VI, VIII (EU, AU, ECOWAS) UN Peace operations and mandate process
	Humanitarian assistance operations		CAF doctrine and policy, Applicable legal regime, DART components
	Non combatant evacuation operations (NEO)		CAF doctrine and policy, Applicable legal regime (SOFA, MOU), Roles and responsibilities of DND and DFAIT
Comments: N/A			

PC 026B CHECK LIST - Advise on CAF operations

Serial	TASK/TASK ELEMENTS	P/F	Remarks
	Legal issues common to all international CAF operations		Principles of Jus in Bello (discrimination, proportionality) Environment, International crimes and war crimes, Refugees, internal displaced persons (IDP) and asylum seekers, Issues relating to private security military companies
	Full spectrum ops		CAF doctrine and policy, Applicable legal regime, Distinction between domestic, International, and expeditionary operations
	Peace Support Operations		CAF doctrine and policy, Applicable legal regime UN Charter Chap VI, VIII (EU, AU, ECOWAS) UN Peace operations and mandate process
	Humanitarian assistance operations		CAF doctrine and policy, Applicable legal regime, DART components
	Non combatant evacuation operations (NEO)		CAF doctrine and policy, Applicable legal regime (SOFA, MOU), Roles and responsibilities of DND and DFAIT

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	Legal issues common to all domestic CF operations		Mandates, use of force, ROE and self-defence in domestic context, criminal responsibility and civil liability, Command and control (MP jurisdiction and Peace officer status)
	Defence of Canada		CAF directives and policies, Relevant legal regime, Interdepartmental considerations, Potential mixed (international and domestic) nature of the operation, NORAD (principal agreements MOUs,Missions & tasks)
	Sovereignty operations		CA directives and policies, Relevant legal regime, Interdepartmental considerations, Arctic operations (OP NANOOK, OP NUNALIVUT), RCN, RCAF and Canadian Rangers roles
	Aid of the civil power		CAF directives and policies, Relevant legal regime
	ALEA		Law enforcement assistance under NDA , Key OICs (CF Assistance to Provincial Police Directions CFAPPFD, CF Armed Assistance Directions CFAAD, Assistance to Correctional Services Federal Penitentiaries (OIC 175-131), Classes of support, Evidentiary issues arising during ALEA, Key MOUs (CF/RCMP Counter-Drug Ops, DFO Integrated National Security Enforcement Teams (INSET)), Integrated Border Enforcement Teams (IBETS), Exemples Operations (SABOT, RUGGED, PODIUM, CARIBBE),
	Public service under NDA		CAF directives and policies, Relevant legal regime (section 273.6 (l) of the NDA), Interdepartmental considerations
	Provision of Service (POS)		CAF directives and policies, Relevant legal regime (Provision of Service Policy) PoS conditions, authorization, costs recovery. admin requirements Interdepartmental considerations
	Search and rescue operations		CAF directives and policies, Relevant legal regime, Command and control relationships relating to SAR, Interdepartmental considerations
	Operations involving other governmental departments (OGD)		Presently applies to OP PALACI , DFO MOU, CAF directives and policies Relevant legal regime
	Maritime ops		Applicable legal regime in particular law of the sea, Internal, territorial, national and international waters, coastal zones, contiguous and exclusive economic zones, baselines Jurisdiction, DFO, maritime enforcement operations, boarding and right of visit in peacetime, stateless vessels, piracy, proliferationi security initiative, interdiction operations. CAF doctrine and policy, Command control relationship for RCN, coalition considerations, interdepartmental considerations
BT0020	Legal issues related to intelligence operations		CAF policy and directives pertaining to: international operations, domestic operations, legal regime relating to each of the two aforementioned types of operations, Info sharing including limitations and prohibitions, Allied and coalition considerations (especially US), release and disposal, Communications Security Establishment Commissioner, Types of intelligence (open sources, signals, imagery), CAF intelligence framework (defence, security, criminal) Privacy Act, CISIS Act, Radiocommunication Act

BT0025	Legal issues related to information operations		CAF doctrine and policies, Applicable legal regime, Legal considerations pertaining offensive information operations, LOAC Issues, International law relating to information operations, distinction from intelligence operations
BT0115	Legal issues related to special operations (SOF)		Nature, structure and role of CANSOFCOM and its units, relation between CANSOFCOM and force generators/ employers, relation between OJAG and CANSOFCOM Definition, characteristics and types of SOF, Key players (CJOPC, JTF 2, 427 SOAS, CSOR, CJRU)
Comments: N/A			

PC 026B CHECK LIST - Advise on targeting

Serial	TASK/TASK ELEMENTS	P/F	Remarks
	CF targeting doctrine, framework and process		CF targeting doctrine, CF targeting directives (generic & specific), Relevance of targeting in a coalition context, Key steps in the targeting process
	Applicable principles of Jus in Bello		Humanity, Chivalry, Military necessity, Proportionality, distinction and the doubt rule, means and methods, precautions in attack, collateral damage
	Key distinctions in types of targeting		Types of targeting: Kinetic, Non-kinetic, lethal, non-lethal dynamic, deliberate, time sensitive
	The role of the legal advisor in the targeting process		Role in the nomination process (Joint Targeting Working Group), Role in approval/ validation, Role in execution
Comments: N/A			

PC 026B CHECK LIST - Advise on legal issues pertaining to PW & detainees

Serial	TASK/TASK ELEMENTS	P/F	Remarks
	Applicable legal regimes		Types of CAF International Operations and Detainees (Armed Conflict Operations in International Armed Conflict, Armed Conflict Not of an International Character, Non-Armed Conflict Operations, Combatant Status, Civilian Status, Unlawful Combatants / Unprivileged Belligerents, Categories of Detainees). Prisoners of War Status (Medical Personnel and Chaplains, Indeterminate Status, Persons Captured During Operations Outside Of Armed Conflict, PW in Coalition Operations).
	PW determination under GCIII		PW Status Determination (legal status of a captured or detained person who has committed a belligerent act during an international armed conflict In accordance with the Prisoner of War Status Determination Regulations, SOR/91-13419, Persons entitled and not entitled to PW status, medical and religious personnel, procedure for determination of PW status).

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	Applicable legal regime and policy		Treatment of Detainees, Restraints, Blindfolds, Hoods and Security, National responsibility of treatment of PWs, Protecting Power (Discharge of Responsibilities. Representatives, Delegates, Inspection Facilities, Passes for Representatives and Delegates), Persons who may not be made PWs, standard of treatment for male and female PWs.
	Applicable legal regime and policies		Interrogation and Tactical Questioning of PW and Detainees (Definition, Purpose, Concept (Interrogation and TQ are Controlled and Systematic, Specified Personnel Conduct Interrogation and TQ), Principles) Interrogation and Tactical Questioning in special circumstances (Detainees, Suspicion of Criminal Offences) Conduct of interrogation and tactical questioning (organization, procedures, constraints)
	Applicable regime and policies		PW handling during Coalition Operations, Transfer of PWs, Transfers Between Canadian PW Establishments, International Transfers, Administrative Considerations (Notice of Transfer, Forwarding of Mail, Prisoner Lists, Movement of Personal Effects, PW Accounts), PW Exchange. Repatriation of sick and wounded PW (The Geneva Convention and Repatriation, Assessment of PW War for Repatriation - The Mixed Medical Commission), Eligibility for Repatriation (Criteria for Eligibility for Direct Repatriation, Criteria for Eligibility for Transfer to a Neutral Country, Criteria for Eligibility for Further Repatriation from a Neutral Country), Costs of Repatriation of Sick and Wounded PW, Further Military Employment of Repatriated PW, Release and repatriation at the end of hostilities (Guidelines for Release and Repatriation, Costs of Repatriation, Asylum for PW).
Comments: N/A			

PC 026B CHECK LIST - Advise on the use of force

Serial	TASK/TASK ELEMENTS	P/F	Remarks
BT0030, BT0065, BT0060, BT0090	Advise on generation of ROE		Process of developing ROE (amendment, amplification, implementation, request, cancelation process)
	Legal sources for the use of force		international context: Domestic context: Relevant foreign/ domestic law:
	Roles and responsibilities of stakeholders in the generation of ROEs		CDS SJS and SJSLA CJOC and CJOC LA Subordinate units and formations and their legal advisors
	ROE authorisation process		Roles of: CDS SJS and SJSLA CJOC and CJOC LA Subordinate formations and their LEGAD ROE development (request (ROEREQ), authorization (ROEAUTH imput), amendment, implementation (ROEIMP), cancelation (ROECX)
	Advise on application of ROE		Principal components of ROE for international and domestic operations.

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	Principal components of ROE for international operations		Definition, purposes and legal effects of ROE Deadly and non-deadly force ROE Excessive force Legal basis for operations (UN Charter, UNSCR) National constraints Multi-national operations ROE Development and communication of ROE
	Principal components of ROE for domestic operations		CF Standing ROE Purpose of ROE Definition, purposes and legal effects of ROE Non-deadly force ROE Excessive force Legal basis for domestic operations National constraints Development and communication of ROE
	Legal regime relating to self defence		Use of force and self-defence in domestic operations (Self-defence, Use of force to protect property, Use of force and maintenance of law and order, Unlawful use of force). Hostile acts and hostile intent (Hostile act against Canada, hostile act against CAF personnel, units or forces, hostile intent against Canada, hostile intent against CAF personnel, units or forces, determination of hostile intent against Canada and CAF personnel, units or forces). Categories of self-defence (National self-defence, Foreign violations of Canadian territory, territorial waters or airspace, personal, unit or force self-defence, exercising the right of self-defence, response to hostile intent, restriction on response to hostile intent, hold fire orders, self-defence during combined operations, cross-boundary or cross-border fire). Use of force and self-defence in international operations (Article 51 of the UN Charter; when Armed attack occurs, self-defence, anticipatory self-defence, and pre-emptive self-defence, defence of nationals outside the territory of the state, necessity and proportionality, geographic and temporal parameters, the Until clause of Article 51, the Reporting requirement of Article 51, Security Council Resolutions: enforcement action, self-defence or both, collective self-defence)).
Comments: N/A			

PC 026B CHECK LIST - Provide legal support during the planning of operations

Serial	TASK/TASK ELEMENTS	P/F	Remarks
	Operational planning process (OPP)		Categories of CAF Operations (Routine and Contingency Operations) Domestic Operations (Routine and Contingency Operations, Transitions) International Contingency Operations Principles of CAF Operations Phases of an operation (warning, preparation, deployment, employment, redeployment) Levels of planning (government policy, strategic, operational, tactical). Stages to the operational planning process (Initiation, Orientation, Course of Action development, Plan development, Plan review).

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	products reviewed by the legal officer		Role of the operational legal advisor (legal officer attendance at all planning sessions, reviewing all courses of action (COAs) developed by the team. Attendance at all briefings to the COMD (Mission analysis brief, info brief, and decision brief) to deal with any legal issues/questions that may arise during the briefing. Review all OPP products, especially the OPLAN and its annexes. Attendance to the planning sessions to ensure that if there are legal concerns with any of the COAs considered by the team that the legal concerns are made known before they are too far into the planning cycle.
	Products produced by the legal officer		Preparation of the legal annex to the operational plan (aim, legal framework, legal support, legal organization, general legal guidance (Code of Service Discipline, Aid to Law Enforcement Agencies (ALEA), Aid of the Civil Power, Peace Officer status, Use of Force, Summary Cards, Protection from Civil Liability, Information and Intelligence Collection and Sharing, Legal Support to Military Police and CF National Investigation Service (CFNIS), Claims By or Against the Crown, Contracts, Rental Vehicles, Military Administrative Investigations, Environmental Protection, Continuing Legal Consultation).
Comments: N/A			

PC 026B CHECK LIST - Advise on legal bases and authorities pertaining to international CAF operations

Serial	TASK/TASK ELEMENTS	P/F	Remarks
	Application of public international law		Treaties, customary international law, general principles of law, subsidiary sources, subjects of international law, States and non-States actors, Enforcement of international legal obligations.
	Roles and responsibilities of stakeholders in international operations		Main stakeholders (Canadian Joint Operations Command (CJOC), CJOC Expeditionary, Canadian Special Operations Forces Command (CANSOFCOM), Maritime Command (MARCOM), Land Force Command (LFC), Air Command (AIRCOM). CAF Command and Control framework for international operations (context, organization, Task Forces (TF), Command and Control (C2), National Command, Administrative Control, Liaison and Coordination, National Constraints and Assets, Maritime, Land and Air forces, Special Operations forces, Operational support, Military Personnel Command Forces, Military Police forces) United Nations Operations (Operational Framework, Administrative Considerations) Force Employment (Planning and Preparation, Initiation, Legal and policy considerations)
	Crown prerogative and other aspects of the domestic legal regime		What is the Crown prerogative, Who exercises the Crown prerogative, The Crown prerogative and its use to deploy the CAF.

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Comments: N/A

PC 026B CHECK LIST - Advise on the legal bases and authorities for CAF operations

Serial	TASK/TASK ELEMENTS	P/F	Remarks
	Application of public international law		Treaties, customary international law, general principles of law, subsidiary sources, subjects of international law, States and non-States actors, Enforcement of international legal obligations.
	Roles and responsibilities of stakeholders in international operations		Main stakeholders (Canadian Joint Operations Command (CJOC), CJOC Expeditionary, Canadian Special Operations Forces Command (CANSOFCOM), Maritime Command (MARCOM), Land Force Command (LFC), Air Command (AIRCOM). CAF Command and Control framework for international operations (context, organization, Task Forces (TF), Command and Control (C2), National Command, Administrative Control, Liaison and Coordination, National Constraints and Assets, Maritime, Land and Air forces, Special Operations forces, Operational support, Military Personnel Command Forces, Military Police forces) United Nations Operations (Operational Framework, Administrative Considerations) Force Employment (Planning and Preparation, Initiation, Legal and policy considerations)
	Crown prerogative and other aspects of the domestic legal regime		What is the Crown prerogative, Who exercises the Crown prerogative, The Crown prerogative and its use to deploy the CAF.
	Roles and responsibilities of stakeholders in CAF domestic operations		Roles and responsibilities (Chief of the Defence Staff, Canadian Joint Operations Command (CJOC), Canadian Special Operations Forces Command (CANSOFCOM), Commanders of Royal Canadian Navy (RCN), Canadian Army (CA) and Royal Canadian Air Force (RCAF), Commander Military Personnel Command, Chief of Defence Intelligence, Vice Chief of the Defence Staff I Commander Canadian Forces Military Police Group) CAF Command and Control framework for domestic operations (Maritime, Land and Air forces, Special Operations forces, Military Personnel Command Forces, Military Police Forces, Operational Support, Search and Rescue, Explosive Ordinance Disposal) Force Employment (Routine, Contingency and Rapid-Response Operations)

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	Domestic legal regime		What is the Crown prerogative, the Crown prerogative in the defence of Canada and domestic operations, Constitution Act, 1867, Legal framework of DND and the CAF, Mandate, Exercising the mandate, Provision of Services, DND Provision of Services Policy (PSP), Non-Defence Use of DND Real Property, CAF Support as a Public Service. CAF Assistance to Law enforcement Agencies and Aid to the Civil Power (legal framework) CAF Assistance to Provincial Law Enforcement Agencies (CF Assistance to Provincial Police Forces Directions (CFAPPFD), Application of subsection 273.6(2) NDA to provincial policing). CAF Assistance to Federal Law Enforcement Agencies and Other Federal Government Departments (Assistance to Federal Penitentiaries Order, Canadian Forces Armed Assistance Directions (CFAAD), Application of NDA subsection 273.6(2) to federal law enforcement, CAF Assistance pursuant to Memoranda of Understanding (MOU), MOU for CAF assistance to RCMP counter drug operations, MOU for CAF assistance to the Department of Fisheries and Oceans (DFO), Legal protection for CAF members providing support to DFO).
	Continental defence arrangements and agreements		CJOC responsibilities for CAF operations, roles of CJOC Deputy Commanders. North American Aerospace Defense Command (NORAD) (Background, Organisation, Operations, Air Defence Canadian Contribution, Counter-Drug Mission, Canada-U.S. Defence Cooperation). North Atlantic Treaty Organization (NATO) (Origins of the Alliance, The North Atlantic Treaty, NATO Military combat and enforcement operations, the process of NATO enlargement, NATO Headquarters, the North Atlantic Council (NAC), the NATO Secretary General) NATO Military Structure (The NATO Military Committee (MC), Allied Command Operations (ACO), Allied Command Transformation (ACT), Canada - United States Regional Planning Group (CUSRPG)). NATO Partnerships (Euro-Atlantic Partnership Council (EAPC), Partnership for Peace, NATO-Russia Council (NRC), Mediterranean Dialogue (MD), Istanbul Cooperation Initiative (ICI).
Comments: N/A			

NOTES: Unsuccessful attempts in a specific task/task element result in failure of the task/task elements being assessed. Candidate must successfully complete all applicable checklist items in order to achieve minimum standard.

N/A

Candidate Signature _____ **DATE** _____

Assessor Signature _____ **DATE** _____

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ANNEX C - SCALAR

Legal Officer Qualification AJCK

The scalar annex is available as a seperate PDF and also online. Follow the link below to view the scalar for this TP online.

http://s3.ongarde.net/isat/tpms/tpms_export.php?doc=550§ion[scalarannex]=1

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ANNEX D - RECORD OF DECISIONS

TITLE Legal Officer Qualification
Location of Board N/A
DATE N/A - N/A
BOARD COMPOSITION

Position	Person	Unit
CFMLC Director	LCol MJ Gendron	CDA HQ
CFMLC IC Standards	Maj RG Fowler	CDA HQ
CFMLC LSO Trg & Ed Dev (Military Justice)	LCdr JCP Levesque	CDA HQ
CFMLC LSO Trg & Ed Dev (OpLaw)	LCdr JRDM Paille	CDA HQ
CFMLC LSO Trg & Ed Dev (Admin law)	LCdr RMC Barnet	CDA HQ
CFMLC Instructor	Lt(N) MA Baker	CDA HQ
DJAG Military Justice	Col RF Holman	DJAG MJ
D Law MJ Strat	LCol SS Strickey	DJAG MJ
D Law Admin Law	LCol MJ Dow	DJAG MAL
CJOC Senior LegAd	LCol JMPP Cambron	DJAG Ops
AJAG Central Region	Cdr SM Sukstorf	DJAG Reg Svcs
D Law CBP&E	LCol RC Strum	DJAG MAL
DJA Borden	LCdr KW Osborne	DJAG Reg Svcs
DJA Kingston	Maj ML Tran	DJAG Reg Svcs
Canada Com Legal-2	LCdr TRO Park	DJAG Ops
D Law CBP&E 3	Maj VE Saunders	DJAG MAL
ACOS Training	Maj MC Levesque	COS JAG
LKM Legal Analyst (Library)	Diane St-Laurent	COS JAG

There were no RODs for this TP.

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ANNEX E - RESOURCES IMPACT ASSESSMENT

<table>
<tr><th>Considerations</th><th>Details</th></tr>
<tr><td>Name of TP:</td><td>Legal Officer Qualification</td></tr>
<tr><td>Training Authority:</td><td>CDA</td></tr>
<tr><td>Current Training Strategy:</td><td>N/A</td></tr>
<tr><td>Proposed Training Strategy:</td><td>N/A</td></tr>
<tr><td>Training Limitations:</td><td>a. limitation 1
b. limitation 2</td></tr>
<tr><td>Rationale for Requirement:</td><td>N/A</td></tr>
<tr><td>QSB Dates:</td><td>31 December 1969 - 31 December 1969</td></tr>
<tr><td>TPB Dates:</td><td>31 December 1969 - 31 December 1969</td></tr>
<tr><td>Pilot Course Dates:</td><td>N/A</td></tr>
<tr><td>Production (Course load-Min/Opt/Max):</td><td>8/24/32</td></tr>
<tr><td>Personnel Requirements (Rank/MOSID and expected level of effort):</td><td>Existing:
<table><tr><th>Instructor</th><th>Rank</th><th>MOSID</th><th>QTY</th><th>Time Allocation</th></tr><tr><td colspan="5">N/A</td></tr></table>
Proposed:
<table><tr><th>Instructor</th><th>Rank</th><th>MOSID</th><th>QTY</th><th>Time Allocation</th></tr><tr><td colspan="5">N/A</td></tr></table></td></tr>
<tr><td>Funding:</td><td>Funding for training events and methods:
<table><tr><th>Item</th><th>#</th><th>$</th></tr><tr><td>Sub total</td><td></td><td>$0.00</td></tr></table></td></tr>
<tr><td>Accommodations/Travel:</td><td>Rations and Quarters:__ x candidates in quarters for ___ days (including weekends). DS accommodation, including __x pre and post course days, will be __days:
<table><tr><th>Item</th><th>#</th><th>$</th></tr><tr><td>Sub total</td><td></td><td>$0.00</td></tr></table>
TD: N/A
<table><tr><th>Item</th><th>#</th><th>$</th></tr><tr><td>Sub total</td><td></td><td>$0.00</td></tr></table></td></tr>
</table>

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<table>
<tr><td>Additional Resource Requirements:</td><td>

One time purchase:

Item	#	$
Sub total		$0.00

Known cost tally:

Item	Itemized cost	Sub total
Training Events	$0.00	
RQ	$0.00	
TD	$0.00	
Future recurring costs		**$0.00**
One time purchase	$0.00	
Total		**$0.00**

</td></tr>
<tr><td>Recommended QS Amendments:</td><td>N/A</td></tr>
<tr><td>Other points of interests/concerns:</td><td>N/A</td></tr>
</table>

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PO 001 – EXPLAIN THE ROLES AND RESPONSIBILITIES OF THE OFFICE OF THE JAG

PART 1 -- LESSON IDENTIFICATION

TITLE: EO 001.01 Explain the Role and Responsibilities of the JAG

Performance: Explain the Roles and responsibilities of the JAG

Conditions:

Given: Relevant factual context, legislation, policy, case law, reference materials.

Denied: Direct supervision

Standard. The legal officer shall describe how the roles and responsibilities of the Office of the JAG influence the legal officer's duties, functions and relationship with supported decision-makers in the CAF, including: The legal officer shall explain the role and responsibilities of the Judge Advocate General of the Canadian Forces.

Main Teaching Points:

Method. This EO will be accomplished by a combination of Self-Study and Developmental Lesson. Students will be asked to read Module 2 on their own as it pertains to general concepts. Those concepts will be particularized to CAF context and expanded and discussed under instructor's guidance.

Duration. ½ a 40-minute period (to be combined with EO 001.02).

References. As per TP.

Training / Learning Aids.

Note to the instructor. A review of the main teaching points will then take place at the end of the periods, by Enabling Checks (EC).

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PART 2 – INTRODUCTION

Objective: The Legal Officer shall describe the role and responsibilities of the JAG in order to understand how these roles and responsibilities influence the performance of the legal officer's duties.

Introduction: Introduce the lesson by emphasizing that the statutory basis of the JAG's role and responsibilities is a defining characteristic of a legal officer's role and duties.

Outline: The LOC instructor shall introduce the lesson outline

Stage 1: Role and Responsibilities of the JAG

Stage 2: Relationship Between JAG and other key actors: DND/CF LA, DMP, DDCS, Chief Military Judge

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PART 3 – BODY OF THE LESSON

Stage 1: Role and Responsibility of the JAG

1. **Introduction**: The Judge Advocate General of the Canadian Forces is defined under the National Defence Act. His relationship with other key CAF and Departmental stakeholders is further amplified by regulations, directives, orders, instructions and other policies, promulgated principally under the authority of the *National Defence Act*.

2. These legislated roles and responsibilities define the JAG's relationship with other key stakeholders in military law, including, but not limited to:

a. The Minister;
b. The Chief of the Defence Staff;
c. The CAF;
d. The Department of National Defence;
e. The Department of Justice, particularly DND/CF LA;
f. Director Military Prosecutions; and
g. Director Defence Counsel Services.

Legislative Provisions

3. The role and responsibilities of the JAG are defined within sections 9 to 10.1 of the National Defence Act. Specifically, these statutory provisions establish that:

a. The JAG is appointed by the Governor-in-Council (subs. 9(1));

b. The minimum requirement to hold the position is 10 years good standing at the bar of a province (subs. 9(1));

c. The JAG holds office at pleasure (one of the few positions in the CAF that is truly held at pleasure) for up to four years (subs. 9(2));

d. This position can be renewed (and has been, on two occasions, since these amendments were introduced in 1998) (subs,. 9(3));

e. The JAG holds the rank of at least BGen (s. 9.4);

f. The JAG advises the Governor General, Minister, CAF and DND on matters of military law (s. 9.1);

g. However, this does not derogate from the authority of the Minister of Justice and Attorney General of Canada to advise federal departments or other organizations (s. 10.1);

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h. The JAG superintends military justice (subs. 9.2(1)) and shall conduct (or cause to be conducted) regular reviews of the administration of military justice (subs. 9.2(2)). The JAG must report to the Minister annually on the administration of military justice (subs. 9.3(2)) and the Minister is obliged to present a copy of this report to Parliament within 15 days of its receipt;

i. The JAG is responsible to the Minister for the performance of his duties (subs. 9.3(1)); and

j. The Minister may authorize any other officer who has at least 10 years good standing before the bar of a province to exercise the JAG's powers and perform the JAG's duties and functions.

4. Legal officers whose duty is to provide legal advice to the CAF shall be posted to the establishment of the Office of the JAG (QR&O 4.081(1)). The JAG has command over all officers and NCM posted to the establishment of the Office of the JAG (QR&O 4.081(2)). The duties of a legal officer posted to a position established within the Office of the Judge Advocate General are determined by or under the authority of the Judge Advocate General and, in respect of the performance of those duties, a legal officer is not subject to the command of an officer who is not a legal officer (QR&O 4.081(4)).

5. The practical effect of subs. 9.3(1) of the *NDA* and QR&O 4.081, is to establish a chain of command for a legal officer – whose duty is to provide legal advice – through the chain of command of the Office of the JAG, to the JAG, and then to the Minister. Consequently, although unit legal advisors must be responsive to the commanders they support, they are responsible to their legal officer supervisor (typically an AJAG or a Director). This arm's length relationship with (sometimes referred to as independence from) supported commanders is a key functional principle that ensures that legal advice is not improperly influenced by a command relationship. This differs from that of a formation Staff Judge Advocate (SJA) in the US Navy, Army and Air Force, where SJA are typically subordinate to the commander they advise.

6. The JAG is a 'Level 1' (candidates will be taught more about this in subsequent lessons in PO 005) similar to the other senior leaders in the CAF who report to the CDS. He sits on Armed Forces Council. However, his position is unique among the L1. He is a Governor-in-Council appointee (based upon the recommendation of the Minister). The only other Governor-in-Council appointee on Armed Forces Council is the CDS. Reporting to the Minister on matters of military justice and the performance of the JAG's duties, separates him from other L1. Again, this is to ensure that there is not undue command influence on the legal advice given by the JAG.

Interim Summary: Use the prepared PPT presentation to do a quick review of the material.

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PART 3 – BODY OF THE LESSON (Continued)

Stage 2: Relationships with Other Stakeholders

7. The JAG has command over the Office of the JAG in a manner similar to the command exercised by other L1 over their commands.

8. The JAG serves as the principal legal advisor to the CAF and DND on matters of military law. Although he is the "...senior legal officer of the CAF..." he also advises departmental decision-makers, including the Deputy Minister. Although the distinction between the CAF and DND will be the subject of lessons in other PO, it should suffice to explain that the CAF and DND function as the military and civilian components of the defence team. Consequently, both have need of advice on matters of military law; although advice to the former (the CAF) will often occupy the majority of the activities of the Office of the JAG.

9. In many ways, the role of the JAG may be likened to the role of an Attorney General as the Chief Legal Officer of a legislature and legal advisor to a government, though on a smaller scale.

10. The JAG is not the sole legal advisor to the CAF and DND. As s. 10.1 of the NDA clearly states, the Minister of Justice and the Department of Justice still have a role to play. The Department of Justice Legal Services Unit (LSU) assigned to the DND is the DND/CF Legal Advisor (DND/CF LA). The Department of Justice legal advisor who occupies the position of the DND/CF LA is typically a Senior General Counsel, and is presently occupied by Leigh Taylor.

11. DND/CF LA is headquartered in Ottawa and is comprised of directorates that provide legal advice to the DND and CAF in a manner similar to other LSU assigned to other federal departments. These areas include (but are not limited to):

a. Claims and civil litigation by and against the Crown, the application of the Financial Administration Act, as well as the proper application of the Treasury Board policy on claims and ex gratia payments;
b. Contracting, procurement, real property and intellectual property;
c. Human rights, including assisting DND/CF in preparing for hearings before the Canadian Human Rights Tribunal;
d. Official Languages;
e. Access to Information and Privacy;
f. Conflict of interest;
g. Labour relations and employment law;
h. Aboriginal matters;
i. Environmental law, including safety and unexploded ordnance; and
j. Pensions and benefits for civilian employees.

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12. In many cases, there are clear distinctions between the role of the DND/CF LA and the role of the JAG. However, in some instances, the distinction between the roles may not be clear, may be disputed, or may overlap. Consequently, there can be tension between the two legal advisory organizations. Two important considerations are relevant is such tension arises. First, effective leadership requires co-operation with other members of the Defence team in order to realize collective goals. Second, ultimately, it is the recipient of the legal advice, and not the legal advisor, who will determine the course of action.

13. **DMP and DDCS**. There are two specific statutory actors within the Office of the JAG who have statutorily determined roles: Director Military Prosecutions and Director Defence Counsel Services.

14. The structure of the Office of the JAG will be taught during EO 001.02. However, DMP and DDCS are both 'Deputies' within the Office of the JAG. Nevertheless, they have distinct statutory roles.

15. The appointment of DMP is provided for at s. 165.1 of the NDA. Like the JAG, DMP must be a barrister in good standing before the bar of a province for at least 10 years. DMP is also appointed for a term of not more than 4 years; however, DMP's appointment is 'during good behaviour'. The Minister may remove DMP for cause upon the recommendation of an Inquiry Committee, established under regulations made by the Governor in Council. Like the JAG, DMP may be re-appointed for subsequent 4-year terms.

16. DMP is responsible for preferring all charges for courts martial. DMP also acts as counsel to the Minister in respect of appeals. DMP also has the power to withdraw charges that have been preferred; however, once a court martial has commenced, this may only be done with leave of the court.

17. DMP acts under the general guidance of the JAG. The JAG has provided this guidance by way of JAG Policy Directive 008/00. The JAG may issue general instructions or guidelines in writing in respect of prosecutions. The JAG may also issue general instructions pertaining to a particular prosecution. In both cases, DMP is obliged to ensure that these instructions are available to the public.

18. In many respects, DMP is not unlike a Director of Public Prosecutions (or similar position), who generally reports to the Attorney General.

19. The appointment of DDCS is provided for at s. 249.18 of the NDA. Like DMP, DDCS is a barrister or advocate with at least 10 years good standing before the bar of a province and is appointed for a term of not more than 4 years during good behaviour. Interestingly, unlike DMP, there is no provision for a Committee of Inquiry to advise the Minister regarding removal of DDCS. In light of the 'adversarial' role that DDCS plays in the military justice system, this stands in marked contrast to DMP.

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20. As with DMP, the JAG may issue general instructions to DDCS regarding defence counsel services, and has done so via JAG Policy Directive 009/00. There is no statutory provision permitting the JAG to issue general instructions relating to a specific case. This is consistent with the need for a degree of institutional independence for defence counsel services.

21. Notwithstanding the statutory protections granted to DMP and DDCS, commentary, including the most recent 5-year review, has suggested that DDCS in particular requires additional protections.

22. The objective is to ensure that defence counsel from Defence Counsel Services are free to serve the interests of their individual clients (the accused appearing before courts martial) and that no undue influence affects their ability to do their job. One apparent concern is the potential chilling effect on careers of legal officers who are placed in a position that is adversarial to the will of the chain of command of the CAF. Defence counsel inherently act as advocates adverse to the position taken by DMP and the CAF chain of command.

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PART 4 – CONCLUSION

Summary: Review essential material from the whole lesson

Stage 1: Legislated role of JAG

Stage 2: Relationship between JAG and:

a. The Minister;
b. The Chief of the Defence Staff;
c. The CAF;
d. The Department of National Defence;
e. The Department of Justice, particularly DND/CF LA;
f. Director Military Prosecutions; and
g. Director Defence Counsel Services.

Confirmation: Done in a discussion format. Ask some confirmation question

Conclusion: recap while this lesson and material presented in important. Make a link from your introduction to the conclusion.

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PO 001 Explain the Roles and responsibilities of the Office of the JAG

PART 1 -- LESSON IDENTIFICATION

TITLE: EO 001.02 Explain the Organization of the Office of the JAG

Performance: Explain the roles and responsibilities of the Office of the JAG.

Conditions:

Given: Relevant factual context, legislation, policy, case law, reference materials.

Denied: Direct supervision

Standard. The legal officer shall describe how the organization of the Office of the JAG influences the legal officer's duties, functions and relationship with supported decision-makers in the CAF.

Main Teaching Points:

Method. This EO will be accomplished by a combination of Self-Study and Developmental Lesson. Students will be asked to read Module 2 on their own as it pertains to general concepts. Those concepts will be particularized to CAF context and expanded and discussed under instructor's guidance.

Duration. ½ a 40-minute period (to be combined with EO 001.01).

References. As per TP.

Training / Learning Aids.

Note to the instructor. A review of the main teaching points will then take place at the end of the periods, by Enabling Checks (EC).

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PART 2 – INTRODUCTION

Objective: The Legal Officer shall describe the organization of the Office of the JAG in order to understand how this organization influences the performance of the legal officer's duties.

Introduction: Introduce the lesson by emphasizing that, following upon the statutory basis of the JAG's role and responsibilities, the organization of the Office of the JAG is a second defining characteristic of a legal officer's role and duties.

Outline: The LOC instructor shall introduce the lesson outline

Stage 1: Organization of the Office of the JAG

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PART 3 – BODY OF THE LESSON

Stage 1: Organization of the Office of the JAG

23. **Introduction**: As taught in the previous EO, the JAG has command over all officers and NCM in the Office of the JAG. Although the JAG is considered a L1, similar to other Commanders of Commands, and notwithstanding that the CDS authorized the JAG to exercise the powers of a Commander of a Command, the Office of the JAG is not a Command. It is an element (or, more precisely, an 'other element') of the CAF.

24. Assisting the JAG with the leadership of the Office of the JAG are senior officers colloquially referred to as 'the Deputies'. This nomenclature is derived from the positions of several of these officers, which are titled Deputy Judge Advocate General or DJAG. However, not all 'Deputies' are DJAG. The deputies include:

a. DJAG Strategic (Strat);
b. Chief of Staff (COS) – JAG;
c. DJAG Military Administrative Law (MAL);
d. DJAG Military Justice (MJ);
e. DJAG Operations (Ops);
f. DJAG Regional Services (Reg Svcs);
g. Director of Military Prosecutions (DMP);
h. Director Defence Counsel Services (DDCS);
i. DJAG Reserves.

25. The JAG is also assisted by the JAG CPO1/CWO, a Senior Appointment who serves to advise and assist the JAG.

26. **DJAG Strat** is a recently created position and has minimal staff. DJAG Strat assists the JAG by providing strategic planning for the Office of the JAG.

27. **COS JAG** is principally responsible for the management of the Office of the JAG. The officer in this position is assisted by a Deputy COS (DCOS) and two Assistant COS (ACOS): one for training and tasks and one for personnel. COS JAG is responsible for the JAG General Office (GO), the Business Management Section, the Information Technology support section (which includes JAGNet Management, Performance Measurement Decision Support System (PMDSS), and other IT-related functions). COS JAG also serves as the commanding officer for the JAG Primary Reserve List (PRL) as well as legal officers posted to NDHQ other than those posed to the Canadian Military Prosecution Service (CMPS) and Defence Counsel Services (DCS).

28. **DJAG MAL** is responsible for the provision of legal advice on the range of administrative law issues. There are three directorates answering to DJAG MAL:

a. **D Law Admin Law**. D Law Admin Law is primarily responsible for advising the Director General Canadian Forces Grievance Authority

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(DGCFGA) on the CAF grievance process. This includes providing legal advice to the final authority, as well as advising DGCFGA on the administrative law issues arising from the management of the The Directorate of Law/Administrative Law (D Law/Admin Law) advises the Director General Canadian Forces Grievance Authority (DGCFGA) and the Chief of Defence Staff (CDS) on matters relating to applications for redress of grievance. This includes briefing DGCFGA and its staff at training sessions. D Law/Admin Law is also responsible for instructing Department of Justice counsel in applications for judicial review of CDS and DGCFGA decisions and for co-ordinating with the DND/CF Legal Advisor, Director Claims and Civil Litigation (DCCL) concerning grievances that have claims implications. The Directorate advises and assists in the preparation of amendments to Ministerial Organization Orders (MOOs) and Canadian Forces Organizational Orders (CFOOs). D Law/Admin Law also advises the Administrative Investigation Support Centre (AISC) on Boards of Inquiry (BOI) and Summary Investigations (SIs);

b. **D Law/CBP&E**. The Directorate of Law/Compensation, Benefits, Pensions and Estates (DLaw/CBP&E) provides legal advice to NDHQ authorities on legislation, regulations and policies relating to financial and pension matters. This legal advice is provided mainly to the Director General Compensation and Benefits (DGCB) on all aspects of compensation and benefits for CF members, including: policy development, the drafting of regulatory instruments and submissions to the Treasury Board, the administration of compensation and benefits, and the adjudication of financial-related grievances submitted by CF members. D Law/CBP&E also advises on the application of the Canadian Forces Superannuation Act, the Garnishment, Attachment and Pension Diversion Act and the Pension Benefits Division Act. Finally, the Estates and Elections section of DLaw/CBP&E administers the pay, allowances, gratuities, personal property and other elements that comprise the service estate of deceased CF members. The section also administers the voting of CF members under the Special Voting Rules in Part II of the Canada Elections Act during federal general elections and provide a general advisory service in the form of CANELECTGENs for all provincial general elections.

c. **D Law/Mil Pers**. The Directorate of Law/Military Personnel (D Law/Mil Pers) provides legal advice on the development and application of personnel policies and orders that impact CF members. Legal Officers in DLaw/Mil Pers play an important role in the modernization of military personnel policies, ensuring that the principles of administrative law are taken into account and that proposed policies comply with the legislative framework applicable to the CF. They also provide advice regarding the potential impact of new policies on the existing policy framework

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governing the administration of the CF. DLaw/ Mil Pers also provides legal advice on the application of existing personnel policies and orders in areas such as recruiting, promotion, administrative reviews for conduct or performance deficiencies and release.

29. **DJAG MJ**'s principal role is to advise on the Code of Service Discipline, including amendment and implementation of legislative changes. This Division is comprised of two directorates: Directorate of Law / Military Justice Strategic and Directorate of Law / Military Justice Ops.

a. D Law/MJ Strat is responsible for legislative initiatives;

b. D Law/MJ Ops is responsible for current advisory activities in Military Justice.

30. **DJAG Ops** is responsible for the provisions of legal advisory services to deployed operations as well as to those Commands and other elements responsible for the planning and conduct of operations. The directorates and offices within this Division include:

a. The Strategic Joint Staff Legal Advisor (SJS LA);

b. The Canadian Joint Operations Command Legal Advisor (CJOC LA). The legal advisors to Canadian Special Operations Command (CANSOFCOM) fall within this office;

c. The Directorate of International and Operational Law (DIOL); and

d. The Directorate of Law for Intelligence and Information Operations (D Law/I&IO).

31. The legal officer seconded to the Privy Council Office also reports to DJAG Ops.

32. **DJAG Reg Svcs** is the largest division, by number of legal officers, within the Office of the JAG. DJAG Reg Svcs is responsible for the day-to-day legal advice to the bases, units and formations across the CAF. All Assistant Judge Advocates General (AJAG) report to DJAG Reg Svcs, including:

a. AJAG Pacific (Esquimalt);

b. AJAG West (Edmonton);

c. AJAG Prairie (Winnipeg);

d. AJAG Central (Toronto);

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e. AJAG Easten (Montreal);

f. AJAG Atlantic (Halifax); and

g. AJAG Europe (Geilenkirchen).

33. DJAG Reg Svcs is responsible for all base Deputy Judge Advocates through their respective AJAG. DJA Ottawa reports to DJAG Reg Svcs through the Assistant DJAG Reg Svcs. Approximately 25% of all Regular Force legal officers fall within DJAG Reg Svcs. Most large bases have two DJA assigned to them, and the very large bases with multiple formation HQ (e.g. Esquimalt, Edmonton, Halifax) have multiple DJA.

34. **DMP** is responsible for the CMPS and for preferring all charges for courts martial, for the prosecution of offences at court martial and for advising the Minister and representing the Crown on appeal. DMP is assisted by Deputy DMP (at the rank of LCol) for each of four regions.

35. **DDCS** is responsible for representing accused at courts martial and performs these duties at arm's length from other legal advisors within the Office of the JAG.

36. **DJAG Reserves** is the senior Reserve Force legal officer. Although DJAG Reserves is responsible for representing Reserve Force legal issues at the 'JAG and Deputies table', Res F legal officers have functional chains of command within the Office of the JAG. For example, Res F legal officers on the establishment of DDCS, report to DDCS in the performance of their duties. Each AJAG in Regional Services has a Deputy AJAG who is a Res F LCol. All Res F DJA within a region report to DJAG Reg Svcs through their Res F Deputy AJAG. As noted above, COS JAG, not DJAG Reserves, is the CO of the JAG PRL.

Interim Summary: Use the prepared PPT presentation to do a quick review of the material.

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PART 4 – CONCLUSION

Summary: Review essential material from the whole lesson

Confirmation: Done in a discussion format. Ask some confirmation question

Conclusion: recap while this lesson and material presented in important. Make a link from your introduction to the conclusion.

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PO 001 – EXPLAIN THE ROLES AND RESPONSIBILITIES OF THE OFFICE OF THE JAG

PART 1 -- LESSON IDENTIFICATION

TITLE: EO 001.03 Explain the relationships between the Office of the JAG and supported commanders.

Performance: Explain the relationship between the Office of the JAG and supported commands, formations, units, and other elements of the CAF.

Conditions:

> **Given**: Relevant factual context, legislation, policy, case law, reference materials.
>
> **Denied**: Direct supervision

Standard. The legal officer shall describe how the organization of the Office of the JAG influences the legal officer's duties, functions and relationship with supported decision-makers in the CAF.

Main Teaching Points:

1. Nature of Commands, formations, units and other elements of the CAF;
2. Nature of the independence of the JAG in relation to Commands, formations, units and other elements of the CAF.

Method. This EO will be accomplished by a combination of Self-Study and Developmental Lesson. Students will be asked to read Module 2 on their own as it pertains to general concepts. Those concepts will be particularized to CAF context and expanded and discussed under instructor's guidance.

Duration. One 40-minute period.

References. As per TP.

Training / Learning Aids.

Note to the instructor. A review of the main teaching points will then take place at the end of the periods, by Enabling Checks (EC).

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PART 2 – INTRODUCTION

Objective: The Legal Officer shall describe the relationship between the Office of the JAG and the commands and commanders it supports in order to understand how these relationships influence the performance of the legal officer's duties.

Introduction: Introduce the lesson by emphasizing that a lack of understanding of the relationship between the Office of the JAG and the commands and commanders it supports will invariable adversely affect the provision of legal advice and support.

Outline: The LOC instructor shall introduce the lesson outline

Stage 1: Describe the nature of Commands, formations, units and other elements of the CAF.

Stage 2: Explain the nature of the independence of the JAG (and Office of the JAG) relative to Commands, formations, units and other elements of the CAF.

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PART 3 – BODY OF THE LESSON

Stage 1: Nature of Commands, formations, units and other elements

37. **Introduction**: The legislative and policy bases for the creation or recognition of commands, formations, units and other elements of the CAF will be taught in greater detail in PO 005. Regarding the role of the JAG and Office of the JAG, candidates must be aware of the hierarchical structure of the CAF. This will have been taught, in a basic form, during initial officer basic training. Consequently, this lesson should be principally a recap of that information, with additional explanation of the relationship between the JAG and Office of the JAG and other CAF organizations.

38. The largest organizations in the CFA are the commands. These are commanded by senior officers (typically Lieutenant-Generals and Major-Generals). These are sometimes referred to as Level 1 (or L1) commands. They typically include one or more subordinate formations, which, in turn, are comprised of two or more units each. These commands may also include units whose CO are responsible directly to the commander of the command.

39. Pursuant to subs. 17(1) of the *NDA*, the CAF "...shall consist of such units and other elements as are from time to time organized by or under the authority of the Minister." Pursuant to subs. 17(2) these units, etc. shall be embodied in a component of the CAF, such as the Regular Force or the Reserve Force. The Minister organizes such units, formations and commands through Ministerial Organizational Orders (MOO). The CDS, acting the authority of subs. 18(1) of the NDA for the control and administration of the CAF, amplifies these orders through Canadian Forces Organizational Orders (CFOO).

40. CFOO identify the officer to whom a commanding officer or commander of a formation is responsible for discipline and administration. The CFOO thereby creates the "chain of command". It is this chain of command that is supported by the legal advisors within the Office of the JAG (with the exception of Defence Counsel Services).

41. Often, when people think of military forces such as the CAF, they think of units like infantry battalions, fighter squadrons or frigates. They may even think of the higher headquarters (which are also typically created as units) that serve as the command and control mechanisms for such units. However, there are 'other elements' of the CAF other than these examples of operational or field forces. Many of these other elements can be found in National Defence Headquarters (NDHQ) or on various Canadian Forces Bases (CFB).

42. These 'other elements' play a crucial role in the control and administration of the CAF on behalf of the CDS. Consider the following elements: Director General Compensation and Benefits (DGCB), Director General Canadian Forces Grievance Authority; or the Strategic Joint Staff (SJS). None of these are units (including headquarters), yet they are consumers of legal advice from the Office of the JAG.

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43. There is also no segment of the CAF which does not require and receive – even if only occasionally – advice from the Office of the JAG.

44. Who is the client? A straight reading of s. 9.1 of the *NDA* would tell us that the Governor General, the Minister, the CAF and the DND are the clients. But that's a lot of people, and, although generally, all four entities serve a common purpose under the NDA, some of those people that comprise the CAF and DND may have interests that come into conflict. Understanding the nature of the organization is the first step in understanding a legal officer's role within it.

45. Although in many cases, legal advice will be destined for commanding officers or commanders, these are not the sole personnel with whom legal advisors will interact. As will be demonstrated in subsequent lessons under MAL and MJ, the CO is often the central figure in the administration of units, including, but not limited, the administration of military justice. However, the CO often has the authority to delegate powers or functions. Legal advisors may find themselves advising officers commanding sub-units or other delegated officers. They may also find themselves advising NCM in supervisory positions.

46. By advising subordinate leaders or delegated decision-makers, a legal advisor is supporting the CO or commander, if indirectly. Instead of advising the CO in the exercise of the CO's powers or functions, the legal advisor advises the CO's delegate in the exercise of delegated powers or functions. This includes advising on whether such powers can be, and have been, delegated. By advising the chain of command, the legal advisor is advising the CO or commander.

47. In addition to persons who exercise command functions, legal advisors will also advise 'staff'. This term has a very specific meaning (and connotation) in military organizations. Commanders (at all levels) lead; however, much of the planning and administration in any military organization is completed by staff. Technically, staff do not perform a direct leadership function; however, leaders (particularly at more senior levels in formations) would not be able to lead effectively without the assistance of staff.

48. The detailed roles of staff will be described under PO 022 as part of the Operational Law Module. Generally, the staff with whom legal officers will interact will fill one of three broad categories: personnel administration or support, operations, or planning. Within units, staff who deal with personnel administration are often referred to as Adjutants, Personnel Administration Officers, Unit Administration Officers or similar titles. Operational staff officers will be called Operations Officers (Ops O), possibly Battle-Captains, J-3/N-3/G-3/A-3. Similarly plans officers will be referred to as Plans O or even J-5/N-5/G-5/A-5.

49. Within headquarters, the NATO or continental staff system is used with an alpha-numeric coding. The letter will indicate the environment: J-Joint, N-Naval, G-General (Army) or A-Air Force. The number designates the nature of the position: 1-Personnel

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Administration; 2-Intelligence, 3-Operations, 4-Logistics, 5-Plans, 6-Comminications/IS, 7-Training, 8-Finance, 9-Civil-Military Co-operation.

50. Legal advisors advise staff in order to assist the staff in supporting their commander. In so doing, the legal adviser is supporting the commander. However, this does not alter the direct relationship that a legal advisor has with a commander. The LegAd's relationship with the staff is discussed in the second part of this lecture.

Interim Summary: Use the prepared PPT presentation to do a quick review of the material.

Stage 2: Nature of the Independence of the JAG and Office of the JAG

51. A DJA or unit legal advisor is not providing his or her own particular view of the application of the law. The rationale behind QR&O 4.081, read in conjunction with s. 9.1 of the *NDA*, is that a legal officer is providing legal advice on behalf of the JAG. The JAG is expressly named in statute as the legal advisor to, among others, the Canadian Forces. Practically, the JAG cannot advise all decision-makers. Consequently, legal officers are posted to the Office of the JAG to provide legal advice on behalf of the JAG. By ensuring that those legal officers "... whose duty is the provision of legal services to the Canadian Forces..." are posted to the Office of the JAG ("... shall be posted to a position established within the office of the Office of the Judge Advocate General"), an un-broken relationship is established.

52. This is further reinforced under QR&O 4.081(4): "The duties of a legal officer posted to a position established within the Office of the Judge Advocate General are determined by or under the authority of the Judge Advocate General and, in respect of the performance of those duties, a legal officer is not subject to the command of an officer who is not a legal officer."

53. The significance of this provision is broader than simply establishing that 'a supported commander cannot dictate what the legal advisor's advice is.' It also means that a legal advisor chooses, subject to direction from the JAG and other supervisors within the Office of the JAG, the scope of the legal advice, when to provide legal advice and when to query circumstances that may require legal advice.

54. The term 'Tech Net' is a common colloquialism in the CAF. It refers to a technical network and is drawn from communications parlance. Many commanders and staff will refer to a 'tech net' as distinct from a chain of command. For example, a brigade commander gives orders to his subordinate CO, and each CO, in turn, issues orders to subordinate Officers Commanding (OC) sub-units. However, in parallel to such 'command nets', technical specialists may co-ordinate details to ensure that the execution directed by commanders is feasible. Thus a Brigade G4 Maint may communicate in parallel to a unit Maintenance Officer (Maint O).

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55. Commanders might refer to the communication between a unit legal advisor and a supervisory legal officer (e.g. an AJAG) as the 'tech net'. This is incorrect. This is represents our 'command net'. The chain of command for a legal officer whose duty is to provide legal advice is the chain of command within the Office of the JAG.

56. Unit legal advisors such as DJA are not posted to the establishment of the units they support. The legal advisor to 1 RCR is not posted to 1 RCR and CO 1 RCR is not that legal officer's CO. A legal advisor in D Law/Admin Law is not posted to DGCFGA. This ensures independence – and, hence, reliability – of the legal advice. Physical proximity to a supported unit, etc. does not equate to being posted onto that unit's establishment. DJA Trenton is physically part of CFB Trenton and receives some support from the Base; however, that legal officer is not part of 8 Wing or CFB Trenton.

57. A unit legal advisor must use his or her their legal knowledge and skills to support a commander's intent, including finding mission-oriented, operationally-focused legal solutions to the challenges or issues that a commander faces. However, a legal officer must not compromise legal principles (or professional principles) in providing that advice.

58. We can use the LegAd to 1 RCR as an example. Normally, DJA Petawawa is the LegAd to 1 RCR. DJA Petawawa is responsible to AJAG Central. AJAG Central is responsible to DJAG Regional Services. DJAG Regional Services is responsible to the JAG. At each level, those respective legal advisors will be responsive to each level in the chain of command. DJA Petawawa will advise, and is responsive to, CO 1 RCR and (save in certain circumstances), Comd 2 CMBG. AJAG Central advises, and is responsive to, Comd 4th Canadian Division. DJAG Reg Svcs advises, and is responsive to, the Comd of the Army. Often, but not always, the internal chain of command within the JAG will mirror the chain of command of supported CO/Comd.

59. Consequently, the performance of DJA Petawawa is not evaluated by CO 1 RCR. There are two good reasons for this: First, CO 1 RCR is not a lawyer and does not have sufficient appreciation for the nature of the duties of DJA Petawawa to evaluate whether the DJA has a sufficient understanding of the law. Equally importantly, if CO 1 RCR (or any other CO or Comd advised by DJA Petawawa) were DJA Petawawa's immediate superior, this could have a chilling effect on legal advice or otherwise alter the merit of the legal advice given by the DJA. It could create a situation where the legal advisor would tell a CO what the CO would like to hear, not what the CO needs to hear.

60. On occasion, legal advisors are referred to as 'staff'. This is imprecise. The staff in a HQ is not only responsive to a commander, the members of the staff are obliged to exercise their functions subject to his direction – or, more accurately, that of the Chief of Staff or their staff principal (the senior person in a staff branch). Such a relationship would improperly fetter a legal advisor. The legal advisor must be free to exercise his or her discretion to advise the Comd as necessary, not solely when the Comd wishes.

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61. A LegAd takes his or her direction from the next senior legal officer in the chain of command. For example, the LegAd (or, if more than one, the senior LegAd) for a Joint Task Force will take direction from DJAG Ops, communicated through CJOC Legal. A LegAd is distinct from, but works closely with, the staff. Consequently, while the COS is the link between the staff and the Commander, that is not the case with the LegAd. The COS should not interpose him- or herself between the Commander and the LegAd.

62. Nevertheless, although the LegAd is distinct from the staff, the LegAd must work closely with all members of the staff and only a foolish LegAd would unnecessarily alienate him- or herself from the staff, particularly the COS. The relationship with the staff – in particular the COS – can be a tricky proposition for an inexperienced LegAd. The COS is accustomed to being the conduit between a Commander and his or her staff and it is not uncommon for a COS, at the outset of an operation or when a LegAd first arrives at a Headquarters, to indicate to the LegAd that the LegAd will advise the Commander through the COS.

63. As with any similar circumstance, the LegAd's response will vary according to a variety of factors, including prior working relationships between key persons as well as their particular personalities. However, certain explanations or approaches are common effective mechanisms for dealing with such potential barriers:

a. First, the LegAd should avoid 'negative' language. In lieu of responding to a COS by saying: "No sir, I won't be going through you to advise the Commander," a LegAd could state: "Sir, my role is to provide timely, solution-oriented, mission-focused legal advice to the right person, at the right time. Sometimes this will be a staff officer or staff principle. Sometimes it will be you. And sometimes it will be the commander. However, it falls to me as the legal advisor to identify the right person and the right moment. I would not presume to interrupt the staff battle rhythm or monopolize the Commander's time; however, I must ultimately have reasonably unfettered access to the commander." By explaining his role, the LegAd can minimize resistance (or interference) by the COS;

b. Second, as demonstrated in the brief 'dialogue' above, the LegAd should take the opportunity, from time to time, to remind commanders, COS, and staff principals of the statutory role of the JAG and the role of the LegAd who is posted to the establishment of the Office of the JAG; and

c. A LegAd who intends to assert his or her role within a Headquarters is greatly aided by a sufficient understanding of the role of key people in the HQ. If a LegAd intends to tell (diplomatically) a COS that the COS is incorrect in asserting that the LegAd must go through the COS to advise the commander, the LegAd would be better positioned to do so if the LegAd understood the basic functions of the COS. It is also useful for the LegAd to have an understanding of the staff process. Consequently, this will be taught during the OpLaw Module.

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64. This independence of legal advice enhances the reliability and credibility of the advice. A commander can have a high level of confidence in the legal advice received from an independent legal advisor (all other factors being equal) because of the presumption that the legal advisor is not attempting to curry favour with the legal advisor's supervisor (or the person evaluating his performance).

65. This does not mean that a supported commander cannot provide the legal advisor (or the legal advisor's supervisor) with feedback. Clear and honest communication between a legal advisor and supported commander is vital to ensuring effective and efficient legal advice. A commander must understand the advice given and an effective legal advisor must be prepared to adjust the manner of advising a commander if there are barriers to communication.

66. Notwithstanding the legislated 'arm's-length' relationship between a legal advisor and a supported commander, the independence of the legal advisor is not an absolute guarantee that legal advice cannot be influenced by this relationship. Two examples illustrate this limitation:

a. Legal advisors often deploy singly or in pairs, depending upon a mission. Even with comprehensive and complex missions, such as we experienced in Kandahar, Afghanistan, where multiple legal officers were deployed, each legal officer was assigned to one or more units. These deployed legal advisors are often reliant upon the supported unit for many of their requirements: transportation, office space, accommodations. In those circumstances, there can be a risk that legal officers may wish to ingratiate themselves in order to either obtain more advantageous support or to avoid having existing support marginalized; and

b. Second, most supported CO and commander will provide feedback to a legal advisor's supervisor within the Office of the JAG. This should be encouraged, since supported commanders tend to see more of a legal advisor than their supervisors do. However, where a commander is not happy with legal advice – not because the legal advice is deficient, but because the commander is frustrated with the extent of his or her powers or jurisdiction – the commander could conceivably provide adverse feedback to the legal advisor's supervisor.

67. These two examples demonstrate potential, though subtle, pitfalls for a legal adviser. Although clumsy and overt measures to influence legal advice are not likely a danger for reasonably intelligent, aware and ethically confident legal officers, it is possible for supported commanders (or their subordinates) to influence (or attempt to influence) a LegAd's function by exerting pressure on stressors within their control.

68. One of the principal challenges for a LegAd is to balance (and maintain) both his or her independence (from the supported chain of command) in the provision of legal

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advice while sufficiently integrating him- or herself into the supported unit or headquarters in order to develop the level of trust and acceptance that is necessary in order to meet the JAG's mission of providing timely, solution-oriented, and mission-focused advice.

Interim Summary: Use the prepared PPT presentation to do a quick review of the material.

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PART 4 – CONCLUSION

Summary: Review essential material from the whole lesson

Confirmation: Done in a discussion format. Ask some confirmation question

Conclusion: recap while this lesson and material presented in important. Make a link from your introduction to the conclusion.

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PO 002 – PROVIDE LEGAL SERVICES IAW JAG POLICY DIRECTIVES

PART 1 -- LESSON IDENTIFICATION

TITLE: EO 002.01 – Explain the general duties of a legal officer

Performance: Explain the general duties of a legal officer.

Conditions:

Given: Relevant factual context, legislation, policy, case law, reference materials.

Denied: Direct supervision

Standard. The legal officer shall explain how the legislated roles and responsibilities of the JAG and Office of the JAG influences how the legal officer will provide legal services to the CAF.

Main Teaching Points:

1. Duties of a base or unit legal advisor
2. Duties of a legal advisor in a Directorate within the Office of the JAG
3. Role and responsibilities of defence counsel (within DCS)
4. Role and responsibilities of a prosecutor within the CMPS.

Method. This EO will be accomplished by a combination of Self-Study and Developmental Lesson. Students will be asked to complete preliminary reading prior to the commencement of classroom instruction. Those concepts will be particularized to CAF context and expanded and discussed under instructor's guidance.

Duration. 1 x 40-minute period

References. As per TP.

Training / Learning Aids.

Note to the instructor. A review of the main teaching points will then take place at the end of the periods, by Enabling Checks (EC).

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PART 2 – INTRODUCTION

Objective: The Legal Officer shall describe the general duties of a legal officer, thereby demonstrating knowledge of how the legal officer will provide legal services to the CAF.

Introduction: Introduce the lesson by emphasizing that the general duties of a legal officer are ultimately drawn from the statutory basis of the JAG's role and responsibilities through the regulatory relationship between legal officers and the JAG.

Outline: The instructor shall introduce the lesson outline

Stage 1: Duties of a base or unit legal advisor

Stage 2: Duties of a legal advisor within an OJAG Directorate

Stage 3: Duties of defence counsel

Stage 4: Duties of a prosecutor

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PART 3 – BODY OF THE LESSON

Stage 1: Duties of a base or unit legal advisor

1. **Introduction**: One of the most common duties assigned to a legal officer – particularly a relatively junior legal officer – is that of a base Deputy Judge Advocate. The origins of this name date back to the early years of the Judge Advocate General and the Office of the Judge Advocate General. Ranks were associated with titles: a colonel was a Deputy Judge Advocate General, a lieutenant-colonel was an Assistant Judge Advocate General, a major was a Deputy Judge Advocate and a captain was an Assistant Deputy Judge Advocate. In the early part of the 20th Century, including the two World Wars, legal officers often served as the legal advisor to courts martial in the capacity of the court 'Judge Advocate'. This particular role has now evolved into that of a military judge. However, the name 'Deputy Judge Advocate' evolved from both the role of the Judge Advocate and the title associated with the legal officers who performed duties on behalf of the JAG.

2. Commanders, CO and other supported decision-makers will use a variety of names (and misnomers) to describe their legal advisor. The abbreviation 'LegAd' (for Legal Advisor) is a useful name. It is consistent with NATO terminology and is generally one most decision-makers can understand and remember. Many legislative provisions refer to a 'unit legal advisor'. In garrison, this will typically be the Deputy Judge Advocate or DJA. The nature of a DJA's day-to-day work will vary with the nature of the base, and the units established at that base, which the DJA supports.

Body of the Lesson

3. A DJA can be described as a corporate legal advisor for a specific portion of the CAF. These duties are delineated less by subject matter than by geography. Depending upon the nature of a base, there may be a preponderance of certain types of legal issues; however, a DJA can be regarded as a generalist. For example, a DJA at CFB Esquimalt, particularly one assigned to support the Pacific Fleet or elements thereof, will have a degree of focus on the law relating to maritime operations. However, a DJA must be prepared to address a broad spectrum of legal issues that can arise. Common subject areas include (but are not limited to):

a. Under Military Administrative Law:

i. Administrative and Remedial measures;

ii. Compensation and benefits issues;

iii. Complaint resolution (including grievances, harassment complaints, and potential litigation);

iv. Crown Liability;

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b. Under Military Justice:

i. Disciplinary investigations;

ii. Charge laying;

iii. Summary trials;

iv. Referrals to courts martial;

c. Under Operational Law:

i. Bases for deployment of forces and use of force;

ii. Rules of engagement (ROE) and self-defence;

iii. Distinctions between international and domestic operations.

4. A DJA or unit legal advisor will generally perform his or her duties alone or paired with another legal advisor. This does not mean, however, that a DJA or unit legal advisor performs his or her duties in isolation. A DJA must have a broad understanding of all three principal 'Pillars' of military law; however, a DJA is not expected to be an expert in all areas of law. A DJA must be prepared to consult with colleagues and to seek direction and confirmation from their supervisors (typically an Assistant Judge Advocate General (AJAG) for the region). Through the AJAG, a DJA can seek assistance from legal advisors who specialize in specific areas of law.

5. QR&O 4.081 describes a fairly concise role for legal advisors: provide legal advice to the Canadian Forces. This can be likened to an 'express task'. However, included within this express task are several 'implicit tasks'. In order to be effective, a legal officer must:

a. Possess a reasonably detailed knowledge of the composition of the Office of the JAG and DND/CF LA. A unit legal advisor is not expected to be able to answer every legal question that is asked or arises. Unit legal advisors are individual members of a large, well-educated and skilled team of legal professionals. However, a legal advisor should have a good understanding of where to turn for support;

b. Know and understand the supported commanders. The provision of legal advice is not simple arithmetic. It is a form of advocacy. Legal advisors influence decision-making not only through the content of their advice, but also the manner by which they provide advice. Most commanders and decision-makers in the CAF attained a senior position based upon skill, knowledge and a strong personality. If a legal advisor does not have an adequate knowledge and appreciation of the commanders' personalities

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and capacity to apply legal advice, the legal advisor will not be as effective as otherwise possible;

c. Be known by the supported commanders. If a legal advisor is not known – and trusted – by a supported commander, he or she will not be an effective advisor. A unit legal advisor is not an electronic mailbox. One of the first things that a unit legal advisor should do, upon arriving at a base or unit, is to meet the key decision-makers who the legal advisor will support. Ideally, this will be done in person, at each commander's (or decision-maker's office). This meeting should be relatively brief, but will permit the legal advisor to introduce him- or herself and provide the supported commander with a general idea of expectations;

d. Have at least a basic understanding of the roles of the supported units, formations and other elements. This knowledge will inform the legal advisor of the common types of legal issues that will arise as well as the units' means to implement advice. If a legal advisor intends to advise multiple and varied units, the legal advisor has to know and understand – even if only at a basic level – what those units do; and

e. Develop an appreciation for supported units' priorities. Various levels of leadership within the Office of the JAG will impose certain priorities on unit legal advisors. Unit legal advisors will be expected to prioritize the work of their office in order to function effectively. This will require the legal advisor to balance both the priorities arising within the Office of the JAG and those of their supported units (as well as the legal advisor's own personal priorities). The former will often be explicitly described (or directed). A legal advisor's knowledge and understanding of the latter will be dependent upon the level of the legal advisor's engagement with those units.

6. Finally, the implication of QR&O 4.081 is that the legal advisors posted to the establishment of the Office of the JAG must speak with one voice. Where a legal issue is common and has been the subject of regular legal advice, this is often not difficult to achieve. In such cases, there will be similar legal advice upon which a unit legal advisor can rely and there will often be specific direction from the JAG, DJAG or AJAG concerning the appropriate advice in such circumstances. However, singular incidents can arise, resulting in (or necessitating) novel legal approaches or analysis. When approaching such circumstances, unit legal advisors must remember that their advice to the unit is not just the legal advisor's personal advice.

7. A significant part of the credibility of individual legal advisors, and of the Office of the JAG generally, is tied to the consistency of advice. It is not uncommon for supported commanders, staff and other recipients of legal advice from the Office of the JAG to 'shop' for advice: i.e. they will ask different legal advisors, sometimes presenting facts in a different perspective or stressing different facts, in order to obtain advice that

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they view as more 'favourable'. Although such tactics can be disingenuous, they are, in part, predicated upon systemic weaknesses in the presentation of consistent advice.

8. Consequently, when a unit legal advisor is faced with a unique or contentious issue, it can be advantageous to consult with colleagues and supervisors. There are several advantages to such consultation:

a. Other legal advisors may have encountered similar circumstances;

b. Other legal advisors may have particular knowledge or experience that would inform the advice; and

c. It raises awareness of the particular issue on a broader scale.

9. The last of these points is particularly important. Where novel issues or legal advice arises, it is vital that legal advisors push such information up the JAG chain of command. Notwithstanding that greater use of JAGNet applications will improve both knowledge management and knowledge sharing, it is incumbent upon unit legal advisors to raise issues with their chain of command to improve the consistency of the legal advice from the Office of the JAG.

Interim Summary: Use the prepared PPT presentation to do a quick review of the material.

Stage 2: Duties of a Legal Advisor within an OJAG Directorate

10. The other common role for a relatively junior legal officer is staff within a directorate within the Office of the JAG, typically at NDHQ. Whereas the role of unit legal advisors is generally described geographically (or by the units advised), a directorate will be defined by the nature of the legal issues on which they advise. The Directorate of Law – Compensation, Benefits, Pensions and Estates advises, not surprisingly, on the full range of financial compensation and benefits for the CAF. The Directorate of International and Operational Law provides strategic legal review of issues arising under international and operational law.

11. In comparison with DJA and unit legal advisors, who tend to work singly or in pairs, legal advisors assigned to Directorates within the Office of the JAG work in teams of (generally) between 4 and 8 legal officers. Although such legal advisors may be assigned specific files (issues, topics, projects) in which there is a significant amount of individual effort, they generally work in greater physical proximity to a larger number of legal advisors than unit legal advisors or DJA.

12. Whereas unit legal advisors and DJA will typically provide advice on individual incidents, circumstances or issues (what some might loosely describe as 'tactical advice'), the legal advisors in Directorates often provide advice on policy development

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or broad, far-reaching issues. This can be likened to 'strategic' legal advice. Whereas unit legal advisors often advise CO and the subordinate commanders and staff for whom a CO is responsible, Directorate legal advisors provide advice to staff officers within Commands (often referred to a Level 1 or L1 organizations).

13. The seniority of the legal advisor will generally, but not always, determine the level at which advice is given. A general rule of thumb is as follows:

a. The JAG advises the Minister, CDS and DM personally;

b. The appropriate DJAG advises a L1 or L2 Commander (e.g. DJAG MAL would advise CMP on development of Personnel policy);

c. A Director would advise a Director General or similar position one level lower than the Commander of a Command; and

d. A legal advisor within a directorate would advise a Director or other staff officer within a staff organization.

14. The foregoing is a very broad rule of thumb, and each Director, AJAG and DJAG will have specific direction for their subordinates. What is vital within the functioning of a legal directorate is consistency of advice. The credibility of the Office of the JAG and any component thereof would be adversely affected if our legal advice – which is provided on behalf of the JAG – were constantly shifting.

Interim Summary: Use the prepared PPT presentation to do a quick review of the material.

Stage 3: Duties of Defence Counsel

15. The provisions relating to the appointment of DDCS – s. 249.18 of the *NDA* – have a similar effect for defence counsel as QR&O 4.081 has for legal advisors generally. Although the JAG may issue general instructions to DDCS regarding defence counsel services (and has done so via JAG Policy Directive 009/00), there is no statutory provision permitting the JAG to issue general instructions relating to a specific case. This is consistent with the need for a degree of institutional independence for defence counsel services.

16. The objective is to ensure that defence counsel are free to serve the interests of their individual clients (the accused appearing before courts martial) and that no undue influence affects their ability to do their job. Unlike unit legal advisors or those in a Directorate within the Office of the JAG, whose 'client' is the CAF and DND (on behalf of the JAG), the clients for defence counsel are the individual accused (or others who face action under the Code of Service Discipline). This is the only person who instructs defence counsel.

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17. The Mission for Defence Counsel Services is to provide the legal services prescribed at QR&O art. 101.20(2) to persons subject to the Code of Service Discipline, including those who are charged or liable to be charged under that Code. These services include:

a. Provision of legal advice to a person arrested or detained in respect of a service offence;

b. Provision of legal counsel to an accused person where there is reasonable grounds to believe the accused person is unfit to stand trial;

c. Provision of legal advice of a general nature to an assisting officer or accused person on matters relating to summary trials;

d. Provision of legal advice with respect to the making of an election to be tried by court martial;

e. Provision of legal counsel in respect of a bail hearing before a military judge;

f. Provision of legal counsel to an accused person which includes:

i. representation at a court martial;

ii. representation for release pending appeal;

iii. representation at a hearing as to the sufficiency of evidence to put an accused person on trial where a finding of unfit to stand trial has been made; and

iv. representation in respect of an application to a referral authority made in accordance with Queen's Regulations and Orders article 109.03;

g. Provision of counsel, where the Minister of National Defence appeals the legality of a finding or sentence or the severity of a sentence awarded by a court martial;

h. Provision of legal counsel to a person on an appeal or an application for leave to appeal under sections 230 or 245 of the *National Defence Act* with the approval of the Appeal Committee established under article 101.21 of the Queen's Regulations and Orders; and

i. Provision of legal advice to a person who is the subject of an investigation under the Code of Service Discipline, a summary investigation or a board of inquiry.

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18. As with any legal office, there are limits to which all of these roles may be filled, and priorities and necessity will dictate the assignment of cases. In addition to the cadre of approximately 8 x Regular Force legal officers plus approximately 4 x Reserve Force legal officers, DDCS may, from time to time, contract with civilian counsel to augment defence counsel services. One of the circumstances that might give rise to such a measure is the prosecution of multiple accused in relation to the same offence(s). DDCS can contract with civilian counsel to avoid an appearance of conflict of interest if the interests of the different accused are in conflict.

19. Defence counsel services are provided in the official language of the client's choice and in a manner that allows the client to clearly understand the disciplinary process. There are many points during the disciplinary process when clients must make certain choices and give instructions to their lawyer on how their defence should be conducted. The aim of defence counsel is to ensure that these choices are informed choices.

20. Where an officer or NCM has been charged with a Code of Service Discipline offence and has either elected court martial or a CO has referred the matter for court martial, the accused must prepare a memorandum addressed to the accused's commanding officer requesting military defence counsel. Defence counsel will normally be appointed once the request and the Record of Disciplinary Proceedings, including election of language of trial have been received at Defence Counsel Services. The Director of Defence Counsel Services always endeavors to appoint counsel in a timely fashion so as not to compromise the right of an accused person to a full answer and defence.

21. Additionally, defence counsel are responsible for maintaining a duty system whereby defence counsel can be contacted by those who require such support at all times. Consequently, bilingualism is an asset.

Interim Summary: Use the prepared PPT presentation to do a quick review of the material.

Stage 4: Duties of Prosecutors

1. This lesson is not intended to provide a detailed review of the duties of a prosecutor. Legal officers posted to the Canadian Military Prosecution Service will receive additional training and guidance from Director Military Prosecutions (DMP) concerning their duties. However, broadly, prosecutors will perform the following duties:

a. Advise the NIS concerning evidentiary sufficiency relating to investigations;

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b. Consultation with unit legal advisors where charges will, or will likely, result in courts martial;

c. Screen cases for trial and prosecute those cases before courts martial;

d. Conduct appeals in the Court Martial Appeal Court (CMAC) and possibly the Supreme Court of Canada;

e. Assist with the development of prosecution policy; and

f. Assist with training and educating members of the CAF.

2. Prosecutors, like defence counsel, must be prepared to perform their duties in a variety of circumstances, including deployed to Special Duty Areas or where Special Duty Operations are ongoing. The environment can be purpose-built courtrooms, ad hoc facilities on Canadian Forces Bases or an austere deployed environment.

PART 4 – CONCLUSION

Summary: Review essential material from the whole lesson

Stage 1: Duties of a base or unit legal advisor

Stage 2: Duties of a legal advisor in a Directorate within the Office of the JAG

Stage 3: Role and responsibilities of defence counsel (within DCS)

Stage 4: Role and responsibilities of a prosecutor within the CMPS.\

Confirmation: Done in a discussion format. Ask some confirmation question

Conclusion: recap while this lesson and material presented in important. Make a link from your introduction to the conclusion.

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PART 1 -- LESSON IDENTIFICATION

TITLE: EO 002.02 – Provide Legal Advice IAW JAG Policy Directives

Performance: Provide legal advice in accordance with JAG Policy Directives.

Conditions:

Given: Relevant factual context, legislation, policy, case law, reference materials.

Denied: Direct supervision

Standard. The legal officer shall comply with JAG Policy Directives and other relevant policies when providing legal services to CAF units and decision-makers.

Main Teaching Points:

1. General implication of JAG Policy Directives
2. Provide verbal legal advice IAW JAG Policy Directives
3. Provide written legal advice IAW JAG Policy Directives

Method. This EO will be accomplished by a combination of Self-Study and Developmental Lesson. Students will be asked to complete preliminary reading prior to the commencement of classroom instruction. Those concepts will be particularized to CAF context and expanded and discussed under instructor's guidance.

Duration. ½ x 40-minute period (20 minutes)

References. As per TP.

Training / Learning Aids.

Note to the instructor. A review of the main teaching points will then take place at the end of the periods, by Enabling Checks (EC).

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PART 2 – INTRODUCTION

Objective: The Legal Officer shall explain how JAG Policy Directives and other policies influence the manner of providing both verbal and written legal advice.

Introduction: Introduce the lesson by emphasizing how JAG Policy Directives and other relevant policies and practices influence a legal officer's role and duties.

Outline: The instructor shall introduce the lesson outline

Stage 1: General implication of JAG Policy Directives

Stage 2: Provide verbal legal advice IAW JAG Policy Directives

Stage 3: Provide written legal advice IAW JAG Policy Directives

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PART 3 – BODY OF THE LESSON

Stage 1: General implication of JAG Policy Directives

Introduction:

1. Following the significant amendment of the *NDA* in 1998, which modernized provisions relating to military justice and the role of the Judge Advocate General (JAG), the JAG began implementing a series of Policy Directives to assist with the governance of the Office of the JAG. These directives cover a myriad of different endeavours, including standards of conduct, social activities, civilian human resources, publication of articles, and promotion.

2. JAG Policy Directive 006/00 – Professional Standards Review, notwithstanding what the nomenclature of the policy would seem to imply, is the principal directive establishing the JAG's expectation concerning the appropriate standard of conduct, including communication, for legal advisors. Although JAG Policy Directive 006/00 establishes the broad methodology for responding to complaints about the professional conduct of legal officers, it also (first) describes, in general terms, the standard of conduct for legal officers.

Body of the Lesson

3. Legal officers in the CAF are subject to myriad legislative and policy direction. As members of the CAF, legal officers are, generally, subject to the same obligations, prohibitions and policies as any other officer in the CAF. Additionally, as lawyers or advocates, called to the bar of a province or territory, legal officers are governed by the by-laws, rules and other directives of their governing Law Society (or equivalent) in the performance of their legal duties, including the provincial legislation that governs that Law Society. Finally, as legal officers assigned to duties as legal advisors to the CAF, they are subject to the direction of the JAG, including, but not limited to, JAG Policy Directives, as well as other senior leaders in the Office of the JAG.

4. One of the principal JAG Policy Directives governing a legal officer's conduct is JAG Policy Directive 006/00 – Professional Standards Review. This Policy Directive is also included as Annex A to JAG Policy Directive 023/02 – Ethics Directive. JAG Policy Directive 006/00 reinforces the concept that legal officers must comply with all legislation, rules and policy that pertain to the performance of the duties of officers generally, as well as the rules and regulations imposed upon them by any and all law societies to which they are members.

5. As para 5 of the directive states:

> 5. Legal officers must exercise judgment and discretion, and must pursue fairness and truth. Fairness, moderation and dignity characterize the conduct of the legal officer. Accordingly, the legal officer is bound by a duty:

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a. to act with integrity and dignity; and

b. to respect and promote values protected by the *Canadian Charter of Rights and Freedoms*.

6. Additionally, para 6 encourages legal officers to comply with the principles of civility published by The Advocates' Society, which is appended to the Policy Directive.

7. The Policy Directive describes the requirements for the provision of legal advice, which may be done verbally or in writing. Although the general preference is for legal advice to be written, depending upon the circumstances, verbal advice might not only be permitted but, having regard to the circumstances, may be the most effective form of advice.

Interim Summary: Use the prepared PPT presentation to do a quick review of the material.

Stage 2: Provide verbal legal advice IAW JAG Policy Directives

8. Where a legal advisor provides verbal legal advice, and it is expected that the supported commander or decision-maker will rely upon that advice in evaluating a potentially significant or contentious decision (or, frankly, any decision that will affect the rights, interests or privileges of another person), the legal advisor should maintain a written synopsis of the advice given, including, where appropriate:

a. The matter upon which the advice was given;

b. The person(s) to whom the advice was given;

c. The date upon which the advice was given;

d. The significant and relevant facts upon which the advice was based;

e. The nature of the advice given; and

f. An indication whether further advice on the same matter is anticipated or required.

9. The JAG Policy Directive offers a format for such a synopsis; however, a legal advisor may develop a personal format, provided that it supports this intent.

10. There are many circumstances in which a legal advisor may be prompted to provide verbal legal advice, rather than written advice. Some circumstances justify verbal advice more than others.

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11. Three common circumstances in which a legal advisor may be called upon by a supported commander or CO to provide verbal advice include: (i) the conduct of time-sensitive operations; (ii) during the conduct of a summary trial, particularly when unexpected evidence is presented or there is an unexpected change in circumstances; or (iii) where incidents precipitate the need for short-notice decision-making, particularly where safety is a factor. These circumstances (not surprisingly) involve all three pillars of military law. Even though the circumstances may necessitate reliance upon verbal legal advice, the requirement to record the information identified above remains.

12. **Operations**. During the conduct of operations, a legal advisor will be called upon to provide legal advice and support on short-notice and in circumstances in which written advice would be an overly time-consuming mechanism. Whether it involves dynamic or time-sensitive targeting issues, advice on legal anomalies arising during the conduct of an operation, or reinforcing advice that was provided previously, a legal advisor must be able to articulate clear, cogent, and accurate verbal advice. The need to record advice in a timely and accurate fashion means that a legal advisor must have the means readily to hand to record his or her advice contemporaneously. A well-prepared legal advisor will carry a notebook in which he or she consistently records verbal advice.

13. However, the conduct of operations is not an excuse for the lack of adequate planning or appreciation of potential legal issues. Just as commanders and their staff must anticipate possible eventualities when planning operations, an effective legal advisor will also conduct a legal estimate in order to identify potential legal issues. This is why a legal advisor must work closely with a commander and the commander's staff in order to evaluate likely legal issues. Whenever possible, the legal advisor should conduct anticipatory analysis and, where feasible, address these legal issues in advance and in writing. Such advance analysis will also enable the legal advisor to provide effective supplemental verbal advice.

14. **Disciplinary Matters**. Most pre-charge and pre-trial legal advice, as well as review advice, will be in writing. However, throughout the disciplinary process, questions may arise that will require a quick response. This is particularly true where a presiding officer is conducting a summary trial, and unforeseen facts or issues arise. Many of these are not complex issues and a competent legal advisor should be capable of providing a clear and cogent response in short order. However, legal advisors must be wary of seemingly 'simple' questions or issues.

15. It is not inconceivable that a supported commander or other decision-maker will be 'economical' with the facts in order to shape legal advice. Some decision-makers who wish to shape legal advice may resort to the archetypical 'quick question', offering limited facts, in order to be able to justify their actions based upon the resulting advice. The context of verbal legal advice is reciprocal – just as the supported decision-maker may be seeking timely advice, the legal advisor may seek timely clarification of details.

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16. Regardless of the specific issues, where disciplinary decision-making relies upon timely action, a legal advisor should not shy from providing clear and cogent verbal legal advice. However, the legal advisor should also ensure that he or she follows up in writing to ensure that elements of the advice are not lost or forgotten.

17. **Administrative Law Matters**. CAF decision-makers are supported by a significant number of legislative provisions and policy instruments that provide guidance on the administration of the affairs of the CF. Most CAF decision-makers are fairly well versed in the commonly-relied-upon legislation and policy instruments; however, invariably circumstances may arise in which a decision-maker must act without delay. Additionally, circumstances involving competing priorities or legal regimes will often require a legal advisor to 'talk the decision-maker through' certain steps, particularly where some decisions are time-sensitive.

18. For example, misuse of alcohol or drugs can often raise issues under both administrative and disciplinary law. In subsequent lessons, you will learn that the disciplinary regime will generally have sequential priority in order to ensure that the administrative process does not adversely impact upon the rights of an accused within the disciplinary process. However, where drugs and alcohol are factors, safety considerations may necessitate immediate action. Consequently, a decision-maker may contact a legal advisor for advice regarding what may be done to minimize risk, while maintaining 'freedom of action' with a subsequent disciplinary process. Although the legal advisor might well provide written advice on the issue(s), it may also be necessary for the legal advisor to provide greater 'fidelity' or clarification through verbal advice. The nature of this advice – augmenting written advice – must be recorded.

Interim Summary: Use the prepared PPT presentation to do a quick review of the material.

Stage 3: Provide Written Legal Advice

19. Pursuant to JAG Policy Directives 006/00 Professional Standards Review and 010/00 Charge Screening, written advice is the norm, particularly, but not solely, for disciplinary advice. Written advice provides a permanent record, for both the legal advisor (and the Office of the JAG) and the supported decision-maker. Equally, it removes an element of uncertainty regarding what advice was provided, and when.

20. JAGNet is the primary Knowledge and Information Management tool for the Office of the JAG and JAG Policy Directive 041/08 details the a legal officer's obligations arising under this policy.

21. Under the aforementioned JAG Policy Directives, there is some flexibility regarding the medium by which a legal advisor provides written legal advice. The two most common means are written memorandum (typically prepared using MSWord) or

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by e-mail (typically via MSOutlook), with the latter means the most common for unit legal advisors.

22. Regardless of the means by which written legal advice is generated, the JAG has directed that it will be designated 'Protected B'. There are two principal normative reasons for this designation. First, it constitutes a solicitor-client confidence. Consequently, in addition to the designation 'Protected B' (which should be indicated in the manner prescribed by A-AD-121-CO/FP-000 Staff and Writing Procedures) the term 'Solicitor-Client Privilege' will also be included in the header and footer of written legal advice (where formatting permits). Second, legal advice will almost invariably include personal information about one or more people. Although some of this personal information might be subsequently, and properly, released by virtue of disciplinary proceedings, the presence of personal, and otherwise sensitive, information warrants a measure of protection.

23. Writing techniques will be the subject of a special lecture delivered separately. However, the following are a few guiding principles that will assist legal advisors in crafting effective legal advice:

a. Know your audience. This means more than simply tailoring the complexity of advice to the perceived understanding of the audience's knowledge and experience. It also means obtaining a degree of understanding about what they do, how they will employ the advice, and what their priorities are;

b. Summarize the facts. Although most legal advisors will likely already employ this feature in their writing, this is a critical aspect of providing legal advice within the CAF. Many CAF decision-makers take a literalist approach to legal advice and can sharply criticize perceived dissonance in differing advice. Much of the advice at unit level will turn on the facts; consequently, clarifying the factual basis for advice is key to maintaining credibility, and ensuring that the advice is not improperly applied in future circumstances;

c. Do not hesitate to clarify ambiguity. This is closely related to 'summarize the facts'. Not all queries or issues should be taken at face value and an effective legal advisor must be able to identify gaps or ambiguity in the information presented by the supported decision-maker. An effective legal advisor will develop an ability to draw additional relevant information out of a supported decision-maker without seeming to interrogate the same;

d. Be brief. Regardless of the rank, knowledge, experience or intelligence of the recipient of legal advice, a legal advisor needs to be brief. Although decision-makers of elevated rank, experience and/or intelligence generally have a broad capacity to assimilate complex issues and advice, there is

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typically in inverse relationship between rank/experience/knowledge and available time to review advice;

e. Written advice is a form of advocacy. A legal advisor whose principal function is to generate written advice (which is most legal advisors in the Office of the JAG) is as much an advocate as a trial counsel who regularly appears before courts. Legal advisors are rarely decision-makers, but we can positively (or negatively) influence decisions.

24. E-mail is one of the most common forms of communication in the CAF, including for legal advisors providing legal advice to supported decision-makers. E-mail can also be a hasty form of written communication. Although provision of timely legal advice is a virtue, undue haste is not. Legal advisors who regularly send their advice by e-mail (which is most legal advisors in the Office of the JAG) must guard against sub-standard advice precipitated by 'bad e-mail habits'. The following guidance is helpful:

a. Legal advisors employing e-mail to send legal advice must ensure that the first line (or one of the first lines before the content of the e-mail) is marked as 'Protected B' and 'Solicitor-Client Privilege';

b. An e-mail is much more likely to be forwarded – and possibly forwarded to someone who is not entitled to have access to a solicitor-client confidence – than a hard copy memorandum. In particular, there is a tendency for people to forward, and build upon, e-mail 'chains'. Consequently, the initial 'Protected B, Solicitor-Client Privilege' can sometimes be 'lost' at the end of an e-mail chain. Therefore, legal officers should incorporate a standardized caveat, preferably in both official languages, in their signature block. Ideally, this would be set up to be auto-generated with every e-mail. One example of such a caveat is:

"This information constitutes legal advice and is subject to solicitor-client privilege. If you receive this e-mail by error, please advise the sender and return all copies of the e-mail to him/her. The rules applicable to the protection of PROTECTED B information apply to solicitor-client information."

« Ces renseignements constituent un avis juridique et sont assujettis au secret professionnel. Si vous recevez ce courriel par erreur, veuillez aviser l'expéditeur et lui retourner toutes les copies du courriel. Les règles applicables aux renseignements PROTÉGÉ B s'appliquent aux renseignements assujettis au secret professionnel. »

c. In addition to the caveat, it may also be prudent for legal advisors to include a clear and direct comment in the legal advice, indicating that recipients should not forward the advice, electronically, to any other person.

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d. As the JAG has designated legal advice as Protected B, it must be encrypted using a PKI when sent to recipients. This may pose a challenge where recipients either do not have a PKI or do not have access to an encryption system. Also, legal advisors within the Office of the JAG will often communicate with legal advisors in the Department of Justice, both within and without the DND/CF LA legal services unit. Legal advisors within DND/CF LA will typically have the capacity to encrypt/decrypt using PKI; however, other Department of Justice legal advisors will not. Consequently, the latter will typically send e-mails without encryption, but with designation of 'Solicitor-Client Privilege' or 'Litigation-Privilege' as appropriate;

e. Legal advisors will typically generate legal advice from the JAGNet Protected B server platform. This Knowledge and Information Management tool is increasingly the default mechanism by which legal advisors within the Office of the JAG operate. Although legal advisors within the Office of the JAG will increasingly share information through this secure server-based application, the recipients of legal advice do not have access to this server. Consequently, although the generation of legal advice may employ JAGNet, it must be sent to recipients via MSOutlook and encryption through PKI; and

f. The more 'formal' an e-mail is treated, the less likely the content will be 'off-hand'. Hastily drafted e-mail advice is hastily drafted advice. The act of formatting written advice and signing one's name to it has a sobering effect – it is less likely that a legal advisor will hastily (and haphazardly) draft advice that the legal advisor will actually sign. Consequently, maintaining a degree of formality when drafting legal advice within an e-mail (e.g. formatted paragraph and sub-paragraphs and numbering, use of file numbers, references, signature blocks) will likely reduce undue or detrimental haste in the drafting of legal advice.

Interim Summary: Use the prepared PPT presentation to do a quick review of the material.

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PART 4 – CONCLUSION

Summary: Review essential material from the whole lesson

Stage 1: General implication of JAG Policy Directives

Stage 2: Provide verbal legal advice IAW JAG Policy Directives

Stage 3: Provide written legal advice IAW JAG Policy Directives

Confirmation: Done in a discussion format. Ask some confirmation question

Conclusion: recap while this lesson and material presented in important. Make a link from your introduction to the conclusion.

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PART 1 -- LESSON IDENTIFICATION

TITLE: EO 002.03 – Provide Base and Unit Level Legal Services

Performance: Provide base and unit level legal services (other than legal advice).

Conditions:

Given: Relevant factual context, legislation, policy, case law, reference materials.

Denied: Direct supervision

Standard. The legal officer will provide timely, solution-oriented and mission-focused legal services to CAF units and decision-makers.

Main Teaching Points:
1. Provide legal education and training to units
2. Provide other legal support

Method. This EO will be accomplished by a combination of Self-Study and Developmental Lesson. Students will be asked to complete preliminary reading prior to the commencement of classroom instruction. Those concepts will be particularized to CAF context and expanded and discussed under instructor's guidance.

Duration. ½ x 40-minute period

References. As per TP.

Training / Learning Aids.

Note to the instructor. A review of the main teaching points will then take place at the end of the periods, by Enabling Checks (EC).

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PART 2 – INTRODUCTION

Objective: The Legal Officer shall demonstrate a basic understanding of the types of non-advisory legal services that will be provided to units and bases, including legal education and training and other legal support.

Introduction: Introduce the lesson by emphasizing that legal advisors can influence administration and operations in the CAF through means other than legal advice, and that in select areas, we contribute significantly to the training and development of CAF personnel.

Outline: The instructor shall introduce the lesson outline

Stage 1: Provide legal education and training to units

Stage 2: Provide other legal support

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PART 3 – BODY OF THE LESSON

Stage 1: Provide legal education and training

Introduction

1. In addition to legal advisory functions, legal officers support the mission and objectives of CAF units by providing legal education and training. These activities will vary between units and bases. Bases with a large or principal training role will likely call upon the DJA or unit legal advisor frequently to provide legal education or training. However, all bases or units can require this support. Such activities help reinforce the solicitor-client relationship: the legal advisor who will support a unit or formation with advice will also deliver key training on military law subjects.

Body of the Lesson

2. Training and education can be structured or unstructured. It can be periodic and seasonal or sporadic. Finally, the legal officer may have to generate the training personally, or he or she may be part of a larger initiative. Here are some common examples:

a. Structured Training. Most unit legal advisors will be called upon to deliver Presiding Officer certification Training (POCT) and Intermediate Law of Armed Conflict (ILOAC) training. Both of these courses are managed by the CFMLC, including curriculum development; however, instructors for POCT are typically the local unit legal advisor(s) and, although the CFMLC provides some instructors for ILOAC, local legal advisors will often also be requested to help deliver the training;

b. Unstructured Training. This is training where there is no formal QS/TP, qualification code or lesson plan. However, such training is still valuable. It can involve any pillar of military law. Common subjects include:

i. Basic disciplinary functions, such as unit disciplinary investigations, charge laying, or search and seizure;

ii. Basic LOAC, including mission-specific training, ROE, or use of force; and

iii. Use of remedial measures or other administrative functions attracting a high content of fairness.

c. Periodic or seasonal training. This training can be structured or unstructured. Annual refresher training on LOAC is a common example. Similarly, some bases, formations or units may wish to schedule either

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formal (e.g. POCT) or informal disciplinary law training at the start of a training or administrative year. Specialized units, formations or other elements may wish to conduct annual training in a particular field of military law, targeting both incoming personnel and related stakeholders (e.g. the annual training in law relating to grievances conducted by DGCFGA);

d. Task-specific Training. Some formations or units may conduct mission- or task-specific training. Legal advisors supporting such specific tasks or missions will typically be assigned via the Canadian Forces Task, Planning and Operations (CFTPO) orders. Depending upon the nature of the task or mission, there may be multiple legal advisors assigned and the content of the training may be centrally (i.e. the Office of the JAG) developed and approved. Alternatively, a single legal advisor may be implicated in the task and the scope and content of the legal training may be left entirely to the legal advisor's discretion. In such circumstances, a prudent legal advisor will leverage the knowledge, skills and experience of colleagues when developing the training. A common circumstance for many legal advisors arises with the need for pre-deployment training on a broad range of legal issues not limited to topics specific to the mission (e.g. the specific ROE). Briefings or introductory training regarding legal issues arising in personal administration (service estates, wills, power of attorney) are common; and

e. ROE/Use of Force. Training in ROE and use of force may arise as either periodic training (typically for 'high readiness' units) or as task-specific training. It warrants specific mention. Legal officers will typically provide training on both *jus ad bellum* (legal bases for the use of force) and *jus in bello* (the proper use of force in armed conflict). However, the chain of command is responsible for training subordinates in ROE. This reinforces their status as orders. Legal officers can support this training in two general ways. First, a legal officer should review the ROE with the commander who will be delivering the training (or, at least, offer to do so). This can be done at several levels: Task Force, battalion, sub-unit. Second, the legal officer can offer to be present at the training in order to assist the commander, as necessary. Any such involvement must be handled tactfully and the legal officer must remember that the commander is delivering the training, not the legal officer.

3. A common medium for training is the MS PowerPoint application. Many briefings and lectures within the CAF are prepared and delivered on this medium. However, a PowerPoint 'deck' is not a substitute for a lesson plan. Nor is it the sole appropriate or useful training aid that may be employed. When providing instruction on legal subjects, a legal officer must ensure that he or she develops a proper lesson plan. Where possible, the legal officer should 'present' the lesson to a colleague as a means of Beta-testing the lesson.

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4. Legal advisors should be cautious of requests from units and personnel to provide training materials without instruction. From time to time non-legal officers have, through various means, obtained PowerPoint 'decks' upon which they have relied in order to provide their own, at times uninformed, instruction. The proliferation of PowerPoint 'decks' increases the likelihood of such uninitiated instruction.

5. There are some circumstances in which laymen are capable of providing instruction on legal issues. An excellent example is the relationship between the ILOAC course and Code of Conduct Training. The lesson plans for both the ILOAC course and Code of Conduct Training have been prepared by the Office of the JAG, and the latter is available from the JAG website. Candidates who complete the ILOAC course are equipped to teach Code of Conduct to personnel at their units, and this is one of the objectives of the ILOAC course: to provide personnel in leadership roles with sufficient knowledge and understanding of the LOAC to make appropriate decisions on operations and to train their subordinates on the basic aspects of the LOAC. However, the capacity of non-lawyers to present Code of Conduct training is a specific goal of the ILOAC course. This is not always the case with other subjects.

6. Presiding Officer Certification Training (POCT) is designed to prepare officers for their duties as presiding officers at summary trial. It also imparts upon them relatively detailed knowledge of the code of service discipline at the summary trial level. It does not make them experts. The Office of the JAG has also produced an Assisting Officer's guide, which is available online. Although not an express training objective of POCT, that course does provide sufficiently detailed training that those who successfully complete POCT should have sufficient knowledge and understanding of the Code of Service Discipline that, with the assistance of the Assisting Officer's Guide, they can train subordinates to perform the duties of an Assisting Officer effectively. Indeed, such activity could be considered a proper exercise of leadership.

7. However, successful completion of POCT is unlikely to provide sufficient knowledge and understanding of legal issues arising within the context of the Code of Service Discipline that the POCT-qualified officer could provide training in more complex subjects, such as: legal issues arising from investigations, including search and seizure, right to silence, right to counsel; specific areas of disciplinary law, such as drug- and alcohol-related offences; or other subjects that require not only knowledge of the Code of Service Discipline at the Summary Trial level, but also broader constitutional and criminal law. Such training should be conducted by a legal officer.

Stage 2: Provide other legal support

8. Other than a legal officer's principal advisory duties and legal training and education, unit legal advisors may also be called upon to perform miscellaneous activities for which they are qualified, provided that it is consistent with CAF policies, JAG policies, and the legal advisor's professional obligations. Such activities may be characterized as 'legal assistance'.

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9. CFAO 56-5 governs 'legal assistance'. Legal officers should note that this order was last updated 20 November 1992. Legal assistance may be provided to:

a. members of the Canadian Forces (CF) and members of other armed forces who are attached or seconded to the CF, regardless of whether they are serving inside or outside Canada;

b. if these members are serving outside Canada, their dependants; and

c. persons who are part of the civilian component of the CF outside Canada, and their dependants.

10. Legal assistance under this order is not intended to replace legal services generally available within the civilian community or to restrict access to those services. It is provided to the persons referred to above with the following three limited goals:

a. to advise them of their legal rights and obligations;

b. to assist them in determining whether they should obtain civilian legal assistance; and

c. to assist them in presenting their case properly to their civilian lawyer.

11. A legal officer may, subject to the legal officer's availability, level of experience and areas of competence, provide legal assistance to the aforementioned persons

a. where it is required in situations of urgency or operational necessity;

b. where the welfare and effectiveness of a member depends on it; or

c. where no civilian legal assistance is readily available.

12. The legal officer's own judgement concerning availability and competence will be the principal governing factors in such requests. It is a manageable matter to advise a member of the CAF concerning whether or not the CF Service Will provided under DAOD 7012-0/-1 is sufficient for that member's particular familial circumstances. It is a far less manageable matter (and not recommended) to draft up a detailed will for a twice-divorced CAF member with minor children by two different spouses for whom the CAF member wishes to establish trusts. A legal officer shall provide legal assistance only in cases where the legal officer considers that it is warranted. A legal officer who considers that legal assistance in a given case is not warranted shall so advise the person seeking the assistance.

13. A legal officer shall not provide legal assistance under CFAO 56-5:

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a. in cases involving the Code of Service Discipline, except where the legal officer is acting as a defending officer for a court martial, as counsel for a member who is a respondent to an appeal by the Minister from a court martial or as duty counsel for persons subject to the Code of Service Discipline who have been arrested or are being detained by service authorities;

b. with respect to criminal offences;

c. to conduct litigation; or

d. for any administrative matter, including a Redress of Grievance, that can be dealt with through other military channels.

14. Military legal assistance shall be provided free of charge.

15. Application for legal assistance shall be made in writing to the legal officer concerned. A legal officer shall hold in strict confidence all information acquired in the course of legal assistance including all oral and written communications between the person to whom it is provided and the legal officer. A legal officer shall not divulge information acquired in the course of legal assistance, unless the legal officer is authorized by the person concerned, or required by law, to do so.

16. CFAO 56-5 also states that "Arrangements have been made with the legal authorities of the US Army, US Navy and US Air Force for the provision of legal assistance to members of the CF serving in the USA. Information as to the location and office hours of the office providing legal assistance and the nature of the service it offers can be ascertained from the nearest US military installation or command." However, in light of the dated nature of the order, and the significant changes to CAF administration that have arisen in the past 20 years, a prudent legal advisor who is posted to an OUTCAN position would confirm the status of any such arrangements.

PART 4 – CONCLUSION

Summary: Review essential material from the whole lesson

Stage 1: Provide legal education and training to units

Stage 2: Provide other legal support

Confirmation: Done in a discussion format. Ask some confirmation question

Conclusion: recap while this lesson and material presented in important. Make a link from your introduction to the conclusion.

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PO 003 – RESOLVE ETHICAL ISSUES ARISING FROM LEGAL OFFICER DUTIES

PART 1 -- LESSON IDENTIFICATION

TITLE: EO 003.01 Identify the legal ethical issue(s)

Performance: Identify the legal ethical issue(s)

Conditions:

Given: Relevant factual context, legislation, policy, case law, reference materials, plus limited supervision or mentoring.

Denied: Nil

Standard. The legal officer shall identify potential ethical challenges and the appropriate resolution for each.

Main Teaching Points:

1. Identify characteristics of legal ethical issues.

2. Describe examples of common or likely ethical dilemmas

Method. This EO will be accomplished by a combination of Self-Study and Developmental Lesson. Students will be asked to read Module 2 on their own as it pertains to general concepts. Those concepts will be particularized to CAF context and expanded and discussed under instructor's guidance.

Duration. 1 x 40-minute period (when combined with EO 003.02).

References. As per TP.

Training / Learning Aids.

Note to the instructor. A review of the main teaching points will then take place at the end of the periods, by Enabling Checks (EC).

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PART 2 – INTRODUCTION

Objective: The Legal Officer shall be capable of resolving professional ethical challenges arising in the course of the legal officer's duties with limited supervision or mentoring. The legal officer shall identify potential ethical challenges and the appropriate resolution for each.

Introduction: Introduce the lesson by emphasizing that legal officers must be capable of identifying ethical dilemma, determining appropriate courses of action and implementing ethical solutions in a variety of circumstances and under different stressors.

Outline: The LOC instructor shall introduce the lesson outline

Stage 1: Identify characteristics of legal ethical issues.

Stage 2: Describe examples of common or likely ethical dilemmas

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PART 3 – BODY OF THE LESSON

Stage 1: Identify characteristics of legal ethical issues

Introduction:

1. As public officers who advise other public officers, legal advisors within the CAF will regularly face a variety of ethical challenges. The first step in addressing ethical dilemmas is the timely and accurate identification of legal ethical issues.

Body of Lesson

2. As legal advisors, legal officers are subject to restrictions imposed upon legal practitioners by their licencing law society or equivalent. As 'corporate' legal advisors, the obligations owed to clients are owed to our 'corporate client', the CAF. The solicitor-client relationship exist by virtue of the JAG's statutory role as legal advisor to the CAF and DND on matters of military law, and these obligations arise for individual legal officers by virtue of QR&O 4.081 and the posting of the legal officer to the Office of the JAG.

3. Legal officers have duties and obligations by virtue of holding a public office. They have duties and obligations as commissioned officers. They have duties and obligations as lawyers and advocates. Conflicting obligations may arise.

4. It is vital that legal officers are able to identify these conflicts as well as the characteristics of legal ethical issues. In order to do so, a legal officer must be aware of, and understand, their obligations as public office holders, commissioned officers, and lawyers and advocates. Although legal officers advise commanders, units and elements of the CAF, as well as governmental decision-makers in the DND, they do so in the name of, and under the supervision of, the JAG. Legal ethical issues will arise where two or more of these obligations come into conflict.

5. Ultimately, any legal officer must balance his or her obligations as a lawyer, with his or her obligations as a commissioned officer (as well as any other competing obligations). A useful starting point for legal officers is the presumption that, generally, their obligations as a lawyer are not going to be inconsistent with their obligations as a commissioned officer. Characterized in colloquial terms, the question: "Are you a lawyer first, or an officer first?" could be answered simply: "Yes." The two roles are not generally mutually exclusive and conflicting obligations are an exception, rather than the rule.

Interim Summary: Use the prepared PPT presentation to do a quick review of the material.

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Stage 2: Examples of common or likely ethical dilemmas

6. The types of legal ethical issues that may arise are as varied as the circumstances that legal officers will face. However, there are examples of common or likely legal ethical issues, and examination of these 'common challenges' is useful in providing a contextual foundation for legal officers to examine future legal ethical challenges.

7. Common or likely legal ethical dilemmas include:

a. A supported commander declines to follow legal advice;

b. A legal officer disagrees with 'institutional' legal positions – or, put another way, the legal officer disagrees with the legal analysis underlying a stated position of the Office of the JAG on a particular legal issue;

c. A member of the CAF seeks legal advice under false pretenses;

d. A commander 'shops around' for legal advice or, in a related context, a legal officer is called upon to provide legal advice on a matter that was previously subject to legal advice;

e. A commander purports to act upon 'previous' legal advice (which relates to factually different matters which are not consistent with a current fact pattern);

f. A commander withholds information when seeking legal advice in order to shape the resulting legal advice;

g. In the course of his duties, a legal officer becomes aware that a senior officer (a general or Flag officer) is applying legislative provisions (or statutory instruments) in a disingenuous fashion for the benefit of a specific CAF member or members. The senior officer receives no personal benefit other that being perceived to do 'the right thing';

h. Inadvertent admissions or disclosure of legal advice in personal or non-legal communications; and

i. A legal officer is called upon to provide legal advice where Department of Justice counsel have provided, or are providing, advice.

8. These examples will be used throughout the instruction on this performance objective as a means of developing candidates' understanding of how to resolve legal ethical issues.

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PART 4 – CONCLUSION

Summary: Review essential material from the whole lesson

Stage 1: Identify characteristics of legal ethical issues.

Stage 2: Describe examples of common or likely ethical dilemmas

Confirmation: Done in a discussion format. Ask some confirmation question

Conclusion: recap while this lesson and material presented in important. Make a link from your introduction to the conclusion.

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PART 1 -- LESSON IDENTIFICATION

TITLE: EO 003.02 – Identify the applicable regime(s)

Performance: Identify the applicable regime(s)

Conditions:

Given: Relevant factual context, legislation, policy, case law, reference materials, plus limited supervision or mentoring.

Denied: Nil

Standard. The legal officer shall identify the applicable regimes upon which the legal officer may rely to resolve ethical issues.

Main Teaching Points:

1. Identify the applicable regimes.

2. Identify resources for assistance.

Method. This EO will be accomplished by a combination of Self-Study and Developmental Lesson. Students will be asked to read Module 2 on their own as it pertains to general concepts. Those concepts will be particularized to CAF context and expanded and discussed under instructor's guidance.

Duration. 1 x 40-minute period (when combined with EO 003.01).

References. As per TP.

Training / Learning Aids.

Note to the instructor. A review of the main teaching points will then take place at the end of the periods, by Enabling Checks (EC).

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PART 2 – INTRODUCTION

Objective: The Legal Officer shall identify the applicable regimes upon which the officer may rely in order to resolve ethical issues.

Introduction: Introduce the lesson by emphasizing the scope of mechanisms available to legal officers..

Outline: The LOC instructor shall introduce the lesson outline

Stage 1: Identify the applicable regimes.

Stage 2: Identify resources for assistance.

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PART 3 – BODY OF THE LESSON

Stage 1: Identify the applicable regimes

Introduction:

1. By virtue of their status both as lawyers (or advocates) 'called' to the Bar of a province or territory and as commissioned officers within the CAF, legal officers are both subject to, and may avail themselves of, different regimes for the resolution of ethical issues.

Body of Lesson

2. Lawyers (whether termed barristers, solicitors, or advocates) are subject to Rules of Professional Conduct (or equivalent instruments created by governing or licencing bodies). These rules both constrain lawyers and provide a structured means of resolving ethical issues or conflicts of interest. Additionally, lawyers are further governed by both common-law and statutory constraints. One of the more common constraints is the evidentiary rule of solicitor-client privilege. As an evidentiary component of the broader concept of solicitor-client confidence, this common law limitation often applies where public lawyers are involved in litigation, even as instructing solicitors.

3. Similarly, commissioned officers of the CAF are subject to the *National Defence Act*, and regulations and instruments created under this enabling statute, including the QR&O, DAOD and CFAO. Legal officers are further subject to JAG Policy Directives, of which, Directive 006/00 Professional Standards Review includes, as Annex B, Principles of Civility for Advocates (from the Advocates' Society), which the JAG has incorporated as a standard of conduct for legal officers. Although the JAG has not officially directed that legal officers must comply with the Canadian Bar Association Code of Conduct, all legal officers are provided with a copy of this handbook, and it can be a useful guide supplementing the applicable Law Society rules to which a legal officer is lawfully bound.

4. Regarding ethical dilemma, the CAF and DND are subject to the *Department of National Defence and Canadian Forces Code of Values and Ethics*, which fully integrates and expands on the values and expected behaviours found in the *Values and Ethics Code for the Public Sector*, as well as on the values and ethics found in the Canadian Forces customs and practices described in Duty with Honour: the Profession of Arms in Canada. Under Defence Administrative Order and Directive 7023-0, Defence Ethics, the *Department of National Defence and Canadian Forces Code of Values and Ethics* constitutes a binding directive applicable to all DND employees and is an order for all CF members. This is designed for all CAF personnel and DND employees, and was not designed specifically for legal officers.

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5. A legal officer must balance any conflicting obligations and the general rule is that such determinations must ensure that the legal officer may maximize compliance with all obligations. Notwithstanding that conflict between obligations may arise, as a general conclusion, the obligations imposed upon legal officers *qua* lawyer are not generally, or necessarily, mutually exclusive of those obligations imposed upon legal officers *qua* commissioned officer.

Interim Summary: Use the prepared PPT presentation to do a quick review of the material.

Stage 2: Identify resources for assistance

6. Although legal officers are often expected to perform their duties with little or no direct supervision – particularly legal officers assigned as Base Deputy Judge Advocates and those who are deployed – one of the compelling advantages to serving in the Office of the JAG compared to the professional challenges of a 'sole practitioner', is the readily available advice and mentoring offered by virtue of the chain of command in the Office of the JAG. A legal officer can call upon the assistance of a peer, his or her immediate supervisor, or a mentor within the Office of the JAG.

7. A legal officer is not limited to seeking assistance from fellow lawyers within the Office of the JAG. Legal officers, like most lawyers, will tend to network within their profession and will undoubtedly have friends and colleagues outside the Office of the JAG. Provided that such action will not require the legal officer to disclose solicitor-client confidences, a legal officer may consult with non-military peers concerning rules of professional conduct.

8. Additionally, the law societies that licence each of us maintain publicly available websites which offer up-to-date versions of rules of professional conduct, guidelines, and practice tips. Most also have contact information if a lawyer wishes to seek guidance on the practical application of the rules of professional conduct.

9. Finally, there is helpful case law on professional regulation for lawyers. As with most regimes which, constitutionally, fall within provincial jurisdiction, the case law may vary between provinces. The recent Supreme Court of Canada decision in *Law Society of New Brunswick v. Ryan*, [2003] 1 SCR 247 concerns judicial supervision of a Law Society's regulation of the profession (albeit, with the three pre-*Dunsmuir* standards of review).

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PART 4 – CONCLUSION

Summary: Review essential material from the whole lesson

Stage 1: Identify the applicable regimes.

Stage 2: Identify resources for assistance.

Confirmation: Done in a discussion format. Ask some confirmation question

Conclusion: recap while this lesson and material presented in important. Make a link from your introduction to the conclusion.

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PART 1 -- LESSON IDENTIFICATION

TITLE: EO 003.03 – Apply appropriate courses of action

Performance: Apply appropriate courses of action

Conditions:

Given: Relevant factual context, legislation, policy, case law, reference materials, plus limited supervision or mentoring.

Denied: Nil

Standard. The legal officer will resolve ethical issues in a manner consistent with obligations to the CAF and the legal profession.

Main Teaching Points:

1. Identify potential harm(s) arising from the circumstances.
2. Identify the regime(s) best suited to prevent the harm(s).
3. Evaluate the compatibility of regimes.
4. Identify consequences of the application of the regime(s).
5. Apply the appropriate regime to the circumstances in order to resolve the dilemma.

Method. This EO will be accomplished by a combination of Self-Study and Developmental Lesson. Students will be asked to read Module 2 on their own as it pertains to general concepts. Those concepts will be particularized to CAF context and expanded and discussed under instructor's guidance.

Duration. 3 x 40-minute periods (including syndicate discussions and presentations).

References. As per TP.

Training / Learning Aids.

Note to the instructor. A review of the main teaching points will then take place at the end of the periods, by Enabling Checks (EC).

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PART 2 – INTRODUCTION

Objective: The Legal Officer will resolve ethical issues in a manner consistent with obligations to the CAF and the legal profession.

Introduction: Introduce the lesson by emphasizing that generally, conflict between different obligations will be the exception, not the rule, and that the principal concern is mitigating harm. This lesson will follow a practical approach, presenting the examples of potential ethical dilemma first introduced in EO 003.01, and providing candidates with an opportunity to explore potential solutions in a syndicate environment. Following syndicate discussions, each syndicate will present their conclusions and analysis for each of their problems.

Outline: The LOC instructor shall introduce the lesson outline.

Stage 1: Identify a process for resolving ethical conflict. There are five steps in resolving a legal ethical dilemma:

Step 1: Identify potential harm(s) arising from the circumstances.

Step 2: Identify the regime(s) best suited to prevent the harm(s).

Step 3: Evaluate the compatibility of regimes.

Step 4: Identify consequences of the application of the regime(s).

Step 5: Apply the appropriate regime to the circumstances in order to resolve the dilemma.

Stage 2: Apply the process in syndicate discussion

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PART 3 – BODY OF THE LESSON

Introduction:

1. Legal officers should develop a methodical approach to resolving legal ethical issues just as they adopt a methodical approach to legal analysis. One approach (and it is not the sole reasonable approach) is the one described below. The first step in identifying and addressing potential ethical dilemma is to identify the actual or potential harm arising from the circumstances. There may be more than one 'harm' and different determinations could lead to differing harms.

2. This lesson will be a mix of lecture and syndicate work. The syndicates will resolve dilemma arising from specific fact scenarios conveying the common ethical dilemma identified in EO 003.01:

a. A supported commander declines to follow legal advice;

b. A legal officer disagrees with 'institutional' legal positions – or, put another way, the legal officer disagrees with the legal analysis underlying a stated position of the Office of the JAG on a particular legal issue;

c. A member of the CAF seeks legal advice under false pretenses;

d. A commander 'shops around' for legal advice or, in a related context, a legal officer is called upon to provide legal advice on a matter that was previously subject to legal advice;

e. A commander purports to act upon 'previous' legal advice (which relates to factually different matters which are not consistent with a current fact pattern);

f. A commander withholds information when seeking legal advice in order to shape the resulting legal advice;

g. In the course of his duties, a legal officer becomes aware that a senior officer (a general or Flag officer) is applying legislative provisions (or statutory instruments) in a disingenuous fashion for the benefit of a specific CAF member or members. The senior officer receives no personal benefit other that being perceived to do 'the right thing';

h. Inadvertent admissions or disclosure of legal advice in personal or non-legal communications; and

i. A legal officer is called upon to provide legal advice where Department of Justice counsel have provided, or are providing, advice.

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Body of Lesson

3. This lesson describes five steps in resolving actual or apparent conflict between a legal officer's competing obligations, giving rise to legal ethical dilemma:

a. **Step 1**: Identify potential harm(s) arising from the circumstances;

b. **Step 2**: Identify the regime(s) best suited to prevent the harm(s);

c. **Step 3**: Evaluate the compatibility of regimes;

d. **Step 4**: Identify consequences of the application of the regime(s); and

e. **Step 5**: Apply the appropriate regime to the circumstances in order to resolve the dilemma.

Step 1: Identify potential harm arising from the circumstances

4. The factual context is crucial in identifying actual or potential harm. Often, a legal officer will be alerted to a potential ethical dilemma by the paucity of facts or relevant information. However, often the awareness of warning signs will be dependent upon a legal officer's experience, both as a lawyer and as an officer. Consequently, some warning signs may go unnoticed.

5. Consequently, one of the safeguards for any legal officer to ensure that he or she is not going to be 'blind-sided' by an ethical dilemma, is to ensure that he or she has all the relevant information in order to develop and provide legal advice, and, as a general rule, to avoid providing 'initial' legal advice or being drawn into vague 'hypothetical' discussions. Indeed, when a supported commander or staff officer presents 'hypothetical' scenarios of limited factual context, a legal officer should be reluctant to proceed without concrete description.

6. Once a legal officer has a solid grasp of the relevant facts pertaining to a request for legal advice, the legal officer should be advantageously placed to determine if there is an apparent conflict and, if so, what the potential harm is. The facts relevant to a legal issue may not be determinative of a related ethical dilemma for the legal officer (or even sufficient for the legal officer to resolve the dilemma); however, the relevant facts of the legal issue will likely be indicative of what additional information the legal officer must confirm.

Step 2: Identify the regime(s) best suited to prevent the harm

7. Once the legal officer has identified the actual or potential harm, he or she must identify the appropriate regime(s) to remedy the harm. There may be more than one. Generally, the type of harm will be indicative of the appropriate mechanism. If the harm relates to the legal officers obligations as a lawyer, the appropriate rules of professional conduct will likely be the principal source for the remedial mechanism. Where the harm

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applies to the legal officer's obligations as a commissioned officer, the *NDA* and its secondary legislation and related instruments are the likeliest source of assistance.

8. Legal officers are not limited solely to legislative or legislated mechanisms or policies promulgated by statutory policy makers. A legal officer may also leverage intangible dynamics, such as the nature of working relationships, advocacy skills, and analysis. The key is that the legal officer should consciously identify mechanisms that can address the potential harm, in order to evaluate potential effectiveness and determine which course of action is appropriate.

Step 3: Evaluate the compatibility of regimes

9. Once the legal officer has identified the applicable regimes that may be applied, he or she must evaluate which regimes will minimize the potential harm. Where only one regime is appropriate, this step is not necessary.

10. Prior to evaluating the consequence(s) of any particular regime, the legal officer must first determine whether, and to what extent, potential remedial regimes may be incompatible.

Step 4: Identify consequences of the application of the regime(s)

11. For most ethical dilemma, a legal officer will have multiple options for addressing the issue. Some can be used in concert, and the use of multiple regimes is one of the options that a legal officer should consider. The legal officer must evaluate the consequences of each option and consider the potential impact upon the legal officer's obligations, both as a lawyer and as a commissioned officer.

12. The relevant consequences encompass more than the express or direct obligations imposed upon a legal officer. The legal officer must also consider the impact on the effectiveness of his or her role as a unit or institutional legal advisor. Many of the common ethical dilemma identified in this lesson relate to the legal advisor's relationship with a supported commander or decision-maker. If the legal advisor is perceived (by the commander or decision-maker) as acting in a manner inconsistent with the commander or decision-maker's goals, this can adversely impact this vital relationship.

13. Such consequences go beyond any potential reliance of the legal advisor upon the supported commander. (For example, if a deployed legal advisor is dependent upon the supported CO or commander for the provision of accommodations, office space equipment, transport, and other support, this dependency can influence the legal advisor's desire to curry favour with the supported CO or commander). The relationship between a legal advisor and supported commander – the solicitor-client relationship – can be fragile and is based in large part on trust. Consequently, where a CO or commander is intent on acting in an unethical or unlawful manner, a legal officer faces a distinct challenge (though not necessarily more or less challenging than a subordinate of the CO or commander).

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Step 5: Apply the appropriate regime(s) to the circumstances in order to resolve the dilemma

14. Having identified the relevant harm, the applicable regime(s), the extent of any inconsistency between the regimes, and the consequence(s) of applying the different regimes, the legal officer should apply the regime(s) that minimize the harm while mitigating adverse consequences and meeting obligations imposed upon the legal officer.

Practical Example

15. A simple (and perhaps oft-cited) example can be used to illustrate the application of these steps: A legal officer, assigned to Defence Counsel Services, and licensed by the Law Society of Upper Canada, meets with a CAF member who is accused of a Code of Service Discipline offence arising from allegedly assaulting a higher-ranking CAF member and who will be tried by court martial. During the initial interview, the accused discloses to the legal officer that he also stole $150.00 from the unit canteen fund.

16. Most legal officers would instinctively conclude that the legal officer cannot divulge this information. However, by applying the five steps described in this lesson, we can illustrate their utility for more complex circumstances.

17. First, what is the harm that arises? The accused has admitted to stealing from the unit canteen fund. Essentially, he is stealing from a non-public property fund that would benefit the soldiers in the unit. It is also a breach of discipline. Failure by the legal officer to do anything to remedy this breach is inconsistent with an officer's responsibilities under QR&O 4.02. However, there is very distinct harm if the legal officer discloses this information. It would jeopardize the solicitor-client relationship and it would constitute a breach of the legal officer's duty to his client. (For example, if the legal officer were a licensee of the LSUC, it would represent a contravention of RPC 2.03 – specifically 2.03(1) and is not justified under 2.03(2) to (5)).

18. Second, what are the applicable regimes? QR&O 4.02(1)(e) states that an officer shall "... report to the proper authority any infringement of the pertinent statutes, regulations, rules, orders and instructions governing the conduct of any person subject to the Code of Service Discipline when the officer cannot deal adequately with the matter." This is a positive obligation created by a Ministerial regulation.

19. However, this obligation runs counter to LSUC RPC 2.03(1), which states: "A lawyer at all times shall hold in strict confidence all information concerning the business and affairs of the client acquired in the course of the professional relationship and shall not divulge any such information unless expressly or impliedly authorized by the client or required by law to do so." None of the exceptions under RPC 2.03 apply.

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20. Thus, the two regimes – both technically binding upon the legal officer, are incompatible. Under the third step in the process, the legal officer must conclude that he cannot comply with both.

21. This leads to the fourth step – identifying and weighing the consequences. For this, the legal officer must reflect upon the purpose of the applicable regimes as well as his role in Defence Counsel Services. The obligations under QR&O 4.02 reflect an officer's general leadership role in the CAF. However, as defence counsel, the legal officer's principal role is in representing the interests of the accused and, in so doing, help ensure a fair process. Where the applicable regimes present an absolute incompatibility, one must trump the other. In this example, the role of defence counsel supports the predominance of the obligation as a lawyer.

22. Consequently, the legal officer must apply RPC 2.03 over QR&O 4.02.

Stage 2: Apply the process in syndicate discussion

23. The class will be divided into 3 x syndicates. Each syndicate will be given three fact scenarios, each of which describes one of the common ethical dilemmas identified earlier in the lesson. Each syndicate will be give 60 minutes, plus the assistance of an instructor, to discuss all three scenarios and to develop solutions to resolve the dilemmas. Following the syndicate discussions, the entire course will reconvene, and each syndicate will present their three problems, their proposed resolution, and any key considerations. Ideally, a different candidate will present each of the three scenarios discussed by each syndicate.

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PART 4 – CONCLUSION

Summary: Review essential material from the whole lesson

Stage 1: Identify a process for resolving ethical conflict

Step 1: Identify potential harm(s) arising from the circumstances.

Step 2: Identify the regime(s) best suited to prevent the harm(s).

Step 3: Evaluate the compatibility of regimes.

Step 4: Identify consequences of the application of the regime(s).

Step 5: Apply the appropriate regime to the circumstances in order to resolve the dilemma.

Stage 2: Apply the process in syndicate discussion

Confirmation: Done in a discussion format. Ask some confirmation question

Conclusion: recap while this lesson and material presented in important. Make a link from your introduction to the conclusion.

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PO 004 ADVISE ON THE APPLICATION OF ADMIN LAW AND PRINCIPLES OF CF DECISION MAKING

Performance: understand and provide legal advice on the application of law and policy in the administrative decision making process

Conditions:

Given: relevant factual context, policy, case law, reference material (including prior legal opinion)

Denied: nil

Environment: CF unit, base, wing HQ, deployed domestically and internationally, under austere conditions

Standard: the legal officer shall, without direct supervision, provide legal advice on the application of law and policy related to the administrative decision making process, specifically:

a. Advise on sources of authority
b. Advise on jurisdiction
c. Advise on procedural fairness
d. Advise on substantive elements of decision making
e. Advise on consequences of a failure of fairness

PART 1 -- LESSON IDENTIFICATION

Title: EO 004.01 ADVISE ON SOURCES OF AUTHORITY

Performance: Advice on sources of authority as it relates to the administrative decision making process

CONDITIONS:

a. **given:** References: including but not limited to relevant factual context, legislation, policies, case law, (may also include prior legal opinions) NDA, QR&O
b. **denied:** nil

Standard: At the conclusion of this lesson the individual candidate shall know and understand the sources of authority as they relate to the administrative decision making process, and be able to apply this knowledge in their capacity as a legal advisor

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Main Teaching Points:

- Hierarchy of sources of authority
- Key sources of authority for the CAF
- Methods of authorization

Method: This EO will be accomplished by Development Lesson. Students will be required to read any pre-reading packages assigned and be prepared to respond to questions.

Duration: 10 mins

References: *Constitution Act 1867*, *NDA*, QR&O, DAOD
J.J. Guy, People, Politics and Government, a Canadian Perspective, 5th ed. (Toronto: Prentice Hall, 2001) at 294.
P.W. Hogg, Constitutional Law of Canada (Toronto: Carswell, 2000) at 1.

Training/Learning AidS: Standard classroom with whiteboard and projection system, handouts, student disk, student desk book, Legal Officer Qualification Course (LOQC) Instructors Handbook – Module(s) [XXX]

Note to the instructor: This developmental lesson shall be conducted in structured manner, using the list of "questions to the class" provided in the following pages. Instructors are to complement each segment of the developmental lesson by follow-up and direct questions taking into account the flow and direction of the discussion. Interim summaries shall be conducted at the end of each segment to confirm the material was learned and provide a basis from which the discussion can progress to the next segment. A review of the main teaching points will then take place at the end of the period.

PART 2 – INTRODUCTION

Objective:

1. The instructor shall introduce the subject of sources of authority in the CF administrative decision making process. By the end of the lesson the candidates should have a basic knowledge of these topics which would allow them to provide legal advice as it pertains to this subject

Introduction:

2. A general understanding of the Canadian political system is essential to understanding the overarching legal framework upon which the CF makes administrative law-related decisions. It is important to know and understand the roles

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and levels of authorities for senior advisers. These senior advisers include ADM (Policy), ADM (Finance and Corporate Services), ADM (Material), ADM (Infrastructure and Environmental), DM Human Resources Group consisting of CMP and ADM (HR-Civ), the Chief of the Maritime Staff, Chief of the Land Staff, Chief of the Air Staff, and the JAG.

3. Without a firm understanding of the political and legal division of political power within the Canadian federal state, military commanders and legal advisors will not be able to fully understand the structure, dynamics or context upon which the political direction for the CF to lawfully make administrative decisions is given. Consequently, the ability to anticipate legal issues will be enhanced as a result of having considered this overview.

4. Decision-making can be regarded as the cognitive process resulting in the selection of a belief and/or a course of action among several alternative possibilities. Every decision-making process produces a final choice, or choices that may or may not prompt action. Every decision must be made by a decision maker who has the authority to make the decision. Authority is conveyed upon decision makers by a variety of means and there is also an established hierarchy.

Outline:

5. During this lesson the candidates will be introduced to the hierarchy of sources of authority within the CF decision making process. It is important for legal officers to understand the hierarchy of sources of authority in order to be able to give appropriate advice.

Stage 1 – constitutional authority

Stage 2 – statutory authority

Stage 3 – common law authorities

Stage 4 – authority conveyed by policy

PART 3 – BODY OF THE LESSON

Stage 1 – Constitutional Authority

Introduction:

6. There are a variety of instruments that provide authority to those involved in the administrative decision making process. In this lesson the candidates will be introduced to the hierarchy of sources of authority so they are prepared to provide advice as the

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need arises. This is also sometimes known as the hierarchy of legal instruments associated with the CF decision making process.

Body of the Lesson:

Constitution Act, 1867

7. Laws passed by elected representatives and interpreted by the courts, govern the people of Canada. The Constitution is the supreme law of Canada. Any law that is inconsistent with the provisions of the Constitution is, to the extent of the inconsistency, of no force or effect.

8. The Constitution takes precedence over all other legislation, including the *National Defence Act* (NDA), the key statute governing the CF.

9. The Constitution specifies the powers and responsibilities of each level of government, as well as the necessary and inherent limitations that are needed to balance the needs of society and the rights of the individual.

10. The Constitution gives the federal Parliament the general authority to make laws with respect to matters that affect the nation as a whole where it provides that the federal Senate and House of Commons may "make laws for the Peace, Order and Good Government of Canada.

11. It also grants specific powers to the federal and provincial governments. In particular, subsection 91(7) of the Constitution assigns the federal government responsibility for "Militia, Military and Naval Service, and Defence."54 This provision establishes the federal government's ultimate authority to enact laws governing Canada's military forces, such as the NDA.

12. Every action of the Government must comply with the Constitution and be predicated upon the rule of law

13. Governments have a duty to defend and uphold the Constitution and to ensure that they do not exceed their constitutional mandates.

14. The Constitution Act, 1867 is the most foundational of Canada's constitutional documents, is the fundamental source of political and legal authority in Canada. It establishes the basic structure of the Canadian state. Canada's constitutional structure has several important qualities. Like many political systems worldwide, Canada can be thought to have a 'separation of power' between three branches of government. Broadly speaking, the legislative branch creates laws, the executive branch implements these laws and an independent judiciary adjudicates disputes58 by applying statutory, common law (in provinces outside Quebec) and constitutional principles.

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15. Section 91 authorizes Parliament to "make laws for the peace, order, and good government of Canada, in relation to all matters not coming within the classes of subjects by this Act assigned exclusively to the Legislatures of the provinces". Although the text of the Act appears to give Parliament residuary powers to enact laws in any area that has not been allocated to the provincial governments, subsequent Privy Council jurisprudence held that the "peace, order, and good government" power is, in fact, a delimited federal competency like those listed under section 91 Canada's constitution therefore lacks a residuary powers clause.

Ref: *AG Canada v AG Ontario (Labour Conventions)*, [1937] AC 326 (PC).

16. One of the most notable effects of the adoption of the Charter was to greatly expand the range of judicial review, because the Charter is more explicit with respect to the guarantee of rights and the role of judges in enforcing them than was the Bill of Rights. The courts, when confronted with violations of Charter rights, have struck down unconstitutional statutes or parts of statutes, as they did when Canadian case law was primarily concerned with resolving issues of federalism. However, the Charter granted new powers to the courts to enforce more creative remedies and to exclude more evidence in trials.

17. These powers are greater than what was typical under the common law and under a system of government that, influenced by Canada's mother country the United Kingdom, was based upon Parliamentary supremacy. Section 52 of the Constitution Act, 1982 provides that the Constitution of Canada is the "supreme law of Canada", and any law inconsistent with it is of no force or effect, this would include any aspect of the *NDA* and any subsequent regulations and orders made under the *NDA* such as QR&O.

Canadian Charter of Rights and Freedoms

18. In 1982, the Canadian Charter of Rights and Freedoms (Charter) was embedded into the Constitution. The Charter established a series of individual rights that have the effect of constraining the powers of Parliament and provincial legislatures, as well as their respective executive branches.

19. No level of government can infringe upon these rights unless the infringement is a reasonable limit that can be demonstrably justified “in a free and democratic society. In this regard, some of the Charter rights may be overridden by the use of invoking the “notwithstanding clause,” a provision in the Charter allowing Parliament and the provincial legislatures to enact a law that persists notwithstanding a violation of certain Charter rights. In practice, the notwithstanding clause provision has only rarely been enacted in legislation.

20. The laws of Canada, including the Constitution and the Charter, remain at the core of all administrative decision-making. It is the court’s responsibility to interpret and apply the Constitution and the Charter, as well as all other laws enacted by Parliament and the provincial legislatures, in a manner consistent with the principles of fundamental

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justice. Thus, the principles of administrative law have provided individuals who are subject to government decision-making with the means to challenge decisions that they see as unfair.

Questions:

Q. What is the highest level of authority within the CF decision making process?

Interim Summary:

21. The highest level of authority in the CF decision making process is constitutional authority. Constitutional authority comes from the Constitution Act of 1867 and Constitutional Act of 1982 which includes any authority conveyed by the Charter of Rights and Freedoms. As all authority flows from this it stands to reason that any decision made under the authority of a subordinate legislation, regulation or policy must be grounded in authority first granted under the Constitution Act

Stage 2 – Statutory Authority

Introduction:

22.. The Queen's Regulations and Orders for the Canadian Forces (QR&O) are regulations having the force of law for the governance of the Canadian Forces. They are regarded as the primary document of military law and regulations in Canada - aside from the *National Defence Act*.

Body of the lesson:

23. The QR&O are issued under the authority of Section 12 of the *National Defence Act* (NDA), the governing statute of the Canadian Forces. Section 12 provides the Governor in Council (i.e., the Governor-General acting on the advice of Cabinet) and the Minister of National Defence with the power to make regulations for the organization, training, discipline, efficiency, administration, and government of the Forces so long as such regulations are not inconsistent with the NDA, common-law principles of natural justice, the Canadian Bill of Rights or the Canadian Charter of Rights and Freedoms; it also permits the Treasury Board to make regulations concerning pay, allowances, forfeitures, deductions, etc.

24. QR&O 1.23 further authorizes the Chief of Defence Staff (CDS) to issue orders and instructions "not inconsistent with the National Defence Act or with any regulations made by the Governor in Council, the Treasury Board or the Minister" in the discharge of his duties or in implementation/explanation of regulations.

25. Each regulation or order within the QR&O is, as noted above, issued under the authority of the Governor in Council, the Minister, Treasury Board, or CDS; the issuing

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authority is indicated by a letter in parentheses following each regulation or order, namely (G), (M), (T), and (C), respectively.

26. Regulations tend to contain much more detail than their authorizing, or enabling legislation. Ultimately, statutory regulations must be traceable back to an explicit statutory authority. As a form of subordinate legislation, regulations are inoperative (or ultra vires), if they are made without express statutory authority.

27 Regulations are of particular importance in the CF, where the day-to-day operation and administration of the military is controlled under the authority of such instruments as the Queen's Regulations and Orders for the Canadian Forces (QR&Os).

28. The QR&Os are statutory instruments, comprised of both regulations and orders, which amplify the subjects and procedures that are established by the parent statute – the NDA. The bulk of administrative law applicable to the CF focuses on the powers granted to various officials, positions and entities established by regulations, particularly the QR&Os.

29. In QR&Os, for example, the statutory authority is identified at the end of each specific regulation. The letter "G" denotes the GiC; "TB" refers to the Treasury Board (TB); "M" identifies the Minister of National Defence (MND); and "C" indicates the Chief of the Defence Staff (CDS). The first three are authorized to issue regulations, while the CDS issues orders rather than regulations. Just as statutes must be consistent with the Constitution, regulations and orders must be consistent with all relevant statutes, as well as the Constitution.

30. The NDA charges the CDS with the "control and administration" of the CF. Unless otherwise directed by the GiC, all orders and instructions to the CF must be issued by or through the CDS "to give effect to the decisions and to carry out the directions of the Government of Canada or the Minister [of National Defence].

31. This body of internal rules, orders and directives is generally contained in the Canadian Forces Administrative Orders (CFAOs), Defence Administrative Orders and Directives (DAODs), CF general distribution messages (CANFORGENs), as well as other directives and orders that are issued from time to time, by or under the authority of the CDS.

32. The general authority to issue such directions is legislative in nature, as it is derived by the NDA and the regulations made pursuant to that Act, even though the specific orders, directives and rules are made without any legislative authority referring specifically to the subject of the directions.

33. Authority conveyed by statute is subordinate to any authority conveyed by The *Constitution Act* but is superior to any authority conveyed by regulation, orders or policy

Questions:

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Interim Summary:

34. It is imperative that legal officers be familiar with the statutes, regulations orders and policies that govern authority as it pertains to the CF decision making process. While these are not the only means by which authority can be granted they are the primary source. Authority can also be granted by means of common law authority.

Stage 3 – Common Law Authority

Introduction:

35. Court cases often turn on the interpretation of the Constitution, the *Charter*, or other statutes and regulations made by government. In the Canadian legal system and especially in the common law jurisdictions, courts developed a series of legal precedents which then bind or at least influence subsequent decisions and ensure that decisions are made on a reasonably consistent basis.

Body of the lesson:

36. In the absence of specific statutory or regulatory provisions governing a particular issue, court decisions provide a body of law upon which government administrators can rely. Because of their role interpreting legislation, the Constitution and developing legal precedent, the courts are generally viewed as the final arbiter of fair administrative decision-making in government. Of course, if non-constitutional court precedent develops in a fashion unwelcomed by the legislature, it may be supplanted by legislation.

37. Constitutional court precedent, however, is less vulnerable to legislative reversal. In addition, Canada's written constitution is very difficult to amend, usually requiring substantial support from both the federal and provincial levels of government.

Questions:

Interim Summary:

38. Because the *Charter* has given Canadian courts the constitutional authority to review the substance of legislation passed by Parliament and the provincial legislatures. Courts now have an enormous impact on law and governance in Canada. More than scrutinizing legislation, the courts today insist that the executive branch of government apply the Charter standards when making administrative decisions. This remains true in the CF decision making process as well.

Stage 4 – Authority conveyed by policy

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Introduction:

39. In some circumstances the authority to make administrative decisions may be conveyed by policy. Authorizations can take different forms, including: delegated powers, devolved powers, or the exercise of powers by virtue of 'custom of the service'. In many cases, the source of the delegated or devolved powers will be legislative and the public actor exercising such powers will be exercising statutory or regulatory powers, albeit delegated or devolved from the sources named in the legislation.

Body of the lesson:

40. **Delegated Powers**. Legislation that confers powers on a public actor may also permit that public actor to delegate those powers. A common example within the CF is the delegation of the CDS' adjudicative powers as the final authority in the grievance process to his delegate, DGCFGA. Powers may be delegated only to the extent permitted by legislation.

41. **Devolved Powers**. In some cases, legislation might not expressly stipulate that legislated powers can be delegated. The axiom *delegatus non potest delegare* represents the constitutional principle that, absent the power to further delegate, a delegate may not normally sub-delegate the powers that have been granted to the delegate. When Parliament authorizes a statutory actor to perform functions that would normally be within Parliament's authority, the statutory actor is, in essence, acting as Parliament's delegate. Thus, when, under subs. 12(2) of the *NDA*, Parliament authorizes the Minister to make regulations, Parliament is essentially sub-delegating its law-making authority. The Minister may not further sub-delegate this power.

42. However, there will be occasions in which legislation does not expressly permit a delegate to sub-delegate powers, but where the delegate could not conceivably always exercise such powers personally. Such circumstances gave rise to Devolution Doctrine, sometimes referred to as *Carltona* Doctrine, after the UK case that expressed this principle: *Carltona Ltd v Commissioners of Works*, [1943] 2 All ER 560 (CA). This principle was incorporated into Canadian law by virtue of *The Queen v. Harrison*, [1977] 1 SCR 238.

43. In *Harrison*, Dickson J. (as he then was), citing the judgment of Lord Greene, MR in *Carltona* favourably, held:

> ...The tasks of a Minister of the Crown in modern times are so many and varied that it is unreasonable to expect them to be performed personally. It is to be supposed that the Minister will select deputies and departmental officials of experience and competence, and that such appointees, for whose conduct the Minister is accountable to the Legislature, will act on behalf of the Minister, within the bounds of their respec-tive grants of authority, in the discharge of minis-terial responsibilities. Any other approach would but lead to administrative chaos and inefficiency.

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44. In order for a person other than the delegate to exercised devolved authority:

a. The legislative context, although not expressly permitting delegation, must support the conclusion that the delegate could not be expected to exercise the powers personally;
b. The legislation delegating the powers must not expressly bar subsequent sub-delegation;
c. The devolved decision-maker must possess knowledge and skills that support the conclusion that he or she is in a position to exercise the powers; and
d. The devolved decision-maker must be sufficiently senior to exercise the devolved authority and to be held accountable by the legislated delegate.

45. The decision by a devolved decision-maker is, de jure, the decision of the legislated delegate – typically a minister of the Crown.

46. Subsection 24(2) of the *Interpretation Act* – particularly para. 24(2)(d) – reflects devolution doctrine and expressly permits departmental authorities to exercise powers conferred upon the Minister, absent the express power of the Minister to delegate those powers:

> (2) Words directing or empowering a minister of the Crown to do an act or thing, regardless of whether the act or thing is administrative, legislative or judicial, or otherwise applying to that minister as the holder of the office, include
>
> (d) notwithstanding paragraph (c) [which pertains to the authority of the Deputy Minister], a person appointed to serve, in the department or ministry of state over which the minister presides, in a capacity appropriate to the doing of the act or thing, or to the words so applying.

46. However, as will be described later in this course, the CF and the DND are distinct entities under the NDA and para 24(2)(d) of the *Interpretation Act* cannot apply to CF personnel who are not part of the DND. Consequently, any CF decision-maker purporting to act under authority devolved from the Minister would have to rely upon the common law devolution principle.

47. **Custom of the Service**. Section 49 of the NDA states:

> Any power or jurisdiction given to, and any act or thing to be done by, to or before any officer or non-commissioned member may be exercised by, or done by, to or before any other officer or non-commissioned member for the time being authorized in that behalf by regulations or according to the custom of the service.

48. This is similar to the statutorily devolved power under para 24(2)(d) of the *Interpretation Act* relying upon a factual determination that a power or function was performed on behalf of another CF decision-maker: e.g. Chief Military Personnel performing personnel-related functions on behalf of the CDS.

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PART 4 – CONCLUSION

Summary:

49. The topics covered in this lesson include the sources of authorities in the CF decision making process and the hierarchy of those sources. Students should now understand from where CF decision makers draw their authority and why it is important that the authority exists to before decisions are made

Confirmation:

50. Done in a discussion format. Ask confirmation questions. No group answers, remind students to raise their hand before speaking. Instructor may ask particular students to answer questions.

Conclusion:

51. The preceding examination of the sources of CF legal authorities underscores the position that the rule of law is more than a vague concept. It governs every aspect of the functioning of the CF. It is essential that CF decision makers be able to identify and rely upon the legal authorities and principles that allow them to make administrative decisions.

PART 1 -- LESSON IDENTIFICATION

Title: EO 004.02 Advise on jurisdiction

Performance: Advise on jurisdiction as it relates to the administrative decision making process

Conditions:

a. **given:** References: including but not limited to relevant factual context, legislation, policies, case law, (may also include prior legal opinions) NDA, QR&O

b. **denied:** nil

Standard: At the conclusion of this lesson the individual candidate shall know and understand jurisdiction as it relates to the administrative decision making process, and be able to apply this knowledge in their capacity as a legal advisor

Main Teaching Points:

- principle of *vires*
- types of administrative decisions

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Method: This EO will be accomplished by Development Lesson. Students will be required to read any pre-reading packages assigned and be prepared to respond to questions.

Duration: .2 (10 min)

References: *Constitution Act, NDA*, QR&O,

Training/Learning Aids: Standard classroom with whiteboard and projection system, handouts, student disk, student desk book.

Note to the instructor: This developmental lesson shall be conducted in structured manner, using the list of "questions to the class" provided in the following pages. Instructors are to complement each segment of the developmental lesson by follow-up and direct questions taking into account the flow and direction of the discussion. Interim summaries shall be conducted at the end of each segment to confirm the material was learned and provide a basis from which the discussion can progress to the next segment. A review of the main teaching points will then take place at the end of the period.

PART 2 – INTRODUCTION

Objective:

52. The instructor shall introduce the subject of jurisdiction in the CF administrative decision making process. By the end of the lesson the candidates should have a basic knowledge of this topic which would allow them to provide legal advice as it pertains to this subject

Introduction:

53. After authority jurisdiction is the second block in the foundation of the administrative decision making process. As a legal officer it is critical to know who has jurisdiction to make decisions within the administrative decision making process.

Outline:

54. During this lesson the candidates will be introduced to various aspects that relate to jurisdiction as it pertains to the administrative decision making process. In particular the following subjects will be covered in this lesson:

Stage 1 – principle of *vires*

Stage 2 – who are decision-makers

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Stage 3 – when is the decision made

Stage 4 – what decisions can be made by the decision making authority

PART 3 – BODY OF THE LESSON

Stage 1 – Principle of *Vires*

Introduction:

55. The literal translation of the term 'vires' is 'power' or 'force'. Consequently, the juridical term *ultra vires* is interpreted as meaning "beyond powers", or beyond the powers". Its standard legal translation and substitute is "beyond power". If an act requires legal authority and it is done with such authority, it is characterized in law as *intra vires* meaning "within the powers". The standard legal translation and substitute is "within power". If something is done or a decision is made without such authority, it is considered to be *ultra vires*. Acts that are *intra vires* may be deemed to be valid and those that are *ultra vires* invalid.

Body of the lesson:

56. Jurisdiction is determined by establishing who has the authority to make the decision that is required by the particular circumstances that prevail. Authority to make the decision is conveyed by the various statutes, regulations, orders, policies and directives. It would therefore stand to reason that it should be clear who has the jurisdiction and authority to make decisions in every circumstance. Having the jurisdiction and exercising that jurisdiction are two different things.

Interim Summary:

57. Decisions must be made within the powers established by the source of authority. Decisions that are deemed to be ultra vires are not valid and may be overturned by proper authority. Rank and position convey certain powers but one must always look to the source of the authority, who is exercising the authority and the nature of the issue that requires a decision to determine if the decision is within the jurisdiction of the decision making authority

Questions:

Stage 2 – Who makes decisions?

Introduction:

58. Often, but not always, it is clearly stated within the instrument of authority who has the authority to make a particular decision.

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Body of the lesson:

59. What can be problematic is a decision maker relying up a lower level of authority or an advisor, including legal advisors, in such a way that they do not exercise their discretion, or decision making authority, and essentially rubber stamp the advice provided to them. This type of action has the effect of the decision actually being made by someone who does not have jurisdiction. Upon review it could be determined that this decision was in fact made by someone without jurisdiction and is therefore ultra *vires*.

60. Jurisdiction may be established by rank or by position and it may transpire that someone of a lower rank has authority to make decisions whereas someone of a higher rank does not, as is the case with positional authority.

Questions:

Interim Summary

61. Ultimately the responsibility for the decision made rests with the decision making authority that is established by the source of that authority be it statute, regulations or some other means. A decision that is made by someone who does not have the authority to do so would not withstand a challenge launched by the individual, or individuals, affected by said decision.

Stage 3 – When are decisions made?

Introduction:

62. While some timelines for decisions are prescribed by the various instruments that convey authority to the decision maker this is not always the case.

Body of the lesson:

63. When a regulation, policy or directive is silent on timeframes within which a decision must be made the course of action that must be followed is one that ensures that the decision is made within a reasonable time that does not undermine fundamental justice or render the decision making process ineffective due to delay. Unjustified delay could give rise to grounds for a grievance or some other form of challenge by a person who feels they have been negatively impacted by the delay.

Interim Summary:

Questions:

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Stage 4 - What types of decisions can be made?

Introduction:

64. The types of decisions that can be made within the administrative decision making process are many and varied but always the decision made must be one which is within the authority of the decision maker to make.

Body of the Lesson:

65. The chain of command is responsible for the overall effectiveness and operations of their unit. Command requires decisions to be made regarding unit discipline, management and operations.

66. An example of some types of decisions made by the chain of command include but are not limited to areas of expenditure management, careers and career development, investigations, both administrative and disciplinary, use of military resources and public property as well as NPP issues.

67. As stated earlier regardless of the types of decisions to be made they must be made within the scope of authority of the decision maker and within the limits of the regulations, guidelines, policies or orders that govern the particular realm of the decision be it administration, operations or discipline.

PART 4 - CONCLUSION

Summary:

68. The topics covered in this lesson include the principle of vires and types of administrative decisions. The candidates should now have a general understanding of how jurisdiction impacts the administrative decision making process.

Confirmation:

69. Done in a discussion format. Ask some confirmation questions. No group answers, remind students to raise their hand before speaking. The instructor may ask particular students to answer questions

Conclusion:

70. The administrative decision making process is not always an easy thing to negotiate. As a legal advisor you may be called upon to provide advice to the chain of command on many aspects of the administrative decision making process including

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questions regarding jurisdiction, the scope and nature of the decision, conformity with laws, regulations, orders, policies and directives. It is critical that all legal officers are family with the capstone documents, regulations and policies that govern the various aspects of decision making within the CF.

PART 1 - LESSON IDENTIFICATION

Title: EO 004.03 ADVISE ON PROCEDURAL FAIRNESS

Performance: Advise on procedural fairness as it relates to the administrative decision making process

Conditions:

a. **given:** References: including but not limited to relevant factual context, legislation, policies, case law, (may also include prior legal opinions) NDA, QR&O

b. **denied:** nil

Standard: At the conclusion of this lesson the individual candidate shall know and understand the jurisdiction as it relates to the administrative decision making process, and be able to apply this knowledge in their capacity as a legal advisor

Main Teaching Points:
- elements of procedural fairness
- content of fairness

Method: This EO will be accomplished by Development Lesson. Students will be required to read any pre-reading packages assigned and be prepared to respond to questions.

Duration:.4 period (20min)

References: NDA, QR&O, Constitution Act
Training/Learning Aids: Standard classroom with whiteboard and projection system, handouts, student disk, student desk book, Legal Officer Qualification Course (LOQC) Instructors Handbook – Module(s) [XXX]

Note to the instructor: This developmental lesson shall be conducted in structured manner, using the list of "questions to the class" provided in the following pages. Instructors are to complement each segment of the developmental lesson by follow-up and direct questions taking into account the flow and direction of the discussion. Interim summaries shall be conducted at the end of each segment to confirm the material was

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learned and provide a basis from which the discussion can progress to the next segment. A review of the main teaching points will then take place at the end of the period.

PART 2 – INTRODUCTION

Objective:

71. The instructor shall introduce the subject of procedural fairness in the CF administrative decision making process. By the end of the lesson the candidates should have a basic knowledge of these topics which would allow them to provide legal advice as it pertains to this subject

Introduction:

72. The modern concept of procedural fairness that has emerged from Canadian legal jurisprudence is a fundamental underpinning of CF personnel administration. Although natural justice pervades public administration regardless of specific statutory provisions, many CF regulations and administrative orders do contain provisions reflecting and reinforcing the requirements of procedural fairness.

73. The development and expansion of government and statutorily authorized administrative tribunals has resulted in an evolving array of case law that ensures a minimum level of protection from unjust decision-making procedures for those affected. The key legal concepts embodied by the jurisprudence are natural justice and the duty to be fair.

74. CF decision-makers are required by law to ensure that a bureaucratic decision significantly affecting the career of another individual takes into account the gravity of the situation and provides a level of procedural fairness commensurate to the potential effect of the decision on the individual concerned. Whether a decision is considered 'fair' will depend on the following circumstances:

a. the nature of the decision;
b. the relationship existing between the decision-maker and the affected individual; and
c. the effect of that decision on the individual's rights.

Outline:

75. The NDA and the QR&Os provide authority for commanders, COs and supervisors to make administrative decisions ranging from routine career management to extraordinary, career-ending action. Although a court would assess the minimum required degree of procedural protections afforded to an individual on a case-by-case basis, it will generally be assessed proportionately to the seriousness and urgency of the decision (i.e., a decision to deny a CF member leave will not be as closely

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scrutinized as a decision to involuntarily release a member,). It is incumbent on CF decision-makers to incorporate a minimum standard of procedural fairness for each administrative decision.

76. During this lesson the candidates will be introduced to the subject of procedural fairness as it pertains to the CF decision making process and in particular the following topics:

STAGE 1 – rights, interests or privileges

STAGE 2 – right to know the case

STAGE 3 – right to be heard

STAGE 4 – right to an impartial decision maker

STAGE 5 – disclosure

STAGE 6 – opportunity to make informed representations

STAGE 7 – sufficiency of reasons to support decision

PART 3 – BODY OF THE LESSON

Stage 1 – Rights, Interests or Privileges

Introduction:

77. As with any decision making process there are often numerous stakeholders who have a vested interest in the outcome of the decision being made. These persons often confuse what they believe are rights with what is actually and interest or a privilege. In this lesson the student will be introduced to the difference between rights, interests and privileges in the administrative decision making process.

Body of the lesson:

78. In many, but not all, situations a person seeking a decision will have certain rights. Such as the right to make submissions or the right to be present during a hearing or tribunal. These rights are usually clearly defined within the instrument that controls the decision making process. At other times an applicant may merely have an interest in the outcome of the decision but no rights. That is they are actually peripheral to the decision making process, have no standing to be heard or to make submissions even though they may be affected by the decision.

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79. One example is a change to pay policy. While ever member of the force have an interest in the outcome of the decision as they may be affected by a change to pay policy, individual members have no right to be heard by the decision making authority, to make submissions, or to challenge the final outcome.

80. Privilege, which is most often confused with a right, is often afforded to individuals who have an interest in the outcome of a decision who by regulation, policy or directive would have no right to play an active role in the process. The decision making authority may deem it appropriate to extend to certain individuals the opportunity to make submission, provide information, attend hearings or other such actions which if prescribed by regulation would be rights.

Questions:

Interim Summary:

81. As a legal officer it is important to know what rights are conveyed to individuals involved in the decision making process and how to advise commanders on what these rights mean, not only to the decision maker but also to those who enjoy these rights. Additionally, the legal officer may be called upon to advise the commander on whether or not it is appropriate in the circumstances to convey certain privileges or how to acknowledge interest in a particular decision making circumstance. In all circumstances the decision maker must be mindful of taking a course of action that is consistent with ensuring fundamental elements of procedural fairness are preserved.

Stage 2 – right to know the case

Introduction:

82. The right to know the case to be met has been held to be an essential component of procedural fairness and substantial case law exists that clearly states the court's opinion on this issue. Two key cases are *McClennan v. Canada* and *Gayler v. Canada*.

Body of the lesson:

83. *McClennan v. Canada (Minister of National Defence)*, LS McClennan was provided with a notice of intent to recommend release. The case was one that dealt with apprehension of bias but also highlights the procedural fairness requirement that an individual should be informed of the case to be met and provided sufficient time to make representations. This principle was reinforced in the FCC decision of *Gayler v. Canada (Director Personnel Careers Administration Other Ranks, National Defence Headquarters)*.

84. Cpl Gayler was interviewed by the military police in the course of an investigation into illicit drug use. She heard nothing further for several months until the Base

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Comptroller informed her that the Director of Personnel Careers Administration (DPCA) had issued a message placing Cpl Gayler on counselling and probation (C&P) due to drug involvement, during which time she would be subject to urinalysis testing at any time.

85. The decision to place Cpl Gayler on C&P was made on the basis that she had been present when someone else was smoking marijuana. No substantiation was provided for this allegation until months later, when she was informed that a military police (MP) investigation report contained a questionable witness statement that claimed three individuals had smoked marijuana at Cpl Gayler's residence.

86. On that basis, she had allegedly contravened QR&O 20.04 (Prohibition), the CF's prohibition against unauthorized drug involvement.

87. The FCC took the following into consideration:

a. the MP report was never released to Cpl Gayler;
b. the decision to place Cpl Gayler on C&P was an administrative action;
c. the procedures outlined by QR&O 20.15(4) required that she be given an opportunity to make representations to the appropriate authority prior to the commencement of administrative action;
d. there was an employer/employee-like relationship between the DPCA and Cpl Gayler; and
e. the decision affected the applicant's livelihood and prospects in that relationship by precluding her from eligibility for training selection and promotion, incentive pay and postings during the probation period.

88. The Court determined that the DPCA had breached basic principles of procedural fairness by failing to give Cpl Gayler notice of the case against her and an opportunity to respond to the evidence before the decision to place her on C&P was made. The court set aside the decision to place her on C&P and ordered that all related documents be removed from her personnel file

Questions:

Interim Summary:

Stage 3 – right to be heard

Introduction:

89. One of the fundamental challenges of administrative law is determining the degree to which the right to notification and opportunity to respond is to be afforded to the individual. The application of the principles of fairness requires a great degree of flexibility. However, it is incumbent on all CF decision-makers to ensure that the

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appropriate degree of procedural fairness is applied to each decision and this will likely include affording the affected party the right to be heard in some format.

Body of the lesson:

90. The right to be heard is an important feature is encapsulated by the maxim *audi alteram partem* (i.e. to hear the other side). By meeting this elementary requirement, the administrative decision-maker provides the individual who may be affected by the decision with an opportunity to make representations regarding their situation. Logically, this could also provide information to the decision-maker that will result in a more informed and rational decision.

91. The opportunity for a CF member to make representations, however, does not necessarily mean that an individual is entitled to an oral hearing or to personally appear before the decision-maker.

92. Courts have determined that procedural fairness does not require that, in all cases, the applicant must be given an opportunity to make submissions directly to the decision-maker, provided that the applicant is able to make submissions in some form and those submissions are placed before the decision-maker (who will presumably consider those representations in making a final determination): *Hawco v. Canada (Attorney General)*.

93. It is not a failure of natural justice if a CF member is not able to make direct representations to the decision make as long as his or her representations reach the decision maker before the decision in made, and in enough time for the decision maker to review the information and consider them as part of the overall decision making process. An opportunity to make representations or an opportunity to respond, in whatever means is appropriate in the circumstance and is best suited to facilitate the members side of the story be presented to the decision maker will be enough to satisfy the requirement of the right to be heard.

Questions:

Interim Summary:

Stage 4 – right to an impartial decision maker

Introduction:

94. Procedural fairness cannot occur if the decision-maker has a pre-determined or biased disposition toward the issue or individual. The decision-maker who has a personal or financial interest in a matter under consideration might also be reasonably perceived as having a real or apprehended bias.

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95. In Canadian law, a reasonable apprehension of bias is a legal standard for disqualifying judges and administrative decision-makers for bias. Bias of the decision-maker can be real or merely perceived.

96. The test was first stated in *Committee for Justice and Liberty v. Canada (National Energy Board)*, [1978] 1 S.C.R. 369:

Body of the lesson:

97. In the administrative decision making process there cannot be either a 'real bias' on the part of the decision-maker or 'a reasonable apprehension of bias' of the decision-maker.

98. The standard to determine a reasonable apprehension of bias may vary from case to case. The leading Canadian case in which the application of bias was considered is *Committee for Justice & Liberty v. Canada (National Energy Board)*, which stated the test concerning a "reasonable apprehension of bias" in the following terms:

> ...the apprehension of bias must be a reasonable one, held by reasonable and right minded persons, applying themselves to the question and obtaining thereon the required information.

99. The test for bias is not only whether an actual bias exists, but whether a fully-informed, reasonable third party viewing the situation would apprehend that the decision-maker in question is likely to make a decision that is not entirely based on the admissible evidence before him.

100. A reasonable apprehension of bias may be raised where an informed person, viewing the matter realistically and practically and having thought the matter through, would think it more likely than not that the decision maker would unconsciously or consciously decide the issue unfairly.

101. Sometimes a reasonable apprehension of bias can be perceived through the manner in which procedural fairness is applied. In the case of *McClennan v. Canada (Minister of National Defence)*, LS McClennan was provided with a notice of intent to recommend release. He was afforded an opportunity to make representations but, it "was done in a fashion suggesting that the [CO] had already made up his mind, after the applicant was told to prepare to leave [his ship] and after the message to...Headquarters that he was being released [had been sent]."

102. The judge quashed the CO's decision because procedural fairness could not be "said to [have been] met when these representations are made after a de facto decision has been made."

103. It is appropriate to state that, in this fact scenario, a fully informed and reasonable person would likely have an apprehension of bias with respect to the CO's

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decision to release LS McClennan, considering the CO's course of action before LS McClennan was actually given the right to make representations.

Questions:

Interim Summary:

Stage 5 – disclosure

Introduction:

104. The right to disclosure is a vital component of procedural fairness in administrative proceedings, and originates in the principle audi alteram partem, which means simply "hear the other side too". It is most often used to refer to the principle that no person should be judged without a fair hearing in which each party is given the opportunity to respond to the evidence against them. Procedural fairness requires that individuals, whose rights, privileges or interests are to be affected by an administrative decision-making process, be provided with adequate information in order to know and respond to the case to be met.

Body of the lesson:

105. While the right to a fair hearing is well established, the content of the duty of fairness is a flexible standard that will be determined in the specific circumstances of each case. The nature, scope and timing of a disclosure obligation will vary in each case, depending on the nature of the situation in which the decision is to be made, any established rules or policies in relation to disclosure, and a number of other factors.

106. Disclosure provides an affected party with the opportunity to participate meaningfully in the decision-making process.

107. In Rockman v. Canada (Attorney General), a CF corporal applied for judicial review of the decision of the Director General of Military Careers (DGMC) to release him. Cpl Rockman was arrested for possession of marijuana by the MP and faced the imminent prospect of criminal charges.

108. Ultimately, the charges were not laid for evidentiary reasons. The Rockman case also addressed issues related to the disclosure of documents that would enable an individual to make appropriate representations. Cpl Rockman's judicial review application argued that he did not receive procedural fairness because he had received "a heavily edited version of the military police report while the CRB had an unedited version of the same report."

109. Disclosure is a context driven issue. Accordingly, the guiding principle is that decisions having potentially serious consequences for a CF member require a greater degree of procedural fairness than those concerning less serious outcomes. Certain CF

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administrative procedures (i.e., C&P, Notice of Intent to Recommend Release, harassment decisions and grievances), stipulate that disclosure is to occur so that the decision-maker may receive appropriate information in order to facilitate their decision. Decision-makers should ensure that documents and information that will be relied on to formulate a decision are disclosed to the affected individual in a timely manner and that no other, extraneous considerations are taken into account when making a decision.

Questions:

Interim Summary:

Stage 6 – opportunity to make informed representations

Introduction:

110. The Gayler case highlights an important requirement for procedural fairness for all serious administrative decisions. This important feature is encapsulated by the Latin maxim audi alteram partem (i.e., to hear both sides). By meeting this elementary requirement, the administrative decision-maker provides the individual who may be affected by the decision with an opportunity to make representations regarding their situation. Logically, this could also provide information to the decision-maker that will result in a more informed and rational decision.

Body of the lesson:

111. As written by the judge in Gayler:
Even if the applicant was not entitled to an oral hearing, since the decision was one of an administrative nature, she should have had a fair opportunity to respond to the case against her, including correcting or explaining any relevant information, before the decision was made.

112. The opportunity for a CF member to make representations, however, does not necessarily mean that an individual must be allowed direct access to the decision-maker or is entitled to an oral hearing. In the case of Hawco v. Canada (Attorney General) the applicant, Cpl Hawco, applied for judicial review of a decision by the Director General Personnel Career Other Ranks (DGPCOR) to release him for reasons related to chronic alcohol abuse.

113. Cpl Hawco raised several issues in his application, including the fact that he ought to have been given direct access to the DGPCOR, as opposed to submitting his representations to the Career Review Board (CRB). The judge dismissed the application for judicial review and concluded:...that procedural fairness in the circumstances of this case does not require that the applicant be given an opportunity to make submissions directly to the decision-maker, so long as he or she is able to make submissions to the Career Review Board, and those submissions are before the decision-maker.

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114. Nor is there always a requirement for a CF member to be granted an oral hearing. In Rockman v. Canada (Attorney General), a CF corporal applied for judicial review of the decision of the Director General of Military Careers (DGMC) to release him. Cpl Rockman was arrested for possession of marijuana by the MP and faced the imminent prospect of criminal charges. Ultimately, the charges were not laid for evidentiary reasons.

115. Cpl Rockman subsequently applied for voluntary release under the Force Reduction Plan (FRP) in 1996. If he had been released under the FRP, he would have received several financial advantages, including a pension. However, after Cpl Rockham submitted his voluntary request for release, a CRB changed the applicable release item to "unsuitable for further service," thereby disqualifying him from the FRP and its associated benefits. Cpl Rockman applied for judicial review, in part, on the grounds that he had not been allowed to address the decision-maker prior to the change of his release item and he was not given the reasons for the CRB's recommendation.

116. In the end result, the cases relied upon by Cpl Rockman do not go so far as to confer a right to make submissions directly to the Release Authority once the Career Review Board recommendations are known. They do support the proposition that a person whose rights are to be affected must be given a chance to be heard, though not necessarily in person.

117. In this case, Cpl Rockman's representations and those of his counsel were before the Career Review Board and before the Release Authority. While one can understand why Cpl Rockman would wish to deal with the Release Authority directly, it is not a failure of natural justice that he was not able to do so as long as his representations reached the Release Authority in their original form without having been modified or filtered by some intermediary. For that reason, this ground of review fails.

118. Cpl Rockman's application for judicial review was ultimately dismissed. Even though there had been technical breaches of the duty of fairness, the judge decided that Cpl Rockman was given substantial reasons for the CRB's decision and was given an opportunity to respond to the decision-maker, albeit not directly.

Questions:

Interim Summary:

Stage 7 – sufficiency of reasons to support decision

Introduction:

119. The duty to give reasons will only be satisfied when the reasons are adequate. The existence of an adequate written decision, where appropriate, facilitates the review

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of a decision by higher-level authorities in the chain of command, particularly if a grievance is submitted.

Body of the lesson:

120. An examination of relevant case law also establishes the principle that reasons for a decision must be given to the affected individual

121. Reasons, it has been argued, foster better decision-making by ensuring that issues and reasoning are well articulated and, therefore, more carefully thought out. The process of writing reasons for a decision by itself may be a guarantee of a better decision.

122. Reasons also allow parties to see that the applicable issues have been carefully considered, and are invaluable if a decision is to be appealed, questioned or considered on judicial review.

123. The duty to give reasons will only be satisfied when the reasons are adequate. The existence of an adequate written decision, where appropriate, facilitates the review of a decision by higher-level authorities in the chain of command, particularly if a grievance is submitted.

Questions:

Interim Summary:

PART 4 – CONCLUSION

Summary: The topics covered in this lesson include XXX. You have been informed of

Confirmation: Done in a discussion format. Ask some confirmation questions. No group answers, remind students to raise their hand before speaking. Or instructor may ask particular students to answer questions

Conclusion:

Administrative decision-making pervades every aspect of the CF. Decisions directly affecting individual CF members are made on a daily basis from the ministerial level downward. Therefore, the role of individual decision-makers must be understood in terms of ensuring that administrative law principles are applied throughout the decision-making process. Administrative decisions must be made according to certain legal standards, such as the duty of fairness. Throughout the remainder of this manual, these legal standards will be articulated and explained in the context of the day-to-day application of CF administrative policies and decisions. Administrative law embodies a set of principles, requirements, processes and remedies that, together, require

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ministers, COs and other DND and CF decision-makers to exercise their statutory powers with even-handedness, fairness and diligence.

PART 1 – LESSON IDENTIFICATION

EO 004.04 ADVISE ON SUBSTANTIVE ELEMENTS OF DECISION MAKING

Performance: Advise on the substantive elements of the administrative decision making process

Conditions:

a. given: References: including but not limited to relevant factual context, legislation, policies, case law, (may also include prior legal opinions) NDA, QR&O

b. denied: nil

Standard: At the conclusion of this lesson the individual candidate shall know and understand the jurisdiction as it relates to the administrative decision making process, and be able to apply this knowledge in their capacity as a legal advisor

Main Teaching Points:

- steps in decision making
- determine content of fairness for the particular decision
- identification of the appropriate decision making mechanism

Method: This EO will be accomplished by Development Lesson. Students will be required to read any pre-reading packages assigned and be prepared to respond to questions.

Duration: X period (XX min)

References: NDA, QR&O, Constitution Act

Training/Learning Aids: Standard classroom with whiteboard and projection system, handouts, student disk, student desk book, Legal Officer Qualification Course (LOQC) Instructors Handbook – Module(s) [XXX]

Note to the instructor: This developmental lesson shall be conducted in structured manner, using the list of "questions to the class" provided in the following pages. Instructors are to complement each segment of the developmental lesson by follow-up and direct questions taking into account the flow and direction of the discussion. Interim summaries shall be conducted at the end of each segment to confirm the material was learned and provide a basis from which the discussion can progress to the next segment. A review of the main teaching points will then take place at the end of the period.

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PART 2 – INTRODUCTION

Objective:

124. The instructor shall introduce the subject of the substantive elements of the CF administrative decision making process. By the end of the lesson the candidates should have a basic knowledge of these topics which would allow them to provide legal advice as it pertains to this subject

Introduction:

125. Everyday within the CF a multitude of decisions are made that affect the careers of service members. These decisions cover a broad spectrum or topics, from posting to deployments and from recorded warnings to course enrollments. Sometimes the decisions are accepted by the member and sometime the member is unhappy with the outcome and will choose to challenge the decision.

126. In order for the decision maker to be able to establish that the decision is sound and within the boundaries imposed by regulation, directives, orders and policies they must be able to demonstrate compliance with the decision making process.

127. They must be able to demonstrate that they had jurisdiction to make the decision, that the decision was made within the scope of their authority and that they applied procedural fairness to the decision making mechanism in order to arrive and the appropriate decision. These four topics will be covered in the next part of your lesson.

Outline:

128. During this lesson the candidates will be introduced to the substantive elements of administrative decision making, It is important for legal officers to understand the substantive elements of the administrative decision making process so they are able to provide effective legal advice.

STAGE 1 jurisdiction

STAGE 2 scope of authority

STAGE 3 content of fariness

STAGE 4 decision making mechanisms

PART 3 – BODY OF THE LESSON

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Stage 1 – jurisdiction

Introduction:

129. The NDA and the QR&Os provide authority for commanders, COs and supervisors to make administrative decisions ranging from routine career management to extraordinary, career-ending action. In order for their decisions to be lawful and binding they must have jurisdiction. Jurisdiction is the practical authority granted to an administrative decision maker to make pronouncements, issue orders and to manage and administer resources that fall within their defined area of responsibility. Jurisdiction may also denote the geographical area or subject-matter to which such authority applies.

Body of the lesson:

130. A determination of jurisdiction will examine whether the legislation, regulation, policy or program conveys a power that gives the decision maker the authority to decide a particular matter whether or not they fall within the expertise of the decision-maker.

131. If a decision maker makes a decision or pronouncement that is outside the scope of the authority of instrument from which they receive their authority they will be deemed to have acted outside of the scope of their jurisdiction and their decision may be overturned upon review by an appropriate authority.

Questions:

Interim Summary:

Stage 2– scope of authority

Introduction:

132. Authority conveyed to commanders and others to enable them to carry out their duties. There is no authority to perform any act not legitimately within the scope of such authority. The authority granted to a member of the CF by rank, position or appointment is restricted to such authority that is expressly conferred, or as may be reasonably implied.

Body of the lesson:

133. Scope of authority is a term used in agency law to determine whether a principal is liable for the acts of his/her agent. It is not necessary that the conduct of the agent be expressly authorized by the principal or be undertaken for the benefit of the principal for such conduct to be within the scope of the agent's authority. Conduct which is incidental

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to, customarily connected with or reasonably necessary for the performance of an authorized act is within the scope of the agent's authority.

134. An agent is not acting within the scope of authority while engaged in the ordinary commute to and from the place of work. However, if the agent is coming from home or returning to it on a special errand either as part of regular duties, or at the specific order or request of the principal, the agent is acting within the scope of authority from the time of starting on the errand until return, or until completely abandoning the business errand for personal reasons. A mere deviation for personal reasons is not a complete abandonment. An agent acts within the scope of authority when pursuing simultaneously a business errand and a personal objective.

135. Within a military context it is the authority conveyed by higher command to those in a position of authority over subordinates and such authority flows from higher commend by means of promotion, appointment or delegation.

136. If the authority is by means of a delegation the person giving the delegation cannot delegate beyond the scope of their own powers or authority and the person receiving the delegation is equally constrained in that they cannot do under a delegation what the principal is not authorized to do.

Questions:

Interim Summary:

Stage 3 – content of fairness

Introduction:

137. The common law imposes a minimum duty of fairness in certain administrative proceedings. The duty can only be invoked where the circumstances satisfy a threshold based on three factors set out by the Supreme Court in Knight v. Indian Head School Division No. 19.

Body of the lesson:

138. First, the nature of the decision must be sufficiently administrative or quasi-judicial. Decisions that are of a "legislative or general nature" which are based on broad policy issues rather points of law are not likely to warrant a duty of fairness. Furthermore, the decisions must be final in nature, not preliminary or interlocutory.

139. Second, the relationship between the (public) body and the individual must be based on an exercise of power in pursuant to a statute (or prerogative power).

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140. Third, the decision must affect the claimant's rights, privileges or interests.

141. Where the circumstances satisfy the threshold test to invoke a duty of fairness a claimant will be entitled to certain participatory rights including pre-hearing rights, such as rights related notice, disclosure, discovery, and delay, as well as hearing rights, such as rights related to the form of hearing, counsel, examinations, and reasons for judgment.

142. Baker v. Canada clarified administrative law in Canada in relation to both substantive matters (discretionary decision making) and procedural matters (procedural fairness).

143. The content of the duty of fairness depends on the type of right and the circumstances of the case. There are five factors that affect the content of this duty:

- The nature of the decision. It asks whether the decision is more for the purpose of resolving dispute, protecting individual rights or some other judicial purpose rather than a decision that balances many interests and primarily considers policy.
- The importance of the interest at stake in the decision relative to other interest
- The statutory scheme under which the decision is made. This primarily focuses on whether the decision is final and conclusive or if whether it is preliminary or if there is a right of appeal.
- The legitimate expectations of the parties based on whether there were any representations by word or conduct that lead the parties to believe there was some type of procedural protection.
- The procedural choices available to the ADM. The ADM must be accorded some deference to its practices and policies necessary to accomplish its mandate.

144. With respect to discretion, historically, the standard of review for discretionary decisions applied by the courts was that of correctness. However, this changed in Baker where the Supreme Court of Canada emphasized the awkward line between questions of law and discretion. The court recognized that the 'pragmatic and functional' approach, as outlined in Pushpanathan, should be applied when looking at issues of discretion. In addition, courts are able to apply a standard of reasonableness to discretionary decision making.

Questions:

Interim Summary:

Stage 4 – decision making mechanism

Introduction:

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145. The decision making mechanism is defined by a series of steps that aid the decision maker in coming to a solution that adheres to the principle of fairness to ensure that the decision is sound and will stand up to scrutiny if challenged on this basis.

Body of the lesson:

146. The following is a series of steps that if followed will assist the decision maker in ensuring that the principles of fairness have been applied:

a. investigate and research the issue to be determined;
b. confirm that they have the proper authority to decide the issue, either by virtue of the NDA, QR&Os, or some other order, directive or instruction;
c. ensure that they are not biased and that there would be no reasonable apprehension of bias;
d. follow all of the procedures outlined in the NDA, QR&Os, or other orders, directives or instructions that apply to the issue being decided;
e. give appropriate notice to the affected CF member that a decision will be made, when required to do so;
f. assign an assisting officer to assist the affected CF member, when required to do so;
g. disclose to the affected CF member, information that will be provided to the decision-maker, subject to an appropriate vetting process as may be required by law;
h. receive representations from the affected CF member before a final decision is made; and
i. provide reasons for the decision.

Questions:

Interim Summary:

PART 4 – CONCLUSION

Summary:

147. The topics covered in this lesson include: jurisdiction, scope of authority, content of fairness and the decision making mechanism. Candidates have been informed of these topics so they will have a better awareness of the impact of these issues on the decision making process.

Confirmation:

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148. Done in a discussion format. Ask some confirmation questions. No group answers, remind students to raise their hand before speaking. Or instructor may ask particular students to answer questions

Conclusion:

149. Jurisdiction and scope of authority are the foundation for much that transpires throughout the administrative decision making process. Without jurisdiction and scope of authority over the area of responsibility that is at the heart of the administrative decision to be made the actions of the decision maker are void. The first step in the decision making process is for the decision maker to confirm their jurisdiction over the issue and to determine the scope of their authority which will inform what decision is made. The application of the principles of fairness through use of the decision making process allows the decision maker to follow an accepted process that will assist him or her in making the right decision. Your understanding of these aspects of the decision making process will allow you to provide sound legal advice at all levels.

PART 1 – LESSON IDENTIFICATION

EO004.05 ADVISE ON CONSEQUENCES OF A FAILURE OF FAIRNESS

Performance: Advise on the consequences of a failure of fairness in the administrative decision making process

Conditions:

a. **given**: References: including but not limited to relevant factual context, legislation, policies, case law, (may also include prior legal opinions) NDA, QR&O

b. **denied:** nil

Standard: At the conclusion of this lesson the individual candidate shall know and understand the consequences of a failure of fairness as it relates to the administrative decision making process, and be able to apply this knowledge in their capacity as a legal advisor

Main Teaching Points:

- informal corrective measures
- formal corrective measures
- external corrective measures

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Method: This EO will be accomplished by Development Lesson. Students will be required to read any pre-reading packages assigned and be prepared to respond to questions.

Duration: 1 period (40 min)

References: NDA, QR&O, Constitution Act

Training/Learning Aids: Standard classroom with whiteboard and projection system, handouts, student disk, student desk book, Legal Officer Qualification Course (LOQC) Instructors Handbook – Module(s) [XXX]

Note to the instructor: This developmental lesson shall be conducted in structured manner, using the list of "questions to the class" provided in the following pages. Instructors are to complement each segment of the developmental lesson by follow-up and direct questions taking into account the flow and direction of the discussion. Interim summaries shall be conducted at the end of each segment to confirm the material was learned and provide a basis from which the discussion can progress to the next segment. A review of the main teaching points will then take place at the end of the period.

PART 2 – INTRODUCTION

Objective:

150. The instructor shall introduce the subject of the consequences of failure of fairness in the CF administrative decision making process. By the end of the lesson the candidates should have a basic knowledge of these topics which would allow them to provide legal advice as it pertains to this subject

Introduction:

151. Canadian administrative law is the body of law that addresses the actions and operations of governments and governmental agencies. That is, the law concerns the manner in which courts can review the decisions of administrative decision-makers (ADMs) such as a board, tribunal, commission, agency or minister.

152. The body of law is concerned primarily with issues of substantive review (the determination and application of a standard of review) and with issues of procedural fairness (the enforcement of participatory rights). Administrative law concerns the statutes and rules of government operations. Courts ensure that ADMs observe the limits on the authority. Also, declaration and equitable injunction remedies exist.

153. The same can be said for military administrative law in that there exists a series of processes and checks and balances to ensure that the CF decision making process is fair, equitable and as transparent as possible. There are a number of mechanisms

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through which members of the CF can seek redress if procedural fairness was not exercised during the decision making process and there are measures that can be taken, either formally or informally, to correct failures of fairness.

Outline:

154. During this lesson the candidates will be introduced to the consequences of a failure of fairness as it relates to the administrative decision making process It is important for legal officers to understand procedural fairness as it is part of the foundation of the processes of decision making and they will be called upon throughout their career to give advice on this issue.

Stage 1 informal corrective measure

Stage 2 formal corrective measures

Stage 3 external corrective measures

PART 3 – BODY OF THE LESSON

Stage 1 – informal corrective measures

Introduction:

155. Where CF decision-makers have erred in the application of fair decision-making, the first recourse should be to Informal corrective measures. Informal corrective measures are generally not expressly described within legislation or policy, but are also not proscribed by legislation, regulation order or policy. Notwithstanding that they are not expressly defined, they encompass corrective measures which a decision-maker may take which satisfy the need to remedy any disadvantage or harm occasioned by errors in fairness in CF decision-making.

Body of the lesson:

156. By their very nature, informal corrective measures are varied and flexible, and tend to be limited only by a supervisor's imagination and proscription under law and policy. They tend to be decentralized, requiring little or no recourse to external mechanisms, and can often be implemented in a short period of time.

157. A compelling example of the scope of informal remedy is QR&O 19.12 Communication with the commanding officer: "An officer or non-commissioned member may, upon application, see the member's commanding officer on any personal matter." This exemplifies that, where an officer or NCM believes that he or she has been the subject of an unfair decision, initial recourse should be to the chain of command to seek a remedy at the earliest possible opportunity.

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158. Examples of situations in which an officer or NCM might seek an informal remedy include:

a. A PDR or PER that does not fairly represent the officer or NCM's performance: Before submitting a written grievance, an officer or NCM has the opportunity to discuss a PER with his or her supervisor, or even CO, in order to identify any major shortcomings;
b. Personal conflict within the workplace: An officer or NCM can approach a supervisor or peer in order to remedy conflict within the workplace. Potential solutions can vary from a discussion of the conflict leading to its resolution, to changing responsibilities or functions within the workplace; and
c. Inadequate training: An officer or NCM may experience adverse evaluation due to insufficient training or preparation for particular duties. What is initially viewed as a lack of effort might be due to a lack of knowledge or experience. In such circumstances, supervisors can provide additional training to assist subordinates whose performance might otherwise be considered below par.

Questions:

Interim Summary:

Stage 2 – formal corrective measures

Introduction:

159. Formal corrective measures may include internal and external processes. Within the CF there are formal corrective measures that may remedy errors in administrative decision-making. The statutory grievance mechanism is the one most commonly used within the CF. In some cases, such as where a CF member believes he or she is subject to harassment, recourse may be had to other complaint mechanisms, such as harassment resolution pursuant to DAOD 5012-0. There are also various corrective measures that exist outside of CF processes that allow for members of the CF to seek remedy when they believe the process that led to the outcome of a decision, within the CF, was unfair. These include application to superior courts for judicial review (most notably, the Federal Court), application to Canadian Human Rights Commission (CHRC) and adjudication by the Canadian Human Rights Tribunal (CHRT).

Body of the lesson:

160. The CF Grievance Process is an example of an internal formal corrective measure. Other formal mechanisms include Harassment complaints under DAOD 5012-0 or Alternative Dispute Resolution (ADR). These are described as 'formal' mechanisms as they are governed expressly by legislation and/or policy instruments, which establish specific procedures to be followed. The specifics of each mechanism will be discussed later under PO 009 – Complaint Resolution.

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161. External corrective measures include those available by means of judicial review before superior courts of justice and application to external bodies such as the Canadian Human Rights Commission and Tribunal, both established under the *Canadian Human Rights Act*. Access to external mechanisms can be limited by both the potential remedy and the conditions under which they may act. For example, some complaint resolution mechanisms can only be relied upon where the applicant or complainant has exhausted all internal review mechanisms. Additionally, the types of corrective measures they can impose will differ between the various courts, commissions and tribunals.

Questions:

Interim Summary:

Stage 3 – external corrective measures

Introduction:

162. External corrective measures include any corrective measures imposed by court, arbitrator or any other entity or authority external to the CF.

Body of the lesson:

163. When the outcome of an administrative decision is challenged by a member of the CF and internal mechanisms have either been exhausted or are not available, the complainant may turn to external mechanisms to seek remedy.

164. Courts perform a supervisory role over administrative tribunals. In particular, the courts will ensure that the law is applied correctly and that both the content of fairness and procedural fairness are applied properly. The requirement for procedural fairness arises where the rights, interests or privileges of a person are affected by a statutory decision-maker. The content of fairness – the extent to which procedural fairness must be applied – will be dependent upon the finality of the decision and the extent to which the decision affects a complainant's rights, interests or privileges.

165. These rights flow from two principles of natural justice, the right to be heard (*audi alteram partem*) and right to be judged impartially (*nemo judex in sua causa*). However, these are guiding principles, not specific requirements for all decisions that affect the rights, interests or privileges of CF personnel.

166. The powers of an administrative decision-maker are primarily created by statute, which is known as the "enabling statute". These powers are limited by the relevant legislative authority pursuant to sections 91 and 92 of the *Constitution Act, 1867*. Superior Courts (known as 'Section 96 Courts') have an inherent power at common law to review any decision of an administrative decision maker.

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167. Judicial review is distinct from an appeal. The reviewing court focuses on the decision-making process, rather than the substance of the decision. Deference will be granted to the administrative tribunal, particularly where the tribunal has expertise in the subject matter. The courts will generally grant limited deference to determinations of law, including human rights, which traditionally fall within the purview of superior courts. The power (and scope) of judicial review can be found either in the enabling statute or by virtue of the common law. The common law powers are derived from the four original writs of certiorari, prohibition, mandamus, and habeas corpus.

168. Courts may also review a decision through appeal where the statute expressly creates such a right. Appeal from the judgment and sentencing of a Court Martial is one such example. Appeals are typically reviews for errors of law.

169. The power of judicial review can be limited by privative clauses or finality clauses within the enabling statute. Other jurisdictions, such as the UK, may refer to these as 'ouster clauses'. A privative clause will declare the (administrative or statutory) decision as "final and conclusive" and/or that the decision-maker has "exclusive jurisdiction" over the matter, effectively removing any power of review. However, in 1981, the Supreme Court of Canada held in *Crevier v. Quebec* that the Constitution requires that the courts be able to supervise errors of statutory and administrative decision-makers. Consequently, the legislatures cannot completely oust them from that power.

170. Whatever the nature of the external process, the goal is to determine what, if anything, went wrong and to find a means to put things right. Because procedural fairness is such a key element of the administrative decision making process there must be access to these external mechanisms when the root of the problem is the workings of any internal mechanism.

Questions:

Interim Summary:

PART 4 – CONCLUSION

Summary:

171. The topics covered in this lesson include formal and informal review process and external review process to address the consequences of a failure of procedural fairness as it pertains to the administrative decision making process.

Confirmation:

172. Done in a discussion format. Ask some confirmation questions. No group answers, remind students to raise their hand before speaking. Or instructor may ask particular students to answer questions

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Conclusion:

173. Any failure of fairness will have a negative impact on the person who is the subject of the administrative decision being made. When it is recognized that a duty of fairness is owed it must also be understood that a failure of fairness must be remedied. Therefore, there must be a series of checks and balances that can identify that a duty of fairness was owed, that this duty was breached and that a meaningful remedy is applied. Understanding the effects of a failure of fairness and how they are addressed by various informal and formal processes will assist the legal officer in providing appropriate legal advice.

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PO 005 ADVISE ON CAF ORGANIZATION AND COMMAND

Performance: understand and provide legal advice on the CAF organization and command structure

Conditions:

Given: relevant factual context, policy, case law, reference material (including prior legal opinion)

Denied: nil

Environment: CAF unit, base, wing HQ, deployed domestically and internationally, under austere conditions

Standard: the legal officer shall, without direct supervision, provide legal advice on CAF organization and command, specifically:

a. Advise on the constitution of the CAF
b. Advise on CAF organizations
c. Advise on CAF command

PART 1 -- LESSON IDENTIFICATION

EO 005.01

Title: CONSTITUTION OF THE CAF

Performance: Advise on the constitution of the CAF

Conditions:

a. **given**: References: including but not limited to relevant factual context, legislation, policies, case law, (may also include prior legal opinions) *NDA*, QR&O
b. **denied**: nil

Standard: At the conclusion of this lesson the individual candidate shall know and understand the legal basis for the CAF structure, the constitution of the CF, components and subcomponents of the CAF and be able to apply this knowledge in their capacity as a legal advisor

Main Teaching Points:

- Legal Basis for CF structure

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Method: This EO will be accomplished by Development Lesson. Students will be required to read any pre-reading packages assigned and be prepared to respond to questions.

Duration: 1 period (40 min)

References: *NDA,* QR&O, CFP 219, MOO, CFOO,

Training/Learning Aids: Standard classroom with whiteboard and projection system, handouts, student disk, student desk book.

Note to the instructor: This developmental lesson shall be conducted in structured manner, using the list of "questions to the class" provided in the following pages. Instructors are to complement each segment of the developmental lesson by follow-up and direct questions taking into account the flow and direction of the discussion. Interim summaries shall be conducted at the end of each segment to confirm the material was learned and provide a basis from which the discussion can progress to the next segment. A review of the main teaching points will then take place at the end of the period.

PART 2 – INTRODUCTION

Objective: The instructor shall introduce the subject of the constitution of the CAF, components and subcomponents of the CAF and the legal basis for the structure of the CAF. By the end of the lesson the candidates should have a basic knowledge of these topics which would allow them to provide legal advice as it pertains to this subject.

Introduction: Within what is commonly known as the CAF there are two separate and distinct "entities", the Department of National Defence and the Canadian Armed Forces. The CAF has more rigid rules as set out in the *National Defence Act* and the QR&O. The main teaching points for this lesson are the constitution of the CAF, the legal basis for the structure of the CAF, what authorities establish who has the power to influence the structure of the CAF and how units and other elements of the CAF are organized.

Outline: During this lesson the candidates will be introduced to the constitution of the CAF, What is the legal basis for the CAF structure and the components and sub components of the CAF. It is important for legal officers to understand the structure of the CAF as is plays a part in the understanding the practical application of the information contained in the previous PO, PO 008 sources of authority.

Stage 1 – Legal Basis for CF structure
Stage 2 – Constitution of CF
Stage 3 – Components and Sub-components of CAF

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PART 3 – BODY OF THE LESSON

Stage 1 – Legal basis for CF structure

Introduction:

1. The CF is composed of units, formations and other elements, organized by the Minister as defined in the *NDA*. Only the Minister can affect the organization of units and formations of the CF.

Body of the Lesson:

2. There are five terms that are important to understand when considering the topic of the legal basis for the organization of the CAF:

- Organize
- Embody
- Establish
- Allocate
- Assign

3. *Organize:* The CF shall consist of such units and other elements as are from time to time organized by or under the authority of the Minister: **Ref. *NDA* s. 17(1)**. Only MND can organize units and other elements of the CF and the term organize is meant to include the creation, naming and disbanding of units and other elements.

4. *Embody*: A unit or other element organized under subsection 17(1) shall from time to time be embodied in such component of the CF as may be directed by or under the authority of the Minister: **Ref. *NDA*, s. 17 (2).** Embodiment identifies if a unit or other element is part of Regular, Reserve or Special Force Component which we will discuss more fully later in the lesson

5. *Establish:* The Minister may authorize the establishment of commands and formations: **Ref. QR&O 2.08(1)(a)**.

6. *Allocate*: The Minister may authorize the allocation to commands and formations such bases and other units and elements that the Minister considers expedient: **Ref. QR&O 2.08 (1)(b)**.

7. This has the effect of grouping units and formations and identifies chain of command. The CDS also has the authority to "temporarily allocate" elements for the purposes of training or operations. However, past experience has shown that there is a legal problem with the interpretation or application of the word "**temporarily**". It is taken to mean "for the duration of the exercise" in the case of a reallocation for training. For reallocations for operations, it is taken to mean "until the CDS can properly staff a request to the Minister."

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8. *Assign*: Where the MND has not made an allocation the CDS has residual authority to assign units and other elements to L1s for control and administration. This is fraught with certain difficulties when control and administration of a unit or other element is assigned to a civilian L1. In these situations, for matters of discipline, the next superior officer will always be the senior military officer in the L1 group.

Suggested Questions:

Q. What is the primary source of law dictating the structure of the CF?

Q. Who may authorize the establishment of commands and formations?

Q. When does the CDS have residual authority to assign units and other elements to L1s for control and administration?

Interim Summary:

10. The *NDA* provides the authority for the MND to organize the CAF. The candidates have been instructed on the residual authority of the CDS and how he, or she, may alter the structure of the CAF. Also discussed in this lesson are the QR&O and how the authority contained within the QR&O has bearing on the structure of the CAF. So now that the candidates have an understanding of the legal basis for the structure of the CAF the focus will be on the constitution of the CAF.

Stage 2 – Constitution of the CF

Introduction:

11. The CAF is the unified armed force of Canada, as constituted by the *National Defence Act*, which states: "The Canadian Forces are the armed forces of Her Majesty raised by Canada and consist of one Service called the Canadian Armed Forces." **Ref. QR&O 2.01**

Body of the lesson:

12. This unified institution consists of sea, land and air elements which are the Royal Canadian Navy (RCN), the Canadian Army, and the Royal Canadian Air Force (RCAF). Personnel may belong to either the Regular Force component or the Reserve Force component, the latter of which has four sub-components: the Primary Reserve, Supplementary Reserve, Cadet Organizations Administration and Training Service, and the Canadian Rangers. The third component, the Special Force, is not currently used, but which can be established by the Governor in Council under section 16 of the *NDA*. The Department of National Defence is created under s. 3 of the *NDA* and is essentially the civilian support system for the Canadian Forces.

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13. The Canadian Forces is managed by the Armed Forces Council, chaired by the Chief of the Defence Staff. Section 15 of the *Constitution Act, 1867* establishes that the Commander-in-Chief of the Canadian Forces is the sovereign, who, since 1904, has authorized her viceroy, the Governor General, to exercise the duties ascribed to the post of Commander-in-Chief and to hold the associated title since 1905. All troop deployment and disposition orders, including declarations of war, fall within the Crown prerogative and are issued as Orders in Council, which must be signed by either the monarch or governor general.

14. The Preamble to the *Constitution Act, 1867*, states that Canada would have "... a Constitution similar in Principle to that of the United Kingdom...". Consequently, incorporating the conventions, customs and practices of the United Kingdom's Westminster Parliament (other than those express provisions under the *Constitution Act, 1867*), the monarch and viceroy must generally follow the advice of his or her ministers in Cabinet, including the prime minister and minister of national defence, who are accountable to the elected House of Commons.

15. CAF personnel are divided into a hierarchy of numerous ranks of officers and non-commissioned members. The governor general appoints, on the advice of the Prime Minister, the Chief of the Defence Staff (CDS), who, pursuant to s. 18 of the *NDA*, has control and administration of the Canadian Forces. He is the highest ranking member of the Canadian Forces and is the head of the Armed Forces Council. The CDS essentially has command of the Canadian Forces. The Armed Forces Council generally operates from National Defence Headquarters (NDHQ). On the Armed Forces Council sit the heads of Canadian Joint Operations Command and Canadian Special Operations Forces Command, the Vice Chief of the Defence Staff, and the heads of the Royal Canadian Navy, the Canadian Army, the Royal Canadian Air Force and other key Level 1 organizations.

16. The CAF operate out of 27 Canadian Forces bases (CFB) across the country, including NDHQ.

Suggested Follow -on Questions

Q. What is the CAF?

Q. What is the CAF comprised of?

Q. Who manages the CAF?

Q. Who is the Commander in Chief of the CAF?

Q. Who is the head of the Armed Forces Council?

Interim Summary:

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17. At this point the candidates should know what elements constitute the CAF and the hierarchy of the CAF including the role of monarch and the Governor General. In the next part of the lesson the various components and sub-components that make up the CAF will be explored.

Stage 3 – Components and subcomponents of the CF

Introduction:

18. As you heard previously in the lesson the CAF consists of Regular Force and the Reserve Force, and the Special Force (which is not to be confused with *special forces* such as JTF2). The Special Force is a force that may be called up in times of war (e.g. a Special Forces. The reserve force has four sub-components: the Primary Reserve, Supplementary Reserve, Cadet Organizations Administration and Training Service (COATS), and the Canadian Rangers.

Body of the lesson:

19. **Regular Force**. The Regular Force of the CAF consists of the Royal Canadian Navy (often referred to as the senior service), the Canadian Army and the Royal Canadian Air Force, as well as other commands and groups within the structure of the CAF, such as Military Personnel Command, Joint Operations Command, and Canadian Special Operations Command. Notwithstanding the reintroduction of terms such as the Royal Canadian Navy or Royal Canadian Air Force, the CAF remains a unified force and these names are simply indicative of 'Level 1' environmental commands.

19. The Royal Canadian Navy (RCN), is headed by the Commander of the Royal Canadian Navy and includes 33 warships and submarines deployed in two regions: Maritime Forces Pacific (MARPAC) located at CFB Esquimalt on the west coast in Esquimalt British Columbia, and Maritime Forces Atlantic (MARLANT) at Her Majesty's Canadian Dockyard in Halifax on the east coast. These regions each have a formation-level fleet. There is an additional formation headquarters, the Naval Reserve Headquarters (NAVRESHQ) at Pointe-a-Carcy in Quebec City, Quebec. The RCN is augmented by various aircraft and supply vessels. The RCN participates in NATO exercises and operations, and ships are deployed all over the world in support of multinational deployments.

- Show Org chart of the RCN now

20. The Canadian Army is headed by the Commander of the Canadian Army and administered through five Divisions -- the 1st Canadian Division (which is mainly a headquarters without subordinate units or formations), the 2nd Canadian Division, the 3rd Canadian Division, the 4th Canadian Division and the 5th Canadian Division -- the Canadian Army Doctrine and Training System and the Canadian Army Headquarters.

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21. Currently, the Regular Force component of the Army consists of three field-ready brigade groups: 1 Canadian Mechanized Brigade Group, at CFB Edmonton and CFB Shilo; 2 Canadian Mechanized Brigade Group, at CFB Petawawa and CFB Gagetown; and 5 Canadian Mechanized Brigade Group, at CFB Valcartier and Quebec City. Each contains one regiment each of artillery, armour, and combat engineers, three battalions of infantry, one battalion for logistics, a squadron for headquarters/signals, and several smaller support organizations. A tactical helicopter squadron and a field ambulance are co-located with each brigade, but do not form part of the brigade's command structure.

22. The 2nd, 3rd and 4th Canadian Divisions each has a Regular Force brigade group, and each Division except the 1st has two to three Reserve Force brigades groups. In total, there are ten Reserve Force brigade groups. The 5th Canadian Division and the 2nd Canadian Division each have two Reserve Force brigade groups, while the 4th Canadian Division and the 3rd Canadian Division each have three Reserve Force brigade groups. Major training and support establishments exist at CFB Gagetown, CFB Montreal and CFB Wainwright.

- Show army org chart now

23. The Royal Canadian Air Force (RCAF) is headed by the Commander of the Royal Canadian Air Force. The commander of 1 Canadian Air Division and Canadian NORAD Region, based in Winnipeg, is responsible for the operational command and control of Air Force activities throughout Canada and worldwide. 1 Canadian Air Division operations are carried out through eleven wings located across Canada.

24. The commander of 2 Canadian Air Division is responsible for training and support functions. 2 Canadian Air Division operations are carried out at two wings. Wings represent the grouping of various squadrons, both operational and support, under a single tactical commander reporting to the operational commander and vary in size from several hundred personnel to several thousand.

- Show air force org chart now

25. **Reserve Force**. The Canadian Forces have a total reserve force of approximately 50,000 primary and supplementary reservists that can be called upon in times of national emergency or threat. For the components and sub-components of the Canadian Forces Reserve Force, the order of precedence follows:

- (1) Primary Reserve,
- (2) Supplementary Reserve
- (3) Cadet Organizations Administration and Training Service, and
- (4) Canadian Rangers

Ref. *NDA* s. 15(3), QR&O 2.03

26. **The Primary Reserve**. Primary Reserve consists of citizen soldiers, sailors, and airmen and women, trained to the level that makes them interchangeable with their Regular Force counterparts, and posted to CF operations or duties on a casual or

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ongoing basis. This group is represented at NDHQ by the Chief of Reserves and Cadets, who is usually a major general or rear admiral, and is divided into four areas that are each operationally and administratively responsible to its corresponding environmental command in the Regular Force – the Naval Reserve (NAVRES), Land Force Reserve (LFR), and Air Reserve (AIRRES) and the Health Services Reserve under the Canadian Forces Health Services Group. **Ref. *NDA* s. 15(3), QR&O 2.034,**

27. **The Supplementary Reserve**. Members of the Reserve Force that are not currently engaged in active training or employment who remain ready to be called up into active service in the event of a national emergency or threat that requires augmentation to the Primary Reserve or the Regular Force. The members of the Supplementary Reserve form a pool of potential augmentees (previously known as the Supplementary Ready Reserve). **Ref. QR&O 2.034, *NDA* s. 15(3)**

28. **COATS**. The Cadet Organizations Administration and Training Service (COATS) is a Reserve Force sub-component that consists of officers and non-commissioned members who conduct training, safety, supervision and administration of cadets aged 12 to 18 years involved in the Canadian Cadet Movement. The majority of members in COATS are officers of the Cadet Instructors Cadre branch of the CF. Members of COATS who are not employed part-time (Class A) or full-time (Class B) may be held on the "Inactive List" in anticipation of employment in the same manner as other reservists are held as members of the Supplementary Reserve. **Ref. *NDA* 15(3), QR&O 2.034**

29. **Canadian Rangers**. The Canadian Rangers provide surveillance and patrol services in Canada's arctic and other remote areas. They are an essential reserve force component used for Canada's exercise of sovereignty over its northern territory. The Canadian Rangers are the military's eyes and ears in the sparsely settled northern, coastal and isolated areas of Canada.

30. Canadian Rangers are non-commissioned members of the Canadian Armed Forces (CAF) Reserve. They are volunteers who are always ready for service but who are not required to undergo annual training. They serve only when placed on active service or when called out in an emergency. The Canadian Rangers are divided into five Canadian Ranger Patrol Groups (CRPGs).

31. Each CRPG covers a distinct geographical area; each has a headquarters and a staff that is responsible for overseeing the Rangers and Junior Canadian Rangers in their area. The Commander of Canadian Army is the Canadian Ranger National Authority (CRNA), but he delegates this authority to the Chief of Staff Army Reserve. **Ref *NDA* 15(3), QR&O 2.034**

32. **The Special Force**. Sub-section 16(1) of the *NDA* states:

> ...In an emergency, or if considered desirable in consequence of any action undertaken by Canada under the United Nations Charter or the North Atlantic Treaty, the North American Aerospace Defence Command Agreement or any

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other similar instrument to which Canada is a party, the Governor in Council may establish and authorize the maintenance of a component of the Canadian Forces, called the special force, consisting of

(a) officers and non-commissioned members of the regular force who are placed in the special force under conditions prescribed in regulations;

(b) officers and non-commissioned members of the reserve force who, being on active service or having applied and been accepted for continuing, full-time military service, are placed in the special force under conditions prescribed in regulations; and

(c) officers and non-commissioned members not of the regular force or the reserve force who are enrolled in the special force for continuing, full-time military service.

33. *NDA 16(2)* The maximum numbers of officers and non-commissioned members in the special force shall be as authorized by the Governor in Council, and the special force shall include such units and other elements as are embodied therein. **Ref *NDA* 16(1), QR&O 2.04**

34. The last time the Special Force was established was during the Korean War.

Suggested follow-on questions:

Q. What are the three components of the CAF?

Q. What are the four sub-components of the reserve force?

Q. What is the role of the Canadian Rangers?

Q. How is the Canadian Army administered?

PART 4 – CONCLUSION

Summary:

35 The topics covered in this lesson include the legal basis for the structure of the CAF, the constitution of the CF its components and sub-components. You have been informed of the authority of the MND and his power to organize units and other elements of the CAF. We have covered the residual authority of the CDS and how this accrues to the CDS when the MND has not made an allocation. We have covered in very basic terms the structure of the CAF its environments: navy, army and Air force and the components and subcomponents of the Regular Force and Reserve Force.

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Confirmation

36 Done in a discussion format. Ask some confirmation questions. No group answers, remind students to raise their hand before speaking. Or instructor may ask particular students to answer questions

Conclusion:

37. Recap why this lesson and material presented in important. Make a link from your introduction to the conclusion. Some points to cover are the need for a general understanding of legal authorities that dictate who has the power to organize and control the structure of the CAF, what constitutes the CAF, the difference between the various sub-components of the reserve force.

38. Additionally, during this lesson the candidates were provided with visual representation of the organization of the three environmental components of the CAF and they should be reminded that this is an excellent tool to orient them to who is who in the zoo when trying to determine command and control of CAF environments when providing legal advice. The candidates should now have a basic understanding of the makeup of the CAF. The information contained in this lesson will be expanded upon in EO 009.02 and 009.03 which will cover CAF organization and CAF Command.

PART 1 -- LESSON IDENTIFICATION

EO 005.02

Title: ADVISE ON CAF ORGANIZATION

Performance: Advise on organization of the CAF

Conditions:

a. **given**: References: including but not limited to relevant factual context, legislation, policies, case law, (may also include prior legal opinions) *NDA*, QR&O

b. **denied**: nil

Standard: At the conclusion of this lesson the individual candidate shall know and understand the organization of CAF.

Main Teaching Points:

- Building blocks of the CAF
- Instruments used to create the building blocks of the CAF

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Method: This EO will be accomplished by Development Lesson. Students will be required to read any pre-reading packages assigned and be prepared to respond to questions.

Duration: 1 period (40 min)

References: *NDA*, QR&O, MOO,
CFOO (http://vcds.mil.ca/sites/intranet-eng.aspx?page=4395),
CFP 219 Organizations &Establishments Policy (June 2012)
http://vcds.mil.ca/sites/CProg/Resources/DDFP%20files/Updated%20CFP%20219%20
2012.pdf

Training/Learning Aids: Standard classroom with whiteboard and projection system, handouts, student disk, student desk book, Legal Officer Qualification Course (LOQC) Instructors Handbook – Module(s) [XXX]

Note to the instructor: This developmental lesson shall be conducted in structured manner, using the list of "questions to the class" provided in the following pages. Instructors are to complement each segment of the developmental lesson by follow-up and direct questions taking into account the flow and direction of the discussion. Interim summaries shall be conducted at the end of each segment to confirm the material was learned and provide a basis from which the discussion can progress to the next segment. A review of the main teaching points will then take place at the end of the period.

PART 2 – INTRODUCTION

Objective:

39. The instructor shall introduce the subject of the organization of the CAF. Teaching points covered will include the definition of and role of elements, commands, formations and units By the end of the lesson the candidates should have a basic knowledge of the CFOOs and MOOs and other instruments that create the organization of the CAF which will allow them to provide legal advice as it pertains to this subject

Introduction:

40. An organization is formed when the constituent parts of any group are required to work together for the attainment of a common aim. Organization means order. It is brought about by systematically correlating the sub-divisions of work into a structure of authority and responsibility, with work being coordinated vertically and horizontally within the organization.

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41. Certain characteristics are common to all organizations. Of the many elements that contribute to developing organizational patterns and structures, the following principles are applicable, and should be considered in organizing at all levels within DND and the CAF: definition of responsibility; unity of command; span of control; rational assignment; delegation of authority; and accountability.

42. The function of Organization is to legalize the structure of the Department of National Defence and the Canadian Armed Forces (DND/CAF). This involves the enforcement of norms in the creation and amendment of organizational structures in DND/CF. The norms are set out in CFP 219.

43. In the previous lesson the candidates were introduced to the constitution of the CAF and the legal basis for the constitution of the CAF. This lesson will explore elements, commands, units and formations and how they form the structure of the CAF which will lead directly to the final EO, EO 009.03 CAF Command.

Outline:

44. In this lesson the instruction in the previous lesson will be expanded upon by examining the building blocks of the CAF. The candidates will be instructed on what is an element, how is it different from a command, what constitutes a unit where does it fit in the CAF structure. Additionally, the candidates will be exposed to the instruments that are used to create the organization of the CAF, in essence how the legal authority is practically applied. CFOOs, MOOs, TQ&E and CFTPO will be covered in this lesson.

Stage 1 Building blocks of the CAF

Stage 2 Instruments to Create the Building Blocks of the CAF

Suggested questions:

Q. How is the CAF organized?

Q. Who has the responsibility of the organization of the CAF

Q. What document sets out the norms related to organization of the CAF?

PART 3 – BODY OF THE LESSON

Stage 1 – Building Blocks of the CAF

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Introduction:

45. As stated in the previous lesson the CAF is composed of units, and other elements, organized by the Minister as defined in the *NDA*. We will now examine these aspects of the CAF which we refer to as the building blocks of the CAF, these building blocks form the structure of the CAF.

Body of the Lesson:

46. The CAF is organized into discreet components.

47. A unit is an individual body of the Canadian Armed Forces that is organized as such pursuant to **s. 17 of the *NDA*** with the personnel and materiel thereof. **Ref. NDA s. 2(1) and QR&O 1.**02 A unit may be called a ship, battalion, regiment, company, squadron, station, base or any other appropriate designation in accordance with its role and the custom of the service, but in each case it is designated a unit by the authority responsible for its original organization.

48. A detachment is a part of a unit and not separately organized by the MND. They may be co-located on wings and bases and provide specialised services to the base/wing such as a dental detachment. They are not necessarily geographically proximate to their unit. Ex: 1 Dental Unit

49. A base is an example of a unit. A base is a unit designated as such by or under the authority of the Minister, the function of which is to provide such accommodation and support services for assigned units as may be directed by the CDS. **Ref. QR&O 1.02**

50. A formation is an element of the Canadian Armed Forces, other than a command, comprising two or more units, designated as a formation by or on behalf of the MND, grouped under a single commander. **Ref. QR&O 1.02** The role of a formation is assigned at the time of its organization. It may be an operational grouping, or simply an intermediate level of command organized to reduce a senior commander's span of control to facilitate administration or training. In all cases, unless the CDS directs otherwise, an officer commanding a formation exercises command over all units and other elements allocated to the formation. The power and jurisdiction of officers commanding formations are extensive and are detailed in the various orders and regulations for the CF. ref. **CFP 219, Organizations &Establishments Policy (June 2012)**

51. A command is an element of the CAF, designated as a command by or on behalf of the MND, grouped under a single commander. There is no separate definition for a command. The definition is derived from the definition of a formation as per **QR&O 1.02**.

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52. There is no minimum number or types of constituent elements that form a command. Commands are major CAF elements whose commanders report directly to the CDS and are responsible to the CDS for the effective and efficient accomplishment of their assigned missions and tasks and, unless the CDS directs otherwise, exercise command over all formations, units and other elements allocated to their commands. **ref. CFP 219, Organizations &Establishments Policy (June 2012)**

53. The element is the basic organizational building block of the CF. Elements are not clearly defined. Elements other than units, formations and commands simply retain the generic designation "element". The OJAG is one example; other examples include CANFLTLANT and CANFLTPAC (Canadian Fleet Atlantic and Pacific)

54. There are no personnel establishments in formations and commands. The commander is normally established, or situated, in the formation or command headquarters which is generally a separate unit.

55. It is important to note that a unit, formation, command or element is not necessarily tied to one geographic location but has a presence and exists everywhere is detachments or constituent elements exist.

56. The three most recognized commands are the Royal Canadian Navy, Canadian Army and Royal Canadian Air Force , which were covered previously. There are a number of other commands.

Military Personnel Command

57. On behalf of the Chief of Defence Staff, the Chief of Military Personnel (CMP) provides functional direction/guidance to the Canadian Forces on all military personnel management matters, monitors compliance with Canadian Armed Forces (CAF) personnel management policies, and is accountable for the effective management of the CAF Personnel System.

58. The CMP is responsible for the development of strategies, policies and programs that foster and maintain the profession of arms as an honourable and desirable career. The CMP has five strategic pillars that form the basis for the development and execution of CAF personnel management to ensure the availability of the right person at the right time and at the right place.

Canadian Forces Intelligence Command

59. In 2013 the MND established the Canadian Forces Intelligence Command (CFINTCOM). CFINTCOM will focus on delivering mission-focused, outcome-oriented advice to commanders and decision makers. It will be better able to respond to evolving intelligence requirements in today's complex security environment. The primary formation within the CFINTCOM is the Canadian Forces Intelligence Group. Its role is to

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provide intelligence officers and integrated intelligence collection services to the CAF and DND. It is made up of five existing units:

- Canadian Forces Joint Imagery Centre (CFJIC)
- Canadian Forces National Counter-Intelligence Unit (CFNCIU).
- Joint Meteorological Centre (JMC)
- Mapping and Charting Establishment (MCE)
- Joint Task Force X (JTF-X)

Canadian Joint Operations Command

60. The Canadian Joint Operations Command is an operational element established in October 2012 with the merger of Canada Command, the Canadian Expeditionary Force Command and the Canadian Operational Support Command. The new command, created as a response to the cost-cutting measures in the 2012 federal budget, combines the resources, roles and responsibilities of the three former commands under a single headquarters

Special Operations Forces Command

61. The Canadian Special Operations Forces Command (CANSOFCOM) is a formation capable of operating independently but primarily focused on generating special operations forces (SOF) elements to support CJOC. The command includes Joint Task Force 2 (JTF2) and the Canadian Joint Incident Response Unit (CJIRU) both based at CFB Trenton, with the latter's headquarters at CFB Kingston, as well as the Canadian Special Operations Regiment (CSOR) and the 427 Special Operations Aviation Squadron (SOAS) based at CFB Petawawa.

62. As noted previously sometimes Commands include a group of existing units known as groups, as is the case with CFINTCOM. The primary formation within CFINTCOM is the Canadian Forces Intelligence group. Other groups are:

Information Management Group

63. The Information Management Group is responsible for the conduct of electronic warfare and the protection of the Forces' communications and computer networks. Within the group, this operational role is fulfilled by the Canadian Forces Information Operations Group, which operates the following units: the Canadian Forces Information Operations Group Headquarters (CFIOGHQ), the Canadian Forces Electronic Warfare Centre (CFEWC), the Canadian Forces Network Operation Centre (CFNOC), the Canadian Forces Signals Intelligence Operations Centre (CFSOC), the Canadian Forces Station (CFS) Leitrim, and the 764 Communications Squadron. In June 2011 the Canadian Forces Chief of Force Development announced the establishment of a new organization, the Directorate of Cybernetics, headed by a Brigadier General, the Director General Cyber (DG Cyber). Within that directorate the newly established CF

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Cyber Task Force, has been tasked to design and build cyber warfare capabilities for the Canadian Forces

Canadian Forces Health Services Group

64. The Health Services Group is a joint formation that includes over 120 general or specialized units and detachments providing health services to the Canadian Forces. With few exceptions, all elements are under command of the Surgeon General for domestic support and force generation, or temporarily assigned under command of a deployed Joint Task Force through Canadian Joint Operations Command

- show organizational structure org chart here

Interim Summary:

65. In this part of the lesson you have been introduced to various structures within the CAF. You should now know the difference between a unit, a formation and a command and how they fit in the hierarchy of the CAF. You now have a basic understanding of the building blocks of the CAF and in the next part of the lesson we will cover the instruments that are used to create these building blocks. As previously discussed in 2013 the MND created the CFINTCOM, how did he do this? What was the process involved in creating a new command? These are topics that we will cover now.

Stage 2 – Instruments to Create the Building Blocks of the CAF

Introduction:

66. There are a variety of instruments that are used to create the building blocks of the CAF. Ministerial Organizational Orders and Canadian Forces Organizational Orders formalize the organization of the CAF. Other instruments such as CFTPO and TO&E are used for temporary organization of CAF assets.

Body of the lesson:

67. The principal means of communicating approved organizational change is through Ministerial Organizational Orders (MOOs) and Canadian Forces Organizational Orders (CFOOs) for the CF; and for NDHQ through the official NDHQ Organization Chart, and NDHQ Organization Change letters.

68. A Ministerial Organizational Order is an order issued by the MND creating a unit formation or command and allocating a unit formation or command to a component of the Canadian Armed Forces. The Ministerial Organization Order (MOO) specifies the title of the element, the name in both official language, the type of element so whether it is a unit, formation or command. The MOO designates the embodiment of the element

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into either the regular force, reserve force or special force. The MOO details the allocation the element and designation of the superior formation or command but it is not the instrument that actually affects the allocation

69. When it is proposed that formal changes be made to the structure of the CAF they must be made through the VCDS as Resource Manager. The will originate from appropriate L1 and include detailed rationale for change and a briefing note for MND. The VCDS then refers request to CProg/DDFP/DDFP 7 (Director of Defence Force Planning) for staffing and recommendations. Requests that do not conform to force development objectives or which violate organizational requirements and principles are referred back to VCDS with recommendations.

70. VCDS may then refer proposal back to the originator, seek comments from other commands or group principals, direct that the proposal either be staffed as recommended by DDFP 7 or as originally proposed.

71. When organizational change is approved Director of Defence Force Planning (DDFP 7) staff will assign a department identity, if necessary, and obtain a valid name for the new entity in both official languages. They will then send the draft MOO for legal review to DLAW/Admin Law and prepare the necessary transmittal document. They are also responsible for staffing requests through the VCDS to the CDA and onto the MND. Finally they will staff the CFOO through its process after the MOO is signed.

72. Canadian Forces Organization Orders (CFOOs) are orders from the CDS, promulgated to formalize the organization of the Canadian Forces. They are organizational documents and not intended for use as an authority for other than organizational purposes. They are published by C PROG under the authority of the CDS, for each command, formation, unit or other element of the Canadian Forces. The CFOOs normally describe a unit or other element's role, command and control relationships, language designation, support services relationships, and channels of communication. Commands and Group Principals should review CFOOs to ensure currency and accuracy of the orders. Any amendments may be proposed through the chain of command to DDFP. The CFOO amplifies and implements the policy direction in the MOO

73. A CFOO identifies the official name and type of element, the department identity for the element, The chain of command including the next superior officer for matters of discipline. The CFOO also will identify the role of the element, any particular powers of the senior officer and the official language designation of the element, English, French or bilingual.

74. The authority to issue CFOO is delegated to DDFP

75. Temporary allocation of CAF assets, both personnel and materiel is achieved through the use of **Canadian Forces Tasking Plans and Operations (CFTPO)** messages and **Tables of Organization and Equipment (TO&E)**. CFTPO messages

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are the method for personnel and materiel to be tasked by various commands by means of authority delegated to them by the VCDS.

76. TO&E prescribe the organization, staffing, and equipage of units. It also provides information on the mission and capabilities of a unit as well as the unit's current status

PART 4 – CONCLUSION

Summary:

77. The topics covered in this lesson include the building blocks for the structure of the CAF and the instrument used to create the building blocks of the CAF. You have been informed of the various types of elements within the CAF and the process to create and change these elements. You now have an understanding of how the MND exercises his authority and his power to organize units and other elements of the CAF. You have been introduced to the various commands and groups within the CAF and you have seen how they are formed to cover distinct areas of operation.

Confirmation:

78. Done in a discussion format. Ask some confirmation questions. No group answers, remind students to raise their hand before speaking. Or instructor may ask particular students to answer questions

Conclusion:

79. Recap why this lesson and material presented in important. Make a link from your introduction to the conclusion. Some points to cover are the need for a general understanding of the various components of the CAF and how they form the structure of the CAF and the means that is used to formally create, allocate and disband aspects of the CAF. Additionally, during this lesson the candidates were provided with basic information about the process for temporary allocation of CAF assets. At some point in their career every legal officer will become familiar with MOO and CFOO and will be required to provide some level of advice on hierarchy and structure within the CAF usually as it pertains to authority and jurisdiction in the CAF decision making process which was discussed in the previous PO.

PART 1 -- LESSON IDENTIFICATION

EO 005.03

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Title: ADVISE ON CAF COMMAND

Performance: Advise on CAF Command

Conditions:

a. **given**: References: including but not limited to relevant factual context, legislation, policies, case law, (may also include prior legal opinions) *NDA*, QR&O

b. **denied**: nil

Standard: At the conclusion of this lesson the individual candidate shall know and understand the sources of command in the CAF and command relationships and be able to apply this knowledge in their capacity as a legal advisor

Main Teaching Points:

- Sources of command
- Command Relationships

Method: This EO will be accomplished by Development Lesson. Students will be required to read any pre-reading packages assigned and be prepared to respond to questions.

Duration: 1 period

References: *NDA,* QR&O

Training/Learning Aids: Standard classroom with whiteboard and projection system, handouts, student disk, student desk book, Legal Officer Qualification Course (LOQC) Instructors Handbook – Module(s) [XXX]

Note to the instructor: This developmental lesson shall be conducted in structured manner, using the list of "questions to the class" provided in the following pages. Instructors are to complement each segment of the developmental lesson by follow-up and direct questions taking into account the flow and direction of the discussion. Interim summaries shall be conducted at the end of each segment to confirm the material was learned and provide a basis from which the discussion can progress to the next segment. A review of the main teaching points will then take place at the end of the period.

PART 2 – INTRODUCTION

Objective:

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80. By the end of the lesson the candidates should have a basic knowledge of the sources of command, types of command and QR&O designation of command and the distinction between the exercise of ministerial power and operational doctrine which will allow them to provide legal advice as it pertains to this subject.

Introduction:

81. In this lesson the instructor shall introduce the candidates to sources of command and command relationships within the CAF.

Outline:

82. During this lesson the candidates will be introduced to sources of command including authority for command and the difference between types of commands. As well the candidates will be instructed on aspects of command relationships. It is important for legal officers to understand the sources of command and command relationships because it can have an impact on the practical application of the information contained in the previous EO, Advice on CAF Organization.

Stage 1 Sources of Command

Stage 2 Command Relationship

Suggested questions:

Q. What is command?

Q. How is the authority of command bestowed upon a commander?

Q. What must every commanding officer do before commencing his or her duties?

PART 3 – BODY OF THE LESSON

Stage 1 – Sources of Command

Introduction:

83. Just as there are many different elements in the CAF there are different forms of command. The subject of command can be complex as one works their way through the authorities that establish command. It is important that the candidate understand that command can be limited in scope and that not all command positions are created equal. In fact sometimes when a person is called a commanding officer they are not

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actually a commanding officer even though they are in command....confused yet? So how does one become a commanding officer? What are the sources of command?

Body of the lesson:

84. The commanding officer (CO) is the officer in command of a military unit. Typically, the commanding officer has ultimate authority over the unit, and is usually given wide latitude to run the unit as he sees fit, within the bounds of military law. Commanding officers have significant responsibilities, duties and powers. There are more officers than command positions available, and time spent in command is generally a key aspect of promotion, so the role of commanding officer is highly valued, and in theory only goes to the best officers. The commanding officer is often assisted by an executive officer (XO), second-in-command (2i/c) or a deputy commanding officer (DCO) who handles personnel and day-to-day matters and a senior enlisted advisor such as a unit, wing or base CWO, or if onboard a ship the Coxswain.

85. A commanding officer is, except where the CDS otherwise direct, an officer in command of a base, unit of element or any other officer designated as a commanding officer by or under the authority of the CDS. **Ref. QR&O Art 1.02**

86. In cases not otherwise provided for in the QR&O, command shall be exercised by either the senior officer present, in the absence of an officer the senior non-commissioned officer present, or by any other officer or non-commissioned member where specifically authorised by the CDS an officer commanding a command or formation or a commanding officer. **Ref. QR&O 3.2**

Types of Command

87. Officer Commanding a Command (OCC): Unless the CDS otherwise directs, an officer commanding a command shall exercise command over all formations, bases, units and elements allocated to the command **Ref. QR&O 3.21**

88. Officer Commanding a Formation (OCF): Unless the CDS directs otherwise, an officer commanding a formation shall exercise command over all bases, units and elements allocated to the formation **Ref. QR&O 3.22**

89. Commanding Officer (CO): Unless the CDS directs otherwise, the officer in command of a base or other unit shall exercise command over all officers and non-commissioned members, at the base or other unit. **Ref. QR&O 3.23**

90. CDS may issue an order delegating authority to designate COs **Ref. QR&O 1.02**

91. CO for CAF members on strength in NDHQ is for those of the rank of LCol and below the Commandant of CFSU(O). For members of the rank of Col and BGen. Cmdre it is CProg. For LGen/V/Adm and MGen/RAdm it is the VCDS and the VCDS answers to the CDS. **Ref CDS order 06 Feb 2007**

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92. Officer in Command/ Detachment Commander: A "detachment commander" is the senior officer in charge of a part of a unit separated from the remainder of the unit and operating under conditions that prevent the commanding officer of the unit from effectively exercising disciplinary powers over the part so separated. The term "detachment commander" includes, for example, the officer in immediate command of persons on detached service on shore from their ship, the officer in command of a reconnaissance group specially organized to operate away from the unit, the officer in charge of a part of a construction maintenance unit working away from the unit, the officer in command of a tender that is absent from the ship to which it is attached and the officer in command of ship's boats that are away on detached service for long periods.

93. Where a detachment is specially formed to operate under these circumstances, the commanding officer of the parent unit should normally appoint the senior officer in charge of the detachment to be detachment commander and in that case the appointment should be in writing and may contain any limitation of powers of imposed by the commanding officer, including potential limitation of powers as it relates to disciplinary issues. **Ref. QR&O 101.01, Note**

94. An officer in command or a detachment commander will not have the full powers and authorities as those exercised by a CO. Generally the authority or power of an OC will be limited to powers that allow him or her to conduct routine tasks in relation to the unit or detachment. For the purposes of determining who is a CO in relation jurisdiction for disciplinary matters a DC/OC will be considered to be a commanding officer. The designation of a DC/OC and the delegation of his, or her, authority is most often done by means of a Terms of Reference (TOR). A TOR will clearly establish the powers and authorities of the DC/OC.

The Office of the Judge Advocate General (OJAG)

95. OJAG was organized in 1996 as "element" by means of MOO 96-082. At this time the JAG was designated as OCC except for grievances and convening/directing court martials. The JAG has command over all officers posted to positions in the OJAG **Ref. QR&O 4.081(2)**

96. Additionally, every legal officer whose duty is provision of legal services to the CAF shall be posted to a position in the OJAG. **Ref. QR&O 4.081(1)**

97. The following position are designated COs for legal officers up to and including rank of LCol/Cdr except for grievances and convening/directing trial by CM:

- COS OJAG
- DMP
- DDCS
- DJAG/Regional Services

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Suggested Questions:

Q. What is the difference between a commanding officer and an officer commanding?

Q. What does the officer commanding a formation exercise command over?

Q. Is the JAG a commanding officer?

Interim Summary:

98. In this part of the lesson the candidates have been introduced to sources of command with a significant portion of the lesson defining the types of commanders and the authority as defined by the QR&O. The QR&O is the predominant source of authority as it relates to determining who is a commander, what type of commander are they, and who do they exercise authority over.

Stage 2 – Command relationships

Introduction:

99. There is a difference between the exercise of ministerial power and operational doctrine. Operational doctrine is the application of strategic doctrine to military action by means of the organization and effective employment of military forces to fulfill a mission. Ministerial power is limited to the powers entrusted to the MND for the management and direction of the Canadian Armed Forces and all matters relating to National Defence.

Body of the lesson:

100. Operational doctrine applies the principles of strategic doctrine to military actions by describing the use of armed forces in the context of distinct objectives, force capabilities, generic mission types and operating environments. Operational doctrine describes the organizations necessary for the effective employment of military forces.

101. The primary function of **strategic doctrine** is to guide the use of armed forces as an instrument of national power. A secondary function is to assist in shaping perceptions within the Government of Canada (GoC) and the CF about the use of military capabilities as an instrument of national power. CF doctrine is subordinate to Canadian law and GoC policies.

102. The CDS "except that he shall not authorize the permanent reallocation of any base or other unit or element" may, when he considers it necessary for reasons of operational necessity or for training requirements, reallocate bases, units and other elements between commands and formations. The Minister's prerogative, however, to

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organize commands and formations, and to allocate bases and other units and elements, has in recent years been very strictly interpreted, such that the CDS has rarely exercised this residual authority. A minor Organization Change is one that falls outside the scope of the Ministerial powers.

103. To cater for those situations where missions and tasks assigned to some commands cannot be accomplished without the support of another command, the appropriate supporting element is assigned to the supported command on a continuing basis. Command arrangements are detailed in CFOO's in general terms, with the specifics left to operational plans. Examples of this are: Commanders MARLANT and MARPAC have been assigned operational control of 1 Cdn Air Div air resources intended for maritime operations; and Commander CA has been assigned operational control of tactical helicopter assets intended to support land operations.

104. Commanders at all levels may group their forces, as they consider necessary to accomplish assigned missions or tasks. As with earlier comments concerning the authority of the CDS, however, this must not infringe on the prerogatives of the Minister, for example by effecting a permanent reallocation of a unit from one formation to another. The power to permanently allocate resources rests with the minister. The authority to employ and deploy those assets to accomplish mission objectives vests in the commander of those assets.

105. Command relationships are extremely important for legal officers to understand as it is not only vital that you give timely, focused legal advice but that you give it to the appropriate client. As legal advisors you need to know who is who in the zoo and be able to understand the command relationships that exist in HQ, garrisons, ships and on domestic and deployed operations as well as those that exist between the management side of the armed forces and the operational side of the armed forces.

Suggested questions:

Q. What is operational doctrine?

Q. What is strategic doctrine?

Q. Is a minor organizational change within the scope of powers of the MND? If not, why is this so?

PART 4 – CONCLUSION

Summary:

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106. The topics covered in this lesson include sources of command and command relationships. The candidates have been informed of the various types of commands within the CAF and the process used to designate commanders and delegate command responsibility. The candidates should now have an understanding of how distinction between the exercise of ministerial power and operational doctrine. One being the overall power for the management and direction of the CAF and the other being the operational employment of military assets and the command functions and relationships required to effect successful completion of military operations

Confirmation:

107. Done in a discussion format. Ask some confirmation questions. No group answers, remind students to raise their hand before speaking. Or instructor may ask particular students to answer questions

Conclusion:

108. Recap why this lesson and material presented was important to the students

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PO 006 ADVISE ON GENERAL PRINCIPLES OF CF SERVICE

PERFORMANCE: understand and provide legal advice on the general principles of CF service

CONDITIONS:

GIVEN: relevant factual context, policy, case law, reference material (including prior legal opinion)

DENIED: nil

ENVIRONMENT: CF unit, base, wing HQ, deployed domestically and internationally, under austere conditions

STANDARD: the legal officer shall, without direct supervision, provide legal advice on the the nature of CF service and Human Rights issues affecting CF members, specifically:

a. Advise on the nature of CF service
b. Advise on Human Rights issues affecting CF members

PART 1 – LESSON IDENTIFICATION

EO 006.01

Title: ADVISE ON THE NATURE OF CF SERVICE

Performance: Advise on the nature of CF service

Conditions:

a. **given**: References: including but not limited to relevant factual context, legislation, policies, case law, (may also include prior legal opinions) NDA, QR&O
b. **denied**: nil

Standard: At the conclusion of this lesson the individual candidate shall know and understand the principles of CF service, and be able to apply this knowledge in their capacity as a legal advisor

Main Teaching Points:

- advise on the relationship between the Crown and the CF member

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- advise on the liability to serve
- advise on universality of service

Method: This EO will be accomplished by Development Lesson. Students will be required to read any pre-reading packages assigned and be prepared to respond to questions.

Duration: 3.5 period (140 min)

References: NDA, QR&O, Constitution Act, 1867

Training/Learning Aids: Standard classroom with whiteboard and projection system, handouts, student disk, student desk book, Legal Officer Qualification Course (LOQC) Instructors Handbook – Module(s) [XXX]

Note to the instructor: This developmental lesson shall be conducted in structured manner, using the list of "questions to the class" provided in the following pages. Instructors are to complement each segment of the developmental lesson by follow-up and direct questions taking into account the flow and direction of the discussion. Interim summaries shall be conducted at the end of each segment to confirm the material was learned and provide a basis from which the discussion can progress to the next segment. A review of the main teaching points will then take place at the end of the period.

PART 2 – INTRODUCTION

Objective: The instructor shall introduce the subject of the nature of CF service. By the end of the lesson the candidates should have a basic knowledge of these topics which would allow them to provide legal advice as it pertains to this subject

Introduction: The *National Defence Act* and the regulations and orders made pursuant to it govern the enrolment of members of the military, The expression enrollment is important in the context of the relationship between members of the CF and the Crown. Members are not hired and there is no traditional employee/employer relationship. Members of the CF serve at the pleasure of Her Majesty.

Outline: In this lesson the nature of the relationship between the crown and the CF member will be explored along with the topics of liability of service and universality of service. It is important for legal officers to understand the nature of CF service to be able to provide comprehensive legal advice.

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Stage 1 – Crown/CF relationship

Stage 2 – Liability to serve

Stage 3 – Universality of service

PART 3 – BODY OF THE LESSON

Stage 1 – Crown/CF relationship

Introduction:

1. As stated in the introduction members are not employees of the Canadian Forces. They are crown servants. A member takes an oath to serve Her Majesty. Officers in the CF receive their commission from the Queen. Members of the CF have entered into a unique relationship with the Crown that carries certain rights and benefits but also imposes restrictions that attach only to the CF.

Body of the lesson:

2. Service in the CF is not contractual; there is no employer/employee relationship as commonly defined in the context of employment or labour law. Members of the CF serve at the pleasure of Her Majesty. Regular Force members are issued terms of service which detail the length of time they are obliged to serve. These terms of service are typically issued initially for a fixed period of time and may be renewed for a further fixed period (e.g. continuing engagements) or as an indefinite period of service, which allows the member to serve until reaching compulsory retirement age.

3. The service of Reserve Force members is typically for an Indefinite Period of Service, and members of the Reserve Force are enrolled for other than continuing fulltime military service. The nature of their service is managed by the application of classes of service: Class A, B and C. Certain benefits and rights, as well as obligation attach to the various classes of service. Reserve Force members often refer to a Class B or C engagement as a contract. While some aspects of the documents that are signed by the member when agreeing to accept a change in their class of service may have language that appears contractual in nature it is not a contract and should not be referred to as such.

4. There is an ongoing obligation on the Reserve Force member to fulfil their responsibilities as per the terms of the engagement but the CF may terminate the service without warning and without compensation to the member at any time. As a matter of policy, Reserve Force personnel on full time service (Class B or C) will generally be given 30 days' notice of termination of that Class of service. Reserve

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Force members on Class B or C engagements may request a reversion to Class A service at any time but there is no obligation on the CF to grant such as request.
Questions:

Interim Summary:

Stage 2 – liability to serve

Introduction:

5. Once enrolled in the CF members have a continuous liability to serve until properly released. For members of the Regular Force this would generally mean until the end of their current terms of service. Nevertheless, members of the Regular Force may still request release prior to the expiry of their Terms of Service. Reserve Force members generally serve on Indefinite Periods of Service and may be released at any time upon request or at the discretion of the CF. Release proceedings must comply with the legislation and policy that applies to the process.

Body of the lesson:

6. The liability to serve as a member of the CF is an unlimited liability; once enrolled a member must complete their initial terms of service unless released according to one of the various release categories. The one very clear exception to this is voluntary release while undergoing initial basic training.

7. After enrollment, but prior to completing basic recruit training or basic officer training, a member of the force may request voluntary release and this request must be granted.

8. Service is categorized in one of three ways depending on which component of the force the member is enrolled in. Eligible applicants selected for service as officers or non-commissioned members (NCM) are enrolled in one of three components.

a) the Regular Force (Reg F) for continuing full-time military service which means a continuing liability to serve until properly release;

b) the Reserve Force (Res F) for other than continuing full-time military service when not on active service, which means they serve on a part-time basis and can be released upon their own request or when the CF decides to release them, and

c) the Special Force, when established by the Governor in Council, for continuing full-time military service for the duration of the time the Special Force is activated. Release of Special Force members would normally be conducted once the Special Force is stood down.

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9. The table explaining the initial TOS offered to members of the CF can be found in DAOD 5002-1

10. Expiration of TOS does not automatically terminate ongoing liability to serve. The liability caries forward until such time as the member is properly released.

Questions:

Interim Summary:

Stage 3 – universality of service

Introduction:

11. The principle of universality of service or what is also colloquially referred to as the 'soldier first' principle holds that CF members are liable to perform general military duties and common defence and security duties, not just the duties of their military occupation or occupational specification. This includes, but is not limited to, the requirement to be physically fit, employable and deployable for general operational duties. This lesson will explain the CF policy on universality of service including the impact of limitations resulting from medical standards and retention subject to employment restrictions

Body of the lesson:

12. The mission of the DND and the CF is to defend Canada, its interests and its values, while contributing to international peace and security. To execute this mission the CF must be given broad authority and latitude in utilizing CF members and their skills. The statutory basis for this authority is section 33 of the *National Defence Act* (*NDA*). The fundamental importance of this authority to the functioning and effectiveness of the CF is recognized in subsection 15(9) of the *Canadian Human Rights Act* (*CHRA*) which provides that the duty to accommodate under subsection 15(2) of that Act is subject to the principle of universality of service. The CF is statutorily exempted from the duty to accommodate. Under this principle, CF members must at all times and under any circumstances perform any functions that they may be required to perform.

13. Effective performance of the broad range of defence and security tasks assigned to the CF requires that CF members be capable of performing a similarly broad range of general military, common defence and security duties, in addition to the more particular duties of their military occupation or occupational specification. This open-ended nature of tasks required in military service is one of the features that distinguish it from the civilian notion of employment governed by a contract, which obliges employees to perform only those duties specified in their job description or contract.

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14. Regardless of their trade or occupation, members of the CF are soldiers, sailors, or airmen/women, and the roles and objectives of the CF require members to serve in a variety of geographic locations and environmental conditions. All members must be capable of coping with the stresses imposed by sustained operations and be physically ready to respond on short notice. Thus the CF has adopted a policy that requires all members to meet minimal operational standards unless they are specifically exempt or retained subject to employment restrictions.

15. Subsection 33(1) of the *NDA* provides that members of the regular force "are at all times liable to perform any lawful duty." Pursuant to regulations made by the Governor in Council, members of the primary reserve (P Res) may be ordered to conduct training and may be called out to perform any lawful duty. The word 'duty' is understood to mean any duty that is military in nature and includes any duty involving public service that is authorized under section 273.6 of the *NDA*.

16. This same concept does not apply to members of the supplementary reserve (Supp Res). They are not required to perform any duty or training except when on active service, but may be placed on active service by the Governor in Council. In other words, all members of the regular force must perform any lawful duty at any time. Members of the primary reserve may be called out to do likewise and members of the Supp Res are obliged to perform military duties when placed on active service. The underlying presumption for establishing universality of service is that CF members must be employable and deployable.

17. The overriding purpose of the Reg F and the P Res is to conduct and support military operations. The Supp Res provides an augmentation capability for the Reg F and P Res as well as for other sub-components. The Canadian Rangers provide a military presence in sparsely settled, northern, coastal and isolated areas of Canada. The COATS primary duty is the supervision, administration and training of cadets.

18. All CF members who serve in or with the Reg F and P Res are expected to be able to contribute to, and be ready for, operational duty in the service of the nation when required. The inability of CF members to do so reduces the capability and flexibility of the CF to mount and sustain operations.

19. Under the *CHRA*, it is a discriminatory practice for an employer to have a policy that deprives people of employment opportunities on the basis of a prohibited ground of discrimination, including disability. The word 'disability' means, "any previous or existing mental or physical disability and includes disfigurement and previous or existing dependence on alcohol or a drug." However, the nature of CF service allows the military to deny continued employment on the basis of disability if the disability means that the member no longer meets the requirements under universality of service. Universality of service is considered to be a *bone fide* occupational requirement.

20. If it is determined after an administrative review (AR) by the appropriate authority that a member of the Reg F or P Res is permanently unable to meet one or more of the

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minimum operational standards, the CF member shall either be released from the Reg F or P Res, or a recommendation made for release, as applicable; or retained subject to employment limitations on a temporary, transitional basis.

21. A temporary employment limitation for a CF member which results in the inability of the CF member to meet the minimum operational standards or a restriction on duty imposed on a CF member under DAOD 5003-1, Restrictions on Duty, are not considered a breach of these standards.

22. If the recommendation of an AR is the release of a CF member because the CF member is in breach of the minimum operational standards, the CF member may be retained subject to employment limitations only on a temporary, transitional basis if there is a critical shortage in the CF member's military occupation or the member has a specific skill set that is required by the CF. A CF member who is not military-occupation qualified and is in breach of the minimum operational standards shall not be retained.

23. There are exceptions to the requirements to meet minimum operational standards for CF members under the age of 18, chaplains and members of COATS, Canadian Rangers and the Supp Res.

Questions:

Interim Summary:

PART 4 – CONCLUSION

Summary:

24. The topics covered in this lesson the Crown/CF member relationship, liability of service and universality of service.

Confirmation:

25. Done in a discussion format. Ask some confirmation questions. No group answers, remind students to raise their hand before speaking. Or instructor may ask particular students to answer questions

Conclusion:

26. The candidates should now have a basic understanding of the Crown/CF relationship, the concept of universality of service and the impact of liability of service. As legal officers it is important that they know and understand these topics and remain current on changes and updates that may impact these areas of military administration law so that they are able to provide clear, concise legal advice.

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PART 1 –LESSON IDENTIFICATION

EO 006.02

Title: ADVISE ON HUMAN RIGHTS ISSUES AFFECTING CF MEMBERS

Performance: Advise on human rights issues affecting CF members

Conditions:

Given: References: including but not limited to relevant factual context, legislation, policies, case law, (may also include prior legal opinions), *NDA*, QR&O

Denied: nil

Standard: At the conclusion of this lesson the individual candidate shall know and understand the jurisdiction as it relates to human rights issues affecting CF members, and be able to apply this knowledge in their capacity as a legal advisor

Main Teaching Points:

- key grounds relevant to CF policy development
- relevant human rights legislation

Method: This EO will be accomplished by Development Lesson. Students will be required to read any pre-reading packages assigned and be prepared to respond to questions.

Duration: 1.5 period (60 min)

References: *NDA*, QR&O, *Constitution Act*, *Canadian Human Rights Act*

Training/Learning Aids: Standard classroom with whiteboard and projection system, handouts, student disk, student desk book, Legal Officer Qualification Course (LOQC) Instructors Handbook – Module(s) [XXX]

Note to the instructor: This developmental lesson shall be conducted in structured manner, using the list of "questions to the class" provided in the following pages. Instructors are to complement each segment of the developmental lesson by follow-up and direct questions taking into account the flow and direction of the discussion. Interim summaries shall be conducted at the end of each segment to confirm the material was learned and provide a basis from which the discussion can progress to the next segment. A review of the main teaching points will then take place at the end of the period.

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PART 2 – INTRODUCTION

Objective:

27. The instructor shall introduce the subject of how human rights issues affect CF members. By the end of the lesson the candidates should have a basic knowledge of this topic which would enable them to provide legal advice as it pertains to this subject.

Introduction:

28. During this lesson the candidates will be introduced to how human rights issues affect the administration of CF members. It is important for legal officers to understand how human rights are handled within a military context so that they are able to provide comprehensive advice. DAOD 5516 series establishes the CF's policy with respect to complaints made under the *CHRA*.

Outline:

29. This lesson will introduce various regulations, policies and directives that pertain to areas of human rights that may affect members of the CF and how the CF has put in place these regulations, directives and policies as a means of ensuring that the CF operates in an environment that is not discriminatory. Mechanisms to ensure compliance with human rights legislation is the focus of this lesson

Stage 1 – Religion

Stage 2 – Gender

Stage 3 – Sexual orientation

Stage 4 – Language

Stage 5 – Race

Stage 6 – Family status

Stage 7 – CHRA

Stage 8 – Case Law

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PART 3 – BODY OF THE LESSON

Stage 1 – Religion

Introduction:

30. Religious discrimination in employment is prohibited under both the *Canadian Human Rights Act* (*CHRA*) and the *Canadian Charter of Rights and Freedoms* (*Charter*). The *Charter* also guarantees every individual freedom of conscience and religion. Employment policies or practices which discriminate against a particular religious group or infringe on religious freedom are therefore illegal, unless they can be justified as a reasonable limit under Section 1 of the *Charter* or established as a non-discriminatory practice (for example, a bona fide occupational requirement) under Section 15 of the *CHRA*.

31. In some circumstances, a general and apparently neutral policy or practice could unintentionally have an adverse effect on an individual by preventing that person from observing a practice that is central to his or her religious beliefs. In such cases, the CF is required to make reasonable accommodation for the religious practices of individuals where to do so would not cause undue hardship. Reasonable accommodation may involve some specific adjustment or individual variation from standard practices, such as modification to workplace conditions, to the manner in which the job is performed, or to policies or procedures.

Body of the lesson:

32. It is the policy of the CF that every reasonable effort shall be made to permit the observance of religious practices by individual members, when to do so will not impose undue hardship on the organizational element responsible for the accommodation.

33. Approval or denial of requests for the accommodation of religious practices must be based on the circumstances of each case, taking into consideration such factors as: operational readiness and effectiveness, cost, health and safety, morale, availability of resources, interchangeability of personnel and facilities, and risk (both the magnitude and who bears it).

34. An accommodation which has been approved for religious reasons may be suspended or revoked by a commanding officer whenever changes to the mission alter the circumstances upon which the approval was based, such that continuing to accommodate the member would cause undue hardship. The degree of accommodation possible may also vary according to the member's employment over the course of a career.

35. Factors such as operational readiness and effectiveness, cost, health and safety may be taken into consideration when a decision making authority is presented with a request for religious accommodation. Additionally, any burden that will be borne by

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other members of the unit as a result of implementing a particular measure may, under certain circumstances, influence a decision to accommodate.

36. The CF interim policy on religious accommodation issued in 1998 [1745-42-10 (ADM (Per)) 12 January 1998; see also CANFORGEN 162/12 CMP 072/12 041556Z SEP 12] sets out the process for a member to request religious accommodation as well as the formal procedures for granting, revoking or amending religious accommodations.

Questions:

Interim Summary:

Stage 2 – Gender

Introduction:

37. No discrimination based on gender shall be acceptable within the CF. All persons in the CF shall be treated fairly and equitably with regard to gender. One area that is of special consideration is accommodation for transgender members and how their special circumstances are to be addressed within the CF.

Body of the lesson:

38. No trade, position or environment is closed to members of either sex. Male and female applicants who meet enrollment standards must be considered equally for enrollment in any trade they qualify for. No discrimination based on sex shall be made when determining selection for reassignment to a different trade, work place or environment within the CF.

39. The process leading to the transition of a transsexual individual from one gender to another is lengthy and subject to careful medical assessment. Not all aspects of the treatment of transsexual individuals will impact the workplace. However, at the point where the workplace does become involved, accommodation of this person will be required as transition from one gender to another will necessitate significant administrative and social adjustment.

40. The CF is obligated to consider accommodation of a transsexual member's needs when advised that the said person is intending to undergo transition. An integral part and one of the first steps in transition would be a medical assessment which would result in assignment of a temporary medical category (TCAT) and medical employment limitations (MEL) that would help shape the workplace accommodation.

41. The CF shall accommodate the needs of CF transsexual members except where the accommodation would constitute undue hardship or cause the CF member to not

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meet, or to not be capable of meeting, DAOD 5023-1, Minimum Operational Standards Relating to Universality of Service.

42. Undue hardship is the limit to which the CF and service providers are expected to accommodate in a given situation, taking into consideration the realistic ability to meet the costs associated with the accommodation and health and safety of CF members and the public.

Questions:

Interim Summary:

Stage 3 – Sexual orientation

Introduction

43. Sexual orientation is different from sex as it is not predicated on gender but rather on sexual preference

Body of the lesson:

44. Human rights legislation has established that society considers unequal treatment of certain groups to be unacceptable. It has done so by compiling a list of characteristics against which discrimination is prohibited. Until the adoption of the *Charter* there were few legal rights or provisions that could be relied upon by lesbians and gay men when faced with discrimination due to sexual orientation. While the *Charter* does not enumerate sexual orientation as a prohibited ground for discrimination it is written in such a way, and was accepted by the Supreme Court of Canada, to include sexual orientation. The *CHRA* includes sexual orientation as a prohibited ground for discrimination.

45. The CF is committed to respecting the inherent right of CF members to form personal relationships of their choosing and respecting the privacy of the personal relationships of CF members. No discrimination shall be made on the basis of sexual orientation.

Questions:

Interim Summary:

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Stage 4 – Language

Introduction:

46. The CF is a bilingual organization, required by legislation to provide services in both official languages and may not discriminate in enrolling or discriminate against serving members based on their first official language (FOL) is English or French, provided that they can perform tasks at the level required for the specification(s) of the trade (air traffic controller).

Body of the lesson:

47. The CF as a federal governmental institution is committed to providing services to all forces members in both official languages. This extends to second language training (SLT), bilingualism requirements for promotion, identification of English language units (ELU), French language units (FLU), bilingual units (BLU). It also mandates the provision of services in both official languages, including: the military justice system, grievances, education and training, support services.

Questions:

Interim Summary:

Stage 5 – Race

Introduction:

48. The CF defines 'racist conduct' as conduct that promotes, encourages or constitutes discrimination or harassment on the basis of race, national or ethnic origin, colour or religion, including the participation in the activities of, or membership in, a group or organization that a CF member knows, or ought to know, promotes discrimination or harassment on the basis of race, national or ethnic origin, colour or religion

Body of the lesson:

49. CFAO 19-43 (Racist Conduct) states that racist attitudes are incompatible with military ethos and effective military service, and any conduct that reflects such attitudes will not be tolerated. Racist conduct is therefore prohibited, and can result in administrative action, disciplinary action, or both and may include release. An applicant for enrolment in the CF who is unable or unwilling to comply with the CF policy against racist conduct will not be enrolled.

Questions:

Interim Summary:

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Stage 6 – Family status

Introduction:

50. Marital status or family status must never be a ground to deny a member of the CF occupational opportunities.

Body of the lesson:

51. No discrimination may be made on the basis of a member's marital or family status. All members of the CF with dependent children are required to file a Family Care Plan. Members who adopt are entitled to the same benefits as those who have biological children such as maternity/parental leave and medical and dental benefit coverage. Accommodation for shift workers is to be considered up to the point where it causes hardship for the unit supporting the member.

Questions:

Interim Summary:

Stage 7 – *Canadian Human Rights Act* (*CHRA*)

Introduction:

52. The *CHRA* is an anti-discrimination law that is applicable to employers, unions and service providers within the jurisdiction of the federal government. Although the CF is not an 'employer' and its members are not 'employees,' they are deemed to be employed by the Crown for the purposes of the *CHRA*. Accordingly, the provisions of the *CHRA* protect the human rights of CF members.

Body of the lesson:

53. The *CHRA* prohibits certain practices based upon proscribed grounds of discrimination. These discriminatory practices are listed in sections 5 to 14.1 of the *CHRA* and include, among others, refusing to hire or refusing to continue to employ someone on a prohibited ground of discrimination, establishing policies that deprive individuals of employment opportunities on a prohibited ground of discrimination and harassing individuals on a prohibited ground of discrimination.

54. In order to engage the protection of the *CHRA*, the impugned act must be based on one or more prohibited grounds of discrimination. The prohibited grounds of discrimination are enumerated in section 3 of the *CHRA*

55. Complaints may be made under Part III of the *CHRA* about any discriminatory practice described in sections 5 to 14.1 of the Act that are based on a prohibited ground

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of discrimination as enumerated in section 3 of the Act. Where a complaint of discrimination is found to be valid, action may be taken against persons found to be engaging in the discriminatory practice.

56. Where a complaint has been filed under the *CHRA*, it is a discriminatory practice to retaliate against the complainant. Any person who threatens, intimidates or discriminates against a person for making a complaint, or for giving evidence before the Canadian Human Rights Tribunal (CHRT), is liable, on summary conviction by a civilian court or military tribunal, to a fine of up to $50,000.

57. A practice is discriminatory regardless of whether it results in 'direct discrimination' or 'adverse effect discrimination.' Direct discrimination refers to a policy that is discriminatory on its face, whereas adverse effect discrimination refers to a standard that is neutral on its face but discriminates in effect. For example, a policy requiring an employer to hire only men would be considered direct discrimination. A policy requiring all employees to be over two meters tall would be considered adverse effect discrimination as such a requirement would tend to exclude women and members of certain racial and ethnic origins.

58. The Canadian Human Rights Commission (CHRC) is established pursuant to subsection 26(1) of the CHRA. The duties of the CHRC include providing information to the public, research programs and liaison with provincial human rights organizations. The CHRC is mandated to investigate complaints made under the CHRA. Any individual or group of individuals who has reasonable grounds for believing that a person is engaging in, or has engaged in, a discriminatory practice may file a complaint with the Commission.

59. An officer or NCM of the CF who believes that he or she has been the subject of discriminatory actions, practices or policy may submit a complaint to the CHRC, notwithstanding the existence of our own internal complaints mechanism (the grievance process). However, where an officer or NCM submits both a grievance to his or her CO and a complaint to the CHRC, the grievance will be suspended (providing that the CHRC is alerted to the grievance) until the HR complaint is resolved.

60. The CHRT is established under subsection 48.1(1) of the *CHRA*. The CHRT is an institutionally independent administrative tribunal that hears cases alleging discriminatory practices. When the CHRT receives a request for a hearing from the CHRC, the Chairperson of the CHRT will respond by assigning one member of the CHRT or, in the case of a complex matter, a panel of three members, to institute an inquiry. The member or panel will give notice of the hearing to the CHRC, the complainant, the respondent and other interested parties. All these parties may appear before the hearing, in person or through counsel to present evidence and to make representations.

61. Both the CHRC and the CHRT fall within the definition of a "federal board, commission or other tribunal," pursuant to the *Federal Courts Act*. Any party to a

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complaint may apply to the Federal Court of Canada for judicial review of a decision made by either the CHRC or the CHRT.

62. Harassment on any of the prohibited grounds is considered to be a discriminatory practice. If a unit is contacted directly by an official of the Canadian Human Rights Commission (CHRC), without prior notice from NDHQ, the unit will take no action other than to politely remind the official that communications must go through the Directorate of Human Rights and Discrimination (DHRD) at NDHQ.

Questions:

Interim Summary:

Stage 8 – Case Law

Introduction: The *Oakes* Test

63. The *Canadian Charter of Rights and Freedoms* guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

64. The terms of section 1 of the *Charter* make clear that no *Charter* protection is absolute. Most allegations of discrimination will be made pursuant to s. 15 of the *Charter*. Where such complaints are made, courts and tribunals must first determine whether there was a violation of s. 15. Where that is the case, courts or tribunals must then undertake a separate s. 1 evaluation to determine whether the infringement nevertheless constitutes a reasonable limit to the equality rights guarantee.

65. The complainant bears the burden of establishing, on a balance of probabilities, whether a *Charter* right has been violated. The government bears the burden of establishing that any *Charter* breach is justified. The governing approach to s. 1 analysis was first detailed by the Supreme Court of Canada in *R. v. Oakes* and involves a two-step process. First, the objective of the legislation or government action must be shown to be sufficiently "pressing and substantial" to warrant overriding a *Charter* right. Second, the means adopted to attain that objective must be reasonable and demonstrably justified. This step entails a proportionality test in which the courts are required "to balance the interests of society with those of individuals or groups." Three elements must be satisfied:

a. the measures adopted must be rationally connected to the objective;

b. the measures adopted should cause minimal impairment to the right or freedom in question; and

c. there must be a proportionality between the effects of the measures limiting the right or freedom and the objective identified as being

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sufficiently important, and between the deleterious and salutary effects of the measures at issue

66. *Ontario Human Rights Commission and O'Malley v. Simpsons-Sears Ltd.*, [1985] 2 S.C.R. 536 is a leading Supreme Court of Canada decision where the Court first acknowledged the existence of indirect discrimination through conduct that creates prejudicial effect. Theresa O'Malley was a Seventh-day Adventist who was employed by the retailer Simpsons-Sears. As part of her religion she was forbidden from working from sundown on Friday to sundown on Saturday. There were no full-time shifts available that did not require work on Friday and Saturday, so the company terminated her employment.

67. Simpsons-Sears argued that by requiring all their employees to work Fridays and Saturdays, they were not intentionally trying to discriminate against her; rather, it was a neutral requirement they imposed on all employees.

68. The issue before the Supreme Court was whether the requirement that all employees work on Friday and Saturday was discriminatory against her religion.

Body of the lesson: *Janzen v Platy Enterprises*

69. During the fall of 1982, Dianna Janzen and Tracy Govereau were both employed as waitresses at Pharos restaurant in Winnipeg, Manitoba. Ms Janzen became the subject of sexual advances by a male co-worker. She repeatedly made it clear that the advances were not welcome, nonetheless they continued. She then complained to the manager of the restaurant who took no action. Eventually, the advances were replaced with uncooperative and threatening behaviour. When the two women approached the manager about it he refused to act on it and instead fired the women.

70. The women sued Platy Enterprises Ltd., the owner of Pharos restaurant, as well as the co-worker under subsection 6(1) of the *Manitoba Human Rights Act*, for violating their right to equal opportunity by firing them because of their sex.

71. The Manitoba Human Rights Tribunal held that the women had been subject to sexual harassment on the basis of sex and so the restaurant owners were in violation of section 6(1) of the Act. The Court of Queen's Bench upheld the decision.

72. The Manitoba Court of Appeal overturned the Court of Queen's Bench. The court found that sexual harassment was not considered discrimination on the basis of sex and that the employer could not be held vicariously liable of the conduct of the employee.

73. The Supreme Court of Canada held that the restaurant's conduct did constitute discrimination on the basis of sex. Chief Justice Dickson rejected the Court of Appeal's ruling that the harassment was not based on sex because not all female employees were targeted. He stated that discrimination on the basis of sex is where there is a "practice or attitude which had the effect of limiting the conditions of employment of, or

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the employment opportunities available to, employees on the basis of a characteristic related to gender."

Questions:

Interim Summary:

PART 4 – CONCLUSION

Summary:

74. The topics covered in this lesson focused on how human rights issues impact the CF. You have been informed of these topics so that you will be better prepared to provide legal advice when called upon to do so. Human Rights is a dynamic area of law and you will be well served to continue to expand your knowledge and understanding of this subject area.

Confirmation:

75. Done in a discussion format. Ask some confirmation questions. No group answers, remind students to raise their hand before speaking. Or instructor may ask particular students to answer questions

Conclusion:

76. During this lesson the candidates were introduced to the subject of how human rights issues affect CF members. The candidates should now have a basic knowledge of this topic which would allow them to provide legal advice as it pertains to this subject It is important for legal officers to understand how human rights are handled within a military construct so that they are able to provide comprehensive advice. DAOD 5516 series establishes the CF's policy with respect to complaints made under the *CHRA*. It is important for the candidates to know and understand this in order to provide comprehensive legal advice.

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PO 007 ADVISE ON THE DEVELOPMENT AND APPLICATION OF SIGNIFICANT CAF POLICIES

Performance: Understand and provide legal advice on the development and application of significant CAF policies

Conditions:

Given: relevant factual context, policy, case law, reference material (including prior legal opinion)

Denied: nil

Environment: CAF unit, base, wing HQ, deployed domestically and internationally, under austere conditions

Standard: The legal officer shall, without direct supervision, provide legal advice on the application of significant CF policies, specifically:

A. Advise on the CF drug/Alcohol policy
B. Advise on the issue of public comment by CAF members and conflict of interest
C. Advise on sexual misconduct by CAF members and sexual disorders
D. advise on removal from command positions

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PART 1 –LESSON IDENTIFICATION

EO 007.01 – Advise on the CAF Drug and Alcohol Policy

Performance: Advise on the CAF drug/alcohol policy

Conditions:

a. **Given**: References: including but not limited to relevant factual context, legislation, policies, case law, (may also include prior legal opinions) NDA, QR&O

b. **Denied**: nil

Standard: At the conclusion of this lesson the individual candidate shall know and understand the CF drug and alcohol policies, and be able to advise CAF decision-makers on the application of these policies.

Main Teaching Points:

- relevant regulations and policies
- CAF alcohol policy
- CAF drug policy

Method: This EO will be accomplished by Development Lesson. Students will be required to read any pre-reading packages assigned and be prepared to respond to questions.

Duration: 1 period (40 min)

References: *Constitution Act, 1867* and *Constitution Act, 1982*, *NDA*, *Controlled Drugs and Substances Act*, QR&O, DAOD 5019-7 Alcohol Misconduct, DAOD 5019-3 CF Drug Control Policy

Training/Learning Aids: Standard classroom with whiteboard and projection system, handouts, student disk, student desk book, Legal Officer Qualification Course (LOQC) Instructors Handbook

Note to the instructor: This developmental lesson shall be conducted in structured manner, using the list of "questions to the class" provided in the following pages. Instructors are to complement each segment of the developmental lesson by follow-up and direct questions taking into account the flow and direction of the discussion. Interim summaries shall be conducted at the end of each segment to confirm the material was learned and provide a basis from which the discussion can progress to the next segment. A review of the main teaching points will then take place at the end of the period.

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PART 2 – INTRODUCTION

Objective:

The instructor shall introduce the subject of the CAF drug/alcohol policy. By the end of the lesson the candidates should have a basic knowledge of these topics which would allow them to provide legal advice as it pertains to this subject

Introduction:

The possession, consumption and trafficking of certain drugs are criminal offences in Canada under the *Controlled Drugs and Substances Act* (*CDSA*) and the *Food and Drugs Act* (*FDA*). While civilian anti-drug laws are designed to deter and punish criminal misconduct, the unique demands of a military force have required the CAF to design a drug control program which aims to achieve different purposes. Additionally, the CAF has developed a DAOD on alcohol misconduct which imposes certain responsibilities and certain actions that the chain of command must complete when faced with a member who violates the DAOD.

Outline:

During this lesson the candidates will be introduced to the CAF Drug Control Program. The topic of drug use and other drug involvement will be explored. Drug testing and the administrative and disciplinary actions that may flow from drug use or other drug involvement will also be covered. As well the alcohol misconduct policy and consequences of violation of this policy will be introduced. It is important for legal officers to the CAF drug and alcohol policies and relevant orders and directives associated with them in order to provide appropriate legal advice when called upon to do so. This lesson will be broken down into a number of stages.

Stage 1 – Constitutional issues

Stage 2 – CF drug control program

Stage 3 – Drug use and other drug involvement

Stage 4 – Post drug testing actions

Stage 5 – Administrative measures

Stage 6 – Alcohol misconduct policy

Stage 7 – Alcohol misconduct

Stage 8 – Conduct deficiency involving alcohol

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Stage 9 – *Criminal Code* charges for impaired operation of a motor vehicle and provincial roadside screening

Stage 10 – Policies relating to the serving of alcohol on CF establishments

Stage 11 – Measures taken as a consequence of violations of these policies

PART 3 – BODY OF THE LESSON

Stage 1 – Constitutional issues

Introduction:

1. Section 7 of the *Canadian Charter of Rights and Freedoms* stated "Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice. Additionally, section 8 states: "Everyone has the right to be secure against unreasonable search or seizure".

2. These two provisions in the *Charter* are relevant when drug control and testing policies are initiated and enforced in the workplace. The CAF is not immune to the challenges associated with the friction that arises when trying to balance the rights of members of the CAF with ensuring that the CAF has a safe, effective and efficient fighting force.

Body of the lesson:

3. The Canadian Forces and Department of National Defence announced its drug testing policy in 1990 and regulations respecting the Canadian Forces Drug Control Program were enacted May 1992.

4. Under the original program a mandatory drug testing scheme with random elements was introduced. The original program was focused on military personnel in safety-sensitive positions.

5. Most military drug testing was to be done through the random selection of units comprising up to 500 individuals. Under the original policy testing for cause was included as well as testing for members undergoing rehabilitation for drug use and or post-accident investigations.

6. In 1994 the DND temporarily suspended its drug testing program. This was done in response to the report of the Privacy Commissioner's and his opposition to the widespread use of random testing of CAF members for the presence of illegal drugs. The opposition arose because the DND conducted a study which revealed that drug use

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within the CAF was not a common occurrence and that alcohol, not illicit drugs, was more commonly used by members of the CAF.

7. The use of urinalysis to test whether an employee has consumed drugs or alcohol had become a controversial subject within the context of *Charter* rights and possible violations. The legality of the practice has been challenged multiple times in the courts and there is now a certain air of caution when contemplating drug testing. How far is 'too far' and how do we balance the rights of the member with the needs of the CAF?

8. Alleged drug use by a CAF member can give rise to a disciplinary investigation, and administrative investigation, or both. The implementation of both types of investigations can complicate each process; the principles governing the conduct (and de-confliction) of contemporaneous disciplinary and administrative investigations is discussed under PO 010. For the purposes of the present lesson, the key factor for administrative decision-makers is that an administrative investigation – which can rely on very broad powers of inquiry – should be managed in a manner that does not compromise a disciplinary investigation.

9. A disciplinary investigation concerning alleged drug use is usually conducted by the military police because of their appropriate skill set. Administrative investigations of drug use are conducted by a unit administrative staff, with the assistance of Director Military Career Administration (DMCA). In both cases, the investigations are typically initiated by the commanding officer (CO) of the member. An exception to this assumption arises where an independent MP investigation identifies suspects.

10. The principal Charter issue arises from the authority for ordering drug tests (which is essentially an order to conduct searches and seize evidence). The CO, who will often initiate an administrative or disciplinary investigation concerning allegations of drug use, is also the person vested with the responsibility of determining the reasonableness of the grounds for ordering drug testing. Similarly, a CO is vested with the authority to authorize searches by Military Police (discussed in PO 016).

11. There is nothing in the QR&O that prevents the CO who ordered an investigation from being evaluating the circumstances that will determine the reasonableness of the grounds or the evidence to support a test for cause. Indeed, such actions are clearly anticipated by the relevant regulations. The possibility of a strong apprehension of bias may result. Coupled with the possibility that the results could lead to serious career implications including disciplinary and/or administrative action, this can be troubling.

12. Because the potential outcomes for the accused are serious, including possible release from the military or possible incarceration (i.e. the loss of liberty), it is imperative that the CF Drug Control Program operate in such a way as to reduce possible *Charter* challenges. The chain of command must be well versed in all aspects of the program and seek legal advice at the earliest opportunity when faced with a drug testing matter.

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13. Furthermore, the *Charter* tension arising from the regulatory powers granted to a CO can lead to a dissonance between expectations of the chain of command and prosecutors within the Canadian Military Prosecution Service, with unit legal advisors seemingly caught in the middle. COs and other decision-makers may query why they cannot rely upon investigative powers granted to them under the QR&O (e.g. QR&O 20.11 and 20.15) in order to obtain evidence for disciplinary proceedings. Military prosecutors are likewise reluctant to rely upon a legislative basis for search and seizure that has not been tested by the courts and which they consider to be vulnerable to *Charter* challenge. In this lesson, we will explore these issues.

Questions:

Interim Summary:

Stage 2 – CF Drug Control Program

Introduction:

14. The CAF is committed to a drug-free workforce by providing the appropriate tools and information to reduce or eliminate the drug-risk behaviours of CAF members. The Canadian Forces Drug Control Program has been developed and implemented to ensure that the CAF commitment to a drug free workplace is governed by appropriate policy.

Body of the lesson:

15. CMP has the superintendence of the administration of the Canadian Forces Drug Control Program, which aims to achieve the following objectives:

a. the maintenance of operational readiness;

b. the safety and health of both members and the public;

c. the security of defence establishments and materiel (and other public or private property);

d. the security of classified and protected information;

e. discipline within the CF;

f. the reliability of CF members;

g. cohesion; and

h. morale

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16. These objectives have precipitated a more stringent administrative and disciplinary approach to drug enforcement in the CAF than that which exists in the civilian criminal justice system and civilian employment environments. The essential elements of the CF Drug Control Program are contained in QR&O Chapter 20 – Canadian Forces Drug Control Program, which is amplified by DAOD 5019-3 – Canadian Forces Drug Control Program.

17. The chain of command and individual CF members are responsible for the deterrence and detection of prohibited drug use and other involvement with drugs by CF members. QR&O article 20.04 prohibits the use of any drug by CF members, except as set out in paragraphs (a), (b) and (c) of that article (respectively: authorized by a medical practitioner, use of non-prescription drugs consistent to the published use of the drug, or where it is necessary in the performance of CAF duties). Any supervisor who is contemplating drug-related administrative or disciplinary action must read and adhere to these provisions.

18. QR&O Chapter 20 sets out the essential elements of the CF Drug Control Program and provides the legal authority for testing for drug use by CF members. To monitor and detect drug use, QR&O Chapter 20 authorizes mandatory drug testing for specific purposes in defined circumstances.

19. DMCA shall be consulted for any clarification of drug testing under QR&O Chapter 20.

20. A-AD-005-DCP/AG-000 Canadian Forces Drug Control Program Manual sets out detailed testing procedures and standards for drug testing. Testing procedures and standards are modelled on the Mandatory Guidelines for Federal Workplace Drug Testing Programs, published by the Substance Abuse and Mental Health Services Administration of the Department of Health and Human Services of the United States of America.

21. Testing falls into six categories: deterrent testing, testing for cause, high risk/safety sensitive testing, blind testing, accident or incident related testing wherein it is suspected that drug use was a contributing factor and administrative control testing. Each is governed by a different section of QR&O 20:

a. QR&O article 20.08, Deterrent Testing;

b. QR&O article 20.09, Testing of Members in High Risk Safety Sensitive Positions;

c. QR&O article 20.13, Blind Testing;

d. QR&O article 20.10, Accident and Incident Related Testing;

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e. QR&O article 20.11, Testing for Cause; and

f. QR&O article 20.12, Control Testing.

22. Pursuant to QR&O 20.15, two of these forms of testing may be used for disciplinary purposes: testing for cause and control testing. The rationale behind this authorization is that these forms of testing would meet the threshold (under s. 8 of the Charter) for lawful search and seizure within the criminal law context. Conceivably, the grounds for 'testing for cause' are similar to those that would be required for a warrant. 'Control testing' is part of a regulatory regime intended to assist with monitoring a CAF member who has previously contravened the CF Drug Control Program.

23. However, the person authorizing 'testing for cause', the CO, does not enjoy the same degree of 'judicial independence' as a justice who would normally authorize a search warrant. Consequently, the Director of Military Prosecutions is reluctant to proceed with charges that are predicated upon such searches, which might not satisfy all criteria established under s. 8 of the *Charter* by the Supreme Court. DMP is also concerned about the reliability of the 'chain of evidence' where samples are collected and sent for urinalysis. A secondary concern arises from the perspective that the CF Drug Control Program is intended principally for administrative sanction (notwithstanding the clear indication that disciplinary action is contemplated within the program).

24. Over the past decade, much of the focus for drug testing has been on 'safety sensitive testing' in advance of deployments and reliance upon 'testing for cause' and 'control testing' in support of administrative or remedial measures. Operations such as Op ATHENA, have been subject to authorizations by the CDS for 'safety sensitive testing'. Although disciplinary action has not arisen from such testing, the potential for exclusion from what is widely viewed as financially-lucrative deployments serves as a deterrent.

Questions: Focus on the types of testing

- Deterrent Testing
- Accident or Incident Testing
- Testing for Cause

Interim Summary:

Stage 3 – Drug use and other drug involvement

Introduction:

25. The CF Drug Control Program applies to both drug use and other involvement with drugs. Drug use is defined as any use of drugs contrary to QR&O article 20.04,

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Prohibition and means any act of injecting, swallowing, inhaling, smoking, ingesting or otherwise absorbing into the human body.

26. Other involvement with drugs is defined as any act, other than prohibited drug use, which involves a drug or is committed with the intent to commit an act that involves a drug and is an offence under federal legislation.

Body of the lesson:

27. Article 20.04 QR&O states:

> No officer or non-commissioned member shall use any drug unless:
>
> a. the member is authorized to use the drug by a qualified medical or dental practitioner for the purposes of medical treatment or dental care;
>
> b. the drug is contained in a non-prescription medication used by the member in accordance with the instructions accompanying the medication; or
>
> c. the member is required to use the drug in the course of military duties.

28. DAOD 5019-3 defines other involvement with drugs consists of, but is not limited to:

a. drug possession;

b. drug trafficking;

c. drug cultivation;

d. possession of drug paraphernalia;

e. breaking and entering to obtain drugs;

f. stealing drugs; and

g. administration of a noxious thing.

29. Note that possession for purpose of trafficking, trafficking, importing, exporting, manufacturing and cultivating certain drugs constitute offences contrary to federal legislation such as the *Controlled Drugs and Substances Act* are activities that are included in the phrase "other involvement with drugs".

30. This is not an exhaustive list but merely some examples provided within the DAOD, other behaviours would have to be assessed on a case by case basis.

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31. Examples of drug-related conduct that *does not* constitute other involvement with drugs for the purposes of DAOD 5019-3 include, but are not limited to:

a. being present during prohibited drug use by other persons;

b. failing to report prohibited drug use or other involvement with drugs by another CF member;

c. advocating the decriminalization of drugs; and

d. possessing marihuana for medical purposes in accordance with applicable laws.

Questions:

Interim Summary:

Stage 4 – Post-drug testing actions

Introduction:

28. Possible post-drug testing actions are linked to the rationale or reason supporting drug testing. In response to prohibited drug use or other involvement with drugs by a CAF member, the chain of command may take, as appropriate in the circumstances, administrative or disciplinary action, or both.

Body of the lesson:

29. Disciplinary action may be taken under the Code of Service Discipline for prohibited drug use or other involvement with drugs. However, as indicated above, DMP is reluctant to proceed with preferral of charges where evidence of drug use is established by way of 'testing for cause' or 'control testing'.

30. A CF member may also be subject to prosecution in civil court. In particular, where a CAF member is charged by civil authorities with possession, production or distribution of controlled substances (drugs), such a prosecution can trigger administrative action.

31. If it is determined that prohibited drug use has occurred, the CO shall immediately refer the CAF member to a CAF medical care provider for an assessment for drug dependency. The purpose of this assessment is to determine whether treatment is recommended. A referral is ordered using the Medical Referral and Certification form in A-AD-005-DCP/AG-000.

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32. Only a CAF medical care provider may assess, offer treatment for and treat drug dependency. A CAF member who is concerned about drug use is encouraged to voluntarily seek assistance.

33. Treatment for drug dependency is voluntary, i.e. a CAF member is not obliged to accept treatment. However, a CAF medical care provider shall document any refusal of treatment on the CAF member's medical file and shall advise the CAF member's CO of any continuing MELs.

34. The chain of command may take appropriate administrative or disciplinary action, or both, to address a CAF member's prohibited drug use or other involvement with drugs, regardless of the CAF member's decision on treatment.

35. Refusing treatment for drug dependency does not preclude:

a. the CAF member's CO making another mandatory referral for medical assessment at a later date; or

b. the CAF member volunteering for assessment or treatment at a later date.

36. The chain of command is responsible for ensuring that a CAF member who is believed to be displaying unacceptable drug-related conduct or performance is offered assistance from a CAF medical care provider.

37. Assessment and treatment of drug-related health problems, including drug dependency, is a medical responsibility of CAF health services. Treatment is arranged by the CAF member's unit medical facility and may include in-patient or out-patient treatment as well as follow-up for relapse prevention.

38. Treatment and rehabilitation available for members of the Reserve Force are set out in ADM(HR-Mil) Instruction 03/04, The Canadian Forces Spectrum of Care, which amplifies the legislative provisions at QR&O Chapter 34 – Medical Services. Treatment and rehabilitation procedures do not apply, generally, to:

a. CAF members of the Primary Reserve on Class "A" Reserve Service; or

b. ACF members of the Canadian Rangers, Cadet Organizations Administration and Training Service and Supplementary Reserve unless serving on Reserve Service in excess of 180 days.

Questions:

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Stage 5 – Administrative measures

Introduction:

39. DAOD 5019-3 provides guidance on what administrative measures must be taken when misuse of drugs or alcohol has been identified

Body of the lesson:

40. In response to prohibited drug use or other involvement with drugs by a CAF member, the chain of command may take, as appropriate in the circumstances, administrative or disciplinary action, or both.

41. Administrative action may be taken in respect of prohibited drug use or other involvement with drugs that takes place at any time by a CAF member.

42. IAW DAOD 5019-2, -4, and -7, CMP, the Director General Military Careers (DGMC) and DMCA were normally the only authorities who could impose remedial measures or other administrative action in respect of prohibited drug use or other involvement with drugs. However, pursuant to the direction in CANFORGEN 134/12, the authority to take administrative action and to impose remedial measures up to and including Counselling and Probation (C&P) has been delegated to CO. The authority to approve release remains with DMCA and DGMC.

43. An administrative review (AR) in respect of prohibited drug use or other involvement with drugs is conducted in accordance with DAOD 5019-2.

44. Before selecting any administrative action in respect of prohibited drug use or other involvement with drugs by a CAF member, the approving authority in respect of remedial measures or administrative action shall consider the following:

a. the facts of the CAF member's case, including:

   i. the nature of the drug in issue;

   ii. the means of detection;

   iii. the type of prohibited drug use or other involvement with drugs;

   iv. the location and time of the prohibited drug use or other involvement with drugs; and

   v. the degree of impact on CF operations, activities, safety, security and morale;

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b. the CAF member's entire period of service, taking into account the CF member's rank, military occupation, experience and position;

c. the CAF member's previous prohibited drug use or other involvement with drugs, if any;

d. the CAF member's leadership role, if any; and

e. the CAF member's history of referral for medical assessment for prohibited drug use.

45. As a general principle, the appropriate administrative action is the one that best reflects the degree of incompatibility between the CAF member's prohibited drug use or other involvement with drugs and the CAF member's continued service in the CAF.

46. Administrative action which may be taken is set out in the AR 'Decisions' block in DAOD 5019-2.

Administrative Control Testing

47. As a part of administrative action, control testing may be ordered under QR&O article 20.12 to confirm the continued abstinence from prohibited drug use by a CAF member when:

a. it is confirmed that the CAF member has engaged in prohibited drug use; and

b. the CF member is to be retained in the CAF.

48. Only a CO may order control testing. A CO shall order control testing with the minimum frequency that is reasonably necessary to confirm continued abstinence from prohibited drug use by the CAF member, and shall order that at least half of all control tests be conducted during any period of associated administrative action.

49. The CO should consider the following when determining the frequency of control testing:

a. the type of drug the CAF member is confirmed to have used; and

b. the time period during which any future use could reasonably be detected by urine testing (see the chart specifying detection periods for different drugs in A-AD-005-DCP/AG-000).

50. Control testing may only be administered during the one-year period after the day that the first control test sample of urine is provided.

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Disclosure of Personal Medical Information

51. Specific diagnosis and treatment of a CAF member, and any other information obtained during a medical or social work examination or interview, shall not be disclosed to or discussed with the CO or any non-medical personnel unless the disclosure is required by law or the CAF member has provided informed written consent.

52. A CAF medical care provider shall fully describe and explain, by appropriate means, to the CO of a CAF member:

a. any medical employment limitations (MELs) assigned to the CF member, including any limitations on the use of weapons or complex machinery or equipment; and

b. any time required away from the workplace for medical reasons.

53. A CAF medical care provider may be required by law in certain circumstances to disclose information about a CAF member to a third party without the consent of the CAF member.

Questions:

Interim Summary:

Stage 6 – Alcohol misconduct policy

Introduction:

54. The CAF policies concerning the misuse of alcohol are not dissimilar to those concerning drug use. DAOD 5019-7 establishes the criteria for alcohol-related misconduct and the steps the chain of command must take to address it.

55. The CAF does not condone the misuse of alcohol. It is CF policy to help members overcome alcohol dependencies through counselling and treatment. Unchecked alcohol misuse may result in disciplinary or administrative action or both, including the potential for release from the CF.

Body of the lesson:

56. The definition for 'misuse of alcohol' is any use of alcohol by a member which:

a. interferes with the performance of duty, including regular attendance at the place of duty;

b. creates an administrative burden by causing domestic or other problems;

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c. interferes with satisfactory social or economic functioning;

d. interferes with health; or

e. otherwise reflects discredit upon the CF.

57. DAOD 5019-7 provides comprehensive information on what will and will not be considered either alcohol misconduct or a conduct deficiency involving alcohol. Which will discussed in the next two stages of the lesson.

Questions:

Interim Summary:

Stage 7 – Alcohol misconduct

Introduction:

58. Alcohol abuse and alcohol dependence create widespread and serious problems in the CF, harming basic social and military values and undermining security, morale, discipline and cohesion in the CAF. Alcohol abuse and alcohol dependence lead to behaviour that reflects discredit on the CAF and are therefore not tolerated by the CAF. Maintaining a healthy regard for alcohol is addressed through education and, if necessary, medical treatment.

Body of the lesson:

59. Under DAOD 5019-7 alcohol abuse is defined as a maladaptive pattern of repeated alcohol use as manifested by recurrent or significant adverse consequences. Alcohol dependence can be defined as a physiological or psychological dependence on alcohol as manifested by tolerance or symptoms of withdrawal.

60. Alcohol misconduct means any conduct, other than a conduct deficiency involving alcohol, that is an offence under the *Criminal Code* or the Code of Service Discipline that includes the consumption or influence of alcohol as an element of the offence or as a contributing factor, including, but not limited to, the following offences:

a. impaired driving;

b. impaired driving causing bodily harm or death;

c. refusing to comply with a demand to provide a breath or blood sample;

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d. drunkenness under section 97 of the *National Defence Act* or an offence under QR&O article 19.04 – Intoxicants, if dealt with at court martial, or at summary trial if a court martial election was given; and

e. stealing, assault or sexual assault.

61. No CAF member shall engage in alcohol misconduct and any CAF member who engages in alcohol misconduct is liable to criminal, disciplinary and administrative action, including release.

62. An incident of alcohol misconduct or suspected alcohol misconduct shall be reported to:

a. the member's commanding officer (CO) through the chain of command;

b. the military police; or

c. the local representative of the Office of the Judge Advocate General (OJAG).

63. All incidents of alcohol misconduct and conduct deficiency involving alcohol shall be dealt with in a timely fashion. After any report of a CAF member's alcohol misconduct or suspected alcohol misconduct, the CO shall immediately notify DMCA and provide sufficient description of the circumstances, obtain legal advice from the unit legal advisor. The CO must consider whether action under QR&O article 101.08 – Relief from Performance of Military Duty – Pre and Post Trial, is necessary, depending on the nature of the offence. Often, such action will not be necessary; however, it falls within the scope of possible considerations by a CO.

64. DAOD 5019-7 states that, upon notification by a CO, DMCA shall initiate an administrative review (AR) as appropriate under DAOD 5019-2, Administrative Review. The reason for this is that, pursuant to the unmodified version of DAOD 5019-7, only DMCA, the Director General Military Careers (DGMC) and CMP could impose administrative action for alcohol misconduct. However, pursuant to the delegation of authority signalled at CANFORGEN 134/12, CMP has delegated to COs the authority to impose administrative measures, including remedial measures up to C&P, but excluding authorizing release. However, a CO must still inform DMCA of any reported alcohol-related misconduct.

Questions:

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Stage 8 – Conduct deficiencies involving alcohol

Introduction:

65. A conduct deficiency involving alcohol means any conduct or performance involving alcohol that is an offence under section 97 of the *National Defence Act* or QR&O article 19.04, if dealt with at summary trial and a court martial election was not given, or is an offence under provincial or municipal law or demonstrates personal financial mismanagement or any other unacceptable conduct or performance. It is essentially a 'lower order' deficiency or form of misconduct than 'alcohol misconduct'.

Body of the lesson:

66. After any report of a CF member's conduct deficiency involving alcohol or a suspected conduct deficiency, the CO shall perform the following actions:

a. conduct an initial evaluation;

b. consult with the unit legal advisor to determine the required action in accordance with this DAOD, other relevant DAODs and QR&O article 101.08;

c. consider relieving the CAF member from the performance of military duty in accordance with QR&O article 101.08;

d. contact the military police if the initial evaluation of the incident indicates a requirement for a police investigation;

e. administer, if appropriate, a remedial measure in accordance with the 'Administrative Action if an AR is not Conducted' block; and

f. refer the member to a CAF medical care provider in accordance with CFAO 34-56, Mental Disorders.

67. DAOD 5019-7 states that the CO shall refer any incident to DMCA for an AR if the conduct deficiency involving alcohol demonstrates a significant lack of judgement relating to the performance of the CF member's duties or disregard for the safety of others. However, this must now be read in the context of the delegation announced in CANFORGEN 134/12. A CO must still report a conduct deficiency involving alcohol to DMCA. However, DMCA will only become actively involved if release is a possibility and that, therefore, an AR in advance of such a decision must be conducted.

68. Prior to any administrative action being imposed by a CO for a CF member's conduct deficiency involving alcohol, DMCA may order that an AR be conducted under DAOD 5019-2.

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69. If DMCA has ordered an AR in respect of a conduct deficiency involving alcohol, a CO may not impose administrative action. Any administrative action purportedly imposed by a CO after the AR is ordered by DMCA is of no force or effect. However, if DMCA staff do not conclude that DMCA must be involved (due to potential compulsory release), then a CO may proceed with determining whether an AR will be ordered.

Questions:

Interim Summary:

Stage 9 – Criminal Code Impaired/Over .080 and provincial roadside screening

Introduction:

70. A charge of impaired operation of a motor vehicle (or 'over .080') under the *Criminal Code* is not usually prosecuted under the Code of Service Discipline, unless it occurs outside of Canada. An 'impaired/over .080' charge laid before civil authorities may lead to certain restrictions on a member's career and a conviction could result in serious career implications.

Body of the lesson:

71. A CAF member is required to report alcohol misconduct by another CF member, in accordance with QR&O 4.02(1) or QR&O subparagraph 5.01(e).

72. A CAF member is also required to report their own arrest by a civil authority, in accordance with QR&O article 19.56 – Report of Arrest by Civil Authority. This includes arrest for impaired operation of a motor vehicle. (There is, notably, a lacuna in these obligations. Where a CAF member is not arrested, there is seemingly no obligation to self-report when charged with a *Criminal Code* offence. However, a person charged by civil authorities with impaired operation of a motor vehicle will almost always be arrested).

73. Any report of alcohol misconduct or suspected alcohol misconduct requires the CO to immediately notify DMCA and provide a sufficient description of the circumstances, and obtain legal advice from the local OJAG representative. Commanders and persons in position of trust may also face serious career implications for a conviction of impaired driving and could lead to relief from performance of a military duty or removal from command (including the cancellation of a designation as a CO where the officer is a CO by virtue of designation).

74. Depending on the nature of the member's MOS, alcohol misconduct could result in a recommendation for release if a member would no longer be employable in their MOS.

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75. A number of provinces have now enacted provincial legislation aimed at reducing the number of drivers impaired by alcohol. Under provincial legislation it may be a regulatory offence to drive with any alcohol in your system, or at a level that does not warrant sanction under the *Criminal Code*. These provincial offences generally involve an immediate suspension of driving privileges and/or a fine. This is a provincial offence similar to a 'speeding ticket'. Repeat offences can bring serious consequences and lengthy driving prohibitions depending on the province. Equally, in some provinces, where *Criminal Code* charges have been laid, but have yet to be proven, 'failure' in the administration of 'road-side screening device' (e.g. registering a 'Warn' or a 'Fail' on the approved road-side screening device) could still trigger administrative suspension of a driver's permit under provincial legislation. Such sanction falls within the definition of 'conduct deficiency involving alcohol'.

76. If a CAF member is tried and found guilty of an alcohol misconduct offence, upon the conclusion of the service tribunal or civil court proceeding, the CO shall obtain the certificate of conviction or other document setting out the conviction, the form or other document setting out the sentence, any probation and/or prohibition order.

77. If the CAF member is tried and discharged or found not guilty, or a stay of proceedings is directed the CO shall obtain the entire court transcript and the decision of the service tribunal or civil court.

78. CANFORGEN 134/12 has modified the application of DAOD 5019-7 and the related DAOD 5019-2 and -4. Consequently, a CO must determine if the CO will exercise delegated authority concerning administrative action. If so, the CO shall take into consideration all relevant material, and seek legal advice, in order to determine the appropriate action. If DMCA will conduct an AR or otherwise approve action, the CO shall forward relevant documents, along with any conduct sheet of the member, a summary of evidence, the CO's recommendation on administrative action, if any, along with any other relevant information that may assist in the AR to DMCA.

79. When alcohol misconduct has been identified but the member is not tried for an offence, the CO shall follow a similar process. The CO must identify the misconduct to DMCA and either take appropriate administrative action (including imposing remedial measures where appropriate), or, where DMCA will approve the administrative action, forward to DMCA all information concerning the incident, any conduct sheet, the CO's recommendation for administrative action, if any, and any other relevant information that will assist the AR.

Questions:

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Stage 10 – Policies relating to the serving of alcohol on CF establishments

Introduction:

80. Messes and other recreational facilities on bases, wings and stations fall under the CAF Morale and Welfare programs and are governed by the publication A-PS-110-001/AG-002 *Morale and Welfare Programs in the CF*, *Public Support for Morale and Welfare Programs and NPP* – Volume 1 and by DAOD 9003-1 – Non-Public Property Governance Framework, Chief of Military Personnel and the Non-Public Property Board.

Body of the lesson:

81. Messes are meeting places that foster the esprit de corps and comradeship essential:

> ...for an effective professional armed force. Messes enable all ranks to become personally acquainted with their peers and subordinates and to assist with their professional development. Messes also provide a place to meet with personnel from other CF formations (regular or reserve) and with members of the armed forces of other countries. (Taken from A-PS-110-001/AG-002).

82. Messes are established for the Regular Force and Primary Reserve under the authority of the CDS. They operate under the control of the CO designated as responsible for mess services by the applicable Canadian Forces Organization Order.

83. Messes may be established at each unit for officers, officer cadets (where warranted), warrant officers and sergeants, and junior ranks. COs may authorize a combined mess when the number of CAF members will not support separate Messes.

84. COs may co-locate Messes for other reasons such as resource limitations, geography, or other unique circumstances.

85. Service Clubs may be authorized as an alternative to Mess bars. They provide a place for CAF members to socialize where consumption of alcohol is not the primary activity. Activities provided in Service Clubs are based on the interests of CAF members and may include a lounge area, food outlet, either in the facility or reasonably accessible, dance area, games, and TV areas. Service Clubs may operate either as part of the Junior Ranks Mess or as a separate MW facility.

86. COs will issue regulations concerning hours of operation, dress and standards of behavior for messes and service clubs on their respective establishments.

87. Additionally, all venues that serve alcohol must adhere to licensing regulations as required depending on the nature of the activity in the mess (i.e. rental for private functions where alcohol will be served).

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Questions:

Interim Summary:

Stage 11 – Measures taken as a consequence of violations of these policies

Introduction:

88. Non-compliance with DAOD 9003-1 may have consequences for both the DND and the CF as institutions, and for DND employees and CF members as individuals. Suspected non-compliance will be investigated. The nature and severity of the consequences resulting from actual non-compliance will be commensurate with the circumstances of the non-compliance.

Body of the lesson:

89. Non-compliance with policies, orders and directives could lead to administrative measures and disciplinary charges. In serious cases non- compliance could result in loss of funding and support for base messes and social clubs which could ultimately lead to a prohibition on the sale or consumption of alcohol. In an extreme case it could lead to the closure of messes and/or social clubs.

Questions:

Interim Summary:

PART 4 – CONCLUSION

Summary:

96. The topics covered in this lesson include drug use, drug involvement, drug testing, misuse of alcohol and misconduct involving alcohol use as well as the programs and procedures used to address this issues. The possession, consumption and trafficking of certain drugs are criminal offences in Canada under the *Controlled Drugs and Substances Act* (*CDSA*) and the *Food and Drugs Act* (*FDA*). While civilian anti-drug laws are designed to deter and punish criminal misconduct, the unique demands of a military force have required the CAF to design an anti-drug program which aims to achieve different purposes. The DAOD on alcohol misconduct is relatively new and commanders may require guidance from a legal officer to determine the proper way to address either alcohol misuse or misconduct involving alcohol.

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97. It is important for legal officers to the CAF drug and alcohol policies and relevant orders and directives associated with them in order to provide appropriate legal advice when called upon to do so.

Confirmation:

98. Done in a discussion format. Ask some confirmation questions. No group answers, remind students to raise their hand before speaking. Or instructor may ask particular students to answer questions

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PART 1 –LESSON IDENTIFICATION

EO 007.02 – Advise on Public Comment by CAF Members, Political Activities and Conflict of Interest

Performance: Advise on public comment by CAF members and conflict of interest

Conditions:

a. given: References: including but not limited to relevant factual context, legislation, policies, case law, (may also include prior legal opinions) NDA, QR&O

b. denied: nil

Standard: At the conclusion of this lesson the individual candidate shall know and understand the policies that apply to public comments made by CAF members and conflict of interest, and be able to apply this knowledge in their capacity as a legal advisor

Main Teaching Points:

- Advise on public comment by CF members
- advise on conflict of interest
- advise on political activities

Method: This EO will be accomplished by Development Lesson. Students will be required to read any pre-reading packages assigned and be prepared to respond to questions.

Duration: 3 periods (120 min)

References: *NDA, QR&O, Constitution Act, 1982*

Training/Learning Aids: Standard classroom with whiteboard and projection system, handouts, student disk, student desk book, Legal Officer Qualification Course (LOQC) Instructors Handbook

Note to the instructor: This developmental lesson shall be conducted in structured manner, using the list of "questions to the class" provided in the following pages. Instructors are to complement each segment of the developmental lesson by follow-up and direct questions taking into account the flow and direction of the discussion. Interim summaries shall be conducted at the end of each segment to confirm the material was learned and provide a basis from which the discussion can progress to the next segment. A review of the main teaching points will then take place at the end of the period.

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PART 2 – INTRODUCTION

Objective:

1. The instructor shall introduce the topic of public comment by CAF members and conflict of interest. By the end of the lesson the candidates should have a basic knowledge of these topics which would allow them to provide legal advice as it pertains to this subject.

Introduction:

2. The CAF as a government institution must always appear neutral. While the *Charter* guarantees certain rights including the right to freedom of expression and freedom of assembly it also has been recognized by the courts that these rights may be restricted or reduced in circumstances where it is appropriate to do so.

3. Morale and unit effectiveness are predicated on members of the force having confidence in the chain of command. Public comments that erode that confidence reduce the overall effectiveness of the command team and therefore public comment is tightly controlled within the CAF.

4. Due to the nature of CAF service members of the military are very mobile moving multiple times during their career. The *Canada Elections Act* provides for Special Voting Rules that apply to CAF members in order to ensure they have a fair opportunity to exercise their right to vote. Again, neutrality of the CAF is critical in times of federal elections and thus actions of CAF members and activities on CAF establishments must be tightly controlled so as not to breach this perception of neutrality.

Outline:

5. During this lesson the candidates will be introduced to the subject of comment by CAF members and conflict of interest It is important for legal officers to understand these topics so they are able to provide appropriate legal advice.

Stage 1 – Regulations and policies related to public comment

Stage 2 – Conflict of interest policies and guidelines

Stage 3 – Regulations governing elections

Stage 4 – Political activities regular force members

Stage 5 – Political activities reserve members

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PART 3 – BODY OF THE LESSON

Stage 1 – Regulations and policies related to public comment

Introduction:

6. CAF members and DND employees face significant challenges in their efforts to inform the public and ensure the public's right to know, while being fully aware and respectful of legal restrictions on releasing detailed information about:

a. individuals (restricted by the *Privacy Act*);

b. sensitive elements of military operations (restricted by the *National Defence Act*, the *Security of Information Act* and the *Access to Information Act*); and

c. issues before the courts (which is restricted by the *Canada Evidence Act* and the *Canadian Charter of Rights and Freedoms*).

7. While these restrictions place legal limits on the scope of information which may (or must) be made public by the CAF and DND, every effort should be made to be as open and transparent as possible within the law.

8. To this end, CAF members and DND employees at all levels shall manage their programs and activities in a manner that:

a. maximizes public and media accessibility to information regarding DND and CAF policies, programs, services, operations and initiatives in a timely manner and within the law;

b. minimizes the need for the public or media to resort to the *Access to Information Act* as a means of obtaining information from DND or the CAF; and

c. conforms to both the letter and the spirit of the *Access to Information Act.*

Body of the lesson:

9. Regardless of rank or level, CAF members and DND employees are accountable to their chain of command for the accuracy and currency of the information they make available to the public.

10. QR&O 19.36 (2), which concerns disclosure of information or opinion, states that no officer or non-commissioned member shall, without prior permission publish in any form whatever or communicate directly or indirectly or otherwise disclose to an unauthorized person official information or the contents of an unpublished or classified

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official document or the contents thereof. This sub-article further establishes that a CAF member may not, without prior permission (sought pursuant to QR&O 19.37):

a. use official information or unpublished or classified documents for a private purpose;

b. publish in any form whatever any military information or the member's views on any military subject to unauthorized persons or to deliver publicly, or record for public delivery, either directly, or through the medium of radio or television, a lecture, discourse or answers to questions relating to a military subject;

c. prepare a paper or write a script on any military subject for delivery or transmission to the public;

d. publish the member's opinions on any military question that is under consideration by superior authorities or to take part in public in a discussion relating to orders, regulations or instructions issued by the member's superiors;

e. disclose to an unauthorized person, without the authority of the department, agency or other body concerned, any information acquired in an official capacity while seconded, attached or loaned to that department, agency or other body and to furnish to any person, not otherwise authorized to receive them, official reports, correspondence or other documents, or copies thereof; or

f. publish in writing or deliver any lecture, address or broadcast in any dealing with a subject of a controversial nature affecting other departments of the public service or pertaining to public policy.

11. These prohibitions do not apply to a writing, lecture, address or broadcast to be provided exclusively to members of the CAF.

12. Consequently, before communicating information on one of the proscribed circumstances, CAF members must seek permission pursuant to QR&O 19.37, under which permission may be granted by the Chief of the Defence Staff or such other authority as he may designate.

13. Permission granted under this QR&O does not does not have the effect of establishing that the DND/CAF is endorsing anything said or done by the person to whom it is given.

14. Permission given may not be referred to in any way by the member and the permission will only be granted on the basis that no statement implying endorsement on behalf of the Crown will be included in what is said or done.

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15. In accordance with QR&O 19.375, any communication concerning or affecting the CAF or any part thereof that it may be considered desirable to make to the press or any other agencies concerned with the dissemination of news or opinions will be made by the Minister or an officer or official designated by the Minister.

16. An officer commanding a command, formation, base, unit or element may make communications to the press or other news agencies when they concern or affect only the command, formation, base, unit or element under the officer's command and do not involve enunciation, defence or criticism, expressed or implied, of service, departmental or government policy.

17. CAF members must be vigilant at all times regarding comments made in a public sphere and should be cautioned to understand that there is no such thing as giving a comment off the record.

Questions:

Interim Summary:

Stage 2 – conflict of interest policies and guidelines

Introduction:

18. The CAF is committed to minimizing the possibility of conflict of interest (COI) arising from the performance of official duties, employment and post-employment, and resolving any such COI in the public interest.

19. The principal DND and CF Policy concerning COI is DAOD 7021-0 – Conflict of Interest and Post-Employment, implemented by DAOD 7021-1 – Conflict of Interest. Other relevant policies include DAOD 7021-2 – Post-Employment, DAOD 7021-3 – Acceptance of Gifts, Hospitality and Other Benefits, and DAOD 7021-4 – Sponsorships and Donations.

20. All CAF members shall:

a. make themselves aware of the meaning and intent of the COI and post-employment provisions; and

b. take measures to prevent the possibility of COI arising.

21. Conflict of interest (COI) means a conflict of interest that arises from an activity or situation that places a DND employee or a CAF member in a real, potential or apparent conflict between their private interests and their official duties and responsibilities.

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Body of the lesson:

22. The avoidance of conflict of interest (COI) is one of the primary means by which DND employees and CAF members maintain public confidence in the impartiality and objectivity of the Public Service and the CAF. DND employees and CAF members shall undertake to minimize the possibility of COI arising by avoiding and preventing situations that could give rise to a COI or the appearance of a COI.

23. DND employees and CAF members shall perform their official duties and arrange their private affairs so that public confidence and trust in the integrity, objectivity and impartiality of the DND and the CAF are conserved and enhanced.

24. DND employees and CAF members shall act at all times in a manner that will bear the closest public scrutiny. This obligation may not be fully discharged by simply acting within the law.

25. In carrying out their official duties, DND employees and CAF members shall make decisions in the public interest. In carrying out their official duties, DND employees and CAF members shall arrange their private affairs in a manner that will prevent a real, apparent or potential COI from arising. If a COI arises for a DND employee or a CAF member, the conflict shall be resolved in favour of the public interest.

26. DND employees and CAF members shall not solicit gifts or transfers of economic benefit, and shall not accept gifts, other than incidental gifts, customary hospitality or other benefits of minimal value, unless written approval is given or the transfer is pursuant to an enforceable contract or property right of the DND employee or CAF member.

27. DND employees and CAF members shall:

a. not step out of their official roles to assist a person or private entity in their dealings with the government if this would result in preferential treatment to the person or entity;

b. not accord preferential treatment in relation to any official matter to a family member or friend, or to an organization in which the DND employee or CAF member, family member or friend has an interest; and

c. avoid being placed or appearing to be placed under an obligation to any person, private entity or organization that might profit from special consideration on the part of the DND employee or CAF member.

28. Providing information that is easily accessible to the public, to relatives or friends, or to private entities in which DND employees and CAF members or their family members or friends have interests, is not considered preferential treatment.

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29. DND employees and CAF members shall not knowingly take advantage of, or benefit from, information that is obtained in the course of their official duties and that is not generally available to the public.

30. DND employees and CAF members shall not directly or indirectly use, or allow the use of, government property of any kind, including property leased to the government, for anything other than officially approved activities.

31. After they leave public office, DND employees and CAF members shall not act in such a manner as to take improper advantage of their previous office.

32. A CAF member who fails to comply with the provisions of DAOD 7021-1 may be subject to one or more of the following:

a. change of duties;

b. deferment of promotion;

c. counselling and probation or other remedial measures or administrative action;

d. release; or

e. disciplinary action under the *National Defence Act*.

Questions:

Interim Summary:

Stage 3 – Regulations governing elections

Introduction:

33. CAF members are entitled to vote in federal, provincial and municipal elections provided they meet the voting requirements contained in the *Canada Elections Act* and in applicable, provincial and municipal elections legislation.

34. A citizen's right to vote is entrenched in the *Constitution Act, 1982* through s. 3 of the *Canadian Charter of Rights and Freedoms* and this right is fundamental to our democratic system. With respect to federal general elections, the special voting rules set out a framework designed to facilitate the right to vote which require, in particular, COs to perform duties, provide facilities and make other arrangements so that service polling stations are established and are made accessible to CAF members. Eligible CAF members vote under the special voting rules of the *Canada Elections Act*. This voting system allows CAF members to vote for a candidate in the electoral constituency

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where the CAF member is ordinarily resident (as determined by the member's Statement of Ordinary Residence) while serving anywhere in the world.

35. Additional guidance regarding elections and political activities can be found in Federal, Provincial and Territorial Electoral Events (A-LG-007-000AF-001), otherwise known as the 'Elections Manual'.

Body of the lesson:

36. The *Canada Elections Act* is the main source of statutory authority regarding elections. Part 11, Division 2 of the Act sets out the special voting rules as they apply to CAF electors.

37. These rules allow CAF members to vote at service polls during a 6-day service voting period that precedes the civilian polling day. COs are required, as a minimum, to have service polling stations open for at least three hours during three days of the service voting period.

38. The special voting rules address voting entitlement, the completion and amendment of a Statement of Ordinary Residence (SOR), the duties of COs and the service voting procedures.

39. The publication titled A-LG-007-000AF-001 Federal, Provincial and Territorial Electoral Events and informally known as the 'Elections Manual' is issued on the authority of the CDS. This document is a useful tool that can assist COs in their election duties. It provides detailed information on the eligibility of CAF electors to vote and the corresponding voting procedures.

40. The instructions in the manual only refer to federal elections. In the case of federal by-elections, the special voting rules are normally adapted to enable eligible CAF electors to vote by mail with a ballot kit issued by Elections Canada.

41. For provincial, territorial or municipal elections, the eligible CAF member will vote in accordance with the applicable provincial, territorial or municipal rules where they reside; no special voting rules are issued or required.

42. Service polls allow CAF members to take advantage of voting while they are on temporary duty, posted or deployed away from their ordinary place of residence. CAF members may also vote at civilian polling stations established for the polling division of the elector's place of ordinary residence, but only if they ordinarily reside in that riding.

43. If a service member does not ordinarily reside in the same riding as his or her statement of ordinary residence they may only vote using the special voting rules at a service poll.

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44. Except as otherwise authorized under the *Canada Elections Act*, or any other statute of the Parliament of Canada, a commanding officer shall ensure that any activity that takes place on a defence establishment, including a base or unit, under his command does not affect the actual or perceived political neutrality of the Canadian Forces.

45. Commanding officers shall not allow a political meeting to be held or a political speech to be delivered on a defence establishment (QR&O 19.44(6)). Where exceptional circumstances exist and where no practical alternative location can be found, the Minister may authorize such activities to be conducted.

46. Political advertising shall not be displayed anywhere on a defence establishment in areas exposed to public view except within the confines of married quarters.

47. The commanding officer shall not allow political canvassing or distribution of political advertising except within the confines of married quarters.

48. A commanding officer shall only permit political canvassing and the distribution of political advertising to single quarters and married quarters if, having regard to security and privacy requirements, the canvassers or distributors can be given access to such quarters.

49. The Chief of the Defence Staff may authorize the broadcast, through Canadian Forces broadcasting facilities, of free-time political broadcasts.

Questions:

Interim Summary:

50. It is important that COs familiarize themselves with the elections manual. COs must have a clear understanding of their duties as they pertain to elections. A CAF member's right to vote is a fundamental democratic right that should not be taken lightly.

51. COs are responsible for ensuring that the service voting procedures required by the special voting rules are followed. Failure to properly obtain and deal with a CAF elector's vote may result in the vote not being counted and included in the election results. This effectively denies the CF member of any meaningful participation in the democratic process.

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Stage 4 – Political activities regular force

Introduction:

52. In *Osborne v Canada (Treasury Board)*, [1991] 2 SCR 69, (among other decisions) the Supreme Court of Canada recognized the importance of the political neutrality of the Public Service. This constitutional convention is central to the principle of responsible government, and is also reflected in the Treasury Board Policy on Political Activities, which applies to the Federal Public Administration.

53. Section 2 of the *Canadian Charter of Rights and Freedoms* provides that every person has the freedom of opinion and expression. However, in the case of federal public service employees, a balance has to be struck between the employee's freedom of expression and the public interest in maintaining an impartial and effective Public Service. Consequently, while federal Public Service employees may engage in activities of a political nature they must remain loyal to their employer, the Government of Canada.

54. Their activities should not jeopardize the tradition of the Public Service as a politically neutral institution; and this principle of political neutrality may impose restraint on the political involvement of employees.

Body of the lesson:

55. IAW QR&O 19.44(7), no member of the Regular Force shall take an active part in the affairs of a political organization or party. Members of the Regular Force are prohibited from making a political speech to electors, or announce himself, or allow himself to be announced, as a candidate or prospective candidate, for election to the Parliament of Canada or a provincial legislature.

56. Except with the permission of the Chief of the Defence Staff, no Regular Force member shall accept an office in a municipal corporation or other local government body, or allow himself to be nominated for election to such office.

57. No officer or non-commissioned member shall organize or take part in a political meeting on a defence establishment.

58. Examples of meetings or speeches that might be considered to be political meetings or political speeches are those that are designed to solicit votes for a candidate in a federal, provincial or municipal election, solicit funds to support a candidate in a federal, provincial or municipal election or a political party or organize a lobby to maintain or change public policy at the federal, provincial or municipal level.

59. A meeting or speech that might not be considered to be a political meeting or political speech is a meeting or speech that is designed to impart information but does not require or expect any specific solicited political action to follow as a result.

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Questions:

Interim Summary:

Stage 5 – Political activities Reserve Force

Introduction:

60. The political activities of Reserve Force members are not as restricted as those of Regular Force members. The QR&O pertaining to elections and political activities do not mention Reserve Force members. One must look to the document *Federal, Provincial and Territorial Electoral Events* for a mention of Reserve force members and even then, express references are limited.

Body of the lesson:

61. There is nothing in the QR&O that expressly addresses political activities of Reserve Force personnel. In fact the only mention of Reserve Force personnel in any of the rules, regulations or directives is with regard to voting and how they are included as CAF electors dependent upon specific circumstances surrounding their service.

62. It is stated in the Federal, Provincial, Territorial Electoral Events document that members of the CAF shall ensure, at all times, that their acts and conduct do not affect the actual or perceived neutrality of the CAF. Thus as a member of the CAF, Reserve Force members must also follow this direction.

63. No member of the CAF shall serve as a special ballot officer or as a representative of a political group at any service or civilian voting place. Appointments to those posts are political appointments. The duties of persons appointed to those posts are incompatible with the role of members of the CAF.

Questions:

Interim Summary:

PART 4 – CONCLUSION

Summary:

64. The topics covered in this lesson include public comment by CAF members, conflict of interest and regulations governing elections and political activities.

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Confirmation:

65. Done in a discussion format. Ask some confirmation questions. No group answers, remind students to raise their hand before speaking. Or instructor may ask particular students to answer questions.

Conclusion:

66. The CAF as a government institution must always appear neutral. While the *Charter* guarantees certain rights including the right to freedom of expression and freedom of assembly it also has been recognized by the courts that these rights may be restricted or reduced in circumstances where it is appropriate to do so.

67. Morale and unit effectiveness are predicated on members of the force having confidence in the chain of command. Public comments that erode that confidence reduce the overall effectiveness of the command team and therefore public comment is tightly controlled within the CAF. As a legal officer you may be called upon to advice the chain of command on issues related to conflict of interest and public comment as well as issues related to elections and public office. By knowing the relevant regulations, policies and orders that pertain to these issues you will be better situated to provide appropriate advice.

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PART 1 –LESSON IDENTIFICATION

EO 007.03 – Advise on sexual misconduct by CAF members and sexual disorders

Performance: Advise on sexual misconduct by CAF members and sexual disorders

Conditions:

a. given: References: including but not limited to relevant factual context, legislation, policies, case law, (may also include prior legal opinions) NDA, QR&O

b. denied: nil

Standard: At the conclusion of this lesson the individual candidate shall know and understand the regulations and policies that pertain to sexual misconduct by CAF members and sexual disorders, and be able to apply this knowledge in their capacity as a legal advisor

Main Teaching Points:

- relevant regulations and CAF policies

Method: This EO will be accomplished by Development Lesson. Students will be required to read any pre-reading packages assigned and be prepared to respond to questions.

Duration: 1 period (40 min)

References: *NDA, QR&O, Constitution Act, 1982*

Training/Learning Aids: Standard classroom with whiteboard and projection system, handouts, student disk, student desk book, Legal Officer Qualification Course (LOQC) Instructors Handbook

Note to the instructor: This developmental lesson shall be conducted in structured manner, using the list of "questions to the class" provided in the following pages. Instructors are to complement each segment of the developmental lesson by follow-up and direct questions taking into account the flow and direction of the discussion. Interim summaries shall be conducted at the end of each segment to confirm the material was learned and provide a basis from which the discussion can progress to the next segment. A review of the main teaching points will then take place at the end of the period.

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PART 2 – INTRODUCTION

Objective:

1. The instructor shall introduce the regulations and policies that pertain to sexual misconduct by CAF members and sexual disorders. By the end of the lesson the candidates should have a basic knowledge of these topics which would allow them to provide legal advice as it pertains to this subject

Introduction:

2. Sexual misconduct destroys basic social and military values and undermines security, morale, discipline and cohesion in the CAF. It also reflects discredit on the CAF and is therefore not tolerated by the CAF.

3. The CAF is committed to ensuring that all incidents of sexual misconduct are reported, investigated and dealt with as soon as practicable.

Outline:

4. During this lesson the candidates will be introduced to the policies and regulations that pertain to sexual misconduct by CAF members and sexual disorders. It is important for legal officers to understand these topics in order to provide appropriate legal advice.

Stage 1 – Prohibited conduct

Stage 2 – Disorders

Stage 3 – Consequences related to issues involving sexual misconduct or sexual disorders

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PART 3 – BODY OF THE LESSON

Stage 1 – Prohibited conduct

Introduction:

5. A person who has engaged in sexual misconduct may be refused enrolment or re-enrolment in the CAF.

6. No CAF member shall engage in sexual misconduct

7. A CAF member who engages in sexual misconduct is liable to criminal, disciplinary and administrative action, including release.

8. The key CAF (and DND) policy on sexual misconduct (and sexual disorders) is DAOD 5019-5. The Code of Service Discipline and policies relating to administrative review, remedial measures and other forms of administrative action are also relevant.

Body of the lesson:

9. Sexual misconduct consists of one or more acts that are either sexual in nature or committed with the intent to commit an act or acts that are sexual in nature, and which constitutes an offence under the *Criminal Code* or Code of Service Discipline (CSD). Sexual misconduct includes offences such as sexual assault, indecent exposure, voyeurism and acts involving child pornography.

10. CAF members are required to report any incidents of sexual misconduct, in accordance with QR&O subparagraph 4.02 (1)(e), General Responsibilities of Officers, or QR&O paragraph 5.01(e), General Responsibilities of Non-Commissioned Members or an arrest by civil authority immediately to the CAF member's commanding officer (CO), in accordance with QR&O article 19.56, Report of Arrest by Civil Authority.

11. Other conduct deficiencies of a sexual nature, dealt with at the unit level through the CSD or administrative action, or both, include, but are not limited to:

a. any sexual act between consenting adults in circumstances which are prohibited by virtue of authority stemming from the *NDA*;

b. any harassment in the form of sexual harassment that is prohibited under DAOD 5012-0, Harassment Prevention and Resolution;

c. any fraternization or a personal relationship involving an inappropriate sexual act between consenting adults that is prohibited under DAOD 5019-1, Personal Relationships and Fraternization (NB: Fraternization does not equate to improper personal relationships between CAF

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personnel. Fraternization refers to improper relationships between a member of the CAF and others, such as civilians in occupied territory or local inhabitants in a Special Duty Area); or

d. any use of DND and CAF electronic networks or computers, to access or distribute any material whose focus is pornography, nudity or sexual acts involving adults over age 18, that is prohibited under DAOD 6002-2, Acceptable Use of the Internet, Defence Intranet and Other Electronic Networks, and Computers.

12. The above deficiencies are addressed in policies other than DAOD 5019-5, Sexual Misconduct and Sexual Disorders.

Questions:

Interim Summary:

Stage 2 – Disorders

Introduction:

13. Sexual disorder means any mental disorder of a sexual nature described in the Diagnostic and Statistical Manual of Mental Disorders, 5th Edition (DSM V), published by the American Psychiatric Association.

Body of the lesson:

14. A CAF member who is concerned about medical or psycho-social conditions or behaviours related to sexual misconduct or a sexual disorder is encouraged to voluntarily seek medical services assistance.

15. Treatment for medical or psycho-social conditions or behaviours related to a sexual disorder is voluntary, i.e. a CAF member is not obliged to accept treatment. However, a CAF medical care provider shall document any refusal of treatment on the CAF member's medical file and shall advise the CAF member's CO of any continuing MELs.

16. The chain of command is responsible for ensuring that a CAF member who has engaged in sexual misconduct and raises suspicion that a sexual disorder may exist is sent for assessment and offered assistance from CAF medical care providers as applicable. A referral is ordered using the form DND 2828, Medical Referral and Certification.

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17. The Director General Health Services (DGHS) is responsible for the assessment and treatment of medical or psycho-social conditions and treatable behaviours related to sexual disorders, and for follow-up.

18. Treatment and rehabilitation available for members of the Reserve Force are set out in ADM(HR-Mil) Instruction 03/04, The Canadian Forces Spectrum of Care, which amplifies the provisions at QR&O Chapter 34 – Medical Services. Treatment and rehabilitation procedures do not apply, generally, to:

a. CAF members of the Primary Reserve on Class "A" Reserve Service; and

b. CAF members of the Canadian Rangers, Cadet Organizations Administration and Training Service, and Supplementary Reserve unless serving on Reserve Service in excess of 180 days.

19. A CAF medical care provider shall fully describe and explain to the CO of a CAF member, by appropriate means, any medical employment limitations (MELs) assigned to the CF member in respect of a sexual disorder and any time required away from the workplace for medical reasons.

20. The CAF member may consent to the disclosure of other information.

21. A CAF medical care provider may be required by law in certain circumstances to disclose information about a CAF member to a third party without the consent of the CAF member.

22. Refusing treatment for a medical or psycho-social conditions or behaviours related to a sexual disorder does not preclude:

a. the CAF member's CO making another mandatory referral for medical assessment at a later date; or

b. the CAF member volunteering for assessment or treatment at a later date.

23. Medical treatment by health authorities, other than CAF health services, may be provided after release.

Questions:

Interim Summary:

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Stage 3 – Consequences related to issues of sexual misconduct or sexual disorders

Introduction:

24. Due to societal attitudes with respect to sexual behaviour, special provisions are in place to deal with the reporting, investigation and career consequences of sexual misconduct by CAF members. It is important to be able to distinguish between sexual misconduct, which has a disciplinary or criminal aspect to it, and sexual harassment which (although equally unacceptable), is typically dealt with through an administrative process.

Body of the lesson:

25. DAOD 5019-5 – Sexual Misconduct and Sexual Disorders sets out CAF policy with respect to sexual misconduct. It describes in useful detail the manner for dealing with allegations of sexual misconduct including the types of investigations, the availability of administrative action, reporting requirements and NDHQ review.

26. For an act or behaviour to be considered sexual misconduct pursuant to the DAOD, it must meet two requirements: first, it must be either sexual in nature or committed with the intent to commit an act or acts that are sexual in nature; and, second, it must constitute an offence under the *Criminal Code* or Code of Service Discipline (CSD).

27. When sexual misconduct is alleged, the first requirement is for a fair and thorough investigation. The CO must ensure that an investigation into the allegation is conducted as soon as practicable. The Military Police (MP), as the usual first point of contact for investigation of possible criminal offences, must be consulted. Depending on the circumstances, the MP may involve other civilian police authorities. If there is any doubt as to the most suitable type of investigation, the advice of the unit legal adviser should be sought.

28. DAOD 5019-5 further provides that if a police investigation is conducted, there can be an administrative investigation (an informal investigation, SI, or BOI) on matters not covered by the MP or police investigation. If there is any doubt on how to proceed, the unit legal adviser should be contacted.

29. Notwithstanding DAOD 5019-5, if the CO is going to order an investigation based on an allegation that there has been a breach of the CSD, the CO must not order a BOI or an SI if the sole or primary purpose is to obtain evidence for a disciplinary purpose or to assign criminal responsibility. Where an investigation is intended for a disciplinary purpose QR&O Chapter 106 (Investigation of Service Offences) applies. If a BOI or an SI was conducted, any report of the inquiry will not be admissible as evidence or used at a court martial or summary trial.

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30. There is an overlap between sexual misconduct, as defined above, and sexual harassment. Once investigated, it may be the case that alleged conduct falls short of being so serious as to warrant a criminal or disciplinary charge, but there may be sufficient evidence to support a finding that sexual harassment has occurred. If this is the case, the direction provided in DAOD 5012-0 (Harassment Prevention and Resolution) should be followed.

31. An example would be lewd comments. While such conduct would not normally constitute a criminal offence, it can be considered sexual harassment. DAOD 5019-5 provides a course of action to follow for acts that may constitute sexual misconduct and sexual harassment.

Questions:

Interim Summary:

PART 4 – CONCLUSION

Summary:

32. The topics covered in this lesson include sexual misconduct and sexual disorders. Sexual misconduct destroys basic social and military values and undermines security, morale, discipline and cohesion in the CAF. It also reflects discredit on the CAF and is therefore not tolerated by the CAF.

33. The CAF is committed to ensuring that all incidents of sexual misconduct are reported, investigated and dealt with as soon as practicable and has put in place orders and policies to deal with sexual misconduct and sexual disorders in the CAF.

Confirmation:

34. Done in a discussion format. Ask some confirmation questions. No group answers, remind students to raise their hand before speaking. Or instructor may ask particular students to answer questions

Conclusion:

35. A person who has engaged in sexual misconduct may be refused enrolment or re-enrolment in the CAF and no CAF member once enrolled shall engage in sexual misconduct. A CAF member who engages in sexual misconduct may face criminal, disciplinary or administrative action, including release.

36. The CAF is committed to treating CAF members who have sexual disorders and this treatment is included in the CAF spectrum of care.

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PART 1 –LESSON IDENTIFICATION

EO 007.04 – Advise on removal from command

Performance: Advise on removal from command

Conditions:

a. **given**: References: including but not limited to relevant factual context, legislation, policies, case law, (may also include prior legal opinions) NDA, QR&O

b. **denied: nil**

Standard: At the conclusion of this lesson the individual candidate shall know and understand removal from command, the process and its impact, and be able to apply this knowledge in their capacity as a legal advisor

Main Teaching Points:
- relevant regulations and CAF policies
- Removal from command vs. relief of performance of military duty

Method: This EO will be accomplished by Development Lesson. Students will be required to read any pre-reading packages assigned and be prepared to respond to questions.

Duration: 1 period (40 min)

References: National Defence Act, R.S.C. 1985, c. N-5, Queen's Regulations and Orders for the Canadian Forces (QR&O) - Volume I - Administration , CDS Directive of CF Command and Control and Delegation of Authority for Force Employment, 28 April 2013

Training/Learning Aids: Standard classroom with whiteboard and projection system, handouts, student disk, student desk book, Legal Officer Qualification Course (LOQC) Instructors Handbook – Module(s) [XXX]

Note to the instructor: This developmental lesson shall be conducted in structured manner, using the list of "questions to the class" provided in the following pages. Instructors are to complement each segment of the developmental lesson by follow-up and direct questions taking into account the flow and direction of the discussion. Interim summaries shall be conducted at the end of each segment to confirm the material was learned and provide a basis from which the discussion can progress to the next segment. A review of the main teaching points will then take place at the end of the period.

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PART 2 – INTRODUCTION

Objective:

1. The instructor shall introduce the subject of the removal from command, the policies and procedures related to removal from command and the impact of such action. By the end of the lesson the candidates should have a basic knowledge of these topics which would allow them to provide legal advice as it pertains to this subject

Introduction:

2. Temporary or permanent removal from command is not governed by reference to any specific statute or regulation. Similar to the command appointment process whereby the CDS appoints environmental commanders who, in turn, appoint formation commanders and COs, the removal of an officer from command is governed by the customs and practice of the service. Accordingly, the commander with authority to appoint an officer as a CO or a subordinate commander is normally the same authority who will, if need be, exercise the power to remove an officer from command.

Outline:

Stage 1 – Relevant regulations and CAF policies

Stage 2 – Distinguishing removal from command from relief of performance of military duty

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PART 3 – BODY OF THE LESSON

Stage 1 – Relevant regulations and CAF policies

Introduction:

3. The temporary or permanent removal from command reflects a general loss of confidence in the person's ability to exercise command effectively. This loss of confidence may be the result of professional or off-duty misconduct, unsatisfactory performance, including serious errors in judgment, or a trend of errors having a serious impact on a commander's ability to carry out their duties. Considering the potential impact on an individual's career, any officer who is being considered for removal from command must be afforded the fullest measure of procedural fairness. This must be balanced with other factors relating to efficient and effective control and administration of units, formations and other elements of the CAF.

Body of the Lesson:

4. Broadly, there are two types of command positions: (i) those where a commanding officer or commander is posted into a position in command of a unit or formation; (ii) and those where an officer is designated a commanding officer by a commander whom the CDS has authorized to make such designations (such positions are often called 'designated CO').

5. In the former case, permanent removal from command will entail a posting out of the position of CO or commander. Temporary removal from command might not entail a posting out of the position, but could entail a temporary attached posting from the unit or headquarters, other direction not to exercise command, or, in extreme cases, relief of performance of military duty. In such a case, the commander or CO would still occupy the position within the unit or formation establishment, but would be away from the unit or headquarters, for the purpose of command. The authority to remove an officer from command will generally rest with the authority who approved the posting. For commanding officers and lower formation commanders (e.g. brigade or wing commanders) this will normally be the Commander of the relevant Command (e.g. Commander of the Army, Commander of the RCAF). For commanders of larger formations, this will typically be the CDS.

6. In the case of a 'designated CO', the officer is not posted into a position in command of a unit, and consequently, a posting is not necessary in order to temporarily or permanently remove the powers of a CO. Where such a CO is 'removed' from command, either permanently or temporarily, the commander who designated the officer to be a CO need only rescind the designation.

7. On 12 December 2001, the CDS issued *Guidelines – Removal from Command*, which have not been rescinded. These guidelines focus on officers occupying positions

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of command over formations and units, and are silent concerning 'designated CO'. Arguably, the designation of an officer as a CO is an exercise of greater discretion than the selection of a commander or CO of a formation or unit. The former is typically designated in order to permit the exercise of certain functions that the designating commander considers should be exercised by the designated CO for the greater efficiency or effectiveness of the relevant formation. An officer posted into a position of command over a formation or unit is typically selected through a process of succession planning. Nevertheless, although the designation of a CO is distinguishable from the selection of CO and commanders of units and formations, the spirit of the CDS Guidelines are typically applied where a designating commander chooses to rescind a designation.

8. At a minimum the procedural fairness afforded a commander in this context must include providing the individual whose career may be affected with:

a. a notice of intention to render a decision regarding their continuing command;

b. information regarding the superior's concerns and the allegations against the member's interest so that the member may properly address the concerns. Information provided to the member will include the disclosure of all information and documentation that is to be considered by the decision-maker; and

c. a reasonable period of time to prepare a response and to make representations to the member's superior. Whether the representations will be made orally or in writing will be determined by the situation. There is no requirement for the submission to be in written format.

9. The superior officer who is considering the removal of an officer from command should consider the seriousness of the allegations or circumstances causing concern as well as the reliability and completeness of the information causing concern, including police reports or service investigations. The superior officer must also consider the representations of the officer whose career may be affected and the effect that the officer's continued presence or removal will have on that officer's subordinates.

10. The superior officer must also consider the notoriety of the issue, as well as both the CAF's and the public's perception of the issue. He, or she, must remain mindful of the principles of Canadian Defence Ethics when examining the situation and determining the right course of action.

11. The superior commander must assess the officer's ability to carry out the functions of command effectively, including leadership and disciplinary functions, while maintaining public trust and confidence and the individual's ability to effectively exercise command given current and anticipated future circumstances.

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12. If a superior commander is contemplating removing a subordinate from command because of behavior or actions (or alleged behaviour or actions) that have resulted in an investigation or legal proceeding, the superior commander must consider the consequences of any investigation or legal proceedings, including rights of appeal.

13. Finally, the superior commander must consider past precedents and previous corrective measures that have been taken against this individual, if applicable; and determine the best course of action keeping in mind the best interests of the CAF.

14. Normally the appointing authority that removes a CO or subordinate commander from command will also act as the review authority. The decision to remove a Flag or General officer from command will usually be made by the appointing authority. However, the review of the removal action will be conducted by Armed Forces Council, which will advise the CDS after completing the review.

15. In some cases, the requirements of the service may require that a decision be made within a limited time-frame, such that recourse to procedural fairness will be hampered. Although such circumstances should not be the norm, some considerations, such as the immediacy of a deployment or governing safety requirements may oblige a decision to be made without permitting the full panoply of procedural fairness. In such circumstances, legal advisors must actively support the decision-maker(s) and not simply wait for requests for legal advice. It is circumstances such as these that consistently active engagement with the chain of command will pay dividends.

16. Although such circumstances will be governed by prevailing factors, decisions of a temporary nature will often be useful control measures. For example, a CO of a fighter squadron is alleged to have been flying while under the influence of alcohol. It is likely that the Commander of 1 CAD, who is responsible for flight safety of all operational RCAF units, will wish to ground the CO as a pilot. This is a reasonable precaution. However, that does not necessarily mean that the CO must be removed from command immediately. Notwithstanding, that a CO must lead by example, the CO could remain in command, pending investigation (and full procedural fairness), notwithstanding that the CO would not be able to 'lead in the air'.

17. However, this situation becomes more complicated where the alleged alcohol abuse also (allegedly) influences other command decisions apart from flying. Here, Comd 1 CDA will be aware (either by experience or following legal advice) that any administrative investigation will likely be delayed by a disciplinary investigation and that allegations of flying while under the influence of alcohol will necessitate a disciplinary investigation. Even where such investigations are expedited, they could take several week. During that time, Comd 1 CAD might lose confidence in the ability of the CO to command. Nothing prevents Comd 1 CAD from removing the CO from command (notwithstanding the stigma that could arise) temporarily, pending completion of the investigation.

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18. Although such a decision would adversely affect the (now removed, if temporarily) CO's interests and privileges, considerations of safety and the effective and efficient control and administration of the unit justify such a decision. Clearly, in such cases, the basis for the decision must be grounded on credible evidence, and not a vague suspicion.

Questions:

Interim Summary:

Stage 2 – Distinguishing between removal of command and relief of performance of military duty

Introduction:

19. Removal of command may be temporary or permanent and severs the command and control relationship established when the individual is appointed commander. When an individual is removed from command a new commander must be appointed to take over the duties and responsibilities of the command, formation or unit.

20. There are occasions where it may be appropriate for a commander to be relieved from the performance of their military duties – either in addition to, or distinct from, being removed from command. Unlike removal from command there are specific regulatory authorities and obligations regarding the 'relief of performance of military duties'. Members may be relieved from performance of military duty pursuant to QR&O 19.75, which is a provision of general application, or pursuant to QR&O 101.08, which specifically concerns relief from the performance of military duty pre- and post-trial.

Body of the lesson:

21. In exceptional circumstances, when other administrative action is insufficient, military authorities may determine it is necessary to relieve a member from performing all military duties for reasons of public interest or because the member's presence will undermine unit morale or operational effectiveness. Unlike removal from command it is not predicated on a superior commander's loss of confidence in the individual's ability to exercise command effectively and the individual will remain the commanding officer even if relieved from performance of military duties. Relief of performance of military duties is predicated upon the requirement to remove a CAF member from the environment and circumstances relating to service.

22. The ramifications of being relieved of military duty may be substantial or negligible, depending in part on the individual circumstances of the member concerned. However, for a senior officer, approaching the end of a career, or who is being considered for higher command, the stigma that could be associated with that officer's abilities or character may be irreparable.

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23. While the circumstances would be exceptional, there may be situations where removal from military duties might be advantageous to, or for the benefit of, the member (i.e., for their protection or to avoid public humiliation).

24. The focus of the provisions at QR&O 19.75 and 101.08 is the relief from duty – once initiated, the CAF member will have no military duties to perform. This measure also reduced a degree of control over the CAF member, since the member would have no military duties to perform. Consequently, relief of performance of military duty should be considered as a 'last resort'. If a CAF member may continue to contribute to the CAF mission and functions, relief of performance of military duty would likely be an excessive measure. For example, if a CAF member's presence in a workplace is disruptive to the effective functioning of that workplace, and a posting or other change of workplace is not feasible or appropriate, relief of performance of military duty is not necessarily the sole option. If the CAF member possesses knowledge or skills, or is performing functions that are necessary for the unit or workplace, one option might be to have the CAF member perform his or her military duties in a different location.

25. QR&O 101.09 offers an object example of the rationale behind this power. Where a CAF member is charged with a Code of Service Discipline offence, it may be necessary to relive the CAF member from duty in order to: (i) ensure the investigation or prosecution is not hampered; (ii) to safeguard the accused or witnesses from a potentially hostile environment; or (iii) to safeguard the accused's privacy.

26. There can also be pay implications arising from relief of performance of military duty. Although members of the Regular Force and Reserve Force on Class C service will continue to be paid, members of the Reserve Force on Class A service will, in effect, have their service (and pay) suspended. This is because Reserve Force personnel on Class A service are only paid when service is rendered, which cannot arise if relieved of performance of military duty. This has led to claims of inequitable treatment, when compared to Regular Force personnel. Although, in light of the distinction between the two forms of service, such difference of treatment can be justified, it highlights the central consideration when using this power – it should only be used as a last resort.

27. Often, a legal advisor will act as 'sober second thought' in such circumstances, as there can be a tendency by senior leadership to rush to the use of available powers. The prosecution of former Colonel Russell Williams offers an example. After Williams had been arrested and charged, one of the first reactions by senior leaders was to conclude that Williams should be relieved of performance of military duty. The operative question in such circumstances is: why? Williams had been arrested and charged by civil authorities. As it developed, he remained in custody until his trial. He was found guilty and was sentenced. Throughout this process he was effectively removed from performing any military function by virtue of his arrest. There was no need to relieve him from performance of military duty.

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28. Neither removal from command nor relief from military duty may be used as a form of discipline, punishment or penalty. Relief from military duty should be viewed as a military-specific administrative separation from employment. Nevertheless, the extreme nature of the action can still have significant, prejudicial effects on the member's reputation and morale. A Regular Force member who is relieved from performing military duties continues to receive pay and allowances, remains subject to the Code of Service Discipline and is liable to obey all lawful commands.

29. A commander who has been removed from command for leadership deficiencies and whose presence at any unit would be disruptive to operational effectiveness, could be relieved from the performance of military duty but it is not mandatory. A commander removed from command may still be required to report for duty and carry out other duties and tasks assigned to them, whereas an individual relieved from performance of military duty will not.

Questions:

Interim Summary:

PART 4 – CONCLUSION

Summary:

30. The topics covered in this lesson include removal from command, the policies and procedures that govern removal from command and the impact on command positions, appointments and other positions.

Confirmation:

31. Done in a discussion format. Ask some confirmation questions. No group answers, remind students to raise their hand before speaking. Or instructor may ask particular students to answer questions.

Conclusion:

32. Removal from command is a significant administrative measure that is likely to have a profoundly negative impact on the career of the individual. It is not an action that is taken lightly due to the serious consequences associated with removal from command.

33. A legal officer must be able to explain the CDS-directed process for removal of command and the difference between removal from command and relief of military duty in order to provide appropriate advice to superior commanders.

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PO 008 ADVISE ON THE ADMINISTRATION OF CF SERVICE

Performance: understand and provide legal advice on the administration of CF service

Conditions:

a. **Given:** relevant factual context, policy, case law, reference material (including prior legal opinion)
b. **Denied**: nil
c. **Environment**: CAF unit, base, wing HQ, deployed domestically and internationally, under austere conditions

Standard: the legal officer shall, without direct supervision, provide legal advice on the administration of CF service, specifically:

a. Advise the enrollment of CF members
b. Advise on legal issues pertaining to career
c. Advise on CF compensation and benefits issues
d. Advise on the release of CF members

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PART 1 –LESSON IDENTIFICATION

EO 008.01 – Advise on the enrolment of CF members

Performance: Advise on the enrolment of CF members

Conditions:

a. **given**: References: including but not limited to relevant factual context, legislation, policies, case law, (may also include prior legal opinions) NDA, QR&O, CAOD

b. **denied**: nil

Standard: At the conclusion of this lesson the individual candidate shall know and understand the regulations governing the CAF enrolment process, and be able to apply this knowledge in their capacity as a legal advisor

Main Teaching Points:

- relevant regulations and policies

Method: This EO will be accomplished by Development Lesson. Students will be required to read any pre-reading packages assigned and be prepared to respond to questions.

Duration: ¼ period (10 min)

References: NDA, QR&O, DAOD

Training/Learning Aids: Standard classroom with whiteboard and projection system, handouts, student disk, student desk book, Legal Officer Qualification Course (LOQC) Instructors Handbook – Module(s) [XXX]

Note to the instructor: This developmental lesson shall be conducted in structured manner, using the list of "questions to the class" provided in the following pages. Instructors are to complement each segment of the developmental lesson by follow-up and direct questions taking into account the flow and direction of the discussion. Interim summaries shall be conducted at the end of each segment to confirm the material was learned and provide a basis from which the discussion can progress to the next segment. A review of the main teaching points will then take place at the end of the period.

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PART 2 – INTRODUCTION

Objective:

1. The instructor shall introduce the topic of enrolment in the CAF and the regulations and policies that govern enrolment. By the end of the lesson the candidates should have a basic knowledge of these topics which would allow them to provide legal advice as it pertains to this subject

Introduction:

2. The CAF is committed to enrolling eligible applicants who are most suitable for service. Enrolment is selective and may be competitive.

3. Applicants are assessed through tests, interviews and other methods that comply with the *Canadian Charter of Rights and Freedoms*, the *Canadian Human Rights Act*, the *Employment Equity Act*, the *Official Languages Act* and recognized psychological and statistical principles.

4. Applicants who are eligible for enrolment in the CAF, and are found to be suitable in the selection process for the targeted component, sub-component and military occupation, if applicable, may be enrolled.

Outline:

5. During this lesson the candidates will be introduced to the regulations and policies that govern enrolment as well as the irregular enrolment and the consequences associated with irregular enrolment. It is important for legal officers to understand the enrolment process so they are able to provide advice as required.

Stage 1 – Enrolment regulations

Stage 2 – Enrolment policies

Stage 3 – Irregular enrolment and the consequences associated with irregular enrolment

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PART 3 – BODY OF THE LESSON

Stage 1 – Enrolment regulations

Introduction:

6. The CAF is committed to enrolling eligible applicants who are most suitable for service.

7. Applicants for enrolment should:

a. possess an aptitude for learning;

b. have valued, applicable skills;

c. be motivated to commit to a CAF career; and

d. exhibit characteristics, values and work attitudes necessary for service in the CAF.

8. Enrolment is selective and may be competitive.

9. Applicants are assessed through tests, interviews and other methods that comply with:

a. the *Canadian Charter of Rights and Freedoms*;

b. the *Canadian Human Rights Act*;

c. the *Employment Equity Act*;

d. the *Official Languages Act*; and

e. recognized psychological and statistical principles.

10. Applicants who are eligible for enrolment in the CAF, and are found to be suitable in the selection process for the targeted component, sub-component and military occupation, if applicable, may be enrolled.

11. An applicant may be enrolled if the applicant is:

a. eligible for enrolment;

b. selected for a component or sub-component; and

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c. selected for a military occupation, if applicable.

Body of the lesson:

12. QR&O article 6.01, Qualifications for Enrolment, establishes eligibility for enrolment in respect of the following conditions:

a. citizenship;

b. good character;

c. minimum age; and

d. current and former service in the CAF, other military force(s) or the Royal Canadian Mounted Police (RCMP).

13. An eligible applicant is an applicant who has met the conditions of eligibility for enrolment.

Questions:

Interim Summary:

Stage 2 – Enrolment policies

Introduction:

14. The enrolment process starts when a member initially contacts the local recruiting center. Interviews and testing will be performed and the suitability for enrolment assessed. Certain people are precluded from enrolment in the CAF, while others are deemed not suitable for certain trades. During this lesson the candidates will learn about the enrolment, process, re-enrolment and the consequences of irregular enrolment.

Body of the lesson:

15. There are persons who are precluded from enrolling in the CAF. These individuals include:

a. Members of the Royal Canadian Mounted Police (RCMP) for service in the Regular Force (member of the RCMP may, however, serve in the Reserve Force). The reason for this exemption is that RCMP are members of another federal force and, during times of emergency, could be required by law to serve both as CAF members and as RCMP members simultaneously;

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b. Current members of any other of Her Majesty's Forces (i.e., members of other Commonwealth Forces), unless special authority is obtained from the CDS; or

c. Persons who have been previously released from the CAF, or from any other of Her Majesty's Forces, where a determination has been made that they are medically unfit, were inefficient or were released with a conduct assessment below "good" or the equivalent. This does not apply to a person who was released with a conduct assessment below good or the equivalent that was based upon a conviction for which a pardon has been granted under the *Criminal Records Act*.

Reenrolment

16. Any former member who is interested in re-enrolling as an officer or an NCM in the CAF has to meet the same enrolment criteria as any other applicant. A former officer will be re-enrolled in the rank of officer cadet and may be promoted to a higher rank upon enrolment. This will be determined by NDHQ on a case-by-case basis.

17. An NCM who applies for re-enrolment within six months of release from the CAF, may, with prior approval of NDHQ, be granted the substantive rank and the MOC qualifications that the member held prior to his or her release. If the member re-enrolls more than six months since release, the member may, with prior approval of NDHQ, be re-enrolled and granted an acting rank and a provisional MOC qualification. The member will hold the acting rank and provisional MOC qualification as long as NDHQ determines it to be appropriate in the circumstances.

18. Persons who have been dismissed with disgrace from the CAF, for which the punishment has not been set aside, will not be re-enrolled in the CAF unless there is an emergency. Special authority must be obtained from the CDS to enroll any member who has been released from the CAF, any other of Her Majesty's Forces, the RCMP, or a foreign Commonwealth Force for misconduct.

Questions:

Interim Summary:

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Stage 3 – Irregular enrolment and the consequences of irregular enrolment

Introduction:

Body of the lesson:

19. Section 26 of the *National Defence Act* provides that any person who is erroneously or irregularly enrolled and receives pay as an officer or NCM is deemed to be an officer or NCM, as the case may be, regularly enrolled. By virtue of this provision, the erroneously or irregularly enrolled person will be subject to the same obligations and benefits as members who are properly enrolled.

20. A person is erroneously or irregularly enrolled if they were not eligible for enrolment, e.g. by virtue of age, by virtue of prior release due to misconduct, or by virtue of serving in a military force other than the CAF.

21. Any alleged erroneous or irregular enrolment shall be immediately reported to the Director Military career Administration (DMCA), who has exclusive authority to review it.

Questions:

Interim Summary:

PART 4 – CONCLUSION

Summary:

22. The topics covered in this lesson include enrollment policies and regulations and irregular enrollment and the consequences of irregular enrollment. You have been informed of who is eligible for enrollment, who is barred from enrollment, re-enrollment and irregular enrollment.

Confirmation:

23. Done in a discussion format. Ask some confirmation questions. No group answers, remind students to raise their hand before speaking. Or instructor may ask particular students to answer questions

Conclusion:

24. Enrolment is a controlled process and not all candidates who apply are determined to be fit to serve. The CAF is committed to enrolling persons who are best suited to serve the people of Canada and the testing and selection process is aligned with regulation and legislation to ensure it is a fair and equitable process.

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PART 1 –LESSON IDENTIFICATION

EO 008.02 – Advise on legal issues pertaining to a career in the CAF

Performance: Advise on legal issues pertaining to a career in the CAF

Conditions:

a. given: References: including but not limited to relevant factual context, legislation, policies, case law, (may also include prior legal opinions) NDA, QR&O, DAOD

b. denied: nil

Standard: At the conclusion of this lesson the individual candidate shall know and understand legal issues pertaining to a career in the CAF, and be able to apply this knowledge in their capacity as a legal advisor

Main Teaching Points:

- rank promotion and succession planning
- conduct and performance deficiencies
- administrative actions
- legal issues arising out of injury to CAF members
- civil and criminal court proceedings

Method: This EO will be accomplished by Development Lesson. Students will be required to read any pre-reading packages assigned and be prepared to respond to questions.

Duration: 2 ½ periods (100 min)

References: *NDA*, QR&O, *Constitution Act, 1982*

Training/Learning Aids: Standard classroom with whiteboard and projection system, handouts, student disk, student desk book, Legal Officer Qualification Course (LOQC) Instructors Handbook

Note to the instructor: This developmental lesson shall be conducted in structured manner, using the list of "questions to the class" provided in the following pages. Instructors are to complement each segment of the developmental lesson by follow-up and direct questions taking into account the flow and direction of the discussion. Interim summaries shall be conducted at the end of each segment to confirm the material was learned and provide a basis from which the discussion can progress to the next segment. A review of the main teaching points will then take place at the end of the period.

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PART 2 – INTRODUCTION

Objective:

1. The instructor shall introduce the topic of legal issues that pertain to CAF service. By the end of the lesson the candidates should have a basic knowledge of these topics which would allow them to provide legal advice as it pertains to this subject

Introduction:

2. The topics covered in this lesson topics that pertain to CAF service and will include rank, promotion and succession planning, conduct and performance deficiencies, administrative action that can be taken to address conduct and performance deficiencies. The lesson will also cover legal issues arising out of injury to CAF members and civil and criminal court proceedings and how they are addressed in the CAF.

Outline:

3. During this lesson the candidates will be introduced to legal issues pertaining to a career in the CAF. It is important for legal officers to understand legal issues pertaining to a career in the CAF so they are able to provide appropriate legal advise

Stage 1 – Advise on rank, promotion and succession planning

Stage 2 – Advise on conduct and performance deficiencies

Stage 3 – Advise on administrative actions with regard to CF members

Stage 4 – Advise on legal issues arising out of injury to CF members

Stage 5 – Advise on civil and criminal court proceedings

PART 3 – BODY OF THE LESSON

Stage 1 – Advise on rank, promotion and succession planning

Introduction:

4. Officers and non-commissioned members of both the regular and reserve force may be promoted provided they meet the promotion requirements set out in the QR&O and in orders issued under the authority of the CDS. The regulations and orders that apply in each case will depend on whether the member is an officer or NCM of the regular force, or an officer or NCM of the reserve force. Although this chapter describes in more detail the regulations and orders controlling promotions in the regular and

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reserve forces, the CF's various promotion policies can be reduced to three basic questions:

a. **Vacancy**: does the CF believe this particular vacancy requires the promotion of a member;

b. **Recommendation**: does the CF believe this particular member is ready for promotion; and

c. **Approval**: does the CF want to promote this particular member into this particular vacancy?

Body of the lesson:

5. The promotion of officers is subject to a solitary regulatory provision: QR&O 12.01, which states:

> Officers shall be promoted in rank in accordance with orders and instructions issued by the Chief of the Defence Staff.

6. However, this provision is dependent upon the general provisions concerning promotion under Chapter 11 of the QR&O. Specifically, QR&O 11.01 and 11.02 govern, respectively, the authority for, and conditions of, promotion.

7. Under QR&O 11.01, the person with the authority to promote an officer in the CF is either the Minister or the CDS, depending on the rank of the officer. For General and 'Flag' officers (BGen/Cmdre or higher), it is the Minister who will promote the officer on the recommendation of the CDS. For officers of the rank of Col/Capt(N) or below, the CDS has the authority to promote. If the officer is a LCol/Cdr or below, the CDS can designate an officer to fulfill the responsibilities of promoting the member.

8. Under QR&O 11.02, an officer or NCM may be promoted if the member satisfies various conditions for promotion. First, before any member can be promoted, there must be a vacancy in the establishment for the member's component. Second, the appropriate authority must recommend the officer or NCM for promotion. Third, the officer must meet the promotion standards, as prescribed by the CDS. The CDS, however, may direct that the requirement to meet any promotion standard be waived. Members of the special force, whether officers or NCM, may be promoted to a temporary or acting rank.

9. The CDS may authorize a designated officer to grant a CAF officer an acting rank. Acting ranks may be granted to meet special requirements. An officer who has been granted an acting rank does not have seniority in that rank, but will continue to have seniority in the officer's substantive rank. The holding of the higher rank must be essential for the member to perform his or her job. Acting ranks will not be granted for temporary positions.

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10. Promotion of subordinate members will depend not only on merit and potential, but also military requirements. There must be a vacancy in the next higher rank before a member can be promoted. Additionally, the member must meet the promotion standards as set out by the CDS.

11. Promotions are not automatic. In one grievance decision, the CF Grievance Authority stated:

> Promotions are not an entitlement and they are not granted as rewards. There are many deserving members who are qualified and deserving of promotion but who are not promoted. The reason they are not promoted is because there is no vacancy in their unit or there is no military requirement for their promotion. Promotions are based firstly on the military requirement. If you are not an effective member of a military unit then there is no military requirement to promote you."

12. Promotion may be viewed as a privilege, not a right. Alternatively, a promotion can be described as fulfilling a public requirement – an officer or NCM is not promoted to benefit the officer or NCM, but for the purpose of a public benefit.

Questions:

Interim Summary:

Stage 2 – Advise on conduct and performance deficiencies

Introduction:

13. Performance deficiencies can be addressed in two ways, formally or informally. Formally, performance deficiencies may be brought to the attention of a member through their PDR or annual PER or through specific administrative action (e.g. the process of removal from command or relief of performance of military duty). DAOD 5019-4 Remedial Measures provides one of the principal mechanisms for formally addressing an officer or NCM's deficient conduct or performance. Informally, review of a members' performance and expectations of future performance may be conveyed to the member by that member's supervisor.

Body of the lesson:

14. Collectively, CAF members have a core responsibility to the government and people of Canada to defend Canada and its interests. Individually, CAF members are responsible for their conduct and performance.

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15. A conduct or performance deficiency occurs if a CAF member fails to meet the standards of conduct and performance established for CAF members. CAF members shall be held accountable for any failure to meet established standards of conduct and performance resulting from factors within their control.

16. Commanding officers and other senior officers or leaders, as applicable, shall take appropriate action if a CAF member demonstrates conduct or performance deficiencies. Depending on the circumstances, the appropriate action may involve disciplinary or administrative action, or both.

17. If a CAF member has been charged with an offence under the *National Defence Act*, *Criminal Code* or other federal statute, CO and other responsible persons may, regardless of the eventual disposition of the charges, take administrative action to address any conduct or performance deficiencies arising from or identified as a result of the circumstances.

18. The CAF shall provide education, counselling and treatment, as appropriate, to assist CAF members to prevent, correct or subsequently overcome conduct or performance deficiencies

Questions:

Interim Summary:

Stage 3 – Advise on administrative actions with regard to CAF members

Introduction:

19. Each CAF member is required to maintain professional standards of conduct and performance. When an incident, a special circumstance or a professional deficiency occurs that calls into question the viability of a CAF member's continued service, administrative action may be appropriate.

20. An administrative review (AR) is the process employed to determine the most appropriate administrative action, if any, in such a case and the CAF is committed to an AR process that is fair.

21. Remedial measures are specific mechanisms within the broader context of administrative action, which can be taken to address conduct and performances deficiencies.

Body of the lesson:

22. Administrative review (AR) is described in DAOD 5019-2. The AR process in respect of a CAF member involves the functions of at least two officers. One or more

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staff officers will act as AR analysts responsible for conducting the AR analysis and another officer acts as the approving authority (AA) and is authorized to select and impose, if appropriate, administrative action in accordance with a relevant QR&O or DAOD.

23. The AR process may be initiated for a conduct or performance deficiency, with or without the prior administration of a remedial measure pursuant to DAOD 5019-4, or upon the recommendation from the chain of command that an AR be conducted.

24. A CO is required to contact Director Military Career Administration (DMCA) in any case of prohibited drug use or other involvement with drugs, sexual misconduct or alcohol misconduct.

25. An AR in respect of a CAF member may be recommended by an initiating authority, as identified in DAOD 5019-4, when remedial measures fail to rectify a conduct or performance deficiency or an incident, a special circumstance, or a professional deficiency arises that calls into question the viability of the CAF member's continued service.

26. A career manager or the Reserve Force equivalent, or the CO of a training establishment, Canadian Forces Recruiting Group HQ or Canadian Forces Support Training Group HQ may recommend an AR following a training failure – again to assess the viability of a CAF member's continued service.

27. An AR may be recommended by DMCA staff or an area (Division) HQ or equivalent staff if D Med Pol has assigned a permanent MEL. A CO may recommend an AR when a CF member cannot meet any one of the minimum operational standards under the principle of universality of service and a permanent employment limitation is assigned as a result.

28. All AR are conducted to assess and determine the member's viability for continued service. Not every AR results in a recommendation for release and it may be determined that the member is fit to remain in the CAF although they may be subject to administrative action in order to assist them in overcoming their shortcomings.

29. Before any administrative action is imposed, the approving authority (AA) shall ensure that he or she is authorized by QR&O or a DAOD to impose the selected action. As a general principle, the appropriate administrative action is the one that best reflects the degree of incompatibility between the CF member's conduct or performance deficiency and the CF member's continued service in the CF.

30. Pursuant to DAOD 5019-4, Remedial Measures represent a common type of administrative action that may arise from an AR, but they may also be imposed independently of an AR if the nature of the problem is not sufficiently serious to warrant an AR or an AR is not required by regulation or policy.

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31. If a CAF member has demonstrated a conduct or performance deficiency, an appropriate remedial measure may be initiated. The standard of conduct for a CAF member is based on established military standards, ethics and values identified in regulations, orders, instructions and policies. The standard of performance for a CAF member is based on established military standards applicable to the CAF member's current rank, military occupation, experience and position. The standard of performance establishes the level of performance expected of a CAF member in the execution of duties, tasks and responsibilities.

32. Remedial measures are specific steps to assist a CAF member in overcoming their conduct or performance deficiency and are based on established CAF standards. Remedial measures are part of the range of administrative actions which may be initiated in respect of a CAF member and are intended to make the CAF member aware of any conduct or performance deficiency, assist the CAF member in overcoming the deficiency and provide the CAF member with time to correct their conduct or improve their performance.

33. Remedial measures initiated in respect of a CAF member are intended to be applied in increasing significance from initial counselling (IC) to recorded warning (RW) and to the final stage of remedial measures, counselling and probation (C&P).

34. Commanding Officers are not required to initiate a remedial measure at the lowest level (i.e. initial counselling or IC), but may choose to impose RW or C&P, depending on the nature of the performance or conduct deficiencies and what measure is best suited to assist the member in overcoming their deficiency. Equally, where a form of remedial measure has been employed for a particular deficiency (e.g. a RW for alcohol misconduct), a CO is not automatically required to use a more severe form of remedial measure if there is a recurrence of the deficiency (although, prior identification of a deficiency and previous resort to formal measures will be relevant factors in determining the appropriate response to the present incident).

35. Administrative actions are a broader form of response and are initiated under applicable regulations, orders, instructions or policies. In addition to the remedial measures set out in DAOD 5019-4, administrative actions may include occupational transfer, transfer between sub-components, posting, an offer of terms of service in any case in which an offer has not been made by CF authorities, reversion in rank or release or recommendation for release, as applicable.

36. Administrative actions other than remedial measures may be initiated if: a remedial measure has been unsuccessful or a member has failed to comply with the content of a particular remedial measure; the conduct or performance deficiency is serious enough to warrant such actions; or the conduct or performance deficiency cannot be addressed by a remedial measure. Administrative actions can also be initiated for relatively benign reasons, where fault is not specifically attributed to a specific member. For example, if conflict arises between peers within a workplace, both could be moved to different sections in order to improve the workplace efficiency.

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37. Administrative actions, including remedial measures, are not punishments as defined under the Code of Service Discipline.

38. Both disciplinary actions under the Code of Service Discipline and administrative actions are meant to address a CAF member's conduct or performance deficiency. They may operate independently or one may complement the other.

39. Disciplinary sanction and administrative actions serve different purposes. Disciplinary sanctions possess a punitive aspect that administrative actions do not. Disciplinary action is initiated only if there are sufficient grounds to justify the laying of a charge under the Code of Service Discipline against a CAF member. Moreover, disciplinary sanctions are generally linked to a specific incident (of misconduct), whereas administrative actions are intended to correct a broader deficiency.

40. A CAF member cannot be charged under the Code of Service Discipline for having a 'negative demeanour' that could adversely affect morale. However, such a demeanour can affect the efficiency of a unit (or sub-unit) and can represent a performance or conduct deficiency.

Questions:

Interim Summary:

Stage 4 – Advise on legal issues arising out of injury to CF members

Introduction:

41. Military service requires that at all times all personnel must be capable of performing a broad range of military tasks, such as common defence and security duties, in addition to the specific duties associated with their military occupations such as pharmacist, logistics officer or pilot. This broad obligation on all CAF personnel is commonly referred to a 'Universality of Service' and has been the subject of the Universality of Service (U of S) policy since at least 1985.

42. The U of S policy is derived from sub-section 33(1) of the *National Defence Act*, which states that all Regular Force members are "at all times liable to perform any lawful duty." This legislative imperative means that a member who cannot "at all times ... perform any lawful duty" may not serve in the Regular Force except during a limited period of recovery from injury or illness. This is to allow for transition back into military service for those whose impairment is only temporary, or out of the military and into civilian life for those permanently unable to meet the liability imposed by the Act.

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Body of the lesson:

43. Legal issues arising from injury and illness of CAF members vary, but can be generally grouped in two broad categories:

a. Entitlement to medical care and to benefits relating to injury or illness;

b. Decisions affecting a CAF member's career arising from injury or illness, particularly those decisions that will terminate a career with the CAF.

44. As with many statutory decisions made in the context of the CAF, the greatest degree of contention typically arises from entitlement to financial benefits or decisions that impact negatively on career progression (including termination of a career). This lesson will describe some of the key issues that unit legal advisors will encounter.

45. **Entitlements**. Generally, entitlement to medical care is governed by Chapter 34 of the QR&O (Chapter 35 concerns dental care). Distinctions are drawn between members of the regular Force (and Class C Reserve Force service), full-time Reserve Force Service (Class B service) and part-time Reserve Force service (QR&O 34.07). The policy rationale behind this distinction is based upon the expectation that CAF personnel employed on a full-time basis should receive medical services from the CAF, while those on part-time service will rely upon provincial health care regimes. However, where the requirement for medical care is attributable to military service, a member of the Reserve Force will receive medical care from the CAF.

46. However, issues pertaining to medical treatment do not focus solely on the treatment itself. Many also focus on the receipt of pay and benefits during treatment and convalescence. Generally, members of the Regular Force continue to serve in the Regular Force (read: continue to receive pay and benefits) during treatment and convalescence. This is not always the case with members of the Reserve Force, which has led to complaints of differential (read: discriminatory) policies. For example, members of the Reserve Force who are injured or become ill, can be entitled to compensation under CBI 210.72. The focus of this provision is on injury or illness attributable to military service, and provides for compensation (essentially in lieu of pay) while the Reserve Force member is in hospital, is being treated, or is convalescing, and terminates when the member: (i) is released from the CF; (ii) refuses further treatment; or (iii) completes treatment. Treatment is completed when the Reserve Force member: (i) is able to resume duties with the Reserve Force; (ii) can resume his or her former civilian occupation; or (iii) can be gainfully employed in another civilian occupation.

47. However, this system was considered cumbersome because it relied upon regular referrals from medical professionals and the payment of compensation was often delayed by administration. Consequently, in 2008, CBI 210.72 was amended and 210.72(13) was introduced. This permitted a Reserve Force member on Class C 'Special Duty Service' (by virtue of serving on a Special Duty Operation or in a Special Duty Area) to extend the Class C service by up to 24 months where an injury or illness

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arises during Special Duty Service. This was viewed as bringing benefits for Reserve Force members in line with Regular Force members. It also introduced mechanism that was not as administratively cumbersome as the compensation regime. Often, the extension of Class C service under this regime was extended to 24 months as a matter of course.

48. Special Duty Service, Area and Operation are not defined in CBI 210.72, or in the CBI generally. The introduction of these terms into CBI 210.72 consequently relies upon the statutory origins of these terms. It has also led to the seeming desire by senior decision-makers to designate many operations as Special Duty Service (through the designation of a Special Duty Area or Operation) as a measure of expediency.

49. Special Duty Service, Area, Operation – are legal terms of art under the *Pension Act* and *Canadian Forces Members and Veterans Re-establishment and Compensation Act* (*Veterans Charter*). Specifically, under ss. 69 and 70 of the *Veterans Charter*, respectively, the Minister of National Defence (after consulting the Minister of Veterans Affairs) may designate a Special Duty Area or a Special Duty Operation is, in the Minister's opinion (among select other factors), the deployment has exposed, or may expose, CAF members to conditions of elevated risk. At subs. 2(1) of the *Veterans Charter*, 'Special Duty Service' includes service in a Special Duty Area or on a Special Duty Operation. This is subsequently incorporated into the *Pension Act* under the interpretation provisions at s. 3.

50. Consequently, occasions arise in which senior CAF decision-makers will be inclined to recommend to the Minister that an operation or area be designated as a Special Duty Operation or Area, not because of any articulable elevation in risk, but out of a desire to trigger the compensation provision at CBI 210.72(13).

51. A second controversial issue concerns the entitlement to a 'medical pension'. In actuality, this issue concerns two separate 'entitlements' and the use of specific terminology will assist in distinguishing between the two entitlements. The first is the entitlement to a pension under the *Pension Act*. The second is the entitlement to an immediate and unreduced annuity, indexed immediately, pursuant to the *Canadian Forces Superannuation Act* (*CFSA*). The use of the terms 'pension' and 'annuity', respectively, for these two entitlements will assist in distinguishing between them.

52. **Pension**. Under the *Pension Act* and *Veterans Charter*, a CAF member, regardless of component of service, will be entitled to a pension or other compensation where the CAF member incurs a permanent disability that is attributable to military service. Where the disability arises from an injury or illness incurred during a Special Duty Operation, or in a Special Duty Area – collectively referred to as Special Duty Service – (including while training for the Special Duty Service or on leave from the Special Duty Service), the disability is deemed to be attributable to military service. Where Special Duty Service is not a relevant factor, the determination will turn on the circumstances concerning the injury or illness giving rise to the disability.

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53. The determination of eligibility for a pension or other compensation under the *Pension Act* or *Veterans Charter* lies with the Department of Veterans Affairs, not the DND or CAF. However, CAF decision-makers can influence outcomes by virtue of determinations made before such injuries or illnesses arise, and by the effectiveness of administration after the injuries or illnesses are identified.

54. Where injuries or illness arise during the performance of military duties, establishing 'attributability' is reasonably clear. However, injuries and illness need not arise during normal working hours or while a CAF member is within the confines of a military establishment. The duty for all CAF personnel to remain physically fit offers an object example in attributability and the role of the chain of command. Injuries arising from physical training are a common source of litigation concerning entitlements under the *Pension Act* (and, now, *Veterans Charter*). Injuries arising from CAF-sanctioned sporting events or approved physical training, even if they occur outside CAF establishments, or outside of 'normal' working hours, remain attributable to military service. Consequently, the recording of approved physical training (e.g. on the annual physical fitness evaluation form) is an important administrative step to safeguard entitlements for CAF personnel.

55. One of the key documents that is generated when a CAF member becomes ill or is injured, particularly within the context of military service, is the CF-98 Report of Injuries and Exposure to Toxic Materials. The completion of this form is described at CFAO 5018-2. This report creates a record of the circumstances of an injury or exposure, and can be crucial in the eventual determination by the Department of Veterans Affairs regarding eligibility for a pension or other compensation.

56. Ultimately, CAF decision-makers do not determine eligibility for compensation under the Pension Act or Veterans Charter. However, determinations and administration by CAF leadership will influence subsequent determinations by decision-makers within the Department of Veterans Affairs.

57. **Annuity**. When a CAF member is compulsorily released from the CAF due to medical employment limitations (MEL) – typically where MEL will prevent the CAF member from meeting the obligations of the principle of Universality of Service (discussed later in this lesson) – this can give rise to an entitlement to an immediate and unreduced annuity, indexed immediately, under the *CFSA*. This can sometimes be confused with entitlement under the *Pension Act* when the term 'medical pension' is used. Consequently, this portion of the lesson will focus on the term 'annuity'.

58. CAF members who are no longer medically fit to comply with the obligations of Universality of Service will normally be released under Item 3a or 3b described in the table to QR&O 15.01. The terms of release and the number of years of service have implications on the award of annuity under the *Canadian Forces Superannuation Act* (*CFSA*) and other benefits. This direct impact upon financial benefits can cause such decision-making to be influenced by emotions, particularly in light of recent public

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discourse by ill or injured CAF members, some of whom allege that the CAF, and government generally, has abandoned them.

59. The entitlement to an annuity under the *CFSA* vests after 2 years of service. However, most CAF members will become entitled to an immediate and unreduced annuity only after a lengthy period of service (such as 25 years). Pursuant to paragraph 16(1)(d) of the *CFSA*, a contributor under Part I of the Act (essentially, the Regular Force Pension Plan) is eligible for an annuity after only 10 years of credited service if they become 'disabled'. The term 'disabled' is defined under s. 2 of the Act as meaning "... any member of the regular force...[who suffers from] ... any condition rendering him mentally or physically unfit to perform his duties as such member...".

60. The 10-year threshold has been the subject of public commentary where members of the Regular Force, injured on Special Duty Service, have been released with less than 10 years of service when determinations have been made that their injuries have precluded them from continuing to serve. Where the compulsory release occurs close to, but under, the 10-year threshold, criticism has been pointed. Some confusion can also arise concerning the distinction between a pension (or other benefit) under the *Pension Act*/*Veterans Charter* and an annuity under the *CFSA*.

61. Equally, some senior leaders have expressed a desire to ensure that CAF personnel injured while on Special Duty Service be retained until they attain at least 10 years of service in order to reach the threshold for an immediate, unreduced annuity under the *CFSA*. The same desire is typically not expressed for CAF personnel who are disabled other than on Special Duty Service, notwithstanding that the 10-year threshold applies equally to all members of the Regular Force. As described later in this lesson, regarding compulsory release, all such personnel should be treated in a similar fashion.

62. Finally, contentions have been raised concerning the distinction between the entitlement under the Regular Force Pension Plan and the Reserve Force Pension Plan. As indicated above, the former is triggered when a member of the regular force incurs a disability that prevents continued service in the regular force. The practical effect is that, if a member of the regular force is released under Item 3a (On medical grounds, being disabled and unfit to perform duties as a member of the Service) or 3b (On medical grounds, being disabled and unfit to perform his duties in his present trade or employment, and not otherwise advantageously employable under existing service policy) of the table to QR&O 15.01, and the regular force member has at least 10 years of credited service, the entitlement to an immediate unreduced annuity will be triggered.

63. The threshold for a member of the Reserve Force is higher. Paragraph 43(1)(d) of the *Reserve Force Superannuation Regulations* (enacted under s. 59.1 of the *CFSA*) states:

> A member who ceases to be a participant and has to their credit not less than two years of pensionable service is entitled to an immediate annuity, if

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(d) they are disabled by reason of suffering from a physical or mental impairment that

(i) prevents the member from engaging in any employment for which the member is reasonably suited by virtue of education, training or experience, and

(ii) can reasonably be expected to last for the remainder of the member's lifetime; or...

64. Although the temporal threshold is lower than for the regular Force (2 years, instead of 10 years), the effect of this provision is that contributors under the Reserve Force Pension Plan will only be entitled to an immediate unreduced annuity if the disability will prevent the member from being gainfully employed in any employment (that is suitable to the member's experience, education and training), not just employment in the CAF (which, presumably, has more rigorous physical and medical requirements than many more sedentary forms of employment).

65. This distinction can lead to a perception of unfairness. However, the rationale behind this distinction is that Reserve Force service is not anticipated to be the primary occupation of a member of the Reserve Force. Neither are members of the Reserve Force subject to the requirements of Universality of Service to the same extent. The expectation is that income form Reserve Force service is not the sole or principal source of income, and that the Reserve Force member is also employed in a civilian capacity.

66. **Decisions that can terminate a career**. Just as entitlements for injured and ill personnel can raise significant legal issues, decisions concerning limitations to the careers of injured and ill personnel – most particularly, compulsory release (and consequent termination of career) – will often give rise to legal issues. Two key regulatory provisions governing such decisions are QR&O 15.05 and 15.06. QR&O 15.05, a Governor-in-Council regulation, states:

An officer or non-commissioned member of the Regular Force who is suffering from a disease or injury that necessitates his release as medically unfit may, at the discretion of the Chief of the Defence Staff or the officer commanding the command, be retained for prolonged treatment, institutional care or medical observation for a further period of not more than six months, at the end of which time he shall be released unless otherwise directed by the Minister.

67. QR&O 15.06, a Ministerial regulation, states:

Where an officer or non-commissioned member is to be released as medically unfit, he shall be referred to the Department of Veterans Affairs if he requires treatment or institutional care and, subject to article 15.05 (Retention of Officers

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and Non-commissioned Members Eligible for Release on Medical Grounds), his release shall be completed as soon as possible after that reference.

68. Ill and injured personnel are given the time and care they need to recover and rehabilitate before any administrative action is taken with regard to their careers. Depending on the type of injury or illness, this time period can range from a couple of months to a few years. The CAF remain committed to supporting ill and injured personnel as they progress through recovery, rehabilitation and reintegration under a comprehensive approach entitled 'Caring for our Own'. The CAF, however, must also field an armed force that is capable of performing designated tasks.

69. Typically, during treatment, a member will be assigned a temporary medical category (TCAT). In most cases (pregnancy being an exception) these TCAT are assigned for up to 6 months, whereupon a subsequent medical evaluation is made. Eventually, when a member's medical condition becomes stable, a permanent medical category (PCAT) is assigned, and a medical assessment is conducted, which may identify tasks that the member can no longer perform.

70. Members who are assigned one or more permanent medical employment limitations (MEL) will have their case reviewed by either the Director of Military Career Administration (DMCA) or their unit Commanding Officer, depending on the nature of the limitation, to determine whether or not the individual can still comply with the fundamental requirements of military service as described by Universality of Service.

71. Regular Force members who are no longer medically fit to comply with the obligations of Universality of Service will normally be released under Item 3a or 3b described in the table to QR&O 15.01. As described above, the terms of release and the number of years of service have implications on the award of annuity under the *Canadian Forces Superannuation Act* (*CFSA*) and other benefits. Also, the determination that a member of the CAF is disabled by an injury or illness and can no longer continue to serve can have a profound impact upon the member. This direct impact upon financial benefits and status can cause decision-making to be influenced significantly by emotions. Consequently, legal advisors must be able to identify and articulate the type and nature of statutory decisions that are being made, and to identify and advise on the application of the relevant legislation and policy.

72. Where career-related decisions are made as a consequence of a change in a CAF member's medical status, there are generally two separate, yet related, determinations. The first decision is the determination by authorities within CF Health Services concerning the MEL imposed upon a CAF member by virtue of his or her medical status. The determination of the appropriate MEL is made by, or on behalf of, Director of Medical Policy (D Med Pol). This is a determination – more accurately, a diagnosis – by a physician. Although D Med Pol is not empowered to make career determinations, the determination of MEL is an exercise of legislated authority by D Med Pol, and is, consequently, subject to potential review by courts (once internal remedial mechanisms are exhausted).

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73. The second determination that is made concerns the career implications of the MEL. This determination is typically predicated upon an AR conducted by DMCA. Where the determination falls short of release (e.g. the identification of career limitations such as course, postings or types of employment), the determination is made by DMCA. Where this determination is for compulsory release, DMCA is authorized to make the determination for NCM, but for officers, who may only be released by the Governor General, DMCA makes the recommendation.

74. Consequently, a determination that a member of the CAF must be released for medical reasons is based upon two distinct decisions: the decision, by medical authorities, to impose MEL; and the decision, by administrative authorities, to release the member. Typically, DMCA will not 'look behind' the medical determination. Consequently, when D Med Pol imposes a MEL that indicates a CAF member's inability to comply with the principle of Universality of Service (e.g. 'Member cannot deploy on international operations, where medical support is not immediately available.'), the determination by DMCA will typically be a foregone conclusion.

75. Both of these decisions must be made in a procedurally fair context. Normally, the latter determination by DMCA is made following an AR pursuant to DAOD 5019-2. If the DAOD is followed, the affected CAF member will normally be given an opportunity to make informed representations that will be presented to the decision-maker. However, where MEL clearly indicate that a CAF member's medical status does not meet Universality of Service, the subsequent AR by DMCA will provide limited opportunity for the CAF member to question the basis of the MEL. Consequently, a legal officer must be able to distinguish between the two distinct determinations, and advise the supported CO or commander accordingly.

76. Other legal issues can arise within the context of ill and injured CAF members, particularly where actions are taken outside the control of the CAF. One common example concerns per quod claims. When a CAF member has been injured by the actions of a non-CAF or non-governmental actor, the CAF can seeks to be compensated for wages paid to the member while they were unable to work or for medical treatment provided to the member to treat their injuries. These are termed 'per quod claims' and are addressed in a later lesson.

Interim Summary:

77. Decisions concerning treatment, entitlements and the continued career of injured and ill CAF members can be emotionally charged and motivated by a variety of factors – some more appropriate than others. Sometimes the 'right' decision can be confused with the 'politically expedient' decision. Some decisions are predicated upon ignorance of the applicable legislation or policy. This can lead to abuses of statutory powers or inconsistent decision-making.

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78. A legal officer must maintain knowledge of current legislation and policies relating to the treatment of ill and injured soldiers in order to ensure that supported commanders apply these rules properly and consistently.

Questions:

Stage 5 – Advise on civil and criminal proceedings

Introduction:

79. A CF member may become involved in proceedings in courts of either civil or criminal jurisdiction, in Canada or abroad. This involvement may arise out of a member's military service or it may relate to the member's private activities.

80. Normally, a CF member who is obliged to attend civilian court proceedings will be issued with a relevant form of a court order (e.g. a summons), requiring attendance. For witnesses, the summons or subpoena should be accompanied by instructions for the payment of 'conduct money' to defray travel expenses.

81. DAOD 7001-0 sets out the policy with respect to civil and criminal court proceedings. DAOD 7001-1 provides specific details concerning the implementation of the policy.

82. Civil and criminal proceedings will generally fall into two categories and will be addressed separately in this lesson. The first situation is when a CAF member is a witness in civil or criminal matter or is a party to a civil action. The second situation arises when a CAF member is the accused in a criminal action.

Body of the lesson:

83. **Attendance at court**. In the event of civil or criminal court cases involving a member as a witness, the CF shall provide, subject to operational requirements, an opportunity for the member to attend at the least expense to the Crown.

84. If a member is subpoenaed or otherwise ordered to attend as a witness before a foreign court, and attendance of the member would be in the public interest, an officer commanding a command is authorized to order the member to attend on duty.

85. A commanding officer is authorized to permit a member to attend civil or criminal court in Canada either on leave or on duty.

86. If a member has been subpoenaed to attend as a witness at a criminal court, has been ordered as a witness for the Crown in right of Canada or has been subpoenaed to attend as a witness in a military capacity at a civil court, the member will attend on duty. If the member has been subpoenaed or otherwise ordered to attend as a witness before

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a foreign court the member shall be placed on special leave (as indicated in the Canadian Forces Leave Policy Manual).

87. If the member has been subpoenaed to attend as a witness, in a civilian capacity, at a civil court, e.g. a witness to a motor vehicle accident, the member shall be placed on special leave subject to the exigencies of service.

88. If a member is not subpoenaed to attend court but wishes to attend at any judicial proceedings as the plaintiff or defendant, or as a witness, in circumstances not otherwise covered by this policy the member may request annual leave for the relevant period. Otherwise, the member shall be placed on leave without pay.

89. When a member has been subpoenaed to attend as a witness at a criminal or civil court and is required to proceed on duty, the CO shall ensure that the member seeks payment of the appropriate conduct money by the party seeking the member's appearance prior to attending court.

90. When the situation required lodgings and meals for a member the CO shall endeavour to arrange for the member's expenses to be paid by the party seeking the member's appearance.

91. Any conduct money, expense money or witness fees must be made payable to the member subpoenaed, who shall apply these funds towards the travel claim. A statement of monies and benefits received should be requested by the member from the lawyer or crown attorney concerned to substantiate the claim. The member will be reimbursed under the CBI only to the extent that the conduct monies and related payments are insufficient to defray the reimbursement to which the member would otherwise be entitled.

92. **Civil jurisdiction**. Canadian military personnel consent to being subject to the *NDA* and the Code of Service Discipline (CSD) when they join the CAF. This special status within Canadian society does not negate a CAF member's continuing obligation to obey the laws that apply to all citizens and residents of Canada. In their private capacity, all CAF personnel remain subject to the jurisdiction of the civilian legal system and they may be charged with committing an offence under any federal statute, including the *Criminal Code*, or applicable provincial legislation, to the same extent as a civilian.

93. Military personnel who are charged by a civil authority with a criminal offence could face very serious consequences in terms of their personal lives, as well as their careers. Depending on the nature of the offence, the outcome of a particular trial could reflect on the member's unit, the support base and the CF in general. It is important for COs to maintain situational awareness whenever any of their personnel are being dealt with under the civilian criminal justice system.

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94. The regulations require, and make provision for, COs to appoint an officer as an 'attending officer.' An attending officer's duty is to attend court, observe the proceedings and report back to the CO. The role of attending officers does not include assisting or advising CF members who are being dealt with in civil or criminal court.

95. An attending officer is required to be informed of, or collect, certain documents and information prior to attending the civil court proceeding of a CF member, including:

a. the member's record of service;

b. the member's pay account or pay records;

c. the member's conduct sheet (or, at least, information related to the member's conduct generally); and

d. confirmation whether the CO authorizes the attending officer to pay any fine in the event the member is convicted and a fine is imposed.

96. The attending officer must ensure that the CF member understands that the attending officer is not acting in any way as the member's solicitor, representative or agent.

97. The attending officer is in court to represent the CAF and to inform the CO. If the court makes a specific request to an attending officer, the officer is authorized to provide the court with all of the information related to the member's service conduct, as well as the particulars of any convictions under section 130 of the NDA. However, attending officers are not legally authorized to disclose any particulars of members' convictions of other offences under the CSD, nor can they provide copies of the members' conduct sheet to the court, the prosecutor or defence counsel.

98. A service member who is the accused in a criminal case shall not be placed on duty and shall take leave (or be placed on leave without pay) in order to attend court proceedings.

99. NB: Pursuant to section 268 of the *National Defence Act*, members of the regular force and special force, as well as members of the reserve force on active service, are exempt from jury duty. Where a CF member receives a notice to serve on a jury, the member should ensure that the statutory exemption is immediately brought to the attention of the Court office that issued the notice.

Questions:

Interim Summary:

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PART 4 – CONCLUSION

Summary:

100. The topics covered in this lesson include were focused around career administration within the CAF, including rank, promotion and succession planning, conduct and performance deficiencies, administrative actions with regard to CAF members and civil and criminal court proceedings involving CAF members.

Confirmation:

101. Done in a discussion format. Ask some confirmation questions. No group answers, remind students to raise their hand before speaking. Or instructor may ask particular students to answer questions

Conclusion:

102. Career administration is a complex and diverse area of military administration and involves many aspects of a member's service from enrolment to release. It is often referred to as from cradle to grave. Due to the complex nature of some issues that may arise throughout a member's career is it essential that legal officers remain current on legislation, orders, policies and directives that impact career administration. In this lesson you were introduced to rank promotion and succession planning, conduct and performance deficiencies, administrative actions related to conduct and performance deficiencies, legal issues arising out of injury to CAF members and the orders and directives that govern CAF participation in civil and criminal proceedings

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PART 1 –LESSON IDENTIFICATION

EO 008.03 Advise on CAF compensation and benefits issues

Performance: Advise on CAF compensation and benefits issues

Conditions:

a. given: References: including but not limited to relevant factual context, legislation, policies, case law, (may also include prior legal opinions) NDA, QR&O, DAOD

b. denied: nil

Standard: At the conclusion of this lesson the individual candidate shall know and understand CAF Compensation and benefit programs, the legal issues associated with them, and be able to apply this knowledge in their capacity as a legal advisor

Main Teaching Points:

- sources of authority in relation to compensation and benefits
- garnishments and forfeitures
- significant issues regarding compensation and benefits
- common-law partnerships

Method: This EO will be accomplished by Development Lesson. Students will be required to read any pre-reading packages assigned and be prepared to respond to questions.

Duration: 1 1/2 periods (55 min)

References: NDA, QR&O, DAOD

Training/Learning Aids: Standard classroom with whiteboard and projection system, handouts, student disk, student desk book, Legal Officer Qualification Course (LOQC) Instructors Handbook – Module(s) [XXX]

Note to the instructor: This developmental lesson shall be conducted in structured manner, using the list of "questions to the class" provided in the following pages. Instructors are to complement each segment of the developmental lesson by follow-up and direct questions taking into account the flow and direction of the discussion. Interim summaries shall be conducted at the end of each segment to confirm the material was learned and provide a basis from which the discussion can progress to the next segment. A review of the main teaching points will then take place at the end of the period.

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PART 2 – INTRODUCTION

Objective:

1. The instructor shall introduce the CAF compensation and benefits issues. By the end of the lesson the candidates should have a basic knowledge of these topics which would allow them to provide legal advice as it pertains to this subject

Introduction:

2. The CAF strives to ensure that they maintain a system of compensation and benefits that addresses the needs of CAF members and compensates them for the unique challenges faced when a member of the CAF.

Outline:

3. During this lesson the candidates will be introduced to various aspects of CAF compensation and benefits. It is important for legal officers to understand the CAF compensation and benefits processes and policies so they are able to provide appropriate legal advice.

Stage 1 – Roles and responsibilities of Treasury Board

Stage 2 – Statutory authorities for CBIs and related instructions

Stage 3 – Limitations regarding compensation and benefits

Stage 4 – Compulsory payments

Stage 5 – Financial support orders

Stage 6 – Judgment debts

Stage 7 – Forfeitures arising from CF regulations

Stage 8 – Recovery of overpayments

Stage 9 – Impact of relief of performance of military duty

Stage 10 – Role of D Law CBP&E

Stage 11 – Separation expense

Stage 12 – Common-Law Partnerships

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PART 3 – BODY OF THE LESSON

Stage 1 – Roles and responsibilities of Treasury Board

Introduction:

4. The Treasury Board is a Cabinet committee of the Queen's Privy Council of Canada. It was established in 1867 and given statutory powers in 1869.

5. The Treasury Board is responsible for accountability and ethics, financial, personnel and administrative management, comptrollership, approving regulations and most Orders-in-Council. In particular, for the CAF, the Treasury Board has the power to make regulations and to regulate, pursuant to subs. 12(3) and s. 35 of the *NDA* respectively, concerning pay, benefits, allowances and reimbursement for members of the CAF.

Body of the lesson:

6. Under the *Financial Administration Act* (*FAA*), the Treasury Board has authority over all matters relating to administrative policy, financial management, expenditure plans, programs of departments, personnel management, and other matters relating to the prudent and effective use of public resources in support of government objectives.

7. The Board thus plays a critical role in establishing management policies and in monitoring government-wide compliance with those policies—including through the recently introduced Management Accountability Framework, a common basis for performance reporting and accountability that sets out a rigorous regime of managerial expectations and standards.

8. The Treasury Board is accountable to Cabinet and to the prime minister, who appoints the ministers to the Board. The president of the Treasury Board, like all ministers, is accountable to Parliament for the use of the authority granted to him or her under legislation.

9. The Treasury Board, like the Cabinet, serves as a collective decision-making body and is governed by the doctrine of collective responsibility. The decisions of the Treasury Board form part of the collective responsibility of all ministers. They are based on advice from the Treasury Board portfolio (principally, the Treasury Board of Canada Secretariat and the Public Service Human Resources Management Agency of Canada) and on submissions received from ministers.

10. The Treasury Board establishes policies and standards for management practices in a wide range of areas and oversees their implementation across the federal government. Its original role was to assist ministers in the overall financial control of the federal government, and this remains one of its key roles today.

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11. The Treasury Board is responsible for preparing the government's expenditure budget (the Estimates) and monitoring program spending in departments. The Secretariat supports the Treasury Board's role by:

a. establishing policies and standards to improve financial management practices in departments and agencies;

b. managing the government-wide implementation of them;

c. allocating and re-allocating resources;

d. monitoring and analysis of the management of resources on a program, departmental, and sectorial basis;

e. ensuring that resource management is integrated with the government's decision-making and priority-setting processes; and

f. reporting on government expenditures.

12. However, the Treasury Board's principal powers concerning the CAF are not drawn from the *FAA*. Many of the Treasury Board's functions, described above, concern the control and administration of the Federal Public Administration. The Federal Public Administration is defined under the FAA, but does not include the CAF. For example, the Treasury Board is the employer of the Federal Public Administration, and has the authority (and role) to impose policies on the Federal Public Administration as its employer. However the Treasury Board is not the employer of the CAF or members of the CAF. Members of the CAF have a 'direct' relationship with the Crown. Although some legislation may treat members of the CAF as 'employees' for the purpose of the legislation, our status is distinct from the Federal Public Administration.

13. Consequently, when the Treasury Board establishes policies or regulations to regulate pay, allowances, reimbursement of expenses and other financial benefits for members of the CAF, it does so not under the *FAA*, but by virtue of subs. 12(3) and s. 35 of the *NDA*. Although the policy-making body is the same, it is acting under distinct legislated authority. Moreover, policies created by the Treasury Board for the Federal Public Administration pursuant to the *FAA* do not automatically apply to the CAF.

Questions:

Interim Summary:

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Stage 2 – Statutory authorities for CBIs and related instructions

Introduction:

14. The Department of National Defence (DND) and the Canadian Armed Forces (CAF) are committed to ensuring that all CAF members receive fair compensation for their hard work and dedication to military life. It is also important that benefits respond to the evolving needs of the CAF members and their families.

Body of the lesson:

15. Section 18 of the *National Defence Act* provides that the Chief of the Defence Staff (CDS) is charged with the control and administration of the CAF and that all instructions to the CF shall be issued by or through the CDS.

16. Subs. 12(3) of the *NDA* authorizes the Treasury Board to make regulations:

a. prescribing the rates and conditions of issue of pay of military judges, the Director of Military Prosecutions and the Director of Defence Counsel Services;

b. prescribing the forfeitures and deductions to which the pay and allowances of officers and non-commissioned members are subject; and

c. providing for any matter concerning the pay, allowances and reimbursement of expenses of officers and non-commissioned members for which the Treasury Board considers regulations are necessary or desirable to carry out the purposes or provisions of the *NDA*.

17. However, the Treasury Board need not regulate all pay, allowances, reimbursement for expenses, etc. by way of regulations. Section 35 of the *NDA* states:

> (1) The rates and conditions of issue of pay of officers and non-commissioned members, other than military judges, shall be established by the Treasury Board.
>
> (2) The payments that may be made to officers and non-commissioned members by way of reimbursement for travel or other expenses and by way of allowances in respect of expenses and conditions arising out of their service shall be determined and regulated by the Treasury Board.

18. The Treasury Board establishes the rates and conditions of the issue of pay for CAF members (with the exception of military judges and DMP and DDCS) under Compensation and Benefits Instructions (CBI). These CBI are also used to regulate payment of reimbursement for expenses, allowances and other related benefits. Although CBI are not regulations, they do fall within the definition of regulations under

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the *Interpretation Act* (but not the *Statutory Instruments Act*, where they would fall within the definition of a 'statutory instrument').

19. The Treasury Board delegates, pursuant to subsection 6(4) of the *Financial Administration Act*, to the Secretary of the Treasury Board, the Board's authority under subsection 35(2) of the *National Defence Act* to determine and regulate payments that may be made to Canadian Forces members, for the following specific purposes:

a. to ensure comparability to payments that are authorized to be made to a public service employee in similar circumstances; and

b. to make minor amendments to the unique travel and relocation benefits that may be payable to Canadian Forces members, if the Secretary is of the opinion that the amendments will not change the essential character of those benefits.

Questions:

Interim Summary:

Stage 3 – Limitations regarding compensation and benefits

Introduction:

20. The payments described within the 'Compensation and Benefits' regime of the CAF are intended to address unique aspects of CAF service and ensure that members of the CAF receive payments, allowances and reimbursement that address these unique aspects of military service (such as multiple relocations, or separation from loved ones while on attached postings or temporary duty) while maintaining an appropriate level of consistency with the Federal Public Administration.

21. Not all expenses or situations will necessitate compensation and ultimately, CAF members are entitled only to those payments, allowances and reimbursement established by the Treasury Board. For the most part, these are policy determinations and (with certain exceptions) are not the products of independent rights. Nevertheless, the CBI and regulations created by the Treasury Board tend to be consistent with the entitlements created for the Federal Public Administration. However, such entitlements can be changed based upon changing priorities, and CBI (and TB regulations) may be amended or cancelled at any time by the appropriate authority.

Body of the lesson:

22. Compensation and benefits fall into a number of different categories. Some are intended to reimburse members for expenses incurred as a direct result of military duty such as hotel accommodation while on temporary duty or meals consumed while on

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temporary duty. Some forms of reimbursement may be based upon reasonable and actual expenses whereas others are based upon estimates established by the Treasury Board. Reimbursement of expenses is not intended to augment a member's salary but are intended to ensure that CAF members are not out of pocket for expenses legitimately incurred in the scope of their duties.

23. CAF members are also paid allowances for a variety of reasons. These are not considered reimbursement of expenses; rather, they are intended as compensation for specific conditions of service. There are allowances for hardship on certain postings, for elevated risk compared, or as incentives for personnel to volunteer for certain types of training or duties. In all cases, these allowances are derived from policy determinations by the Treasury Board in response to submissions by the CAF relating to the justification for why CAF members should be paid compensation.

24. As mentioned above, most forms of compensation and benefits are described in regulations enacted by the Treasury Board or by policies approved by the Treasury Board to regulate such payments. The latter are typically expressed in CBI. Even where other types of names might be employed – e.g. Military Foreign Service Instructions (MFSI) or the Canadian Forces Temporary Duty and Travel Instruction (CFTDTI) – these are typically linked back to the CBI (e.g. the MFSI are technically Chapter 10 of the CBI and the CFTDTI is identified in Chapter 209 of the CBI). No benefits or compensation may be paid to the member unless he or she meets the criteria required by the relevant policy or regulation, and such policies or regulations generally lie with the Treasury Board.

25. Neither the CDS nor any authority subordinate to the CDS may create regulations or policies establishing payments, allowances, or reimbursement of expenses. In some cases, the Treasury Board has created policies where part of the determination of eligibility will be dependent upon policies established by or on behalf of the CDS for the control and administration of the Canadian Forces. This is not an improper sub-delegation of the Treasury Board's role, as it is consistent with the role that Parliament established for the CDS. However, the CDS cannot alter the regime established by the Treasury Board or create a new regime. Neither may the Minister.

26. The Treasury Board may create provisions that permit flexibility in the interpretation and application of regulations or policies. CBI 209.013(2) is a valuable example. This provision states:

> 209.013(2) (Power of the Minister) Where in this chapter an officer or non-commissioned member or a member's dependants have not received compensation because the relevant circumstances, although not dissimilar to, were different from the circumstances established, the Minister may, if the Minister considers it would be equitable and consistent with the purpose of this chapter, approve the grant of all or part of that compensation.

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27. This does not create a power for the Minister to create a 'new' compensation regime. That would be an improper sub-delegation of the power vested in the Treasury Board by Parliament. However, the CBI (and the regulations that preceded them) were not intended to create a rigid structure. CBI 209.013(2) presents an interpretive provision that permits the Minister (or someone acting on behalf of the Minister by virtue of devolved authority) to apply the provisions in Chapter 209 of the CBI in a reasonably flexible manner.

28. For example, not all possible eventualities will necessarily be within the contemplation of the Treasury Board. Upon submission by the CAF, the Treasury Board could create a CBI within Chapter 209 that authorizes reimbursement of travel expenses for a CAF member as well as the member's spouse and their children when the member is relocating to another place of duty. The CBI may be silent concerning situations in which a CAF member has the care and custody of a minor who is not the member's child. In such a case, the provision at CBI 209.013(2) could be relied upon to permit a reasonable application of the policy: The circumstances of the minor (who is not the member's child) are different, though not dissimilar, to the circumstances of the member's own children, and inclusion of the minor in the calculation of reimbursement would be both equitable and consistent with the purposes of the Chapter.

29. The exercise of such discretion is narrow and cannot be used to create new benefits or to unreasonably broaden the existing regime. If the relevant compensation regime is broadly deficient, it falls to the CAF (principally the Director General Compensation and Benefits) to prepare submissions to the Treasury Board to change the existing regime.

Questions:

Interim Summary:

Stage 4 – Compulsory payments

Introduction:

30. In general, all CF members may agree to payroll deductions from their pay and allowances for their own purposes, including family support payments. Such deductions are referred to as voluntary payments. In contrast, compulsory payments are deductions from a member's pay and allowances that are ordered by a CO. Compulsory payments have priority over voluntary payments.

31. Under Section 2 of QR&O Chapter 207 (essentially QR&O 207.02, 207.03 and 207.031), Pay Allotments and Compulsory Payments, only the Chief of the Defence Staff or the commanding officer (CO) may order a compulsory payment from the pay and allowances of a CF member, in respect of a financial support order or judgement debt submitted by an applicant.

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Body of the lesson:

32. Compulsory payments may be applied against members of the Regular Force and members of the Reserve Force who are on a Class "A," Class "B" or Class "C" reserve service.

33. For the purposes of QR&O Chapter 207 (Pay Allotments and Compulsory Payments), a family support order (FSO) refers to a "decree, order or judgment that contains provisions for periodic payments for maintenance or alimony" that is made by a court in accordance with the *Divorce Act*, provincial laws that relate to family financial support or the laws of a jurisdiction external to Canada, if that country's laws are enforceable within Canada.

34. A 'garnishee summons' means any document or court order of like import made by a court in Canada in relation to a judgement debt.

35. A 'judgement debt' means an order or judgement, other than a financial support order, which requires an officer or non-commissioned member to pay a sum of money to an applicant, and includes an order or judgement for lump sum arrears of maintenance or alimony and lump sum judgements made by a court of competent jurisdiction pursuant to the *Divorce Act* or pursuant to the law of a province relating to family financial support.

36. A prudent CO would confirm the validity and enforceability of an FSO, a garnishee summons or a judgement debt with their unit legal adviser prior to ordering a compulsory payment.

Questions:

Interim Summary:

Stage 5 – Financial support orders

Introduction:

37. A financial support order (FSO) is an order to pay spousal or child support (or child maintenance) and is an ongoing, periodic payment made by a parent for the financial benefit of a child following the end of a marriage or other relationship or for the support of the former spouse.

38. When a member has failed to meet their obligations an application can be made by the payee of the order to the CO of the member for the CO to order a compulsory payment against the member to cover the amount owed by the member under the financial support order.

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39. COs (typically staff acting on behalf of the CO) will usually convey to the unit legal advisor all documents received from the payee or someone acting on behalf of the payee. However, it is not uncommon for irregularities in the manner and content of communication with the CO or unit of a CAF member who is subject to such compulsory payments. There are very specific criteria that must be met before the CO can order a compulsory payment to satisfy a financial support order. The details and specifics are set out in QR&O 207.03.

Body of the lesson:

40. In order for a CO to order a compulsory payment in satisfaction of an FSO, an applicant who wishes to enforce an FSO must submit the following to the proper military authority:

a. a certified copy of the court order;

b. the identity and location of the court in which the order was obtained;

c. the identification particulars of the CF member in question;

d. the applicant's name and address;

e. the address where documents and notices may be sent, either to the applicant or any person authorized by the applicant to receive such mailings (i.e., such as the applicant's lawyer or a provincial maintenance enforcement official); and

f. a statutory declaration by the applicant stating that the amount in the order has not already been paid by the CF member.

41. Once a CO has received all of these documents and is satisfied that the court order is valid under the laws of Canada or a province, they are required (usually within 30 days), to order compulsory payments by the member on a periodic basis as set out in the order. Where the required submission is incomplete, the most common omissions are:

a. The certified copy of the court order (a photocopy of a court order is not a certified copy); and

b. The statutory declaration by the applicant that he or she is not otherwise in receipt of payment in satisfaction of the FSO.

42. The source of the documents will vary. In some provinces, the payee (or a lawyer or agent acting on the payee's behalf) will submit the request. In other

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provinces, an agency (either government, non-profit or even private) may be responsible for making the request. Names of the agencies vary.

43. For CAF members serving outside of Canada, COs should be vigilant to ensure that all necessary documents are received because the member may not have had the same ready access to Canadian courts as the person seeking to have the FSO enforced. If, after receiving the above-noted documents, the compulsory payment is not ordered, the CO is obliged to advise the officer commanding a command of the reasons for not making the order. The officer commanding a command is authorized to direct the CO to order a compulsory payment by a specific date.

44. Where the CAF member is serving in Canada, in most cases the monthly payments will simply be the amount specified in the FSO. In Canada, the provinces govern family support enforcement matters. The payment amount that may be ordered, pursuant to an FSO, cannot surpass the member's monthly pay, after deductions, and is subject to certain limitations, as specified under the law of the province where the member is serving and not the province where the recipient is residing.

45. If the member is serving outside of Canada, the amount payable by a member on a monthly basis can be significantly reduced to reflect the pressures of international service.

46. Under normal circumstances, the maximum amount payable by a member in this situation is the equivalent of 10 day's pay. The CO can further reduce the monthly contribution in only the most exceptional of cases. In such rare cases, the CO is required to inform the recipient of funds of the reasons for reducing the monthly contribution and must refer the matter to the CDS for further review.

47. There is a positive duty on COs to advise the recipient(s) of compulsory payments, in writing, if the CAF member who is making the payments is posted.

48. The CO is obligated to identify the member's change of strength date and the mailing address of the member's new CO. Further, there may be additional information that the CO is obliged to provide to the recipient when a member is posted to a different province or a jurisdiction outside of Canada.

49. When a CAF member is subject to more than one compulsory payment for maintenance or alimony, and the total of those payments exceeds the maximums referred to under provincial regulation, the CO must ensure that the amount is divided proportionally amongst all entitled recipients as long as the total of the payments does not exceed the maximum for a single compulsory payment.

50. The CO should give notice in writing to each applicant explaining the reasons for the reduced payments.

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51. Financial Support Orders come first in precedent over other compulsory payments.

Questions:

Interim Summary:

Stage 6 – Judgment debts

Introduction:

52. CAF members may also be required to satisfy civil judgment debts whereby a third party, also referred to as judgment creditor, seeks to enforce their financial legal rights against the CAF member through the use of a court order authorizing the garnishment of the member's wages. A judgment debt arises from a court order or judgment, other than a financial support order, which obliges a CAF member to pay a sum of money to an applicant. The principal relevant provision is QR&O 207.031.

Body of the lesson:

53. A judgment debt could be an order made by a court to pay lump sum arrears of spousal or child support in accordance with the DA or a provincial family law provision. A judgment debt may be in relation to an order made by a court to settle an unpaid account with a finance company or business.

54. Judgment debts are collected from the pay of the member/debtor by means of a garnishment. As with financial support orders, COs have very specific obligations when dealing with a garnishee summons for a judgment debt. COs must be aware that there are different authorities and procedures specified in QR&O for processing a garnishee summons for a judgment debt.

55. Much as with FSO, the applicant to have a CAF member's salary garnisheed in support of a judgement debt must provide the CAF member's CO with:

a. the garnishee summons or a certified copy thereof;

b. a certified copy of the judgement debt;

c. the identity and location of the court in which the judgement was obtained and of any other court in which the judgement was registered;

d. any particulars available to the applicant which may assist in identifying the officer or non-commissioned member;

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e. the applicant's name and address in full and, if the payments are to be sent to a person, court or institution other than the applicant, the name and address in full of that person, court or institution to whom the payments are to be sent;

f. an address where notices and documents may be forwarded either to the applicant or, if appropriate, to any person authorized by the applicant; and

g. a statutory declaration of the applicant stating that the amount mentioned in the garnishee summons has not been or is not being paid by or on behalf of the officer or non-commissioned member concerned.

56. As with FSO, the information most commonly omitted from requests are:

a. the garnishee summons (or a certified copy thereof);

b. a certified copy of the judgement debt; or

c. the statutory declaration by the applicant that the judgement debt has not otherwise been satisfied.

57. A compulsory payment in relation to a judgment debt can be ordered only if the applicant has served the proper military authority with a 'Notice of Intention to Garnishee Her Majesty' and if the garnishee summons is served on the same military authority within the first 30 days after the first summons could be validly served.

58. Before ordering a compulsory payment, the CO must be satisfied that the court order is enforceable under the laws of the jurisdiction in which the member is serving. In the case of a court judgment rendered by a court of foreign jurisdiction, it must be registered in a Canadian court that will allow enforcement of the foreign order under the laws of Canada or a province thereof.

Questions:

Interim Summary:

Stage 7 – Forfeitures arising from CAF regulations

Introduction:

59. Circumstances can arise in which a CAF member may, or must, be ordered to forfeit pay and/or allowances. QR&O Chapter 208, Section 3, deals with the various situations, processes and requirements for the CAF to action a forfeiture of pay or allowances. Any forfeiture regime created by the Treasury Board must be enacted through regulations pursuant to subs. 12(3) of the *NDA*.

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Body of the lesson:

60. The two principal regulations concerning forfeiture of pay and allowances by an officer or NCM are QR&O 208.30 and 208.31. QR&O 208.30 establishes the regime whereby forfeitures must (or may) be ordered for specific circumstances. QR&O 208.31 describes the scope of discretion that may be exercised by an officer commanding a command or formation to order forfeiture of pay and allowances where an officer or NCM has not rendered service. Unlike many of the provisions under QR&O 208.30, the exercise of power under QR&O 208.31 is discretionary, although it must still comply with the regulatory regime.

61. **QR&O 208.30**. Conceptually, the obligatory forfeitures described under QR&O 208.30 relate to circumstances in which a CAF member has made him- or herself unavailable for service to the Crown through his or her own misconduct. In effect, the CAF member is obliged to repay the Crown the pay and allowances associated for every day that the CAF member made him- or herself unavailable for service. Much of the focus in on unlawful absences (absent without leave, desertion) or periods of incarceration where the CAF member is found guilty of an offence that leads to a period or incarceration.

62. When a CAF member has been charged and found guilty of being absent without leave, the member shall be subject to forfeiture of one day's pay for every day they were absent without authority. Days shall be calculated as every 24 hours after the first 4 hours of absence. Therefore if a member is absent less than four hours there can be no forfeiture but after 4 hours they will lose one day's pay and for every twenty four hours after that.

63. For each day a member is absent as a deserter they will forfeit one day's pay if the member is found guilty of desertion.

64. A CAF member forfeits one day of pay for every day the member is incarcerated and undergoing a punishment of imprisonment imposed by either a service tribunal or a civil tribunal. 'Pre-trial custody' is treated in a similar fashion – a CAF member will forfeit one day's pay for every day spent in civil custody awaiting trial by a civil tribunal if the civil tribunal subsequently finds the member guilty.

65. A CAF member will forfeit a day's pay and allowances for every day in hospital awaiting trial by service tribunal or civil tribunal if:

a. the tribunal subsequently finds the member guilty of an offence;

b. in the opinion of the medical officer attending the member, the period of hospitalization is a direct result of the commission of the offence for which the member was convicted; and

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c. The officer commanding the command or formation to which the CAF member belongs concurs with the opinion of the medical officer.

66. However, if a member is on leave (typically annual leave) with pay and allowances during a period in civil custody there will be no forfeiture of pay. Consequently, when a CAF member is incarcerated awaiting trial or is imprisoned following conviction of an offence, it is not uncommon for the CAF member to request annual leave (or other leave to which the member is entitled as of right – such as accumulated leave) to avoid forfeiture. It would be improper for a CO to grant short leave or special leave to avoid the effects of forfeiture.

67. Where a punishment of detention is imposed by a service tribunal on a non-commissioned member above the rank of private, a forfeiture shall be imposed, for the duration of the period during which the member is undergoing the punishment of detention, that is equal to the difference between the pay and allowances for a private, pay level 1, incentive pay category 3 and the pay and allowances the member would otherwise have been entitled to, had the member not been sentenced to detention.

68. **QR&O 208.31**. QR&O 208.31 is a broader authority for an officer commanding a command or a formation to order forfeiture where a CAF member has not rendered service, but has received pay and allowances. Whereas the effect of the provisions at QR&O 208.30 is generally automatic as a result of the function of a regulatory provision (acknowledging the determination required at QR&O 208.30(1)(e)(iii)), QR&O 208.31 represents a discretionary power. Again, conceptually, the rationale behind this power is to permit the Crown to recover pay and allowances where no service was rendered to the Crown. Absent a contractual relationship, such a regulatory regime is necessary to ensure the Crown does not dispense pay and allowances where such are not warranted.

69. Generally, when no military service is rendered by an officer or NCM during any period and no forfeiture has been imposed in respect of that period, an officer commanding a command or formation may direct that a forfeiture be imposed for the whole or any part of that period (QR&O 208.31(1)).

70. When no military service has been rendered by a former officer or NCM during any period prior to his release, and no forfeiture has been imposed in respect of that period, an officer commanding a command or formation may direct that all or any part of his pay and allowances in respect of that period shall not be credited, or if credited, may direct that the applicable entries in his pay account be cancelled (QR&O 208.31(2)).

71. When the release or transfer of an officer or non-commissioned member is cancelled under paragraph (2) of QR&O 15.50 (Reinstatement), the authority cancelling the release or transfer may direct that a deduction be imposed in an amount equal to all, or any part, of the pay and allowances of the officer or non-commissioned member in respect of the period during which no military service has been rendered (QR&O 208.30(3)).

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72. However, QR&O 208.31 does not apply in respect of an officer or non-commissioned member who is relieved from the performance of military duty under either QR&O 19.75 (Relief from Performance of Military Duty) or QR&O 101.08 (Relief from Performance of Military Duty - Pre and Post Trial), is in custody awaiting trial by a service tribunal, or is in hospital (QR&O 208.30(4)). However, note the forfeiture provision at QR&O 208.30 (above).

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Questions:

Interim Summary:

Stage 8 – Recovery of overpayments

Introduction:

73. From time to time a member of the CAF may receive payment associated with pay, benefits or allowances to which they were either not entitled, including when the payment exceeded the entitlement. The Crown has a right to recover all monies paid in error to CAF members, but must do so in a manner consistent with the regulatory framework.

Body of the lesson:

74. People are human and they make mistakes. Systems are imperfect and sometimes payments are made to members of the CAF to which they were not entitled, either because they were not entitled to any payment or the payment received exceeded the entitlement.

75. In these circumstances, upon notification to the member, the Crown may recover all monies owed to it as a result of an overpayment. Pursuant to s. 32 of the *Crown Liability and Proceedings Act*, the Crown normally has 6 years to exercise this right. The limitation period is calculated from the point at which the Crown knew, or ought reasonably to have known, about the overpayment (*Spinks v. Canada*, [2006] 2 F.C. 563 (CA)).

76. The Crown may recover the amount in a lump sum or, if the member is able to demonstrate that lump sum recovery would cause undue financial hardship, the Crown may recover over a period of time as authorized by the appropriate authority.

77. There are occasions when the Crown might not recover over-payment. Clearly, if the limitation period expires, the Crown has no lawful authority to recover the over-payment. However, 'accounting officers' are responsible for the receipt, custody, control and disbursement of, and accounting for, public funds (QR&O 201.05(1)) and each accounting officer is personally responsible for any payment made by him or by

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his direction contrary to regulations, or otherwise without authorization, or through error by himself or his subordinates (QR&O 201.05(2)). Accounting officers have a positive obligation to seek recovery of the amount of any overpayment from the payee and cannot 'ignore' an overpayment in order to permit a limitation period to expire.

78. The *Financial Administration Act* (*FAA*) provides three mechanisms by which recovery of overpayments and similar mandatory action may be avoided:

a. Remission (s. 23);

b. Forgiveness (s. 24.1); and

c. Write-off (s. 25).

79. **Remission**. The Governor in Council may, on the recommendation of the Treasury Board, remit any debt other than tax or penalty (relating to tax), including any interest paid or payable thereon, where the Governor in Council considers that the collection of the debt is unreasonable or unjust or that it is otherwise in the public interest to remit the debt (subs. 23(2.1) of the *FAA*). This was used, for example, after the discovery of systemic over-payment of benefits under the *Canadian Forces Superannuation Act* (*CFSA*) over several years – see: Overpayments to Certain Members of the Canadian Forces Remission Order, SI/99-99.

80. **Forgiveness**. Forgiveness is less common than debt remission. A debt or obligation to the Crown cannot be forgiven (other than by an Act of Parliament) if the debt is included in the a statement of: (i) the financial transactions of the fiscal year; (ii) the expenditures and revenues of Canada for the fiscal year; or (iii) such of the assets and liabilities of Canada as, in the opinion of the President of the Treasury Board and the Minister, are required to show the financial position of Canada as at the termination of the fiscal year; which would result in a charge to an appropriation. The same is true for any debt or obligation owed by a Crown corporation to Her Majesty (subs. 24.1(1)).

81. Similarly, no debt or obligation shall be forgiven unless the amount to be forgiven is included as a budgetary expenditure in an appropriation Act or any other Act of Parliament (subs. 24.1(2)). The forgiveness of debt may also be conditional (subs. 24.1(3).

82. **Write-off**. Pursuant to s. 25 of the *FAA*, the Treasury Board may make regulations concerning the write-off of debts or obligations owed to the Crown. However, as with forgiveness, the write-off of a debt cannot, in effect, change an appropriation, absent an Act of Parliament. The Treasury Board has enacted the *Debt Write-off Regulations, 1994*, SOR/94-602. These regulations establish the criteria, scope and process for debt write-off. Although these regulations are more commonly relied upon than remission or forgiveness (in large part, due to the lower level of decision-making), the scope is not broad. The criteria, established at s. 6 of the

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regulations, is predicated principally on the write-off of bad debts or those for which there is no reasonable prospect of recovery.

Questions:

Interim Summary:

Stage 9 – Impact of relief of performance of military duty

Introduction:

83. In exceptional circumstances, when other administrative action is insufficient, military authorities may determine it is necessary to relieve a member from performing all military duties for reasons of public interest or because the member's presence will undermine unit morale or operational effectiveness. The CDS and an officer commanding a command have authority to relieve a member from the performance of military duty.

Body of the lesson:

84. Relief from military duty cannot be used as a form of discipline, punishment or penalty. Relief from military duty is merely an administrative separation from employment. Nevertheless, the extreme nature of the action can still have significant, prejudicial effects on the member's reputation and morale. Consequently, this power should only be used when no lesser measure would be effective. For example, in some cases, transferring an Officer or NCM to another working environment (either temporarily or permanently) might be sufficient.

85. A member who is relieved from performing military duties continues to receive pay and allowances, remains subject to the Code of Service Discipline and is liable to obey all lawful commands. Consequently, 'relief of performance of military duty' will not generally adversely impact the pay of a member of the Regular Force. In most cases, it will not impact upon allowances, unless those allowances are tied directly to military duty, and typically, the impact upon such allowances will be triggered by separate action. By way of example, consider the status of a member of the CAF deployed on an operation and consequently in receipt of certain allowances by virtue of the deployment. If the member is relieved of performance of military duty and repatriated due to the circumstances arising from misconduct, the member will no longer be eligible for the deployment-related allowances. However, this consequence arises from the repatriation, not the relief of performance of military duty.

86. However, there can be pay implications for members of the Reserve Force arising from relief of performance of military duty. Although members of the Regular Force and Reserve Force on Class C service will continue to be paid when relieved of performance of military duty, members of the Reserve Force on Class A service will, in

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effect, have their service (and pay) suspended. This is because Reserve Force personnel on Class A service are only paid when service is rendered, which cannot arise if relieved of performance of military duty. This has led to claims of inequitable treatment, when compared to Regular Force personnel. Although, in light of the distinction between the two forms of service, such difference of treatment can be justified, it highlights the central consideration when using this power – it should only be used as a last resort.

Questions:

Interim Summary:

Stage 10 – Role of D Law CBP&E

Introduction:

87. Directorate of Law/Compensation, Benefits, Pensions & Estates (D Law/CBP&E) provides legal advice to NDHQ authorities on legislation, regulations and policies relating to financial and pension matters of current and former CF members.

88. The Estates and Elections section of DLAW/CBP&E administers the service estates of deceased CF members and advises on elections and political activities.

Body of the lesson:

89. CBP&E advises on areas of compensation and benefits including pay, allowances and other financial entitlements.

90. They also provide advice on broad policy implications relating to garnishments of members' pay. In this capacity, they can provide assistance to base and unit legal advisors on this commonly occurring issue.

91. Under the pension umbrella they are the principal legal advisors on the Canadian Forces Superannuation Act and related issues, including the application of the *Garnishment, Attachment, and Pension Diversion Act* (*GAPDA*).

92. The Estates and Elections section of DLaw/CBP&E administers the pay, allowances, gratuities, other financial emoluments, and personal property that comprise the service estate of deceased CAF members and provides advice on funeral and burial benefits for deceased CAF members.

93. Section 42 of the NDA states that the Governor in Council may make regulations concerning the administration of Service Estates. These regulations can be found in two separate instruments: the *Estates Regulations*, C.R.C., c. 1048; and QR&O Chapter 25 (which are comprised, predominantly, of GiC regulations. These two instruments are

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markedly similar; however, the existence of two separate instruments can be confusing. Most CAF administrators will first turn to the QR&O (if they turn to anything).

94. Additionally, these regulations are amplified by two additional instruments. The Minister of National Defence, in Ministerial Order MCU2000-03830 of 3 August 2000, appointed the JAG as Director of Estates. The CDS has also issued DAOD 7011-0 and 7011-1 pertaining to the administration of Service Estates.

95. On behalf of the JAG, the Director of Law/Compensation, Benefits, Pensions & Estates (with the assistance of the Service Estates and Elections Officer, a civilian administrator) carries out the administration and disbursement of Service Estates in relation to CAF members who die while serving on full time service.

96. This often entails coordinating with unit level personnel, JAG field offices, the deceased's executor or estate administrator, family members and private sector legal counsel to ensure that any legal complications are resolved prior to authorizing the release of personal effects and disbursement of the Service Estate monetary entitlements.

97. The Service Estate is comprised of three main components:

a. severance pay entitlement (if applicable);

b. service pay and allowances; and

c. personal effects in the care and custody of the Canadian Forces.

98. Assisting Officers should inform the Estates Administration Clerk by e-mail or telephone, when they have been assigned to a specific casualty case and, at the same time, provide their telephone and fax number.

99. Committee of Adjustment (COA) Presidents should also inform the Estates Administration Officer, by e-mail or telephone, when they have been assigned to a specific casualty case and, at the same time, provide their telephone and fax numbers.

100. Before any of the deceased's personal effects are released, authority should be sought from the Estates Administration Officer.

Questions:

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Stage 11 – Separation expense

Introduction:

101. The purpose of Separation Expense (SE) is to reimburse Canadian Forces members for some additional living expenses resulting from the short-term separation from their dependants and household goods and effects ((D)HG&E) as a result of relocation within Canada for service reasons.

Body of the lesson:

102. The entitlements and limitations on separation expense are detailed in CBI 208.997 – Separation Expense. Invariably, a legal officer will likely be informed that a CAF member is claiming 'entitlement to IR' – referring to the career management mechanism of an 'imposed restriction'. These are two separate concepts. Often, when a member of posted to a new geographic place of duty on an 'imposed restriction' (meaning that there is a restriction imposed on movement of the member's Household Goods and Effects) the member will become entitled to receive Separation Expense (SE). This is due to the fact that the member will relocate to the new place of duty, leaving his or her DHG&E at the geographic location of the former place of duty.

103. The entitlement to separation expense related to imposed restriction ceases whenever the member is reunited with their dependents or their HG&E.

104. If the member is hospitalized, on annual leave, including any incorporated days of short leave or statutory days then separation expense will not be paid for these days.

105. When a member is on imposed restriction and travels on temporary duty separation expense ceases.

106. The onus is on the member to report any periods of reunification with their dependants or HG&E. Failure to do so will result in recovery action.

107. Invariably, legal officers will encounter all manner of creative action by CAF members regarding Separation Expense. One such example is highlighted in the court martial case of *R v Anstey*, [2011] CM 3001. Major Anstey was charged with one offence for having committed an act of a fraudulent nature, not particularly specified in sections 73 to 128 of the *National Defence Act*.

108. The accused was posted from Halifax to Edmonton on an imposed restriction, because he was unable to sell his house in Halifax. He was in receipt of SE. The rationale was that his Dependents (wife and son) and HG&E would remain in Halifax. However, shortly after arriving in Edmonton the accused asked a clerk if his son could live with him (since he and his wife were unhappy with the school system in Nova Scotia). Although Major Anstey's son was initially registered at a school in Halifax, his son relocated to Edmonton. This was predicated on advice that Maj Anstey received

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from an ASU Edmonton clerk, and based upon an Aide-Memoire that the ASU Edmonton orderly room either created or relied upon.

109. Major Anstey also noticed in the CFB Edmonton Aide-Memoire that, if a member's spouse resides with the member at the new location for greater than 30 consecutive days then IR benefits will be discontinued. Consequently, since his wife was a travel agent and that she has to absent herself from the place where she resides often, they decided that she would come with her son to the Edmonton area and stay at the premises Maj Anstey rented (at Crown expense) to take care of her son and work. She ensured that she did not stay at the rented premises for more than 30 consecutive days. In other words, once a month, she would reside away from the rented premises at least one night a month in order to allegedly respect the parameters of the CFB Edmonton Aide-Memoire. During this period, they rented their house in Halifax to neighbours and also purchased a house in Kingston when Maj Anstey's wife 'came into some money'.

110. Although Maj Anstey had clearly constructed a fraudulent premise to justify receipt of SE, even though his spouse and child were living with him, he was acquitted, based primarily upon the defence of 'officially induced error'. He had based his action upon advice from ASU Edmonton clerks, which, in turn, was predicated upon an Aide-memoire. Also note that, by the time of trial, the 'overpayment' had been recovered from his pay.

111. This case is illustrative on many of the difficulties that arise in the administration of SE specifically, and reimbursement of expenses, payment of allowances, and other financial benefits generally:

a. First, note the language used by the military judge. He refers to 'Separation Allowance', 'IR benefits'. Even the judge was unable to identify the correct terminology;

b. Maj Anstey's principal defence was based upon his reliance on an 'Aide-Memoire'. It appears that even the ASU Edmonton clerks relied upon the Aide-Memoire, rather than upon the statutory instrument that defines Separation Expense – CBI 209.997; and

c. CAF personnel will be 'creative' when constructing justifications for receipt of financial benefits.

112. Moreover, SE is reimbursement of expenses arising from service. These are distinct from pay and from allowances. Legal officers must pay particular attention to the nature of terminology within the context of 'Compensation and Benefits'.

Questions:

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Stage 12 – Common Law Partnerships

Introduction:

113. Common Law Partnership (CLP) is recognized by the CAF for the delivery of certain benefits and allowances. For the purposes of CAF administration, CLP is defined at QR&O 1.075. It is further amplified by the CMP Instruction 15/06 on Common-Law Partnerships.

Body of the lesson:

114. For the purposes of the CAF a "common-law partner" in relation to an officer or non-commissioned member, means a person who has been cohabiting with the member in a conjugal relationship for a period of at least one year or for a period of less than one year, if the member and the person have jointly assumed the support of a child.

115. The child does not have to be the child of both partners but may be the child of one or the other alone as long as the non-biological partner has assumed joint responsibility for the child. The child may also be the legal ward of the common-law partner or the member or both, or an individual adopted legally or in fact by the common-law partner or the member or both.

116. The time frame of one year begins when the partners reside together and present themselves to the community and the public at large as being a couple living in a relationship together. Calculation of this time period does not cease if they are living separate and apart from another due to exigencies of service. Other separations, due to school, family emergencies and employment may be considered by the commanding officer in determining whether or not the 12-month time requirement has been fulfilled.

117. If during the 12-month period the couple become estranged from one another and live separate and apart and intended to no longer be considered a couple and they later reconcile the time frame will be established from the date they recommenced cohabitation and not the original date they cohabitated.

118. When an officer or NCM is separated (but not divorced) from a person to whom the officer or NCM is married and has declared a common-law partnership with another person, reference to a "spouse or common-law partner" in respect of that member means the common-law partner.

119. CMP Instruction 15/06 sets out the process by which a CAF member may identify to CAF administrators and the chain of command a CLP. The two principal forms are the Common Law Partnership Application and a statutory declaration (an affidavit) accompanying, and in support of, the application. Interestingly, neither of these forms (nor a template) is included in CMP Instruction 15/06.

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120. A CO may not 'look behind' the veracity of the declaration and accompanying affidavit. Article 6.3 of the CMP Instruction 15/06 states: "The information submitted on the forms should be accepted without further examination unless reasons exist to believe that the information is false or incorrect." Consequently, if the declaration is plainly contrary to what the CO knows about the declarant, the CO may request clarification from the declarant. A CO must also ensure that the forms are correctly completed and administered. The affidavit must be executed properly. The declaration must be complete. Common errors that legal officers find on these forms include:

a. Failure to complete the jurat in the affidavit (and, consequently, a strong indication of improper execution of the affidavit). Other errors in the execution of the affidavit also arise, notwithstanding that DAOD 7000-0/-1 provides very clear instructions on the execution of affidavits);

b. Reliance upon a template affidavit that includes multiple options which would justify a declaration of CLP (e.g. cohabitation for 12 months or more, joint responsibility for a child) which generally indicates sloppy execution of the affidavit and imprecision regarding the justification;

c. Endorsement of the declaration by someone other than the CO (a common error is the execution by a sub-unit OC); and

d. Factual errors or inconsistency on the form.

121. Once the CO has endorsed the declaration of Common Law Partnership, the member is entitled to all the same benefits and allowances as he or she would be entitled to if they were legally married.

122. Pursuant to QR&O 26.02, an officer or NCM shall notify their CO in writing of changes in their family status and of the occurrence of other domestic events that might affect the member's pension, annuity, pay, allowances, benefits or reimbursement of expenses.

Questions:

Interim Summary:

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PART 4 – CONCLUSION

Summary:

123. The topics covered in this lesson include compensation and benefits issues that pertain to the CAF. The candidates have been introduced to the roles and responsibilities of treasury board, statutory authorities for CBIs and related instructions, limitations regarding compensation and benefits. While not a benefit the candidates have been introduced to other financial issues faced by members of the CAF such as financial support orders, compulsory payments, judgment debts, Forfeitures arising from CF regulations and recovery of overpayments. The impact of relief of performance of military duty was examined as well as the role of CDP&E and finally separation expense and common law partnership were explored.

Confirmation:

124. Done in a discussion format. Ask some confirmation questions. No group answers, remind students to raise their hand before speaking. Or instructor may ask particular students to answer questions

Conclusion:

125. The Treasury Board has oversight with regard to pay, benefits and allowances of CAF members. Regulations, instructions and orders govern the determination of eligibility for benefits and allowances and how and when they are to be paid. While the CAF can give you money it can also take it away. The CO has authority to order garnishments and compulsory payments. The CO can also order forfeiture of pay and recovery of overpayment.

126. Benefits and allowances are not a right but a privilege and may be amended or cancelled at any time.

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PART 1 –LESSON IDENTIFICATION

EO 008.04 – Advise on the release of CF members

Performance: Advise on the release of CF members

Conditions:

a. given: References: including but not limited to relevant factual context, legislation, policies, case law, (may also include prior legal opinions) NDA, QR&O

b. denied: nil

Standard: At the conclusion of this lesson the individual candidate shall know and understand CAF release policies and procedures, and be able to apply this knowledge in their capacity as a legal advisor

Main Teaching Points:

- advise on release issues
- advise on pension and annuity related issues
- advise on legal issues arising out of the death of CF member

Method: This EO will be accomplished by Development Lesson. Students will be required to read any pre-reading packages assigned and be prepared to respond to questions.

Duration: 2 periods (80 min)

References: NDA, QR&O, DAOD

Training/Learning Aids: Standard classroom with whiteboard and projection system, handouts, student disk, student desk book, Legal Officer Qualification Course (LOQC) Instructors Handbook

Note to the instructor: This developmental lesson shall be conducted in structured manner, using the list of "questions to the class" provided in the following pages. Instructors are to complement each segment of the developmental lesson by follow-up and direct questions taking into account the flow and direction of the discussion. Interim summaries shall be conducted at the end of each segment to confirm the material was learned and provide a basis from which the discussion can progress to the next segment. A review of the main teaching points will then take place at the end of the period.

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PART 2 – INTRODUCTION

Objective:

1. The instructor shall introduce the CAF release issues, policies and procedures including those that are triggered by the death of the a member of the CAF. By the end of the lesson the candidates should have a basic knowledge of these topics which would allow them to provide legal advice as it pertains to this subject

Introduction:

2. The career of a member of the CAF starts with enrolment and ends with release. Retirement is a function of release and even if a member reaches mandatory retirement age they will still have to be released from the CAF.

3. Release is deemed to be termination of the service in any manner.

Outline:

4. During this lesson the candidates will be introduced to CAF release issues, policies and procedures. It is important for legal officers to understand CAF release issues, policies and procedures so they are bale to provide appropriate legal advice.

Stage 1 – Types or categories of release

Stage 2 – Irregular release

Stage 3 – Pension and annuity issues

Stage 4 – Committee of adjustment

Stage 5 – CF wills

Stage 6 – Settlement of service estate

PART 3 – BODY OF THE LESSON

Stage 1 – Types or categories of release

Introduction:

5. There are a number of different types and categories of release .An officer or non-commissioned member may be released, during his service, only in accordance with table attached to article 15.01 of QR&O.

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Body of the lesson:

6. The authority to approve a release for an officer, other than an officer cadet is the Governor General.

7. For non-commissioned member or officer cadets the release authority is the Chief of the Defence Staff or such officer as he may designate.

8. Subsection 30(1) of the *National Defence Act* provides that "Except during an emergency, an officer or non-commissioned member who is not on active service is entitled to be released at the expiration of the term of service for which the officer or non-commissioned member is enrolled or re-engaged."

9. Subsection 30(3) of the *National Defence Act* provides "Where the term of service for which an officer or non-commissioned member is enrolled or re-engaged expires during an emergency or when the officer or non-commissioned member is on active service or within one year after the expiration of an emergency or after he has ceased to be on active service, the officer or non-commissioned member is liable to serve until the expiration of one year after the emergency has ceased to exist or after he has ceased to be on active service, as the case may be."

10. A member continues to serve in the CAF until such time as he, or she, is properly released.

11. Where the service of an officer or non-commissioned member is terminated by death, his release shall be recorded for that reason.

12. In the case of a punishment of dismissal with disgrace from Her Majesty's service or dismissal from Her Majesty's service awarded by a court martial, the date of release shall be as soon as practicable after the awarding of the punishment and in any other case, the date of release shall be set by the approving authority or if no date has been set by the approving authority, be as soon as practicable after release is approved.

- **Refer to Table to QR&O 15.01**

Questions:

Interim Summary:

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Stage 2 – Pension and annuity issues

Introduction:

13. Annuity and pension are funding schemes after retirement. Though most of the people do not consider any difference between the two, they have some differences that include funding schemes.

14. Pension is the financial benefit individuals receive after they have retired from service. Annuity is also a pension scheme but there is no need for a person to have reached the age of retirement from service for accessing it.

15. A difference that can be seen between pension and annuity is in the payment amount. The pension is determined by the sum that one has earned during his service and adjusted for the duration of his career. Annuity is a scheme that is determined by the amount of investment made by a person towards the scheme.

16. The pension benefits that are provided to CAF members are constantly reviewed to ensure that they meet the objectives of the CAF human resource policies and the needs of the CAF membership. The issues pertaining to pensions are numerous and you will only receive an introduction to these issues. Nevertheless, legal officers should be aware of the critical elements of CAF pensions so they are able to provide advice that will allow commander to effectively manage their subordinates

Body of the lesson:

17. There has been a retirement income scheme for CAF members in place since the *Militia Pension Act* of 1901. Prior to 2003, the last major initiative to revamp the CAF retirement income scheme occurred in the 1970's with the introduction of the *Canadian Forces Superannuation Act* (*CFSA*) which replaced the *Defence Services Pension Act*.

18. Various reforms occurred in the intervening years, which reflected the need to adapt the retirement income scheme to take into account changing demographics of the work force and recruitment and retention impacts. The current pension modernization initiative began with the 1999 amendments to the *CFSA* which were included in the reform of the financial arrangements and which led to the full-scale restructuring scheme that was enacted by Parliament in 2003 (although many of the amended provisions did not come into force until 2007).

19. The overall intent of the legislation is to align the retirement income arrangements available to CAF members with the CAF Human Resources strategy and to have the pension arrangements line up with those offered by other large Canadian employers.

20. The current benefits scheme has been structured to:

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a. tie benefit eligibility to years of pensionable service rather than completion of a period of engagement in the CF (entitlements are no longer based on a decision of the Service Pension Board);

b. provide an unreduced pension after 25 years of paid service in the CF (including service in both the Regular Force and the Reserve Force, and regardless of whether the service was continuous or broken);

c. reduce the minimum period for qualifying for a pension to two years ("vesting"); and

d. provide for a transfer value payment if member is vested, under age 50 and not entitled to an immediate annuity; or immediate access to a reduced pension if member is between age 50 and sixty.

21. The 2003 amendments to the *CFSA* (which came into force 1 March 2007) lowered the 'vesting' threshold for an annuity under the CFSA. Vesting refers to the right of a plan member to receive a benefit from the pension plan on termination of employment other than a return of contributions. A vested benefit may be in the form of an immediate or deferred annuity, and the latter may be converted into a 'cash out' of the accrued benefit (transfer value payment) or an early reduced annuity. A CAF member use to need 10 years to reach the vesting point, but now entitlement to a pension-type benefit will vest in the member after two years of pensionable service.

22. Members who are dismissed with disgrace from her majesty's service will still be entitled to pension benefits.

[The extent to which the LOQ course must delve into CFSA-related issues is uncertain, in light of the limited role that unit-level legal officers play in such decision-making].

Questions:

Interim Summary:

Stage 3 – Committee of adjustment

Introduction:

23. Where an officer or NCM dies or is missing, the commanding officer shall appoint a committee of adjustment to deal with the service estate or personal belongings. The committee of adjustment shall be entrusted with the collection, inventory and safeguarding of the service estate, or personal belongings of the member. This is a demanding role – the duties must be executed in a timely fashion at a time when the next of kin of a CAF member are often emotionally vulnerable and sensitive.

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Body of the lesson:

24. QR&O Chapter 25 is the governing regulatory instrument concerning Committees of Adjustment. These regulations are further amplified by DAOD 7011-0/-1 with respect to service estates.

25. A committee of adjustment shall be appointed with 48 hours of the death of a service member and shall:

a. be constituted and proceed as prescribed by the Chief of the Defence Staff;

b. collect, prepare an inventory of and safeguard the service estate;

c. forward a copy of its minutes directly to the Director of Estates; and

d. dispose of the service estate as directed by the Director of Estates.

26. Pursuant to s. 42 of the NDA, and amplified at QR&O 25.01, the service estate of the member consists of:

a. service pay and allowances;

b. all other emoluments emanating from Her Majesty that, at the date of death, are due or otherwise payable;

c. personal equipment that the deceased person is, under regulations, permitted to retain;

d. personal or moveable property, including cash, found on the deceased person or on a defence establishment or otherwise in the care or custody of the Canadian Forces; and

e. in the case of an officer or non-commissioned member dying outside Canada, all other personal or movable property belonging to the deceased and situated outside Canada.

27. The service estate does not include personal belongings located in family living accommodation, already in the care or custody of the NOK, the executor or the liquidator of the succession. The Committee of Adjustment will not concern themselves with such belongings, unless otherwise directed by the Director of Estates. Where, in the opinion of the Director of Estates, the circumstances make such action necessary for the safekeeping of personal belongings, the Director of Estates may direct the Committee of Adjustment to collect and secure such belongings.

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28. One such circumstance that, though not common, has arisen where a CAF member is divorced, separated or widowed, and occupies married quarters with his or her children. In such cases, the appropriate authority to safeguard the personal belongings of the decedent is the Committee of Adjustment acting under the direction of the Director of Estates. The committee of adjustment shall not dispose of any item from a service member's estate without approval from the Director of Estates.

29. One of the principal responsibilities of the Committee of Adjustment is to locate any will or other testamentary document in the possession of the CAF and to forward it to the Director of Estates. The Director of Estates is responsible for the identification of the personal representative of the estate (often referred to as 'executor' where there is a valid will, or by a variety of terms, such as 'trustee' or 'administrator', where there is not). The personal representative of the decedent's estate is responsible for administering the estate, and the Director of Estates is responsible to authorize the transfer of the service estate to the personal representative.

30. One of the common errors made by CAF decision-makers and stakeholders arises when they equate 'next of kin' (NOK) with the personal representative of the estate. Notwithstanding concerted efforts to educate key CAF stakeholders (such as Director Casualty Support Management), unit and HQ staff still erroneously conclude that NOK are empowered to make decisions concerning funerals or related matters. The personal representative of the estate is the sole lawful decision-maker. The identification of the personal representative typically falls to the Director of Estates.

31. When an officer or NCM dies intestate, the Director of Estates may, without regard to the law of intestate succession of the domicile of the deceased member, distribute any order, decoration or medal to the person that the Director of Estates thinks is best qualified to receive it, but normally in the following order of preference:

a. spouse or common-law partner;

b. eldest surviving child;

c. father and mother; or

d. eldest surviving sibling.

32. Where an officer or non-commissioned member is missing or is released with an unsound mind, the commanding officer shall appoint a committee of adjustment to deal with the member's personal belongings that are not in the care or custody of his next of kin.

33. A committee of adjustment appointed under QR&O article 25.16 (Committee of Adjustment to Deal With Personal Belongings) to deal with the personal belongings of an officer or non-commissioned member who is missing shall:

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a. be constituted and proceed as prescribed, by the Chief of the Defence Staff;

b. collect, prepare an inventory of and safeguard the personal belongings not in the care or custody of the next of kin;

c. forward a copy of its minutes directly to the Director of Estates; and

d. dispose of the personal belongings mentioned in subparagraph (b) as directed by the Director of Estates.

34. A committee of adjustment appointed under QR&O article 25.16 (Committee of Adjustment to Deal With Personal Belongings) to deal with the personal belongings of an officer or non-commissioned member released with an unsound mind shall:

a. be constituted and proceed as prescribed by the Chief of the Defence Staff,

b. collect, prepare an inventory of and safeguard the personal belongings not in the care or custody of the next of kin;

c. forward a copy of its minutes to National Defence Headquarters; and

d. forward the personal belongings mentioned in subparagraph (b) to the Department of Veterans Affairs.

Questions:

Interim Summary:

Stage 4 – CAF wills

Introduction:

35. Every CAF member is strongly encouraged to make a will if they do not already have one, and to review its provisions periodically.

36. The CAF shall provide each CAF member with the opportunity, particularly at enrolment, to make a will and to place their will in safekeeping with the CAF or to record their will's location if it is not held in CF custody. The latter typically arises where a CAF member has had a will prepared by a civilian lawyer or notary.

37. Commanding officers shall remind subordinates of the importance of having a current and valid will. This is typically accomplished by making an entry each year in

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routine orders with reference to this DAOD and DAOD 7012-1, Preparation and Administration of Wills.

Body of the lesson:

38. Conceptually, the execution of a will can be characterized as the expression of intent by a testator to have his or her estate administered and devised according to his or her own unique wishes, rather than in accordance with the relevant provincial legislative regime. Where any person dies intestate, the administration of the person's estate will be directed pursuant to the applicable provincial regime. A secondary benefit is that the administration of an estate pursuant to a will can be more efficient and less time consuming than reliance upon the legislative regime.

39. DAOD Form 7012-1A, CF Will, is a very basic will that is appropriate primarily for single CAF members. It does not provide for administration of complex personal circumstances.

40. A CAF member should consult civilian legal counsel or, if in the province of Quebec, civilian legal counsel or a notary, if the CAF member wishes to include instructions for guardianship of a minor child of the CAF member in the will.

41. A CAF will is not appropriate if the member wishes to set up specific trusts under the will. A CAF member should consider establishing a trust if the member wishes to make a minor child (or children) a beneficiary.

42. A CAF will is not the appropriate instrument is the will is to be used for tax planning purposes.

43. If CAF members wish to ensure that a benefit will only be given to a beneficiary who survives for a certain period of time following the death of the CF member then a civilian will is required as this cannot be done through execution of a CAF will.

44. Finally, a CAF will is not appropriate if the member wishes to specify the law of a particular province or country that will apply to the distribution of the estate.

45. When a CAF will is executed by the member, DAOD Form 7012-1B, Affidavit of Execution of Will, is to be completed by one of the witnesses to the will. These are not simple forms that are completed at leisure. The affidavit of execution is a sworn document that must be executed before a person who may commission an oath. The execution of affidavits is described in DAOD 7000-0/-1. Typically, commissioned officers on full time service may act as commissioners of oaths; however, the minimum rank of the officer, and other considerations, vary by province and anyone executing any affidavit should refer to DAOD 7000-0/-1 for guidance.

46. Common errors arising from the completion of CAF Will forms include:

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a. Both witnesses failing to sign the Will form;

b. Witnesses signing the Will form even though they did not witness the testator's execution of the will (which is the primary purpose of the witnesses);

c. Failure to complete the affidavit of execution, or, alternatively, errors on the face of the affidavit; and

d. Administrative staff setting aside Will forms and affidavits of execution 'to be completed later', in the manner of administrative forms.

47. While everyone is encouraged to have a will, nobody can be forced or ordered to have a will. If a member has a civilian will they do not, and should not, complete a CAF will. Subsequent execution of a new will – even if it is a very simplistic CF Will form – will nullify prior wills. From time to time, during Departure Assistance Groups (DAG) or annual Personal Readiness Verification (PRV) processes, some well-meaning administrators will insist on personnel completing CF Will forms. What should be done as part of the verification process is to permit each CAF member to confirm whether their personnel file has either a CF Will form or a Will Certificate indicating where the member's will is held (typically with a civilian solicitor or notary). If the former is in the personnel file, the member should also be given an opportunity to review the Will form to confirm that it reflects the member's testamentary intentions. Administrative staff should also take the opportunity to confirm that there are no errors on the face of the CF Will form (e.g. missing signatures, lack of affidavit of execution).

48. Some, but not all, provinces have legislative provisions permitting reliance upon 'privileged wills'. Historically, privileged wills were the provenance of mariners and soldiers, who often would not have access to legal assistance when completing wills.

49. Privileged wills generally have relaxed requirements for select categories of persons – often mariners and soldiers on 'active service' or 'full time service'. These relaxed requirements often relate to the absence of a requirement for witnesses and viability based upon a prima facie signature by the testator. This is distinguishable from a holographic will, all of which must be in the testator's handwriting. Consequently, situations have arisen where the CAF and executors were able to rely upon CF will forms that lacked witness signatures and affidavits of execution. Although this is not a recommended practice, and the legislated requirements vary between provinces, it is an option where prior estate administration has been faulty. The Director of Estates can assist unit legal officers where such situations arise.

50. Two key issues that unit legal advisors should note, however, include:

a. Only 6 of the provinces have retained privileged will provisions in the relevant succession laws; and

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b. Most privileged will provisions (in those provinces that have retained them) apply to privileged wills executed when the member of the armed force (not necessarily limited to the CAF) was on active service. The type of service on which the CAF member was serving at the time of death is irrelevant. Many administrators erroneously equate Class C Reserve Force service with 'active service'. However, a member of the Reserve Force is only on 'active service' when serving outside Canada, and the Class of service is irrelevant (see the Order Placing Members of the Canadian Forces on Active Service for the Purpose of Fulfilling Canada's Obligations Under the North Atlantic Treaty, SI/89-103).

51. Although times and communication have changed, the permissibility of privileged wills continues in many jurisdictions and, when offered the opportunity, the Office of the JAG consistently recommends to Law Reform Commissions that such practices should continue. Although means of communication have improved drastically over the past century, some limitations persist. Legal officers are limited, under CFAO 56-5, as to what forms of legal assistance we may offer to CAF personnel. Consequently, some CAF personnel may wish to change their testamentary intent on short notice.

Questions:

Interim Summary:

Stage 5 – Advise on settlement of CAF service estate

Introduction:

52. When a member of the CAF dies, the CAF must collect, administer and distribute the deceased member's service estate. The *NDA* provides the CAF with a description as to what constitutes a service estate. QR&O provide information with respect to collecting, administering and distributing the deceased's estate. There is also a requirement to collect and safeguard the personal belongings of a member who has been reported missing or who has been released from the CF with unsound mind.

Body of lesson:

53. Settlement of a service estate will be overseen by the Director of Estates. The Director of Estates shall, in the exercise of his powers, duties and functions under the QR&O, to the exclusion of all other authorities and persons, have the same rights and powers in respect of a service estate as if he had been appointed an executor or administrator of that estate by a court of competent jurisdiction.

54. The Director of Estates shall administer service estates and where an executor or administrator has been appointed by a court of competent jurisdiction, the Director of

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Estates shall cause to be delivered over to that executor or administrator, the net assets of the service estate in his possession.

55. Where no executor or administrator has been appointed by a court of competent jurisdiction, the Director of Estates shall, subject to any order made by a court of competent jurisdiction, cause to be distributed the net assets of the service estate in accordance with the will of the deceased officer or non-commissioned member or, if the member died intestate, in accordance with the law of intestate succession of the member's domicile.

56. Distribution shall be without regard to any debts of or claims against the estate except those preferential charges prescribed in QR&O article 25.03 (1) (Preferential Charges Against a Service Estate), and if any debts incurred in the country, other than Canada, in which the deceased officer or non-commissioned member died and owing to a person not a member of the Canadian Forces where, under the law of the country or under an international agreement, disposal of personal or movable property situated in the country and forming part of the service estate of the member cannot be effected until the debts are settled.

57. Where no distribution or only partial distribution of any service estate can be made, the Director of Estates shall convert the net assets, or the balance of the net assets, into cash and pay it to the Receiver General of Canada, to be deposited by him in a special trust account or accounts as designated by the Comptroller of the Treasury pending final distribution to the person or persons entitled.

58. The Minister is the authority who may prescribe the procedure to be adopted and issue such directions as may be necessary for the administration of service estates and to give effect to the QR&O.

Questions:

Interim Summary:

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PART 4 – CONCLUSION

Summary:

59. The topics covered in this lesson include CAF release issues, policies and procedures. You have been introduced to the topics of wills and estates, committees of adjustment, categories of release and pensions and annuities.

Confirmation:

60. Done in a discussion format. Ask some confirmation questions. No group answers, remind students to raise their hand before speaking. Or instructor may ask particular students to answer questions

Conclusion:

61. As a legal officer you will be challenged to provide legal advice on all aspects of a member's career from enrollment to release. It is imperative that you have a basic grasp of the topics introduced in this lesson and that you continue to broaden your knowledge in this subject area in order to ensure that you are always prepared to provide advice to your commanders.

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PO 009 – ADVISE ON COMPLAINT RESOLUTION

Performance: **understand and provide legal advice on complaint resolution**

Conditions:

- **a.** **Given**: relevant factual context, policy, case law, reference material (including prior legal opinion)
- **b.** **Denied**: nil
- **c.** **Environment**: CAF unit, base, wing HQ, deployed domestically and internationally, under austere conditions

Standard: the legal officer shall, without direct supervision, provide legal advice on the administration of CF service, specifically:

a. Advise on harassment prevention and resolution
b. advise on grievances
c. advise on other complaint resolution processes

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PART 1 –LESSON IDENTIFICATION

EO 009.01 – Advise on harassment prevention and resolution

Performance: **Advise on harassment prevention and resolution**

Conditions:

a. **given**: References: including but not limited to relevant factual context, legislation, policies, case law, (may also include prior legal opinions) NDA, QR&O,DAOD

b. **denied**: nil

Standard: At the conclusion of this lesson the individual candidate shall know and understand the CAF Harassment Prevention and Resolution policy, and be able to apply this knowledge in their capacity as a legal advisor

Main Teaching Points:
- applicable policies

Method: This EO will be accomplished by Development Lesson. Students will be required to read any pre-reading packages assigned and be prepared to respond to questions.

Duration: ½ period (20 min)

References: NDA, QR&O, DAOD

Training/Learning Aids: Standard classroom with whiteboard and projection system, handouts, student disk, student desk book, Legal Officer Qualification Course (LOQC) Instructors Handbook

Note to the instructor: This developmental lesson shall be conducted in structured manner, using the list of "questions to the class" provided in the following pages. Instructors are to complement each segment of the developmental lesson by follow-up and direct questions taking into account the flow and direction of the discussion. Interim summaries shall be conducted at the end of each segment to confirm the material was learned and provide a basis from which the discussion can progress to the next segment. A review of the main teaching points will then take place at the end of the period.

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PART 2 – INTRODUCTION

Objective:

1. The instructor shall introduce the CAF Harassment Prevention and Resolution Policy. By the end of the lesson the candidates should have a basic knowledge of these topics which would allow them to provide legal advice as it pertains to this subject

Introduction:

2. The Department of National Defence and Canadian Armed Forces (DND/CAF) policy on harassment prevention and resolution is based on the Treasury Board Policy and the *Canadian Human Rights Act*. The initial policy on harassment, introduced in 1988, was revised in 1993, 1995, and in December 2000. The current policy includes military personnel and civilian employees, and focuses on prevention and early resolution through alternate dispute resolution mechanisms.

3. The Harassment Prevention and Resolution Defence Administrative Order and Directive (DAOD) 5012-0 and the Harassment Prevention and Resolution Guidelines are comprehensive documents that emphasize harassment prevention and early resolution measures, specifying the rights and responsibilities of all parties.

4. This policy continues to make one fact clear: all DND employees and CAF members have the right to be treated fairly, respectfully and with dignity in a workplace free of harassment, and they have the responsibility to treat others in the same manner. It is everyone's responsibility to ensure a harassment-free work environment.

5. All members of the Canadian Armed Forces have the responsibility to treat everyone respectfully and ensure a harassment-free work environment. This is critical to the operational effectiveness of the CAF at home and abroad.

6. The CAF does not tolerate harassment. The CAF recognizes that for the individual who is harassed, any incident of harassment is intolerable for them. From an organizational perspective, harassment is poisonous to the workplace and can only result in the erosion of team cohesion and morale. The CAF takes seriously the health and well-being of its members. Although harassment survey results suggest that harassment rates are declining the CAF remains committed to ongoing enhancement of harassment prevention efforts at all levels in order to maintain a deployable, combat ready force.

Outline:

7. During this lesson the candidates will be introduced to the CAF Harassment Prevention and Resolution Policy. It is important for legal officers to understand the CAF Harassment Prevention and Resolution Policy so they may provide appropriate advice on the subject. This lesson will be taught in stages as outlined below:

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Stage 1 – Definition of harassment

Stage 2 – Responsible officer

Stage 3 – Rights and responsibilities of complainant

Stage 4 – Rights and responsibilities of respondent

Stage 5 – Harassment prevention and resolution process

Stage 6 – Legal issues related to harassment claims

PART 3 – BODY OF THE LESSON

Stage 1 – Definition of harassment

Introduction:

8. The DND/CAF define harassment as any improper conduct by an individual that is directed at and offensive to another person or persons in the workplace, and that the individual knew or thought reasonably to have known it would cause offence or harm. It comprises any objectionable act, comment or display that demeans, belittles, or causes personal humiliation or embarrassment, and any act of intimidation or threat. It includes harassment within the meaning of the Canadian Human Rights Act.

9. The *Canadian Human Rights Act* provides that every person in the workplace has a right to freedom from harassment based on race, national or ethnic origin, colour, religion, age, sex, marital status, family status, disability, pardoned conviction or one in respect of which a record suspension has been ordered and sexual orientation. These are referred to as prohibited grounds.

Body of the lesson:

10. Conduct involving the proper exercise of responsibilities or authority related to the provision of advice, the assignment of work, counseling, performance evaluation, discipline, and other supervisory/leadership functions does not constitute harassment. Similarly, the proper exercise of responsibilities or authority related to situations where, by virtue of law, military rank, civilian classification, or appointment, an individual has authority or power over another individual does not constitute harassment.

Questions:

Interim Summary:

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Stage 2 – Responsible officer

Introduction:

11. Commanding Officers, Commanders and their civilian equivalents, which are known in the policy as Responsible Officers, have an overall managerial and leadership responsibility for ensuring a harassment-free workplace. Such responsibility includes leading by example in matters of appropriate workplace behaviour, the implementation of harassment awareness and prevention training programs, and the maintenance of a positive ethical climate. The Responsible Officers also appoint harassment advisors which are responsible to advise them on the harassment program and the complaint process, as well as assisting them in fulfilling their obligation to educate their personnel by conducting harassment awareness and prevention activities.

Body of the lesson:

12. Responsible Officers are identified under the policy as directors general and their superior officers at National Defence Headquarters (NDHQ), the formation commander at a formation headquarters or, if otherwise directed by the commander, the chief of staff or equivalent officer, the commanding officer (CO) of a formation headquarters, if so directed by the formation commander in the case of complaints made by CF members, COs and senior civilian managers in charge of field units.

13. As a Responsible Officer, you have overall managerial and leadership responsibility for ensuring that CAF members and employees work in a harassment–free workplace. You are responsible for overseeing harassment prevention in your organization. You are also responsible to promptly intervene to resolve any apparent situation of harassment that you become aware of, while remaining impartial, and ensuring that all persons involved in a situation or a complaint are treated fairly.

14. The Responsible Officers must deal with harassment complaints as quickly and impartially as possible, initially by engaging alternative dispute resolution techniques when appropriate. Incidents of a more serious or criminal nature are immediately referred to and investigated by the appropriate authorities.

15. It is well recognized that early resolution and the use of alternative dispute resolution techniques often provides for quicker and more satisfying resolution to workplace conflict situations. These techniques may include addressing a situation directly (self-help), through supervisor intervention or through a mediation process. If the use of alternative dispute resolution techniques does not resolve the issue or is inappropriate, a formal complaint may be submitted. The Responsible Officer then determines though a Situational Assessment if the complaint meets the criteria for harassment, and then may launch an administrative investigation.

16. For a member or employee found to have committed harassment, the Responsible Officers decides what administrative, restorative and/or disciplinary action

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is to be taken. For CAF members, administrative action can vary from a formal written reprimand, mandatory counselling and training, to removal from the immediate work place and may even include release (i.e. termination of employment). Improper conduct by a CAF member can also lead to administrative action through the Administrative Review process and may lead to a member's release from the CAF.

Questions:

Interim Summary:

Stage 3 – Rights and responsibilities of complainant

Introduction:

17. In general, the complainant has a right to be treated fairly and have their complaint investigated and processed according to the Harassment Prevention and Resolution Policy. They have the right not to face reprisals for filing a complaint and to work in an harassment free environment. Along with these rights there are certain responsibilities. The complainant is responsible to provide all relevant information to the RO. To provide additional information that is within their control if requested and to cooperate with the investigator and RO.

Body of the lesson:

18. Specifically as outlined in the Harassment Prevention and Resolution Guidelines the Complainant has the following rights:

a. to be treated fairly;

b. to submit a complaint and have it reviewed in a prompt, sensitive and impartial manner, without fear of embarrassment or reprisal;

c. to be assisted, as outlined in Section 3.5.2, Role of the Assistant;

d. that a written complaint is not placed on their departmental personnel file;

e. to obtain information about the review of their complaint, subject to the Access to Information Act and the Privacy Act; and

f. to be informed of any corrective, administrative and disciplinary measures implemented as a result of a founded complaint, subject to the provisions of the Privacy Act.

19. The Complainant also has the following responsibilities:

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a. where possible and appropriate, to approach the perceived respondent and request that the offending behaviour cease;

b. to raise the matter with the immediate supervisor, or higher authority if the supervisor is the Respondent;

c. to clearly state the allegations of their complaint, providing sufficient details of the incident(s) involved, such as time, place and participants, to facilitate assessment and resolution of the complaint and to do so in writing if so requested by the RO;

d. to seek information concerning options for the resolution of their complaint and to seriously consider participating in an ADR process (such as mediation);

e. to participate in a cooperative manner in the resolution process being pursued. This includes responding promptly to requests for information from and being available for meetings with, ROs, managers, mediators or investigators; and

f. to understand that discussion of a complaint with persons not responsible for its resolution, or other advisors, can be detrimental to achieving a resolution and to rebuilding work relationships afterwards. Therefore, discretion is essential.

Questions:

Interim Summary:

Stage 4 – Rights and responsibilities of respondent

Introduction:

20. Respondent to a complaint is the person named in the complaint who has harassed the complainant. The respondent, much like the complainant has certain rights and responsibilities. Complaints of harassment are not investigated in secrecy and the respondent has a right to be notified promptly of any complaint against them and to be provided and opportunity to respond. As well respondents have a responsibility to promptly respond to an allegations against them in addition to other rights and responsibilities.

Body of the lesson:

21. The Harassment Prevention and Resolution guidelines clearly state the following rights afforded to the respondent:

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a. to be treated fairly;

b. to be notified promptly that a complaint has been filed against them;

c. to be informed of the allegations. In the case of a written complaint, the details of it will be provided in writing;

d. to respond to the allegations;

e. to be assisted, as outlined in Section 3.5.2, Role of the Assistant;

f. that documentation related to the complaint is not placed on their departmental personnel file, if the complaint is not founded; and

g. to obtain information related to the review of the complaint, subject to the Access to Information Act and the Privacy Act.

22. The respondent also has the following responsibility:

a. to cease immediately any improper behaviour when requested to do so by a Complainant or a supervisor;

b. to promptly and clearly respond to the allegations of a complaint against them, providing sufficient details of the incident(s) involved, such as time, place and participants, to facilitate the assessment of their response and the resolution of the complaint and to do so in writing if so requested by the RO;

c. to seek information concerning options for the resolution of complaints and to seriously consider participating in an ADR process (such as mediation);

d. to participate in a cooperative manner in the resolution process. This includes responding promptly to requests for information from and be available for meetings with ROs, managers, mediators or investigators; and

e. to understand that discussion of a complaint with persons not responsible for its resolution, or other advisors, can be detrimental to achieving a resolution and to rebuilding work relationships afterwards. Therefore, discretion is essential.

Questions:

Interim Summary:

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Stage 5 – Harassment prevention and resolution process

Introduction:

23. The Harassment Prevention and Resolution policy has two aims: the first is the prevention of harassment, and the second, in cases where prevention has not worked, the prompt resolution of harassment situations.

24. The harassment prevention and resolution process dictates that the CAF and DND shall:

a. inform all CAF members and DND employees about behaviour that constitutes harassment; their rights and responsibilities under this policy, ways of dealing with conflict and harassment; and the resources available to them;

b. provide supervisors and Responsible Officers with guidance, support and training to carry out their responsibilities to prevent harassment and resolve any conflict and harassment situations that may occur;

c. establish a resolution process, including:

i. a complaint procedure;

ii. methods of resolving complaints; and

iii. remedial, corrective and restorative measures; and

d. monitor the effectiveness of this policy.

Body of the lesson:

25. A complaint should be submitted to the immediate supervisor or RO. In cases where the immediate supervisor or RO is the Respondent, the complaint should be submitted to the next superior in the chain of command. Alternatively, the complaint may be submitted to the HA. The complaint should convey a Complainant's specific concerns regarding an alleged harassment situation.

26. While the Complainant is encouraged to express themselves freely, they should, as much as possible, provide the following elements of a harassment complaint:

a. name of Respondent(s);

b. alleged behaviour(s) to include approximate time, date and location of incident(s);

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c. witnesses (if any); and

d. complainant's perceptions.

27. The format of a written complaint is left to the Complainant's discretion. However, as an option, a Complainant may wish to use the Harassment Complaint Form

.

28. A person who receives a complaint shall, within the scope of their authority, take immediate action to:

a. put a stop to any unacceptable or offensive behaviour that is still ongoing;

b. forward without delay the complaint to his/her RO through the chain of command, attaching any comments deemed appropriate; and

c. where the RO is the Respondent, or where the Respondent is of equal or higher rank/classification to the RO, the complaint shall be forwarded directly to the appropriate higher authority.

29. On receipt of a complaint, the RO shall:

a. consult with appropriate advisors;

b. acknowledge the receipt of the complaint. Under normal circumstances this should take place within five working days from the receipt of the complaint;

c. ensure that any health and/or safety issues are addressed immediately;

d. notify the Respondent that a complaint has been received unless it is clear that a criminal offence or breach of the National Defence Act (NDA) is evident. Under normal circumstances this should take place within five working days from the receipt of the complaint. As soon as possible, any written allegations with full particulars shall be forwarded to the Respondent. Should the Respondent provide a written response to the allegations, it should be made available to the investigator during the course of an investigation and incorporated into the Draft Report; and

e. ensure that the Complainant and the Respondent are informed of their rights and responsibilities.

30. Upon completing the initial action, the RO will complete a situational assessment based on the following Harassment Criteria:

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a. the complaint contains the information outlined in the Elements of a Complaint, Section 4.1.2 above; and

b. the allegations, as stated, meet the definition of Harassment in Part 1.

31. The situational assessment will lead to one of three possible decisions. These are:

a. the harassment criteria are met;

b. the harassment criteria are not met; or

c. there is a possibility of criminal activity or breach of the NDA.

32. The RO may have to conduct additional situational assessments as new information comes to light during a subsequent procedure related to the complaint.

33. If Harassment criteria are met the RO shall:

a. ensure that the Complainant and the Respondent are informed of their rights and responsibilities;

b. ensure that every attempt is made to resolve the complaint using ADR when deemed appropriate;

c. if ADR is not appropriate, feasible or is unsuccessful, ensure that an administrative investigation is undertaken and a decision rendered;

d. ensure that the Respondent is given the opportunity to respond either verbally, or in writing to the allegations;

e. ensure that the Complainant and the Respondent have access to an Assistant;

f. decide whether the Complainant and Respondent should be separated during the complaint resolution process, based on what is both practical and in the best interests of both parties. Care should be taken to avoid any perception that such action constitutes retaliation or premature judgement of the case;

g. ensure that the parties are kept informed of developments in the resolution process; and

h. monitor and follow-up on the situation until satisfied that the situation is resolved and remains resolved.

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34. If the harassment criteria are not met, the RO shall ensure that the matter is dealt with appropriately (separate from this policy) and that the Complainant and Respondent are informed of this assessment in a timely manner.

35. The Complainant, Respondent and witnesses may at times be in different units or may be posted during the resolution process. These situations will require all involved ROs to collaborate to ensure resolution. Normally, the RO for the Complainant will take the lead. In cases where this is not practical, the RO where the alleged harassment occurred will do so and will advise and consult with the ROs for the Complainant and Respondent during the process. This collaboration is particularly important to ensure that where disciplinary or administrative action is contemplated, the appropriate chains of command are involved.

36. At times, the RO may receive related complaints from several individuals at the same time and/or cross-complaints (i.e. where the Complainant and the Respondent have mutual complaints against each other). In such cases, it is important for the RO to seek advice from subject matter experts within the chain of command or at NDHQ before deciding what course of action to take.

Questions:

Interim Summary:

Stage 6 – Legal issues related to harassment claims

Introduction:

37. In certain cases, harassment may constitute an offence under the Criminal Code. A CO who receives a harassment complaint and suspects that a criminal offence has occurred should immediately consult with the unit legal adviser and consider informing the appropriate military police (MP) authorities.

Body of the lesson:

38. Although the word 'harassed' is found in the *Criminal Code*, it is not defined. In the criminal context, the courts have said that the words, "tormented, troubled, worried continually or chronically, plagued, bedevilled and badgered" are individually synonymous with the word 'harassed.' This list of words is not cumulative and they do not replace the word 'harassed' in the Criminal Code.

39. It is a criminal offence to engage in certain conduct knowing that another person will be harassed or while being 'reckless' as to whether the other person will be harassed. It is also a criminal offence to engage in certain conduct, knowingly or by being reckless as to the consequences, which reasonably causes that other person, in all of the circumstances, to fear for their safety or the safety of anyone known to them.

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40. This kind of conduct may consist of: repeatedly following someone, persistently communicating with someone, watching someone's house or place of work or engaging in threatening conduct directed at someone or any member of their family. It is also important to note that it is a criminal offence for someone to convey, or have someone else convey, by letter, telephone, etc., information that one knows, or reasonably ought to know, is false with the intent to injure or alarm any person.

41. Further, it is a criminal offence to make an indecent telephone call to a person with intent to alarm or annoy that person.

42. Where harassment involves misuse of the power or authority inherent in an individual's position, it constitutes an abuse of authority. Abuse of authority could be grounds to pursue charges under the Code of Service Discipline. In that, or any other context, harassment may also constitute an 'act to the prejudice of good order and discipline.

43. Where harassment involves the coerced participation, expressed or implied, in improper initiation rites, ceremonies or other events, it constitutes hazing. Hazing could be construed as abuse of subordinates and could lead to a charge under the Code of Service Discipline.

44. Where a possible criminal act or breach of the NDA is alleged, the RO will consult with the appropriate legal advisors and inform the appropriate police authorities.

45. Where there is a complaint against a military member that may constitute sexual misconduct as defined in DAOD 5019-5, (which includes but is not limited to sexual assault, aggravated sexual assault and indecent exposure) the provisions of that order shall be applied. Any form of investigation into the harassment complaint will be suspended while a military police or NIS investigation is ongoing. Where the investigation carried out in accordance with DAOD 5019-5 fails to disclose sufficient evidence to support a charge of sexual misconduct, action to resolve the harassment complaint will be recommenced under the provisions of the Harassment Prevention and Resolution policy.

46. Where a complaint that may constitute sexual assault or another criminal act is made against a civilian employee, prompt action must be taken to notify civilian police authorities. After discussion with civilian authorities it may be necessary to hold in abeyance any harassment investigation that may have been commenced or is about to commence. This delay or suspension will continue pending the police inquiries, until the RO deems it appropriate to commence or continue the harassment investigation.

47. Complaints made in bad faith are those where the Complainant knows the complaint to be false. Such complaints are considered serious and may be dealt with through administrative and/or disciplinary action. For CAF members this may include charges that lead to a summary trial or courts martial.

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48. With regards to DND employees appropriate actions may include: a request for a formal apology, attendance at a training course, a reprimand, a suspension and, in rare cases, termination of employment.

Questions:

Interim Summary:

PART 4 – CONCLUSION

Summary:

49. The topics covered in this lesson include CAF Harassment Prevention and Resolution Policy, rights and responsibilities of complainants and respondents as well as an over view of the harassment complaints process. As a legal officer you may be called upon to provide legal advice regarding harassment complaints and it is imperative that you are family with the policy and process so you are able to give effective advice.

Confirmation:

50. Done in a discussion format. Ask some confirmation questions. No group answers, remind students to raise their hand before speaking. Or instructor may ask particular students to answer questions

Conclusion:

51. The DND/CAF are committed to educating their personnel and employees on the prevention and resolution of harassment situations, stressing the responsibility among leaders, managers and supervisors for creating and maintaining a positive, harassment-free workplace, and responding quickly to problems that arise. The Department expects that all members and employees are familiar with the harassment policy and apply its principles that strive towards the goal of eradicating harassment and unlawful discrimination from its workplace.

52. Even one incident of harassment is one too many, and the DND/CAF will continue to enhance harassment prevention efforts at all levels in the organization.

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PART 1 –LESSON IDENTIFICATION

EO 009.02 – Advise on grievances

Performance: Advise on grievances

Conditions:

a. **given**: References: including but not limited to relevant factual context, legislation, policies, case law, (may also include prior legal opinions) NDA, QR&O,DAOD

b. **denied**: nil

Standard: At the conclusion of this lesson the individual candidate shall know and understand CAF grievance policies and procedures, and be able to apply this knowledge in their capacity as a legal advisor

Main Teaching Points:
- framework for the grievance process

Method: This EO will be accomplished by Development Lesson. Students will be required to read any pre-reading packages assigned and be prepared to respond to questions.

Duration: 1 period (40 min)

References: NDA, QR&O, DAOD

Training/Learning Aids: Standard classroom with whiteboard and projection system, handouts, student disk, student desk book, Legal Officer Qualification Course (LOQC) Instructors Handbook – Module(s) [XXX]

Note to the instructor: This developmental lesson shall be conducted in structured manner, using the list of "questions to the class" provided in the following pages. Instructors are to complement each segment of the developmental lesson by follow-up and direct questions taking into account the flow and direction of the discussion. Interim summaries shall be conducted at the end of each segment to confirm the material was learned and provide a basis from which the discussion can progress to the next segment. A review of the main teaching points will then take place at the end of the period.

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PART 2 – INTRODUCTION

Objective:

1. The instructor shall introduce the framework of the CAF grievance process. By the end of the lesson the candidates should have a basic knowledge of these topics which would allow them to provide legal advice as it pertains to this subject

Introduction:

2. The CAF grievance system is the means by which a CAF member can seek redress for a decision that he feels is not right or was not arrived at through a fair process. The grievance process is governed by various regulations and policies and has recently been amended by changes brought about by Bill C-15.

Outline:

3. During this lesson the candidates will be introduced to CAF grievance policies and procedures. It is important for legal officers to understand the CAF grievance process framework so they can provide appropriate advice.

Stage 1 – Entitlement to grieve

Stage 2 – Submission of grievance

Stage 3 – Assisting member

Stage 4 – Determination of grievance at IA level

Stage 5 – Determination of grievance at the FA level

Stage 6 – Role of the MGERC

Stage 7 – Implementation of the decision

Stage 8 – Available redress

Stage 9 – Litigation considerations

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PART 3 – BODY OF THE LESSON

Stage 1 – Entitlement to grieve

Introduction:

4. Subsection 29(1) of the *NDA* provides the statutory authority for a CF member's right to grieve a perceived injustice or wrong. It states "an officer or non-commissioned member who has been aggrieved by any decision, act or omission in the administration of the affairs of the Canadian Forces for which no other process for redress is provided under this Act is entitled to submit a grievance." The grievor does not have to establish, at the time the grievance is started, the loss of an actual benefit pursuant to a CF decision. It is sufficient only that the matter grieved involves a decision, act or omission in the administration of the affairs of the CF, and that it directly and personally affects the grievor.

Body of the lesson:

5. A CAF member is not entitled to grieve every decision with which they do not agree. Subsection 29(2) of the NDA establishes exceptions to the right to grieve, which are amplified by QR&O 7.02. There is no right to grieve:

a. a decision of a court martial or the Court Martial Appeal Court;

b. a decision (or findings and recommendations) of a board, commission or tribunal established other than under the NDA; or

c. a matter or case prescribed by the Governor in Council (GiC) in regulations.

6. Under this restriction, QR&O article 7.03 provides that there is no right to grieve any decision made under the Code of Service Discipline (CSD). Note, too, that pursuant to subs. 29(2.1), a military judge may not submit a grievance in respect of a matter that is related to the exercise of his judicial duties.

7. The exceptions would also include any other decisions identified in QR&O as decisions precluded from the operation of section 29 of the *NDA*. To date, no other matter has been so prescribed by the GIC in regulations.

8. There are logical rationales for these exceptions. Decisions of courts martial (and the CMAC) may be appealed. Boards, tribunals and other bodies established other than under the NDA generally have their own appeal or review mechanisms. Moreover, the CDS – the final authority in the CF grievance process – generally has no authority over such tribunals. Decisions of presiding officers may be reviewed under a specific mechanism created under the NDA.

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9. **Alternatives**. Note too that a grievor need not necessarily submit a written grievance, pursuant to s. 29 of the NDA, to seek redress. QR&O 7.04 expressly contemplates oral complaint. This provision calls to mind QR&O 19.12, whereby any officer or NCM may apply to see his or her CO on any personal matter.

10. A written grievance triggers obligations – for a CO, potentially for other commanders or senior leaders, and for the grievor him-/herself. It does not necessarily deliver expedient justice. Timely, if verbal, articulation of a complain to a complainant's immediate supervisor or higher authority can occasionally remedy a complaint far more quickly than the grievance process.

Questions:

Interim Summary:

Stage 2 – Submission of grievance

Introduction:

11. QR&O 7.06 through 7.15 describe in detail the process for submitting a grievance, including limitation periods, form and substance of the grievance, and obligations of commanding officers.

Body of the lesson:

12. Pursuant to QR&O 7.06, an officer or NCM may submit a grievance, as of right, within three months of the decision, act or omission in respect of which the grievance is submitted. This limitation period commences on the day the grievor knew, or ought reasonably to have known, of the circumstances leading to the grievance. This new (shortened) limitation period was introduced 1 June 2014. A grievance relating to a decision, act or omission that occurred prior to 1 June 2014 is subject to the previous six month limitation period (QR&O 7.06(4)).

13. If an officer or NCM submits a grievance after the expiration of this limitation period, it is open to the initial authority (or final authority under certain circumstances) to accept the grievance if it is in the interests of justice to do so. Consequently, where a grievance is submitted after the expiration of the limitation period, the grievor must include reasons for delay (QR&O 7.06(2)). Consequently, the acceptance of a grievance where the limitation period has expired is the exercise of broad discretion. However, where the initial (or final) authority declines to accept the grievance for consideration, care should be taken with the reasons for not doing so. Moreover, legal advisors should bear in mind that, with grievances, commanders should not just focus on what must be permitted under law, but also what should be done as a matter of effective leadership.

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14. For example, the IA may accept a grievance after the expiration of the limitation period if the grievor was on a deployment during that time and, as a result of the tempo of the operation and limited access to relevant materials, was unable to submit a coherent grievance within the limitation period. There are a variety of factors that an initial authority could consider, including (but not limited to):

a. The timeliness of the submission, notwithstanding that it was outside the limitation period (e.g. one week late versus three months late);

b. The grievor's duties during the limitation period;

c. The seriousness of the matter;

d. The potential effect of the adjudication of the grievance globally. For example, if the subject matter of the grievance could lead to a determination that changes a fundamental aspect of CF administration, permitting the grievance to proceed may be compellingly in the interests of justice; and

e. The availability of relevant information. Note that this presumes that there was sufficient information for the grievor to conclude that he was aggrieved and the nature of the decision, act or omission; however, the grievor may have requested additional information in support of the grievance and was promised receipt of such information within the limitation period.

15. Factors supporting a claim that the adjudication of a grievance would be in the interests of justice must not be confused with 'discoverability'. If a grievor only learns of a decision, act or omission over 3 months after it arose, such a consideration applies to discoverability (under QR&O 7.06(1)) and not the discretion of the initial authority. Discoverability applies to the knowledge (either actual or 'ought reasonably to have known') of the decision, act or omission and its 'harm' to the grievor. It does not necessarily apply to all the details thereof. Ideally, a grievor would submit a grievance once known, in order to preserve the right. Where information concerning the decision, act or omission is not forthcoming, that lack of transparency can form part of the grievance.

16. The right to grieve applies to any officer or NCM of the CAF, regardless of component. However, a former officer or NCM cannot submit a grievance, even if the decision, act or omission arose while the officer or NCM was serving. Consequently, a grievance can be submitted prior to release from the CAF, notwithstanding that it might not be determined until after the release is effective.

17. There are three principal requirements for a grievance, described at QR&O 7.08. The grievance must be in writing, signed by the grievor and submitted to the grievor's CO. The grievance itself must include the following information:

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a. A brief description of the decision, act or omission giving rise to the grievance, plus any other relevant facts;

b. The redress the grievor seeks;

c. Any relevant statement from a person(s) who can substantiate the grievance;

d. Copies of any relevant documents; and

e. If submitted outside the limitation period, an explanation for the delay.

18. Grievances may not be submitted jointly (QR&O 7.08(3)) and should not contain insubordinate language or otherwise constitute a breach of discipline. The language used should only be that which is necessary to state the grievance (QR&O 7.08(4)).

19. Pursuant to QR&O 7.09, when a grievance is submitted to a CO, the CO must acknowledge its receipt (to the grievor), register it with the National Grievance Registry (maintained by Director General Canadian Forces Grievance Authority), and determine if the CO can act as the initial authority.

20. If the CO cannot act as the initial authority (see QR&O 7.14) must forward the grievance to the Canadian Forces Grievance Authority (CFGA, headed by DGCFGA) within 10 days. Additionally, the CO must forward, as soon as possible, any additional information the CO considers relevant. The CO must inform the grievor of the action taken and disclose to the grievor any additional information forwarded to the CFGA.

21. Legal officers should take note of the truncated staffing process for grievances. Many CO and their staff will be inclined to fall back on the typical staffing process – i.e. they will be inclined to attempt to staff a grievance through the appropriate J1/N1/G1/A1 at a higher headquarters. This is not the appropriate process; however, it is the process with which most CO and principal staff are comfortable. Legal officers conducting unit-level training or familiarization should highlight that a CO is obliged to staff the grievance directly to the CFGA. They may, if they wish, inform their higher headquarters; however, the grievance must be staffed directly to CFGA where the CO cannot act as IA.

Questions:

Interim Summary:

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Stage 3 – Assisting Member

Introduction:

22. The CAF grievance process affords certain rights and imposes responsibilities on the griever. The rights are to ensure that the member is treated fairly and that procedural fairness is present throughout. The responsibilities ensure that the process is not abused and that the member has ownership of their role in the process.

Body of the lesson:

23. Pursuant to QR&O 7.07, a grievor is entitled to an assisting member (AM) – which should not be confused with an Assisting Officer within the military justice system. When a grievor requests an AM, the CO is responsible for assigning an officer or NCM to assist the grievor. If the grievor requests a particular officer or NCM, the CO should provide the grievor with their choice, where practical. If it is not practical to appoint the requested AM, the CO may appoint someone else. The grievor is not obliged to use the AM assigned by the CO.

24. An AM is not a grievor's representative in the grievance process. The AM is not permitted to speak on behalf of a grievor. CFAO 56-5 (Legal Assistance), which concerns the 'Legal Assistance' that may be provided by a legal officer to a member of the CF, states, at para 6: "A legal officer shall not provide legal assistance under this order...(d) for any administrative matter, including a Redress of Grievance, that can be dealt with through other military channels." In rare exceptions, a legal officer might be permitted to act as the AM for a grievor, where no conflict of interest arises. Normally, were a legal advisor to assist a grievor as well as advise the chain of command, such actions would place legal officers in a conflict of interest.

25. The function of an AM is to ensure that a grievor is familiar with the grievance process, including its rules and procedures at any level of the grievance process. An AM is to assist a grievor in articulating their grievance in a clear and concise manner. An AM may also assist a grievor with gathering information and evidence.

26. A grievor is ultimately responsible for formulating and advancing their own grievance, this is not the responsibility of the chain of command or the AM.

27. Grievors are not entitled to legal representation at public expense from the CAF, DND or the Department of Justice (DoJ). Grievors can, however, hire civilian counsel at their own personal expense in order to assist them with their grievance. However, if a grievor retains civilian counsel, this does not sever the chain of command. Neither the CO nor the initial or final authorities are obliged to communicate through the counsel. However, if civilian counsel insists on writing directly to CAF authorities, counsel should be informed of obligations (if any) of communicating with a represented party. In matter of grievances, the CAF is represented by the Office of the JAG.

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Questions:

Interim Summary:

Stage 4 – Determination of grievance by the Initial Authority (IA)

Introduction:

28. The initial authority (IA) is the officer who has initial jurisdiction to determine (decide) the grievance. Pursuant to QR&O 7.09, in order for a CO to act as the IA in a grievance, the CO must meet two principal criteria:

a. The CO must be able to grant the redress sought by the grievor; and

b. The grievance must not relate to an act, decision or omission by the CO.

Body of the lesson:

29. There are two main criteria that a CO must meet in order to act as an IA. Firstly, the CO must be able to grant the redress sought by the complainant and secondly, the grievance must not be based upon an act, decision or omission attributable to the CO. Note that, even where the CO has the power to grant what the CO considers to be appropriate redress, this is not sufficient to afford the CO jurisdiction as the IA – the CO must have the power to grant the redress sought by the grievor, even if the redress sought is, in the opinion of the CO, not the appropriate redress.

30. Where the CO cannot act as IA, the staff at the CFGA will identify the appropriate IA. The determination of who may act as IA is not based on the deciding who can grant the redress sought by the complainant. The central consideration is who – specifically, a commander or officer holding the appointment of director general or above at NDHQ – is responsible for the subject matter of the grievance. In this respect it would appear the appropriate IA, if the IA is other than the CO, is the IA that can grant the most meaningful or appropriate remedy, not the specific remedy sought by the grievor.

31. Under QR&O 7.15, the CAF grievance procedure requires the IA to consider and determine a grievance within four months of receipt of the grievance. Note the effect of a delay by a CO in submitting a grievance to the CFGA for identification of the appropriate IA. If a CO takes – say, 30 days, instead of 10, to forward the grievance to the CFGA, this, in effect, adds an additional 20 days on the limitation period between when the grievor submits a grievance and when the IA loses jurisdiction as of right. Note too that there is not specific limitation period for the CFGA to forward a grievance to the appropriate IA. QR&O 7.10(1)(a) merely states 'as expeditiously as possible'. Consequently, legal advisors assisting with the process should provide advice in a timely fashion and, ideally, should train the appropriate staff in the proper exercise of their functions.

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32. Note that the 4-month limitation period applies only to grievance submitted on or after 1 June 2014. For grievance submitted prior to this date, the limitation period is 60 days. Regardless of the date of submission, where the CDS is the IA, there is no limitation period for the determination of a grievance.

33. When an IA has made a decision, the IA must inform the grievor, in writing, of the decision and the reasons for it. The IA must also inform the grievor of the entitlement to submit a request for the grievance to be considered and determined by the final authority. This should include specific mention of the limitation period for such action: pursuant to QR&O 7.18(2), a grievor has 30 days from receipt of the IA's determination to request that the grievance be submitted to the final authority for consideration. This request must be in writing and submitted to the IA.

34. The IA is also responsible for returning to the grievor all documents or things submitted by the grievor, if their return is requested.

35. Prior to making a decision, an IA must consider all relevant information. In order to resolve the grievance, further investigation may be required. All information being relied upon by the IA (with certain exceptions – see below) must be disclosed to a grievor and the grievor must be provided with the time and opportunity to make representations to the IA regarding any new information.

36. The grievor should be given reasonable time to provide representations to the IA. Where there is a justification at law not to disclose information to the grievor, it can be with-held from disclosure. However, the use of such information may be limited. One of the common types of information that can be, and is, with-held is legal advice to the chain of command, whether it is to the IA, or whether it was given to the initial decision-maker. Withholding such information is consistent with procedural fairness. The legal advice is protected as a solicitor-client confidence. Moreover, the purpose of disclosure is to provide the affected person with relevant facts. Such legal advice is, presumably, predicated upon facts or information disclosed to the grievor. Consequently, the legal advice does not disclose any new facts.

37. Additionally, someone else's personal information may not be disclosed to the grievor save under the exceptions identified under s. 8 of the *Privacy Act*. Where a grievance concerns comparison between the grievor and others, which typically arises concerning performance evaluation (a not uncommon source of grievances), this prohibition can appear overly restrictive. However, other people's personal information need not be referred to when adjudicating a grievance – the focus should be on the grievor's performance.

38. An opportunity to make informed representations to a decision-maker is a fundamental requirement of procedural fairness. This requires adequate disclosure of the facts upon which the decision-maker will determine a grievance and an opportunity to respond in a reasonable amount of time. This is the standard to which the Federal Court will hold the final authority.

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39. Under QR&O 7.15, when an IA is unable to consider and determine the grievance within the established limitation period (4 months for grievances submitted on or after 1 June 2014 and 60 days for grievance submitted before this date), the grievor may request that the IA forward the grievance to the final authority for consideration and determination. The onus rests on the grievor to make this request.

40. If the grievor is satisfied with the determination by the IA – specifically , with the redress granted by the IA – the grievance process typically ends. If the griever is not satisfied with the redress granted by the IA, the grievor has 30 days to submit a request, in writing, to the IA asking for the grievance to be considered by the final authority.

Questions:

Interim Summary:

Stage 5 – Determination of grievance by the final authority (FA)

Introduction:

41. Grievors who are not satisfied with the redress offered by an IA may request that their grievance be submitted to the final authority (FA) (QR&O 7.18). The Chief of the Defence Staff is the final authority in the grievance process (s. 29.11 of the NDA, QR&O 7.16). In some cases, where a grievance concerns a decision, act or omission by the CDS or where the CDS is the sole officer in a position to consider and determine a grievance (i.e. the decision, act or omission is attributable to an officer who reports directly to the CDS), the CDS will act as the initial authority and his decision will, in effect, be the decision of the initial and final authority. In many cases, the determination by the final authority may be made by the CDS' delegate. The current sole delegate is DGCFGA.

Body of the lesson:

42. Where a grievor complies with the 30-day limitation period under QR&O 7.18(2) for submission to the FA (or the 90-day limitation period under QR&O 7.18(6) for greivances submitted before 1 June 2014), the FA must consider and determine the grievance.

43. The FA may accept a grievance after the expiry of the limitation period if the FA is of the opinion that it would be in the interests of justice to do so. If the FA declines to consider a grievance submitted after the expiry of the limitation period, the FA must provide written reasons to the grievor explaining why he has declined to do so (QR&O 7.18(5), see also the Note to QR&O 7.18). The CDS' delegate may make this determination, notwithstanding that the grievance, if accepted, would be one that must be referred to the Grievances Committee.

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44. The CDS is not obliged to consider and determine all grievances personally. He may delegate any of his powers, duties and functions in the grievance process to an officer who is directly responsible to the CDS (s. 29.14 of the *NDA* and QR&O 7.17).

45. The CDS' current delegate is DGCFGA.

46. This delegation has statutory exceptions:

a. The delegate cannot consider and determine a grievance submitted by equal or higher rank;

b. The delegate cannot consider and determine a grievance by a military judge; and

c. The delegate cannot consider and determine a grievance where to do so would place him in a real, apparent, or possible conflict of interest.

47. Consequently, DGCFGA cannot consider and determine a grievance by any officer at the rank of colonel or above. Also, the CDS' delegation specifically stipulates that DGCFGA cannot consider and determine any grievance by a LCol where a possible remedy would include promotion to the rank of colonel. Additionally, the current delegation excludes any grievance of a decision, act or omission made by the delegate personally or and decision, act or omission as DGCFGA. The CDS' delegation reinforces that the delegate may not act where to do so would place him in a conflict of interest. The delegation also excludes any grievance that must be referred to the Grievances Committee (NB: considering and determining a grievance is distinct from making a determination regarding jurisdiction). Finally, the CDS included an exception where the CDS chooses to determine a grievance personally.

48. Like the IA, the FA must consider all relevant information when making a decision. Further investigation may be required. The information being relied upon must be disclosed to the grievor. The grievor must be provided an opportunity to respond to the information by either making written representations with respect to the information or submitting new information to the decision-maker.

49. A grievor should be given reasonable time to provide representations to the FA on any newly disclosed information. Similar exceptions to disclosure, such as solicitor-client confidences, apply to the FA in the same way they apply to the IA>

50. Both the IA and the FA are responsible for ensuring that there is a record of the grievance, the decision and the action taken. First, the CAF has an obligation to safeguard such records. Second, if there is a subsequent application for judicial review of the FA decision, the Grievance Authority is obliged to produce a tribunal record, which includes all information that was placed before the decision-maker.

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51. The FA is responsible for returning all documents or things submitted by the grievor in all cases where the grievor has submitted a request for their return.

52. A decision by the FA constitutes the end of the grievance procedure within the CAF. Pursuant to s. 29.15 of the *NDA*, the FA's decision is not subject to an appeal or review by any other authority except for an application for judicial review before the Federal Court under the *Federal Courts Act* (*FCA*).

53. If the grievor is not satisfied with the determination by the FA, the grievor may seek judicial review. Judicial review is not an appeal. Normally, a court will not accept an application for judicial review unless the grievance process has been exhausted.

54. A reviewing court will typically assess the reasonableness of the decision of the FA and whether procedural fairness was applied to the process. This will normally be based upon the tribunal record (essentially, the grievance file). A court may also examine the correctness of the decision at law.

55. The court will determine the appropriate level of review for a decision. Where the subject matter of the grievance turns on the expertise of the FA (e.g. the evaluation of whether certain conduct merited counselling and probation) the standard of review would be one of 'reasonableness'. In such circumstances, deference would be granted to the expertise of the FA. The standard of review associated with procedural fairness is a standard of correctness. Also, where the court is of the opinion that a decision was made that is not correct at law they will apply the appropriate law when making a determination of the case.

56. Further details concerning judicial review will be examined below under 'Stage 9 – Litigation Considerations'. Judicial review is the highest level of review of a grievance decision.

Questions:

Interim Summary:

Stage 6 – Role of the Grievances Committee (MGERC)

Introduction:

57. Created under the *National Defence Act*, the Grievances Committee is an arm's-length federal body that is independent of the chain of command of the CAF. The Grievances Committee Chairperson and Members are appointed by the Governor-in-Council and have the statutory duty to provide findings and recommendations on certain grievances.

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58. Formerly the Canadian Forces Grievance Board, the name was changed in 2013 to the Military Grievances External Review Committee (similar to the RCMP's External Review Committee) or MGERC. It is also called the Grievances Committee.

Body of the lesson:

59. The nature, role and responsibilities of the Grievances Committee has been the subject of diverse commentary. In particular, the current chair of the Grievances committee has described it's nature and role as "... a federal body with quasi-judicial functions that is independent of the Department of National Defence and the Canadian Forces..." He has further characterized the Grievances Committee as "... ... an independent administrative tribunal reporting to Parliament through the Minister of National Defence."

60. Such descriptions, while not entirely incorrect, do not necessarily reflect the nature of the Grievances Committee as established under the *NDA*. Historically, within the scope of public and administrative law, the term 'quasi-judicial' was often used to distinguish between the exercise of powers delegated to the executive by Parliament. These powers were characterized as 'legislative' or 'quasi-judicial'. Indeed, up to, and including, the first half of the 20th Century, the exercise of both 'legislative' and 'quasi-judicial' powers by the executive were considered by some legal scholars to be an improper usurpation of, respectively, the role of Parliament (the legislature) and the role of the judiciary.

61. The terms 'legislative' and 'quasi-judicial' were used to characterize the functions of a part of the executive based upon whether it was, respectively, creating a rule or other policy which would govern decision-making (i.e. legislating) or adjudicating the application of a rule or other policy to a particular set of facts or circumstances (i.e. judging).

62. Early in the modern context of public and administrative law, reviewing courts would characterize actions of the executive as either 'legislative' or 'quasi-judicial' in order to determine whether the courts would review the actions. Courts would only review the latter type of actions, as they were viewed to fall within the courts' inherent jurisdiction. However, as public and administrative law has evolved over the last 50 years, these distinctions have become increasingly irrelevant.

63. The term 'quasi-judicial' can be misleading. If it is taken to mean court-like or judge-like, it is an inapt comparator. Although the Grievances Committee is independent of the CAF, it remains an extension of the executive. It does not have the same safeguards of impartiality that are present in the judiciary (security of tenure, security of remuneration). Most importantly, it doesn't actually render decisions (notwithstanding the odd slip of the judicial tongue in some Federal Court judgments that refer to a CFGB/Grievances Committee 'decision'.). Perhaps the best descriptor of the Grievances Committee is that it is an arm's length advisory body. Its structure is not unlike a standing, statutory, grievance-related board of inquiry.

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64. According to their website, the vision of the Grievances Committee is to be a centre of expertise in the review of military grievances and a model administrative tribunal, through its fair and efficient processes, professionalism, and good governance. The characterization of the Grievances Committee as an independent administrative tribunal reporting to Parliament through the Minister of National Defence is, presumably, intended to underscore a direct relationship to Parliament. However, that's not an entirely accurate characterization. Section 29.28 of the *NDA* states that "[t]he Chairperson shall...submit to the Minister a report of the activities of the Grievances Committee during that year and its recommendations, if any." The Minister is subsequently required – as is the case for most reports submitted to any Minister under statutory authority and as a statutory obligation – to table the report to Parliament.

65. In a representative democracy that relies upon the concept of 'responsible government' Ministers are held accountable by Parliament for the conduct of their Departments (and other entities). The Grievances Committee reports to the Minister. The Minister reports to Parliament.

66. When a grievance is referred to the final authority (including when the CDS acts as an initial authority) the first (jurisdictional) decision to be made is whether the grievance must be referred to the Grievances Committee. Subsection 29.12(1) of the NDA provides that the Governor-in-Council may make regulations prescribing types of grievances that must be referred to the Grievances Committee. QR&O 7.21 are such regulations and prescribe five categories of grievances that must be referred to the Grievances Committee:

a. administrative action resulting in the forfeiture of or deductions from pay and allowances, reversion to a lower rank or release from the Canadian Forces;

b. the application or interpretation of Canadian Forces policies relating to the expression of personal opinions, political activities, candidature for office, civil employment, conflict of interest and postemployment compliance measures, harassment or racist conduct;

c. pay, allowances and other financial benefits;

d. the entitlement to medical care or dental treatment; and

e. any decision, act or omission of the Chief of the Defence Staff in respect of a particular officer or NCM.

67. This obligation does not preclude the final authority (whether CDS personally or his delegate) from referring a grievance to the Grievances Committee, particularly where the final authority concludes that the determination of the grievance would benefit

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from external review or the independent inquiry that may be made by the Grievances Committee.

68. Where a grievance is referred to the Grievances Committee, it must review the grievance and provide findings and recommendations (F&R), in writing, to the CDS and the grievor (subs. 29.2(1) of the *NDA* and QR&O 7.22). The CDS is not bound by the F&R but, where the CDS does not act on a finding or recommendation, he must provide reasons for not doing so (subs. 29.13 of the NDA and QR&O 7.23).

69. The Grievances Committee has broad powers of inquiry to investigate the circumstances of a grievance, including the power to compel the attendance of a witness, the power to administer oaths and the power to receive evidence (s. 29.21 of the *NDA*). However, these powers are rarely used, and the Grievances Committee tends to rely upon the documentation submitted by the grievor and any subsequent documentation submitted by other CAF actors.

70. Nevertheless, these powers of inquiry are useful in describing the role of the Grievances Committee, which serves, or can serve, three significant functions:

a. First, it provides an arm's length, and presumably dispassionate, review of grievances. This is a particularly vital role where institutional attitudes can become entrenched. By virtue of its arm's length relationship and the absence of vested interest in a grievance, the Grievances Committee can provide a fresh perspective on a situation;

b. Second, the Grievances Committee has the capacity to conduct a factual inquiry into a grievance in a manner similar to that of a Board of Inquiry. Just as a Board of Inquiry can provide a Commander with findings and recommendations based upon such an inquiry, so too can the Grievances Committee provide findings and recommendations to the grievance decision-maker: the final authority; and

c. Finally, the types of grievances that must be referred to the Grievances Committee reflect the perceived benefit of such external evaluation. These are subject matter areas in which CAF decision-makers, who are presumably well-versed in military matters including military administration, could benefit from an external, non-military perspective.

71. Military grievances often deal with unique circumstances particular to the CAF which might bear some similarity to parallel civilian context, but which are shaped by unique military factors. Consequently, in light of the legislative framework that informs the role of the Grievances Committee, some questions may arise.

72. First, consider the merit of the 'fresh perspective' or 'non-entrenched attitude' offered by the Grievances Committee. Initially, very few of the Committee members (when it was the Canadian Forces Grievance Board) had a prior connection to the CAF.

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This enabled them to offer a non-military, and hence novel, perspective. The current Committee is chaired by a retired LCol who was previously a Director within DGCFGA, and number several retired former senior officers, including former military lawyers and judges. Does this present a risk of introducing similar entrenched attitudes or closed perspectives or a failure to take advantage of truly external perspectives?

73. Second, in light of the broad powers of inquiry, is it surprising that these powers are rarely used? Since the creation of the Canadian Forces Grievance Board (the previous name for the Grievances Committee), these powers have been used twice. The Grievances Committee almost invariably relies upon the file provided by DGCFGA. Does this mean that these powers are not necessary? Should CAF decision-makers be concerned that these powers are not used more extensively or where there is factual dispute?

74. Third, although the Grievances Committee is external to the CAF, can it truly be said that they have no vested interests in a grievance or grievances generally? Certainly, it is highly unlikely that a Committee Member would have a personal stake in a particular grievance. However, what about an institutional preference or bias? The Grievances Committee website declares that it seeks to be a "...centre of expertise in the review of military grievances and a model administrative tribunal, through its fair and efficient processes..." notwithstanding that it does not adjudicate the grievances. What if the Committee were to lobby for greater (or some) decision-making authority regarding grievances? Would this alter their perspective on grievances?

75. Although the Grievances Committee is statutorily obliged to provide an annual report to the Minister, it also published regular 'Bulletins' that offer commentary not just on grievances, but on administrative processes within the CAF. The legislative framework that created the Committee does not bar such action and, arguably, the Committee is well-placed to offer such observations. However, in light of the opportunity (and obligation) to report to the Minister annually, what additional objective is served by these regular 'Bulletins'? Does it represent an attempt to expand their mandate and, if so, how does this influence their approach to grievances?

Questions:

Interim Summary:

Stage 7 – Implementation of the decision

Introduction:

76. Once a decision has been made it must be implemented. The CO shall ensure that whatever redress has been granted is actioned as soon as is practicable.

Body of the lesson:

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77. When an initial or final authority has rendered a decision, it must be implemented (this presumes that the grievor has accepted the determination by the initial authority). The implementation of the redress directed by the adjudicative authority will often be left to staff. Where the determination is by the final authority, the staff responsible for implementing the redress is unlikely to be under the immediate command of the CDS or his delegate (DGCFGA). Where the determination is by an initial authority, there will likely be a direct command relationship between the adjudicative authority and the staff responsible for implementation.

78. For example, where a CO is the initial authority, the presumption at law is that the CO can offer the redress requested by the grievor. Consequently, when the CO makes a determination, the CO can also provide the appropriate direction to implement the decision as well as confirm that the direction has been carried out.

79. Where the initial authority is not the CO, but is a more senior commander or a Director General (or higher) at NDHQ, the initial authority can still provide direction for implementation and follow up to confirm the redress has been provided. For example, many grievances relate to compensation and benefits issues. The initial authority in such grievances is often Director General Compensation and Benefits (DGCB). DGCB has a section responsible for the administration of grievances where DGCB is the initial authority. Once DGCB has determined such a grievance, he/she can provide direction to the Director who must implement the decision.

80. Determinations by the final authority require greater co-ordination. When the final authority determines a grievance, the 'decision letter' is sent to the grievor. This is staffed by the Canadian Forces Grievance Authority. Where the determination requires specific action by a commander, a director general (or higher) or another decision-maker, the CFGA must also communicate the final authority's decision to this decision-maker.

81. The receipt of the 'decision letter' by the grievor is an added control measure. Ideally, the redress will be implemented without delay by the appropriate administrative actor. Where this does not happen, the grievor has a copy of a directive by the final authority which may be used to query any such delay. The Grievor may also inquire with the DND/CF Ombudsman (see below).

Questions:

Interim Summary:

Stage 8 – Available redress

Introduction:

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82. 'Redress' is a remedy. It is the outcome that the grievor seeks to correct an injustice, to compensate the grievor for the harm caused by the action, decision or omission that is the subject of the grievance. Not all redress sought by the applicant can be granted. The role of the adjudicative authorities is not simply to find a way to grant what is sought by the grievor but to seek a remedy that is both meaningful and appropriate in the circumstances.

Body of the lesson:

83. Redress is defined as to set right, remedy or rectify. If the decision of the initial authority is accepted by the grievor the grievance process is not complete until the remedy is implemented. Once the remedy or redress is actioned then the file will be closed. If the decision of the initial authority is not acceptable to the grievor, the process will proceed to the final authority. At that level, either the grievor will accept the remedy offered by the final authority, if any, or the grievor will subsequently seek judicial review. Again the file will be closed only once the redress is actioned.

84. The types of redress sought are many and varied. Grievors sometimes seek redress that is outside the scope of their CO, in which case, the grievance will be considered by a higher initial authority. Initial authorities other than a CO are not limited to what the grievor seeks as redress. Consequently, it is possible for an initial authority (other than a CO) to offer redress that would normally be within a CO's power, but which is distinct from the redress sought by the grievor.

85. A grievor cannot dictate who must resolve a grievance. The nature of a grievance, including the manner in which it is presented, will often provide indications of both the appropriate remedy as well as the appropriate initial authority. Where the CO cannot be the initial authority, it will fall to the CFGA, in concert with the prospective initial authority, to confirm the appropriate initial authority. This identification will turn on both the redress sought as well as what the CFGA perceive as appropriate redress.

86. With one exception, the adjudicative authorities – whether initial or final – are not granted any additional remedial powers within the legislative regime. Consequently, they must rely upon their inherent powers (i.e. the powers inherent in their position). Thus, the initial authority is determined by the powers and functions relating to the officer's position. For example, if a grievor alleges that he is aggrieved by a decision by Commander 1 Canadian Air Division (Comd 1 CAD), the appropriate initial authority would be the Commander, Royal Canadian Air Force (Comd RCAF). The reason for this is that Comd 1 CAD is responsible directly to Comd RCAF, who has the authority to countermand an order (or decision) by Comd 1 CAD. Where a determination by Director Compensation and Benefits Authority (DCBA) is challenged in a grievance, DGCB, the immediate supervisor of DCBA and the director general responsible to Chief Military Personnel for the administration of compensation and benefits, would be the appropriate initial authority.

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87. The CDS is the final authority by virtue of statutory designation. However, this designation is predicated upon the CDS' statutory role under s. 18 of the NDA for the control and administration of the Canadian Forces. Consequently, the CDS can offer any redress that is consistent with this role. However, the CDS cannot create new financial benefits (a power reserved to the Treasury Board under subs. 12(3) and s. 35 of the NDA). Neither can the CDS promote an officer to general or flag rank (a privilege reserved to the Minister under QR&O 11.01). Consequently, there are limitations.

88. The only additional power granted to the final authority – specifically to the CDS – is the power to award *ex gratia* payments. The Governor in Council empowered the CDS to authorize *ex gratia* payment in respect of final decisions in the grievance process and to delegate this power to an officer immediately responsible to the CDS. This power is generally only available to the final authority (including DGCFGA):

> 1. (1) The Chief of the Defence Staff may authorize an ex gratia payment to a person in respect of whom a final decision is made under the grievance process established under the *National Defence Act*.
> ...
> 2. The Chief of the Defence Staff may delegate the power to authorize a payment under subsection 1(1) to an officer who is directly responsible to the Chief of the Defence Staff.

89. Since initial authorities in the grievance process do not make the final decision and may not be directly responsible to the CDS, this power is not available to them. Initial authorities could approach claims authorities to seek *ex gratia* payments.

90. These payments are subject to stringent conditions (consistent with the Treasury Board Directive and Guideline on Claims and ex gratia Payments):

> (a) in the case of the Chief of Defence Staff, the payment is in an amount that does not exceed $100,000;
>
> (b) the authority level that the Chief of Defence Staff can delegate is not to exceed $2,000;
>
> (c) A legal opinion is received that states there is no legal liability on the part of the Crown;
>
> (d) There is no other mechanism by which the grievance can be remedied, including under existing laws, regulations, instructions, policies or programs; and
>
> (e) The Chief of Defence Staff ex gratia authority can only be exercised in cases where the payment is not used to fill perceived gaps or to compensate for the apparent limitations in any act, order, regulation, instruction, policy, agreement or other governing instrument.

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91. Conditions (a) and (b) are not contentious. Condition (c) confirms that *ex gratia* payments represent benevolence of the Crown, and do not arise where there is a legal liability. To be clear: *ex gratia* payments cannot be used to compensate for damages.

92. Conditions (d) and (e) pose a problem. Condition (d) indicates that *ex gratia* payments may only be considered as a last resort, but condition (e) prevents the exercise of this power for most perceived injustices bearing financial implications.

93. This problem is illustrated using the example of a CF member who is improperly or unfairly repatriated early from an overseas mission (a 'deployment'). Deployments can be financially lucrative: CF members who deploy on missions typically receive operational allowances, including allowances for risk, hardship, and, where the risk factor is significant enough, tax exemption for earnings received during the deployment. A CF member who ceases to serve on a deployment may complain of 'lost' income.

94. Even if the final authority determined that the removal of the grievor from a deployment was improper, the grievor would not receive compensation for 'lost' income from the deployment. A CF member who is deployed is entitled to operational allowances. A CF member who is not deployed, is not entitled to those allowances. A CF member who is repatriated early, for reasons other than being a casualty, is not entitled to the allowances. The perceived 'loss' is not an actual loss as there is no entitlement to the allowances without deployment. Consequently, the final authority would not be permitted to authorize an *ex gratia* payment because that would be perceived as filling the gap or limitation in the allowance instruction.

Questions:

Interim Summary:

Stage 9 – Litigation considerations

Introduction:

95. Litigation is not uncommon in the context of grievances. Litigation can arise during a grievance or after the determination by the final authority. The following teaching points address the impact of litigation on the grievance process, including parallel processes before tribunals created under statutes other than the NDA. Litigation can add an element of unpredictability to grievance adjudication and administration and there are some issues that are not fuilly settled at law.

Body of the Lesson

96. Broadly, the prospect of litigation can raise issues in one of two circumstances:

a. During the adjudication/administration of a grievance; or

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b. Once a grievance has been determined.

97. **During adjudication/administration of a grievance**. Generally, the CAF grievance process is regarded as an adequate alternative remedy to litigation. Although such an assertion may be debatable, as a means of complaint resolution, the grievance process will generally be a grievor's first recourse (or among one of the first options chosen). Although it is possible that a potential grievor may seek resolution through a complaint to the DND/CF Ombudsman, Alternate Dispute Resolution (ADR) or an harassment complaint, all of these mechanisms are internal to the CAF/DND and do not fall within the broad rubriqe of litigation. De-confliction of these different options is the subject of a subsequent lesson.

98. By litigation, we generally mean 'resort to the courts'. Where complaints relating to 'human rights' are concerned, we also mean resort to the complaint mechanism under the *Canadian Human Rights Act* (*CHRA*) – specifically, a complaint before the Canadian Human Rights Commission (CHRC) and, if accepted by the CHRC, adjudication by the Canadian Human Rights Tribunal (CHRT).

99. The jurisdiction of the CHRC and CHRT are established under the CHRA and is not displaced by the presence of an internal complaints mechanism under the NDA. Not all grievances will necessarily involve a human rights complaint. However, those that do could be subject to the jurisdiction of both the CAF grievance process and the CHRC/CHRT. Where a CAF member brings a human rights claim before the CHRC, the OPI for co-ordinating the response of the Crown in right of the CAF is the Directorate of Human Rights and Diversity (DHRD). DAOD 5516-0/-1 describes the CAF policy on the co-ordination of the Crown's response to human rights complaints under the CHRA. However, it is silent on the co-ordination of the administration of a grievance where the central issue of the grievance is an existing or contemporaneous human rights complaint.

100. Pursuant to QR&O 7.27, the adjudication of a grievance by an initial or final authority will be suspended if the grievor initiates one or more of the following relating to the matter giving rise to the grievance:

a. An action;

b. A claim; or

c. A complaint under an Act of Parliament other than the *NDA*.

101. The third criterion would apply to a human rights complaint brought before the CHRC. However, there is no positive duty on the grievor to inform the initial or final authority that such a complaint has been made. Combined with the lack of express requirement to do so under DAOD 5516-0/-1, it is conceivable that there could be duplication of effort.

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102. Consequently, DHRD has implemented a policy whereby it confirms active CHRA complaints with CFGA, the authority responsible for the national registration of grievances. Through this co-ordination, duplicative adjudication can be avoided.

103. Under QR&O 7.27, where a grievor also brings a complaint before the CHRC, the adjudication of the grievance would normally be suspended. However, the preference of the CHRC is to encourage complainants to exhaust internal remedies (such as the CAF grievance process) and the CHRA enables the CHRC to suspend consideration of human rights complaints where a parallel internal process is pursued. Without co-ordination, this could result in the suspension of both the consideration by the CHRC (and CHRT) as well as the CAF grievance process. Consequently, DHRD co-ordinates with the CFGA to inform the latter when, and if, the CHRC/CHRT process is suspended. When this occurs, adjudication of the grievance may proceed.

104. Where a grievor initiates a claim (either with CCL or through an AJAG) or an action before the courts, concerning the subject matter of a grievance, the adjudication of the grievance will be suspended. This creates a disincentive to bring a claim, action or other litigation (read broadly) concerning the subject matter of a grievance. Where the subject matter gives rise to damages, this can pose a problem for grievors, since no grievance adjudicative authority can award damages.

105. At the final authority, there is an ad hoc arrangement between CFGA and the Director Claims and Civil Litigation that grievances that raise a claim against the Crown (whether expressly, or implicitly) will also be referred to CCL (typically contemporaneous with the adjudication of the grievance) for a determination of the merit of the claim. This arrangement addresses the seeming lacuna in the CAF grievance process, if only partially.

106. Where a complainant brings litigation against the Crown, either contemporaneously with a grievance, or in lieu of a grievance, the Crown will typically raise a plea in bar of litigation based upon the existence of an adequate alternative remedy. This is typically successful, although there have been some notable exceptions (*Jones v Canada*, [2007] 333 FTR 1; *Canada v Bernath* (2007) 290 DLR (4th) 357). These exceptions, however, often turned on very specific facts. Nevertheless, the absence of any power by grievance adjudicators to award damages remains a point of vulnerability.

107. Also, although there is an arrangement between CFGA and CCL concerning the parallel determination of claims for damages contained within grievances, this is an ad hoc arrangement (notwithstanding that there may be very specific protocols developed between the two offices), and there is no consistent arrangement, even if ad hoc, at the level of initial authorities. There is a multiplicity of possibilities in determining appropriate initial authorities and, absent a formal policy (e.g. the amendment of DAOPD 2017-0/-1), there is no common approach to determining grievances that include a claim against the Crown.

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108. A central objective in the administration of grievances is to resolve the grievance at the lowest level possible and in as timely a manner as possible. Consequently, legal advisors to initial authorities (whether it is a CO, a commander, or a director general) should consider the options where a grievance clearly raises a claim against the Crown.

109. Where the potential claim is $25 000 or less, it could be referred to an AJAG for adjudication. The legal advisor to the initial authority can advise the decision-maker that the option exists to co-ordinate the adjudication with the AJAG's determination of the claim. Where the potential claim is more than $25 000, any co-ordination would have to be with CCL. In those circumstances, the legal advisor to the initial authority would need to explain to CCL that it is preferable to resolve the grievance at the initial authority. The legal advisor could also enlist the assistance of D Law Admin Law in approaching CCL.

110. **Litigation after determination of a grievance**. Section 29.15 of the *NDA* states:

> A decision of a final authority in the grievance process is final and binding and, except for judicial review under the *Federal Courts Act*, is not subject to appeal or to review by any court.

111. From time to time, grievors take the Crown up on that challenge.

112. Section 2 of the *Federal Courts Act* defines a federal board, commission or tribunal as:

> any body, person or persons having, exercising or purporting to exercise jurisdiction or powers conferred by or under an Act of Parliament or by or under an order made pursuant to a prerogative of the Crown, other than the Tax Court of Canada or any of its judges, any such body constituted or established by or under a law of a province or any such person or persons appointed under or in accordance with a law of a province or under section 96 of the *Constitution Act, 1867*;

113. This includes the final authority of the CAF grievance process, regardless of whether it is the CDS or his delegate. It would also include the Grievances Committee; however, as described below, from a practical perspective, a judicial review of the exercise of the Grievances Committee's powers is unlikely to arise.

114. Technically, this definition would also apply to initial authorities. However, it is highly unlikely that the Federal Court would conduct the judicial review of a determination by an initial authority, since the grievance regime created under the NDA expressly directs that a grievor who is not satisfied with the determination by the initial authority may refer the matter to the final authority.

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115. Consequently, from a practical perspective concerning post-adjudication litigation, the determination by the initial authority is not directly relevant. Any error in adjudication by the initial authority can be remedied by the final authority (*Parise v Canada*, [2000] FCJ No 900 (CA) online: QL rev'g (1997), 136 FTR 132). The Federal Court (or any other reviewing court) will not 'look behind' the decision of the final authority. Any prior decision or determination, whether by the initial authority or the original decision-maker whose decision was the subject of the grievance, will only be relevant insofar as the final authority either adopts the prior reasoning (expressly or implicitly) or fails to address the defective decision in the adjudication of the grievance.

116. Where a grievor seeks judicial review of a final authority's determination, D Law Admin Law will assist the CFGA with the preparation of the tribunal record. This is, essentially, the grievance file, less any documents which need not be disclosed (such as legal advice). D Law Admin Law will also assist DoJ counsel with the preparation of the defence of the judicial review. The detailed aspects of litigation are not covered under this less or this course.

117. Sub-section 18.1(3) of the *Federal Courts Act* allows the Federal Court to order one of the following remedies in an application for judicial review:

a. it can order a federal board, commission or other tribunal to do any act or thing it has unlawfully failed or refused to do, or has unreasonably delayed in doing; or

b. it can declare invalid or unlawful, or quash, set aside, or set aside and refer back for determination in accordance with such directions as it considers to be appropriate, prohibit or restrain, a decision, order, act or proceeding of a federal board, commission or other tribunal.

Questions:

Interim Summary:

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PART 4 – CONCLUSION

Summary:

118. The topics covered in this lesson include grievances and the grievance process in the CAF. You have been informed of the rights and responsibilities of the grievor, initial authority and the final authority, as well as related decision-makers such as the Director Claims and Civil Litigation. You have also been informed of judicial review as it applies to a review of a grievance as well as the role and function of the Grievances Committee.

Confirmation:

119. Done in a discussion format. Ask some confirmation questions. No group answers, remind students to raise their hand before speaking. Or instructor may ask particular students to answer questions

Conclusion:

120. The CAF has developed an internal grievance procedure to allow members of the CAF who feel that they have suffered an injustice to submit an application for redress of grievance. This provides the CAF member with a process in which to grieve a perceived wrong or injustice to a higher authority within the CAF, normally without any personal expense to the member. It is essential that CAF decision-makers understand the various steps in the grievance process and the responsibilities of the key players involved in the decision-making process.

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PART 1 –LESSON IDENTIFICATION

EO 009.03 – Advise on other complaint resolution processes

Performance: **Advise on other complaint resolution processes**

Conditions:

a. **given**: References: including but not limited to relevant factual context, legislation, policies, case law, (may also include prior legal opinions) NDA, QR&O,DAOD

b. **denied**: nil

Standard: At the conclusion of this lesson the individual candidate shall be aware of, and be able to articulate, the various complaints resolution mechanisms and processes within the CAF, and be able to apply this knowledge in their capacity as a legal advisor

Main Teaching Points:
- function of other complaint resolution processes

Method: This EO will be accomplished by Development Lesson. Students will be required to read any pre-reading packages assigned and be prepared to respond to questions.

Duration: 1 period (40 min)

References: NDA, QR&O, DAOD

Training/Learning Aids: Standard classroom with whiteboard and projection system, handouts, student disk, student desk book, Legal Officer Qualification Course (LOQC) Instructors Handbook – Module(s) [XXX]

Note to the instructor: This developmental lesson shall be conducted in structured manner, using the list of "questions to the class" provided in the following pages. Instructors are to complement each segment of the developmental lesson by follow-up and direct questions taking into account the flow and direction of the discussion. Interim summaries shall be conducted at the end of each segment to confirm the material was learned and provide a basis from which the discussion can progress to the next segment. A review of the main teaching points will then take place at the end of the period.

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PART 2 – INTRODUCTION

Objective:

1. The instructor shall introduce various forms of complaint resolution processes that exist in addition to the harassment complaint and resolution process and the grievance process. By the end of the lesson the candidates should have a basic knowledge of these topics which would allow them to provide legal advice as it pertains to this subject

Introduction:

2. The CAF has a variety of mechanisms for investigating and resolving issues of an administrative nature. These include informal investigations, summary investigations, harassment investigations, boards of inquiry and applications for redress of grievance. In each of these schemes, someone other than the members involved in the issue makes determinations as to the facts and then suggests or implements a course of action intended to resolve the problem.

3. Harassment complaints and grievances are but two types of complaints mechanisms available to members of the CAF. There are a number of other types of complaints that have their own processes and procedures including military police complaints and complaints to the Ombudsman.

Outline:

4. During this lesson the candidates will be introduced to various complaints processes for issues not covered by the harassment and grievance processes It is important for legal officers to understand these complaint resolution processes so that they can provide sound legal advice.

Stage 1 – Informal complaints

Stage 2 – ADR

Stage 3 – MP complaints

Stage 4 – Ombudsman

Stage 5 – Interaction between various complaints processes

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PART 3 – BODY OF THE LESSON

Stage 1 – Informal complaints

Introduction:

5. There is nothing to prevent a member of the CAF from trying to address a complaint through an informal mechanism before resorting to more formal measures. In fact the first step of the harassment complaint process states that the complainant should, if possible in the circumstances, speak to the potential respondent of an harassment complaint and notify them that their behavior or actions are inappropriate and ask them to stop

Body of the lesson:

6. Informal measures may be appropriate in circumstances where complaints are of a low level or less serious nature. Where the unit environment is supportive and the parties involved in the dispute are agreeable to working through their differences together or with minimal assistance from the chain of command.

7. One of the most significant, if significantly under-used, complaints resolution mechanisms is QR&O 19.12, which states:

> An officer or non-commissioned member may, upon application, see the member's commanding officer on any personal matter.

8. This is representative of the broader role of the chain of command and the ideal first steps that a complainant should take. Where an officer or NCM feels aggrieved by any aspect of service, the ideal circumstance is for the complainant to raise the issue with his or her immediate supervisor. Supervisors not only give direction, they provide assistance. Not all supervisory relationships are ideal; however, seeking the assistance of the chain of command is an appropriate first step.

9. Submitting a coherent written grievance takes time. It also triggers formal obligations on statutory decision-makers. This administration takes time, even when managed effectively and efficiently. Speaking to a supervisor and obtaining clarification in an informal manner takes less time and can often be more effective than formal mechanisms. Legal advisors are well served by reminding CAF decision-makers of the effective use of informal mechanisms.

Questions:

Interim Summary:

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Stage 2 – ADR

Introduction:

10. In situations involving workplace disputes, it is often preferable that the members involved resolve the dispute informally, and respectfully. There may be situations where a facilitator can assist the parties to arrive at a mutually acceptable resolution. DAOD 5046-0 establishes the CAF/DND policy regarding Alternative Dispute Resolution (ADR).

11. It is well recognized that early resolution and/or use of ADR techniques usually provide for speedier and more satisfying resolution to conflict situations in general and harassment situations in particular. DND/CAF has therefore made a conscious decision to include these mechanisms in its culture and leadership philosophy. In concert with this philosophy, DND/CAF leaders have decided to make serious consideration of these techniques, unless there are compelling reasons not to do so. Such techniques may become appropriate at any time during the resolution of a complaint and should be utilized.

Body of the lesson:

12. In the CAF, ADR is defined as "any voluntary conflict management method where choices are made by the parties themselves and decisions are not imposed by a third party". ADR encourages parties to deal with conflict constructively and to find their own mutually satisfying solutions.

13. ADR complements other formal processes by providing users with opportunities to resolve issues at the lowest level and at the earliest stage of a dispute. The goal in implementing these ADR processes is to prevent disputes from arising or escalating wherever possible and, if they do arise, to facilitate their resolution quickly and informally. Where appropriate, ADR is the preferred approach for preventing the escalation of disputes and resolving workplace disputes within DND and the CAF. ADR is normally successful because it makes use of 'interest-based processes,' which focus more on people's needs as a basis for seeking agreement and resolution, rather than insisting on their legal rights.

14. DND employees or CAF members who either decide on their own, or request assistance to resolve a situation using ADR methods, are either: trying to solve the problem on their own through self-help methods; enlisting the help of their supervisor; or seeking mediation or other third party intervention.

15. ADR procedures may involve official decisions and may include written documents such as an Agreement to Mediate and Minutes of Settlement. The use of any ADR process does not preclude seeking advice from a supervisor, or any other trusted person or program within or outside the unit or organization. This includes an

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Employee Assistance Program (EAP) representative, and the Canadian Forces Member Assistance Program (CFMAP).

16. The ADR process has been established so that complaints can be addressed at a lower level with the co-operation of the parties involved in order to come to a resolution in a timely manner that is satisfactory to all.

17. In the CF, the lead agency for ADR is the Director General Alternative Dispute Resolution (DGADR) who has stewardship over the Conflict Management Program (CMP). The CMP supports the chain of command through the operation of dispute resolution centres (DRC) across the country that offer ADR services including mediation, training, conflict coaching, facilitation and group interventions. When a workplace conflict occurs, COs are expected to inform their subordinates of ADR options at an early stage in the process. It is expected that all managers and supervisors within DND and the CF ensure that subordinates are given opportunities to consider the various ADR processes available for addressing their disputes

18. Because of the nature of ADR, it is a voluntary process and cannot be imposed on participants. Supervisors cannot oblige subordinates to use ADR; neither may a subordinate impose ADR on a supervisor with whom the subordinate has a conflict.

Questions:

Interim Summary:

Stage 3 – MP complaints

Introduction:

19. The Military Police Complaints Commission (MPCC) is a federal commission, created under the NDA, and independent of the CAF chain of command. The MPCC was created to render the handling of complaints concerning the Military Police more transparent and accessible, and to ensure that both complainants and members of the Military Police are dealt with fairly and impartially. A central goal was to improve the confidence of the public, including members of the CAF, in the handling of MP complaints.

Body of the lesson:

20. The MPCC was initially established under the NDA in 1998, and the provisions creating the Commission came into force December of 1999, as part of a significant effort to modernize and strengthen Canada's military justice system. The MPCC is described under Part VI of the *NDA*, commencing at s. 250.

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21. During the 1990s, a series of sometimes tragic events had combined to raise a number of serious questions about the administration of justice in the Canadian military. Two Special Advisory Groups and a Commission of Inquiry were convened in an attempt to address these questions. Among its other findings, the 1997 report of the Special Advisory Group on Military Justice and Military Police Investigations pointed to the need for a mechanism that would bring greater public accountability to the military justice system, including an 'independent review capability' which is now provided by the MPCC.

22. The Commission is one of 14 distinct organizations in the Defence Portfolio. While it reports to the Minister of National Defence (the Minister), the Commission is both administratively and legally independent from the Department of National Defence (DND) and the Canadian Armed Forces (CAF). The Commission is not subject to direction from the Minister in respect to its operational mandate.

23. Although the MPCC may establish its own procedures and 'rule' on its own processes, it is ultimately an advisory commission, not unlike the Military Grievances External Review Committee. It does not make binding decisions on MP complaints. Neither does the MPCC convene inquiries on all MP complaints.

24. The MPCC is empowered to conduct inquiry into three types of issues:

a. Complaints by any person concerning the about the conduct of a member of the military police in the performance of any of the policing duties or functions that are prescribed for the purposes of this section in regulations made by the Governor in Council ('Conduct Complaints', pursuant to s. 250.18 of the *NDA*);

b. Complaints by Any member of the military police who conducts or supervises a military police investigation, or who has done so, and who believes on reasonable grounds that any officer or non-commissioned member or any senior official of the Department has improperly interfered with the investigation may make a complaint about that person under this Division ('Interference Complaints' pursuant to s. 250.19 of the *NDA*); and

c. any time the Chairperson considers it advisable in the public interest, the Chairperson may cause the Complaints Commission to conduct an investigation and, if warranted, to hold a hearing into a conduct complaint or an interference complaint ('Public Interest Complaints' pursuant to subs. 250.38(1) of the *NDA*).

25. Notwithstanding the broad categorization of the three types of complaints or investigations that could fall within the MPCC jurisdiction, not all such complaints will necessarily come before the MPCC or fall within its investigative jurisdiction.

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26. **Conduct Complaints**. Any person – not necessarily and officer or NCM of the CAF – could potentially make a conduct complaint. A conduct complaint may be made, either orally or in writing, to the Chairperson of the MPCC, the Judge Advocate General or the Provost Marshal. A conduct complaint may also be made to any member of the military police. Subdivision 2 of Part VI of the NDA, commencing at s. 250.26, described the disposition of conduct complaints. The Provost Marshal (PM) is responsible for resolving conduct complaints, unless the complaint concerns the Provost Marshal. In the latter case, the CDS is responsible for resolving the complaint.

27. Upon receipt of the complaint, the PM will determine whether it can be resolved informally with the consent of both the complainant and the 'respondent' (the person named in the complaint). The PM may refuse to resolve a complaint that is either frivolous, vexatious or made in bad faith, or where the complaint is better suited to a different complaint resolution mechanism established under the *NDA* (e.g. a grievance or a harassment complaint). However, where the PM does not have grounds to decline to resolve a complaint, subject to any attempts at informal resolution, the PM is obliged to conduct an investigation.

28. On the completion of an investigation into a conduct complaint, the Provost Marshal shall send to the complainant, the person who is the subject of the complaint and the Chairperson of the MPCC a report setting out:

a. a summary of the complaint;

b. the findings of the investigation;

c. a summary of any action that has been or will be taken with respect to disposition of the complaint; and

d. the right of the complainant to refer the complaint to the Complaints Commission for review if the complainant is not satisfied with the disposition of the complaint.

29. The Chairperson of the MPCC will only gain jurisdiction over a matter where a complainant, who is not satisfied with the response of the PM or subsequent disposition of the complaint, refers the complaint in writing to the MPCC for review. If a complainant refers a complaint to the MPCC, the Chairperson shall send to the Provost Marshal a copy of the complaint and the Provost Marshal shall provide the Chairperson with a copy of the notice sent under subsection 250.27(5) or 250.28(3) of the NDA, or of the report sent under section 250.29, in respect of the complaint and all information and materials relevant to the complaint.

30. The Chairperson shall review the complaint to which a request for review relates as soon as practicable after receiving the request. At the completion of the review, the Chairperson shall send a report to the Minister, the Chief of the Defence Staff and the

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Provost Marshal setting out the Chairperson's findings and recommendations with respect to the complaint.

31. The PM must review the complaint in light of the findings and recommendations by the MPCC and act accordingly. If the complaint was about the PM, the CDS shall review the complaint in light of the findings and recommendations and take action as appropriate.

32. **Interference complaints**. Interference complaints may be raised by any member of the military police who conducts or supervises a military police investigation, or who has done so, and who believes on reasonable grounds that any officer or non-commissioned member or any senior official of the Department has improperly interfered with the investigation. An interference complaint may be made, either orally or in writing, to the Chairperson, the Judge Advocate General or the Provost Marshal. However, an interference complaint must then be referred to the Chairperson of the MPCC if he was not the initial recipient. If the Chairperson considers it appropriate to do so, the Chairperson may ask the Provost Marshal to investigate an interference complaint. If the Provost Marshal does not consent to investigate, the Provost Marshal shall notify the Chairperson in writing of the reason why the consent was not given.

33. The Chairperson may exercise similar discretion as the PM has for conduct complaints concerning complaints that are frivolous, vexatious or made in bad faith or where there is a more appropriate complaints resolution mechanism created under the *NDA*. Barring the exercise of such discretion, the Chairperson or the PM shall investigate the complaint as soon as practicable.

34. Although the NDA is silent on what the PM must do upon completion of an investigation into an interference complaint, the Chairperson, upon completion of an investigation, shall submit findings and recommendations to:

a. The Minister;

b. The CDS (where the complaint is against an officer or NCM of the CAF);

c. The Deputy Minister (where the complaint is against a senior official of the Department);

d. The JAG; and

e. The PM.

35. The CDS or DM, depending upon the subject of the complaint, must then review the complaint in light of the Chairperson's findings and recommendations and take appropriate action. If the complaint is about either the CDS or the DM, the Minister will review the report. The person reviewing the report must also notify the Minister and Chairperson of any action that has been, or will be, taken with respect to the complaint.

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If the person decides not to act on a finding or recommendation, the person making that decision must notify the Minister and the Chairperson of the fact, and the reason for not doing so. Where the Minister reviews the report, the Minister must notify the Chairperson of any action to be taken and, where a finding or recommendation will not be acted upon, the Minister must notify the Chairperson of the fact and the reason for not doing so.

36. Upon receipt of the aforementioned notification, the Chairperson shall consider the notice and prepare a final report in writing setting out the Chairperson's findings and recommendations. A copy of the report shall be sent to the Minister, DM, CDS, JAG, the PM, the complainant, the person who is the subject of the complaint, and all persons with a substantial and direct interest in the complaint.

37. **Public Interest Complaint**. The two main headings of investigation that the MPCC may conduct are conduct complaints and interference complaints. A third heading of investigation – public interest hearings – arises by virtue of s. 250.38(1), which empowers the Chairperson of the MPCC to cause the Complaints Commission to conduct an investigation and, if warranted, to hold a hearing into a conduct complaint or an interference complaint where the Chairperson considers it advisable in the public interest. He may do so even where a complaint has been withdrawn. Consequently, the so-called 'public interest' complaints are really simply variants on conduct complaints or interference complaints.

38. **Limits of Jurisdiction**. There have been at least two occasions recently in which the limits of the MPCC jurisdiction have been subject to debate: the investigation into the conduct of military police in Afghanistan relating to the treatment of detainees; and the conduct of the military police in relation to the apparent suicide by Cpl Stuart Langridge. Although there were grounds in both cases to query the conduct of military police, the Chairperson of the MPCC seemed to expand the scope of the investigation beyond inquiry into the conduct described at s. 250.18 of the *NDA*: "...performance [by military police] of any of the policing duties or functions that are prescribed for the purposes of this section in regulations made by the Governor in Council."

39. The Complaints about the Conduct of Members of the Military Police Regulations (enacted by the Governor in Council) state that any of the following constitute "policing duties or functions":

a. the conduct of an investigation;
b. the rendering of assistance to the public;
c. the execution of a warrant or another judicial process;
d. the handling of evidence;
e. the laying of a charge;
f. attendance at a judicial proceeding;
g. the enforcement of laws;
h. responding to a complaint; and
i. the arrest or custody of a person.

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40. The regulations specifically exclude from the description of policing duties or functions "a duty or function performed by a member of the military police that relates to administration, training, or military operations that result from established military custom or practice."

41. In other words, the handling of PW or detainees, traditionally a function performed by the military police – but not a policing function – would not fall within the jurisdiction of the MPCC. The MPCC investigation entitled "Afghanistan Public Interest Investigation" was conducted based upon a complaint by a law professor form the University of Ottawa, Amir Attaran. Ostensibly, the investigation was focused on the failure of the National Investigation Service (NIS) to investigate and take appropriate action concerning allegations of mistreatment of Afghan detainees in Canadian custody. A more cynical perspective is that it constituted a 'collateral attack', *ultra vires* the MPCC legislated authority, by attempting to investigate the CAF policy on detainee handling generally.

42. Similarly, the investigation conducted following the receipt of a complaint by the mother and step-father of the late Cpl Langridge (and which has not yet been concluded in terms of the Chairperson issuing the final report) was ostensibly conducted to inquire into the investigation(s) conducted by the NIS and other military police (and those that the NIS and other military police allegedly failed to conduct). However, significant portions of the investigation appeared to venture into areas of administrative law (such as service estates) and included compelling the attendance of legal officers from the Officer of the JAG. On several occasions, counsel for the MPCC attempted to elicit from legal advisors the content of their legal advice to CAF and Departmental decision-makers by asking purportedly 'hypothetical questions'. Although this strategy was unsuccessful, it did signal the possible 'over-reaching' beyond the limits of the MPCC jurisdiction.

Questions:

Interim Summary:

Stage 4 – Ombudsman

Introduction:

43. The Governor in Council (GiC), on the recommendation of the MND, created the Office of the Ombudsman in 1998 under the authority of section 5 of the *NDA* to carry out its mandate, pursuant to ministerial directives first promulgated in 1999. The mandate of the Ombudsman may be found at DAOD 5047-1 Office of the Ombudsman. The creation of the DND/CF Ombudsman pre-dates the significant amendments to military justice under the *NDA*.

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Body of the lesson:

44. The Concise Oxford Dictionary definition of an 'ombudsman' is "an official appointed to investigate individuals' complaints against an organization, especially a public authority."

45. The Ombudsman is independent from the CAF chain of command and DND hierarchy and reports directly to and is accountable to the Minister. According to the DND/CF Ombudsman's website, the Ombudsman acts, on behalf of the Minister, as a neutral and objective sounding board, mediator, investigator and reporter on matters related to the CAF and DND. Additionally, he or she acts as a direct source of information, referral and education to assist individuals in accessing existing channels of assistance and redress within the CAF and DND. The Ombudsman also serves to contribute to substantial and long-lasting improvements in the welfare of members and employees of the CAF and DND community.

46. Except in compelling circumstances, the Ombudsman cannot deal with a complaint unless the complainant has first made use of an existing mechanism, such as the CAF grievance process or the military police complaints process. Also, absent specific direction from the Minister, the Ombudsman does not have jurisdiction to investigate complaints arising prior to the creation of the Office.

47. Notwithstanding that there exist other, either statutory or otherwise constituted complaints resolution mechanisms, the DND/CF Ombudsman's role does fill gaps that are otherwise present in the broader context of complaints resolution. Grievance are, by their nature, individualized processes. Although the CDS or other adjudicative authorities could draw conclusions based upon grievance trends (and, certainly, the Grievances Committee is attempting to establish its own role as an advisor on such trends), there is not express mechanism for investigating broader complaints. Second, the grievance process is only open to CAF personnel. The 'conduct complaint' portion of the Military Police complaints process is open to all persons, but is narrowly restricted to complaints about military policing.

48. When determining whether there are compelling circumstances justifying an investigation notwithstanding the existence of a parallel complaints resolution mechanism, the Ombudsman shall consider if access to an existing complaint mechanism will cause the complainant undue hardship; the complaint raises systemic issues; or the complainant and the person with authority to deal with the matter agree to refer the complaint to the Ombudsman. Note that, while the Ombudsman does not normally have jurisdiction to investigate the subject matter of a grievance, he does have a mandate to investigate the functioning of the grievance process.

49. If a complaint is made to the Ombudsman with respect to the handling of a complaint under existing mechanisms (e.g., the CF grievance process or the Military Police Complaints Commission (MPCC)), the Ombudsman may review the process only, to ensure that the member was dealt with in a fair and equitable manner. The

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Ombudsman cannot act in a manner that interferes with or obstructs an authority responsible for administering an existing mechanism in the discharge of the authority's statutory duties (e.g., a CO's responsibility to administer Counselling and Probation).

50. The Ombudsman does not have the authority to investigate any complaint or matter relating to: the exercise of discretion in laying charges by the chain of command, a military judge, court martial or summary trial or any legal advice to DND or the CAF, employees of DND, members of the CAF or the Crown.

51. The Ombudsman will not perform the function of a member of the Military Police in investigating any matter in which there may be an allegation of criminal activity but, the Ombudsman is not precluded from investigating complaints of abuse or delay related to the administration of the Code of Service Discipline.

52. If, upon investigating a matter, the Ombudsman determines that a formal inquiry (e.g., a board of inquiry) is necessary and appropriate, the Ombudsman may refer the matter to the competent authority. If the competent authority carries out the formal inquiry, the competent authority is to inform the Ombudsman of the results and of any action taken and is to refer the matter back to the Ombudsman. If the competent authority decides that no formal inquiry is necessary, the competent authority is to inform the Ombudsman of that fact and of the reasons for that decision.

53. The Ombudsman has a duty to provide information to the complainant and other involved parties as to the progress and disposition of the complaint. Upon completing an investigation, the Ombudsman shall, in specified circumstances, send a report, including any recommendations, opinions and reasons, to the competent DND or CAF authority.

54. Upon receiving such a report, the competent authority has a duty to inform the Ombudsman within a reasonable time of all steps taken or proposed to be taken in response to the recommendations in the Ombudsman's report, including reasons for not following any recommendation. If no response to a report is received, or if the response is insufficient, the Ombudsman may forward a copy of the report to the CDS or DM who shall inform the Ombudsman within a reasonable time of all steps taken or proposed to be taken in response to recommendations in the report, including reasons for not following any recommendation. If the response to a report received from the CDS or DM is insufficient, or no response is received, the Ombudsman may send a copy of the report to the MND.

55. As candidates will discern from this lesson, the Ombudsman does not have any significant decision-making powers. He may control his own process, but he cannot impose decisions on any CAF or Departmental actor or decision-maker. The Ombudsman's power stems from the concept that can be expressed colloquially as 'naming and shaming'. The Ombudsman has two key measures to influence decision-makers. First, if a CAF or Departmental authority does not respond to his recommendations (or respond in a fashion 'acceptable' to the Ombudsman), he can

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report this to the CDS or DM, respectively. If the CDS or DM does not respond (or respond in a manner satisfactory to the Ombudsman), he can report this to the Minister.

56. The second measure available to the Ombudsman is publicity. Notwithstanding that the Ombudsman is a 'creature of Ministerial fiat', the Ombudsman can influence Ministerial action through publicity. Operating at the political level, Ministers are subject to the influence of publicity. The first DND/CF Ombudsman, Andre Marin, was particularly apt at using evocative publicity to influence policy and decision-making. Indeed, Andre Marin used a key 'weakness' of his position – the lack of decision-making authority – as a 'strength'. His defence when challenged with allegations of a lack of impartiality or procedural fairness in the execution of his duties was met with the rejoinder that, since he was not making any final decisions, such obligations were not constituent elements of his responsibilities. Then again, he also claimed that he was able to act as both an advocate and a neutral arbitrator and that 'the buck stops' with him.

57. If the Ombudsman anticipates that a report will contain an adverse comment about any DND employee or CF member, the Ombudsman is required to inform the employee or member of the nature of the intended comment and allow the employee or member 14 days to submit representations in response.

58. The Ombudsman may allow a longer period of time if the Ombudsman considers it in the public interest to do so. The response shall be in writing but the Ombudsman has the discretion to allow oral representations to be made. The Ombudsman is required to append a copy of all written representations to his or her report.

Questions:

Interim Summary:

Stage 5 – Interaction between various complaints processes

Introduction:

59. As demonstrated by the breadth and complexity of foregoing lessons, complaint resolution in the CAF and DND is a complex network of policies, and many complainants and decision-makers will not fully understand the appropriate use of all of the mechanisms.

60. Often, efficient and effective resolution of complaints will require collaboration between the DND and CAF decision-makers, supported by timely, accurate and clear legal advice. Our goal must be the effective and efficient resolution of complaints, regardless of individual merit or the complexity of the circumstances.

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Body of the lesson:

61. There is no one clearing house for complaints by or about CAF (or DND) personnel. Under the existing regimes, it would be impossible to bring all of the complaints-related agencies and actors under a unified direction. Indeed, with certain statutory actors, their institutional independence is an integral part of their role and functions.

62. Briefly, here is a recapitulation of relevant complaints resolution processes and actors:

a. **Informal processes**. This includes reliance upon QR&O 19.12 as a means of achieving redress or reliance, in general, upon the capacity of supervisors and the chain of command to remedy a complaint outside of formal mechanisms established under statute, regulation and published directives such as DAOD;

b. **CAF grievance process**. Established under the *NDA* and amplified by both regulations (QR&O Chapter 7) and directives (DAOD 5017-0/-1) this is the principal formal vehicle for the resolution of grievances by CAF personnel. It vests decision-making authority with the existing chain of command and formalizes the process. It does not grant any additional powers beyond those already held by the CAF decision-makers;

c. **Grievances Committee**. An institutionally independent committee created under the NDA and empowered to conduct investigations and to provide findings and recommendations for the final authority in the CAF grievance process, but has no decision-making powers outside of controlling its own processes;

d. **Military Police complaints process**. Like the CAF grievance process, it is established under the *NDA* and amplified under regulations and other directives;

e. **MPCC**. Like the Grievances Committee, this is an institutionally independent commission created under the NDA and empowered to conduct inquiry and provide findings and recommendations to CAF (and Departmental) decision-makers. It does not have decision-making powers outside the control of its own processes;

f. **DND/CF Ombudsman**. A creature of Ministerial directive, the DND/CF Ombudsman was initially created in response to perceive requirement for a complaints resolution body that was independent of the CAF chain of command or Departmental hierarchy. The Ombudsman's power is limited to inquiry and recommendation and the effectiveness of this power is often dependent upon the use of 'soft power' to influence decision-makers.

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Notwithstanding that the DND/CF Ombudsman does not have the same statutory status of the Grievances Committee and the MPCC, the security of the Office is protected by the potential political repercussions that could arise it it were eliminated;

g. **ADR**. ADR is an alternative complaint resolution process that may only be pursued with the consent of both the complainant and respondent;

h. **CF Harassment Prevention and Resolution Policy**. DAOD 5012-0, and the supporting manual, create the relevant policy. This mechanism should be used prior to submitting a grievance since, by definition, harassment is not proper administration in the affairs of the Canadian Forces;

i. **Complaints under the *CHRA***. This is not precluded by reliance upon mechanisms such as the CAF grievance process; however, if a complaint is pursued under the *CHRA*, adjudication of a grievance of the same subject matter will be suspended until the *CHRA*-related complaint is either determined, withdrawn, or suspended. Generally, the CHRC prefers complainants to pursue internal remedies first and, where it is aware of reliance upon internal mechanisms (such as the CAF grievance process) it will normally suspend its process until the internal process is concluded;

j. **Complaints under the *Privacy Act***. Although not as common as complaints under the CHRA, these may be pursued independent of internal complaints mechanisms;

k. **CSE Complaints**. The CSE Policy and Procedures Manual will apply to Communications Security Establishment (CSE) employees.

63. There is broad scope for complainants to employ multiple complaint resolution mechanisms. This can arise for a variety of reasons: a lack of understanding of the appropriate mechanism; a lack of confidence that any one mechanism would be sufficient; belief that a complex complaint based upon a multiplicity of factors or policies requires multiple mechanisms; and attempt to 'game' the system(s); or even ineffective or improper determinations or advice from the chain of command.

64. Unit legal advisors are ideally situated to advise initial decision-makers on the administration of complaints to ensure that the appropriate mechanism is used at the appropriate time and that complaints are resolved as efficiently as possible. Although unit legal advisors do not (and must not) advise individual CAF members (or members of the public), the legal advisor can advise – and thus, influence – how CO, other commanders and unit administrators address complaints. Efficiencies can be achieved in two broad ways: education and advice.

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65. Ideally, unit legal advisors will address the complexity of complaints resolution before this complexity becomes a problem. Legal advisors often conduct unit-level training for issues relating to both the Code of Service Discipline and operations. The same should be true for complaints resolution. Training decision-makers will pay dividends when complaints are received and must be administered. Secondly, advice must be sufficiently comprehensive that unit commanders and administrators can learn from the processes and can assess all available options.

66. Efficient and effective use of the myriad complaint resolution mechanisms relies heavily upon complainants' understanding of the appropriate mechanism. Although a legal advisor cannot assist complainants personally, a legal advisor can assist the chain of command, which, in turn, can assist the complainant.

Questions:

Interim Summary:

PART 4 – CONCLUSION

Summary:

67. The topics covered in this lesson ADR, Military Police Complaints, complaints under others Acts, the interaction between various complaint mechanisms, the role and responsibilities of the Ombudsman and informal complaints. You have been informed of the ADR process and its use in the CAF, the role of the MPCC, the Ombudsman's mandate and how they carry out their duties.

Confirmation:

68. Done in a discussion format. Ask some confirmation questions. No group answers, remind students to raise their hand before speaking. Or instructor may ask particular students to answer questions

Conclusion:

69. The various complaint processes have been established to ensure that members of the CAFand DND have a means to addresses issues that they believe have a negative impact on themselves and their work conditions. The variety of types of complaints requires that the complaints process be tailored to meet the needs of all parties. A one size fits all approach is not acceptable. As a legal officer you will at some point in your career be called upon to give advice on various types of complaints processes and procedures. This is a dynamic area of administrative law and what you have learned during this course is merely an introduction. You will have to be vigilant to remain current on changes that occur to the various processes and procedures so that you can provide accurate and timely advice when called upon to do so by your commanders.

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PO 010 – Advise on Administrative Investigations

Performance: understand and provide legal advice on administrative investigations

Conditions:

- **a.** **Given**: relevant factual context, policy, case law, reference material (including prior legal opinion)
- **b.** **Denied**: nil
- **c.** Environment: CAF unit, base, wing HQ, deployed domestically and internationally, under austere conditions

Standard: the legal officer shall, without direct supervision, provide legal advice on the administration of CF service, specifically:

a. Advise on appropriate type of investigation
b. advise on convening orders, terms of reference and informal investigations
c. advise on the conduct of administrative investigations
d. advise on the administrative investigation report
e. advise on post report action

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PART 1 –LESSON IDENTIFICATION

EO 010.01 – Advise on the appropriate type of administrative investigation

Performance: Advise on the appropriate type of administrative investigation

Conditions:

a. **given**: References: including but not limited to relevant factual context, legislation, policies, case law, (may also include prior legal opinions) NDA, QR&O,DAOD

b. **denied**: nil

Standard: At the conclusion of this lesson the individual candidate shall be able to advise on administrative investigations including reasons to investigate, subjects that may be investigates and options for investigating , and be able to apply this knowledge in their capacity as a legal advisor

Main Teaching Points:

- subjects of investigations
- reasons to investigate
- options for investigating

Method: This EO will be accomplished by Development Lesson. Students will be required to read any pre-reading packages assigned and be prepared to respond to questions.

Duration: 3/4 period (30 min)

References: NDA, QR&O, DAOD

Training/Learning Aids: Standard classroom with whiteboard and projection system, handouts, student disk, student desk book, Legal Officer Qualification Course (LOQC) Instructors Handbook

Note to the instructor: This developmental lesson shall be conducted in structured manner, using the list of "questions to the class" provided in the following pages. Instructors are to complement each segment of the developmental lesson by follow-up and direct questions taking into account the flow and direction of the discussion. Interim summaries shall be conducted at the end of each segment to confirm the material was learned and provide a basis from which the discussion can progress to the next segment. A review of the main teaching points will then take place at the end of the period.

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PART 2 – INTRODUCTION

Objective:

1. The instructor shall introduce the various aspects of administrative investigations including what can be the subject of an investigations, reasons for investigating, what investigations are mandated by policy or regulations, which investigations are discretionary, what factors to consider when choosing the appropriate type of investigation and the role of the Administration Investigation Support Center. By the end of the lesson the candidates should have a basic knowledge of these topics which would allow them to provide legal advice as it pertains to this subject

Introduction:

2. Commanders at all levels must be able to conduct investigations for the effective and efficient administration of their units. In general, these investigations are categorized as administrative investigations. While the term 'administrative investigation' is not defined in either the NDA or the QR&Os, administrative investigations are used to investigate issues related to the command, control and administration of the CAF

Outline:

3. During this lesson the candidates will be introduced to administrative investigations. The types of investigations and the processes and procedures associated with different investigations. It is important for legal officers to understand administrative investigations as they may be called upon to provide advice to command or to act as legal advisor to a Board of Inquiry.

Stage 1 – Subject of the investigation

Stage 2 – Reasons for investigating

Stage 3 – Mandated investigations

Stage 4 – Discretionary investigations

Stage 5 – Choosing the right type of investigation

PART 3 – BODY OF THE LESSON

Stage 1 – Subject of the investigation

Introduction:

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4. As per DAOD 7002-3 the subjects of administrative investigations are many. Officers commanding a command or formation and commanding officers shall ensure that the investigation of a given subject is conducted in accordance with the applicable references as detailed in the DAOD.

Body of the lesson:

5. Not every situation requires a summary investigation or board of inquiry. The applicable regulations, order or directive will provide guidance on the nature and scope of the investigation as it pertains to the particular subject matter. Legal officers should be aware of the various types of incidents that should, or must, be investigated. They must also be aware of the requirements of the investigation into each discreet subject area.

- Ammunition accident
  QR&O Chapter 21, Section 9, Fire, Explosion or Similar Occurrence

- Casualty
  QR&O Chapter 24, Casualties and Funerals
  CFAO 19-44, Suicide Prevention
  CFAO 24-1, Casualties – Reporting and Administration

- Claim by or against the Crown
  QR&O article 21.19, Where Claim by or Against the Crown Appears Likely
  QR&O Chapter 21, Section 4, Claims By and Against the Crown
  DAOD 7004-0, Claims By or Against the Crown and Ex gratia Payments
  DAOD 7004-1, Claims and Ex gratia Procedures

- Conflict of interest
  DAOD 7021-0, Conflict of Interest and Post-Employment
  DAOD 7021-1, Conflict of Interest
  DAOD 7021-2, Post-Employment

- Disability compensation
  CBI 210.72, Reserve Force –Compensation During a Period of Injury, Disease or Illness

- Disclosure of information – informal request
  DAOD 1001-2, Informal Requests for Access to Departmental Information
  DAOD 1002-2, Informal Requests for Personal Information

- Discrimination
  CFAO 19-40, Human Rights – Discrimination

- Fire or explosion
  QR&O Chapter 21, Section 9, Fire, Explosion or Similar Occurrence

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DAOD 4007-1, Fire or Incident Reporting and Investigating
C-08-005-120/AG-000, Realty Asset Management Manual

- Harassment
  DAOD 5012-0, Harassment Prevention and Resolution
  Harassment Prevention and Resolution Guidelines

- Illegal absence
  QR&O article 21.43, Investigation of Illegal Absence
  CFAO 19-19, Disposal of Absentees

- Injury or death
  QR&O Chapter 21, Section 6, Personal Injuries and Death
  CFAO 19-44, Suicide Prevention
  CFAO 24-6, Investigation of Injuries or Death

- Loss of a controlled serial numbered form
  CFAO 36-24, Controlled Serial Numbered Forms

- Loss of or damage due to a service or criminal offence
  QR&O article 21.73, Investigation into Loss, Overage or Damage due to a Service or Criminal Offence
  CFAO 19-16, Civil Prosecution
  CFAO 22-10, Investigation and Report of Loss or Damage Due to Criminal Offences

- Loss of or damage to a ship
  QR&O article 21.71, Loss of or Damage to Public Property Other Than Public Funds

- Loss of or damage to personal property
  CBI Chapter 210, Section 1, Compensation for Loss of or Damage to Personal Property
  DAOD 7004-2, Compensation for Loss or Damage to Personal Property

- Loss of or damage to public or non-public property
  QR&O article 21.71, Loss of or Damage to Public Property Other Than Public Funds
  QR&O Chapter 38, Liability for Public and Non-Public Property
  CFAO 38-1, Liability for Public and Non-Public Property

- Loss of public funds
  CFAO 202-4, Public Funds – Reporting Losses, Deficiencies or Overages

- Missing or absent CF member

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QR&O article 21.41, General
QR&O article 21.44, Investigation Where Officer or Non-commissioned Member Missing due to Enemy Action

- Mobile support equipment occurrence
  QR&O Chapter 21, Section 6, Personal Injuries and Death
  QR&O Chapter 21, Section 10, Public or Non-public Property
  A-LM-158-005/AG-001, Transportation Manual

- Security violation
  QR&O article 21.75, Investigation of Missing Classified Materiel
  National Defence Security Instructions
  National Defence Security Policy

- Sexual misconduct
  DAOD 5019-0, Conduct and Performance Deficiencies
  DAOD 5019-2, Administrative Review
  DAOD 5019-4, Remedial Measures
  DAOD 5019-5, Sexual Misconduct and Sexual Disorders

- Suicide or attempted suicide
  QR&O Chapter 21, Section 6, Personal Injuries and Death
  CFAO 19-44, Suicide Prevention
  CFAO 24-1, Casualties – Reporting and Administration
  CFAO 24-6, Investigation of Injuries or Death

- Write-off of materiel
  DAOD 1006-1, Write-Off of Materiel
  A-LM-007-014/AG-001, Canadian Forces Supply Manual, Volume 3, Chapter 9, Section A, Materiel Adjustment

Questions:

Interim Summary:

6. There may be significant legal issues that arise during the conduct of a BOI by virtue of the subject matter being investigated. BOIs that are convened to investigate incidents involving Her Majesty's Canadian Ships or aircraft, injuries or death, claims by or against the Crown, or harassment and sexual misconduct, will invariably involve legal issues for which appropriate guidance should be sought.

Stage 2 – Reasons for investigating

Introduction:

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7. Reasons for investigating are often dictated by an incident or accident. Often the relevant legislation, regulation or policy will dictate when an investigation will be required and what will be the scope of the investigation. Any situation that impedes the effective and efficient administration of a unit could lead to some form of investigation. Additionally, the reason for investigating may be because it is required by law, order or directive.

Body of the lesson:

8. Almost anything that happens with the CAF could be subject to investigation on some level. Informal investigations are often launched to help inform the chain of command about aspects of their unit that they want to monitor in order to ensure effectiveness or efficiency of the unit. Perhaps unit morale is flagging and the commanding officer needs to know why in order to formulate a plan to restore morale.

9. Some incidents or accidents themselves will automatically trigger an investigation due to the Act, regulation, order or directive that governs that particular realm such as aircraft incidents or mobile support equipment accidents. For example, the Aeronautics Act clearly states when an investigation must be conducted.

10. Death and or serious injury of a service member will automatically trigger an investigation in order to determine the events surrounding the members death or serious injury and the military nexus, if any. If a commanding officer is in doubt as to whether an investigation is warranted, or required, in any given circumstance he, or she should contact the nearest member of the Office of the Judge Advocate General for advice.

Questions:

Interim Summary:

Stage 3 – Mandated investigations

Introduction:

11. As noted earlier certain incidents will automatically trigger an investigation. There also may be no discretion in the type of investigation that is reguired. Generally, incidents that involve loss of life or serious injury (or the potential for loss of life or serious injury), high value damages or breaches of security will automatically trigger an investigation.

Body of the lesson:

12. In some circumstances, as set out in QR&O chapter 21, an administrative investigation is mandatory although in almost all of these cases, command has the

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discretion to investigate an incident either by way of a summary investigation (SI) or a BOI, giving consideration to the complexity or unusual significance of the occurrence

13. Only with respect to aircraft accidents is a BOI mandatory. In addition, the chain of command always has the discretion to convene a BOI where it wishes to be informed on a particular matter.

14. Other regulations or orders may specify those circumstances when a BOI is appropriate. DAOD 7002-3 (Investigative Matters and References) provides a list of the most common investigative matters and the corresponding orders and instructions.

15. The provisions of QR&O chapter 21 require the convening of *either* a BOI or an SI for examining any unexpected, non-combat deaths. In order to be able to address the matter with sufficient resources, attention to detail and focus as well as ensuring that the investigation process is able to compel testimony and access to documentation it is recommended that a BOI be convened whenever feasible.

Questions:

Interim Summary:

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Stage 4 – Discretionary investigations

Introduction:

16. Any matter that falls within the scope of responsibility of a commander may be subject to an investigation. As stated earlier, any situation that impedes the effective and efficient administration of a unit could lead to some form of investigation.

Body of the lesson:

17. The decision to conduct an SI or a BOI must be premised on what is known as the Primary Purpose Test which is articulated in DAOD 7002-1 (Boards of Inquiry) and DAOD 7002-2 (Summary Investigations). Neither an SI nor a BOI can be convened if the sole, or primary, purpose of the investigation is to obtain evidence for a disciplinary purpose or to assign criminal responsibility.

18. Discretionary investigations may include informal investigation, BOI or SI. Once a commanding officer has made the determination that an investigation is warranted in the circumstances the nature and complexity of the situation will dictate the level of investigation required.

19. Matters of a minor or straightforward nature may only require an informal investigation whereas matters of a serious nature or which involve a great deal of complexity may be best investigated by way of a BOI.

20. Any investigation that is not mandated by regulation, order, policy or directive is discretionary.

Questions:

Interim Summary:

Stage 5 – Choosing the right type of investigation

Introduction:

21. An informal administrative investigation may be ordered to inquire into any matter for which investigation by either a BOI or an SI is not required. Accordingly, informal investigations are those inquiries conducted for administrative purposes for which the formal requirements of other investigations are not required.

Body of the lesson:

22. Military authorities on their own initiative may undertake an informal investigation, or it may be initiated on the basis of verbal or written direction from a higher authority.

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An example of the former situation would be a chief clerk directing a subordinate clerk to find out why a member's pay allotment did not start on the expected date. An example of the latter would be a memo from a CO directing the unit quartermaster to look into unexpectedly high expenditures of training ammunition and requiring the quartermaster to report back to the CO

23. The purpose of informal administrative investigations is the timely gathering of essential information necessary for a decision to be made or action to be taken. An informal investigation may be selected as the appropriate form of inquiry when the following considerations do not require or permit a more formal investigation:

a. an immediate or expedited response is required;

b. the matter is not anticipated to be complicated; or

c. the information sought is readily available (although collection, organization and/or analysis may be required).

24. An SI is normally used to investigate and report on "matters of a minor, straightforward and uncomplicated nature." Regulations that specify the investigation of certain classes or types of incidents will also typically state that military authorities may order a summary investigation or convene or order the convening of a BOI. Accordingly, most cases will require an assessment as to whether an SI is the appropriate investigative process considering the gravity and complexity of the matter to be investigated. DAOD 7002-3 (Investigative Matters and References) provides a list of the most common investigative matters and the corresponding orders and instructions. Generally, SIs are the most appropriate means to investigate lost or damaged equipment for write-off purposes, conflicts of interest, or claims by or against the Crown. Even though an SI may be used to investigate incidents involving death or serious injury, a BOI should be conducted where it is practicable to do so. An informal investigation might be used to assess the appropriate investigative tool.

25. Generally, BOIs are used to investigate and report on matters of unusual significance or complexity that are of interest to the chain of command. In some circumstances, as set out in QR&O 21, an administrative investigation is mandatory although in almost all of these cases, command has the discretion to investigate an incident either by way of a summary investigation (SI) or a BOI, giving consideration to the complexity or unusual significance of the occurrence. Only with respect to aircraft accidents is a BOI mandatory. In addition, the chain of command always has the discretion to convene a BOI where it wishes to be informed on a particular matter. Other regulations or orders generally specify those circumstances when a BOI is appropriate. DAOD 7002-3 (Investigative Matters and References) provides a list of the most common investigative matters and the corresponding orders and instructions.

26. The decision to conduct an SI or a BOI must be premised on the "Primary Purpose Test" that is articulated in DAOD 7002-1 (Boards of Inquiry) and DAOD 7002-2

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(Summary Investigations). Neither an SI nor a BOI can be convened "if the sole or primary purpose is to obtain evidence for a disciplinary purpose or to assign criminal responsibility." The TOR cannot require determinations of criminal liability and information obtained from an individual must not be premised on being able to obtain self-incriminating evidence

Questions:

Interim Summary:

PART 4 – CONCLUSION

Summary:

27. The topics covered in this lesson were focused on preparing legal advisors to provide advice on the selection of the appropriate type of administrative investigation. The candidates were introduced to what may form the subject of an investigation, reasons to investigate and options for investigating.

Confirmation:

28. Done in a discussion format. Ask some confirmation questions. No group answers, remind students to raise their hand before speaking. Or instructor may ask particular students to answer questions

Conclusion:

29. It is important for legal officers to not only understand the mechanics or requirements of the various types of administrative investigation but to also to understand what may be investigate, what must be investigated and if an investigation is discretionary which type of investigation is best suited to provide the information required by the chain of command. By knowing and understanding these topics the legal officer is better situated to provide appropriate legal advice.

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PART 1 –LESSON IDENTIFICATION

EO 010.02 – Advise on convening orders and TOR

Performance: Advise on convening orders and TOR

Conditions:

a. **given**: References: including but not limited to relevant factual context, legislation, policies, case law, (may also include prior legal opinions) NDA, QR&O,DAOD

b. **denied**: nil

Standard: At the conclusion of this lesson the individual candidate shall know and understand convening orders for Boards of Inquiry and Terms of Reference for Summary Investigation, and be able to apply this knowledge in their capacity as a legal advisor

Main Teaching Points:

- Authority to convene BOI and order SI
- Convening of BOI
- Ordering an SI

Method: This EO will be accomplished by Development Lesson. Students will be required to read any pre-reading packages assigned and be prepared to respond to questions.

Duration: 1 ¼ period (50 min)

References: NDA, QR&O, DAOD

Training/Learning Aids: Standard classroom with whiteboard and projection system, handouts, student disk, student desk book, Legal Officer Qualification Course (LOQC) Instructors Handbook

Note to the instructor: This developmental lesson shall be conducted in structured manner, using the list of "questions to the class" provided in the following pages. Instructors are to complement each segment of the developmental lesson by follow-up and direct questions taking into account the flow and direction of the discussion. Interim summaries shall be conducted at the end of each segment to confirm the material was learned and provide a basis from which the discussion can progress to the next segment. A review of the main teaching points will then take place at the end of the period.

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PART 2 – INTRODUCTION

Objective:

1. The instructor shall introduce the topic of convening orders and terms of reference. The candidates will be informed of who has authority to convene a BOI and order SI. The convening of a BOI will be explored as well as the ordering of an SI . By the end of the lesson the candidates should have a basic knowledge of these topics which would allow them to provide legal advice as it pertains to this subject

Introduction:

2. Boards of Inquiry (BOIs) represent the most comprehensive and significant internal investigative tool available to commanders at all levels. They are used to address a broad spectrum of matters related to the control and administration of the CF.

3. The BOI investigative process has been reviewed in recent years by the Federal Court of Canada (FCC) and the Ombudsman's Office In response, the CAF conducted a review of the BOI process in 2005 that resulted, among other things, in the creation of the Administrative Investigations Support Centre (AISC) and training for board members.

4. In addition, there have been other recent orders and directives designed to improve the process.

5. SI are initiated by means of the assignment of an investigator and issuance of a terms of reference. BOI are convened by a convening authority by means of a convening order. An SI is used where an administration investigation is warranted but it does not have to be at the level of depth and formality of a BOI

Outline:

6. During this lesson the candidates will be introduced to the applicable regulations and policies governing the convening of a BOI and the ordering of an SI. They will be introduced to the role of the Administrative Investigation Support Center. The lesson will also cover the requirements associated with a convening order or TOR. It is important for legal officers to understand these topics as they form the foundation of the administrative investigation process.

Stage 1 - Applicable regulations and policies

Stage 2 – Role of AISC

Stage 3 – Scope of investigation for BOI

Stage 4 – Composition of the board

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Stage 5 – Selection of advisors

Stage 6 – Issues related to concurrent investigations/proceedings

Stage 7 – Direction with regard to openness of proceedings

Stage 8 – Direction with regard to attendance of the public

Stage 9 – Scope of the investigation for SI

Stage 10 – Selection of an investigator

Stage 11 – Role of advisors to an SI

Stage 12 – Issues related to concurrent investigation/proceedings as it pertains to SI

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PART 3 – BODY OF THE LESSON

Stage 1 – Applicable regulations and policies

Introduction:

7. BOI and SI are governed by QR&O chapter 21 and DAOD 7002

Body of the lesson:

8. Subsection 45(1) of the NDA provides the legal authority for the conduct of a BOI. The Minister, and such other authorities as the Minister may prescribe or appoint for that purpose, may, where it is expedient that the Minister or any such other authority should be informed on any matter connected with the government, discipline, administration or functions of the Canadian Forces or affecting any officer or non-commissioned member, convene a board of inquiry for the purpose of investigating and reporting on that matter.

9. Pursuant to this ministerial authority, QR&O 21.06(2) empowers the following authorities to convene a BOI:

a. the MND;

b. the CDS;

c. an officer commanding a command;

d. an officer commanding a formation; and

e. a CO.

Questions:

Interim Summary:

Stage 2 – Role of AISC

Introduction:

10. The Administrative Investigation Support Center is tasked with assisting BOI with training and support throughout the conduct of a BOI

Body of the lesson:

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11. The AISC will provide advice on selection of the appropriate administrative investigation (a BOI, SI or informal investigation). They will provide sample convening orders, lessons learned and best practices for the convening and conduct of a BOI and coordinate mandatory training for all DND employees and CF members involved in a BOI.

Questions:

Interim Summary:

Stage 3 – Scope of investigation for BOI

Introduction:

12. A BOI may be convened to investigate any matter described in subsection 45(1) of the National Defence Act. A BOI shall be convened if specifically required by QR&O, a directive or an order; or directed by higher authority.

Body of the lesson:

13. A BOI is also normally convened if a matter to be investigated is of unusual significance or complexity, a CF member is suspected to have wilfully caused their own death or serious injury or detailed medical information is required to report on any matter.

14. Regulations in respect of the investigation of an aircraft accident are set out in Section 8 of QR&O Chapter 21, Summary investigations and Boards of Inquiry. However, an aviation safety investigation conducted under the authority of the Aeronautics Act is not subject to the DAOD 7002 series. And the scope of the investigation is determined by Section 8 of QR&O 21 and the *Aeronautics Act.*

15. Harassment investigations are administrative investigations that are initiated in response to a harassment complaint after informal resolution and mediation of a workplace conflict has failed. Harassment investigations are conducted in order to gather and analyse facts with a view to determining whether harassment has occurred. A convening authority shall not convene a BOI if any purpose of the BOI is to obtain evidence relating to a potential breach of the Code of Service Discipline or to assign criminal responsibility.

16. The purpose of a BOI shall be ascertainable from its convening order and the conduct of its proceedings.

17. The convening order for a BOI shall not call for the assignment of criminal liability with respect to a specific person whose conduct is to be examined. If the BOI compels a

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person to testify, the evidence obtained from that person shall be relevant to a purpose other than to compel that person to give self-incriminating evidence.

Questions:

Interim Summary:

Stage 4 – Composition of the board

Introduction:

18. Upon making a determination that a BOI is required, a convening authority must address the question of who will constitute the board. While certain mandatory requirements regarding the make-up of BOIs are set out in regulations, there remains a good deal of latitude to structure a board with the appropriate balance of experience and skills to conduct an inquiry in the most effective manner. It is now mandatory that all members appointed to a BOI receive up to two days training provided by AISC before the members commence their investigation. This training, dealing with all aspects of BOI procedure including procedural fairness, investigative procedures and practical advice is aimed at generating BOIs that are effective, legally and procedurally compliant, and meet the needs of the CF. Convening authorities should also ensure that key BOI members have the necessary experience to perform their duties, and that they are properly supported by technical experts, where appropriate.

Body of the lesson:

19. The members of a BOI shall be appointed in accordance with QR&O articles 21.08, Composition of Boards of Inquiry, and 21.081, Boards of Inquiry Conducted by a Military Judge. In particular, a member shall not be appointed if any of QR&O sub-subparagraphs 21.08(2)(d)(i) to (iii) have application in the circumstances of the investigation.

20. The recommended rank for the president of a BOI is major or above.

21. The normal and recommended practice is to appoint a minimum of 3 members to a BOI as 2 member boards will cease to have the minimum composition should one member not be able to continue as a member. Also, where the 2 members disagree with each other, they therefore will be unable make a definitive finding on the disputed point.

22. During the conduct of a BOI, the following conditions apply:

a. all members shall conduct the investigation and hear all witnesses together;

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b. a member who does not participate in the investigation with the other members shall be removed from the BOI by amending the convening order;

c. a member may not be replaced after the first witness has been questioned by the BOI;

d. the number of members shall not fall below the minimum established in QR&O paragraph 21.08(1); and

e. a member shall continue with their BOI duties until the completion of the BOI or until the convening authority removes the member.

23. The QR&O also permits the appointment of civilians to BOIs in the following exceptional circumstances, such as where:

a. the matter to be investigated involves a civilian employee;

b. the convening authority is of the opinion that one of more civilians should form part of the board; or

c. in the case of an inquiry having been convened by the MND, a civilian may be appointed as Board president.

24. Before the composition of the BOI is finalized and before the convening authority issues the TOR, it is necessary to screen potential members to ensure that they are appropriate appointees. Regulations require that no person may be appointed as a member of a BOI if they are officially connected with the investigation, have a personal interest in the investigation or are likely to be called as a witness before the BOI.

25. Members of a BOI must perform their duties in a way that, having regard to the special nature of their functions, does not give rise to a real or reasonable apprehension of bias. A lack of bias should not be interpreted to mean total disinterest. As professional military officers, it is to be expected that board members will have the interests of the CF and its service members in mind when conducting their investigation. However, while maintaining a standard of objectivity, the board is expected to direct the investigation and make findings based solely on the evidence introduced at the BOI.

Questions:

Interim Summary:

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Stage 5 – Selection of advisors

Introduction:

26. It is recognized that a BOI may require specialized advice or expertise in the conduct of an inquiry. In addition to legal advice, there may be specific requirements for advice in technical matters, environmental issues, medical matters and public affairs. Advisors to a BOI can assist by developing appropriate lines of inquiry, identifying potential witnesses and questions for the witnesses. They can also assist in the examination of forensic evidence and interpret specialist reports for the board. Often, because of their expertise, they are useful in identifying relevant documentation for the board members. In addition, the nature of the investigation may call for chaplains or social workers to assist the board as advisors, particularly if witnesses may experience significant emotional or physical stress by having to testify about traumatic events.

Body of the lesson:

27. Advisers are not members of the board and are not technically subject to the regulation concerning conflict of interest. Nevertheless, it is advisable to determine what interests, if any, a potential adviser may have in the matter under inquiry before deciding on the suitability of that person to be appointed as a specialist adviser to the board. Depending on the anticipated degree of involvement, the convening authority may appoint a civilian or military specialist as an adviser to the board for the entire duration of the inquiry. Conversely, if the adviser's role is expected to be somewhat limited in nature and scope, appropriate arrangements may be made for a specialist to attend and provide advice for a specific phase of the inquiry, as required.

28. QR&O article 21.14, When Adviser to Board of Inquiry Permitted, provides for the appointment of advisers to a BOI. If it is expected that information to be received by a BOI may include technical matters, the convening authority shall consider the selection and appointment of an appropriate adviser.

29. Other advisers who may be appointed include:

a. a medical officer in the case of a death, injury, serious illness or other health issue;

b. a social worker for an apparent suicide;

c. a chaplain for a BOI that is sensitive in nature;

d. a public affairs officer for a BOI that may attract media attention;

e. a military police member, particularly if a concurrent police investigation is ongoing during the conduct of a BOI; and

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f. specific technical advisers, as required, if it is not practical or appropriate to appoint a member of the BOI with the required qualifications.

30. The convening authority shall consider any conflict of interest and the appearance of a conflict of interest prior to the appointment of an advisor.

31. It is common for a legal adviser to be appointed to a BOI and often are named in the TOR. A convening authority shall appoint, with the concurrence of the JAG or an officer acting on the JAG's behalf, a legal officer to the BOI to provide legal advice, as necessary, during the conduct of the BOI. Such appointments are made in situations where it is anticipated that certain legal issues will have to be properly addressed at one or more phases of the inquiry. As with all specialist advisers, the extent of the legal officer's involvement should be discussed between the board president and the legal officer(s) appointed, near the outset of the process. In some cases, it may be necessary to have the legal adviser present throughout each phase of the BOI. In others, it may be sufficient to have the legal adviser available to the board by phone, and present only as required. Where feasible, attendance of the advisors, including the legal advisor, to the AISC training is recommended.

32. The work product of the advisors is not in itself evidence. As will be discussed, the intent is that wherever possible, the board obtain testimony under oath or solemn affirmation. Only in exceptional circumstances would an advisor provide such testimony in addition to being an advisor for reasons of procedural fairness. Thus, one consideration in the appointment of specialist advisors is to assess whether the person may best serve the interest of the board by acting as an expert witness rather than as an advisor.

Questions:

Interim Summary:

Stage 6 – Issues related to concurrent investigations/proceedings

Introduction:

33. Concurrent investigations or proceedings should be avoided at all times. The nature and purpose of the BOI is to find information related to an incident or accident and to make recommendations on how this may be prevented in the future or what actions the chain of command can take to improve programs or policies to prevent reoccurrence.

34. Other investigations may be based on fault finding or responsibility and this nature of these investigations is not compatible with the focus of a BOI.

Body of the lesson:

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35. If during the course of a BOI the board begins to suspect that a member has violated the code of service discipline than the board shall adjourn and seek guidance from the convening authority before proceeding.

36. Because members are compelled to appear and give testimony before a BOI and have the right to remain silent throughout any disciplinary process unless it is absolutely necessary for the BOI to proceed it will generally remain adjourned until such time the disciplinary investigation has run its course.

37. Other investigations such as flight safety investigations or transport investigations may run concurrently but the BOI has to be aware of the impact on availability of witnesses and the need to de-conflict with these other investigations.

38. There is no mechanism for sharing information between various boards

Questions:

Interim Summary:

Stage 7 – Direction with regard to openness of proceedings

Introduction:

39. The default position is that BOIs are internal processes and are closed to public.

Body of the lesson:

40. Unless the convening authority otherwise directs, a board of inquiry shall exclude from its meetings all persons except a witness while giving evidence, an officer or non-commissioned member whose presence is permitted under paragraph (4) of article 21.10 (Procedure) or under article 21.14 (When Adviser to Board of Inquiry Permitted), a person whose attendance is required by the president; and counsel while his client is giving evidence.

41. However, DAOD also addresses the attendance of a seriously ill or injured member of the CAF and directs that prior to the commencement of a BOI relating to the serious injury or death of a CAF member, the president, upon consultation with the convening authority, shall determine, subject to legal, security and operational limitations, if it would be appropriate to invite the seriously injured CAF member or a representative of the deceased CaF member to attend some of the BOI meetings. The president shall inform the person of the decision.

42. If a seriously injured CAF member is unable to attend, the convening authority may approve the CAF member sending a representative.

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43. If an invited representative is unable or chooses not to attend, the president shall keep the representative informed of the progress of the BOI.

44. No travel or other expenses incurred by a representative who attends BOI meetings may be reimbursed if the representative is not called as a witness at the BOI.

Questions:

Interim Summary:

Stage 8 – Direction with regard to attendance of the public

Introduction:

45. Inquiries conducted under the Inquiries Act are normally open to the public. However, BOIs are internal investigations and, as such, the public and the media are almost always excluded. This exclusion of the public and the media from BOI hearings is subject to the discretion of the convening authority.

Body of the lesson:

46. The FCA ruled that the CF can conduct a BOI that is closed to the public, but there nevertheless may be a need to balance the legitimate public interest with other competing interests, such as maintaining a non-intimidating atmosphere in order to facilitate witness candour.

47. The FCC has favourably ruled upon the issue of BOI being closed to the public. In the case of Travers v. Canada (Board of Inquiry on the Activities of the Canadian Airborne Regiment Battle Group in Somalia), the FCC ruled that the BOI pertaining to the mission of the CF Airborne Regiment in Somalia in 1993 was not a decision-making body but rather, an internal investigative body. In his reasoning, the trial judge summarized the issue:

> "The fact that the constitution [TOR] of the enquiry was made public does not change its nature... it is not, I repeat, not involved in the individual conduct of certain members of the battle group which, we all recognize, is what provoked the media's attention and what in turn created a highly politicized atmosphere both inside and outside Parliament"

and thus the BOI could remain closed to the public.

Questions:

Interim Summary:

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Stage 9 – Scope of the investigation for SI

Introduction:

48. An SI is normally ordered if the matter to be investigated is minor and uncomplicated, is specifically required by QR&O, a directive or an order; or it is directed by higher authority.

49. The Chief of the Defence Staff may order that a summary investigation be conducted where he requires to be informed on any matter connected with the control and administration of the Canadian Forces and a board of inquiry is not required by the regulations.

Body of lesson:

50. An officer commanding a command or formation or a commanding officer may order that a summary investigation be conducted where:

a. he requires to be informed on any matter connected with his command, formation, base, unit or element or affecting any officer or non-commissioned member under his command;

b. a board of inquiry is not required by the regulations; and

c. a board of inquiry or summary investigation has not been convened or ordered by a superior authority.

51. Where a summary investigation concerns a matter the nature of which requires or warrants specific findings or where the officer who orders the investigation directs that findings be made, the report shall contain findings and recommendations and all information that would normally be contained in the report of a board of inquiry.

52. The ordering of a summary investigation does not preclude the subsequent convening of a board of inquiry.

53. Prior to ordering an SI, an officer shall:

a. given the relationship of the officer to the matter to be investigated, consider the existence of a real, potential or perceived conflict of interest, or one that might arise, if the officer orders the SI;

b. obtain legal advice from the nearest representative of the Judge Advocate General (JAG) regarding matters such as the appropriate type of investigation to be conducted; and

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c. contact the AISC to obtain advice on selection of the appropriate administrative investigation (board of inquiry (BOI), SI or informal investigation); and receive sample terms of reference (TORs), lessons learned and best practices to apply for the ordering and conduct of an SI requiring Chief of the Defence Staff (CDS) approval.

54. The officer shall refer the matter to higher authority and not order an SI if:

a. it appears likely that the officer or any superior of the officer may be adversely affected by the findings or recommendations of the SI;

b. the officer or any superior of the officer may be questioned as a witness; or

c. a suitable investigator is not available under the command of the officer ordering the SI.

55. The TORs for an SI shall:

a. state the purpose of the officer ordering the SI for the investigation;

b. be written, detailed and explicit;

c. set out the matters on which findings are to be made;

d. identify the CF member appointed as the investigator for the SI;

e. specify the matters on which recommendations are required, including recommendations to prevent recurrence;

f. normally require that the cause of the matter being investigated be found;

g. establish the latest date for the start of the SI;

h. establish the minimum security classification or designation of the report;

i. normally be stated in the same manner as a convening order for a BOI; and

j. contain the following paragraphs:

Should an investigator receive evidence that permits the investigator to reasonably believe that an offence has been committed, the investigator shall suspend the investigation and notify the officer who ordered the investigation, and the matter shall be referred to the nearest JAG representative for legal advice.

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The investigator shall inquire into all matters referred to it for investigation. If during the course of an investigation, a matter arises which raises issues involving the propriety of a military police investigation or other military police-related conduct, the matter shall be forwarded for further disposition to the officer who ordered the investigation.

56. The ASIC may be contacted for model TORs. However, reliance upon the AISC-sourced TOR does not obviate a legal officer's obligation to review the TOR.

Questions:

Interim Summary:

Stage 11 – Selection of an investigator

Introduction:

57. An officer shall normally be appointed as the investigator to conduct an SI. If an officer is not available, a non-commissioned member of the rank of warrant officer or higher may be appointed. If considered appropriate, two officers, or an officer and a non-commissioned member of the rank of warrant officer or higher, may be appointed.

Body of the lesson:

58. An investigator should possess knowledge of the investigative process and how to analyze evidence. A less experienced investigator may be appointed to work with an experienced investigator.

59. A CF member appointed for purposes of section 156 of the National Defence Act shall not be appointed to conduct an SI unless the SI relates to military police unit or section matters.

60. A CF member shall not be appointed as an investigator if it appears likely that the CF member or any superior of the CF member may be adversely affected by the findings or recommendations of the SI or questioned as a witness during the conduct of the SI.

61. During the conduct of an SI an investigator may not be replaced after the first witness has been questioned and an investigator shall continue with their SI duties until the completion of the SI or until the officer ordering the SI removes the investigator.

62. If two investigators are conducting an SI both investigators shall conduct the SI and hear all witnesses together and an investigator who does not participate in the SI with the other investigator shall be removed from the SI by amending the TORs.

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63. The existence of a real, potential or perceived conflict of interest, or one that might arise given the relationship of a potential investigator to the subject matter of the investigation, shall be considered prior to appointment

Questions:

Interim Summary:

Stage 12 – Role of advisors to an SI

Introduction:

64. Any person with expertise that is deemed to be of assistance to a SI may be tasked to assist the investigator and provide information that is outside the scope of the investigators experience or expertise.

Body of the lesson:

65. The regulations and orders do not require advisors to an SI but the investigator shall consult, as necessary, with appropriate subject matter advisors prior to making findings and recommendations.

66. The nearest JAG representative shall be contacted when dealing with issues involving a notice of adverse evidence or for other situations that require legal advice.

Questions:

Interim Summary:

Stage 13 – Issues related to concurrent investigation/proceedings as it pertains to SI

Introduction:

67. Similar to BOI if at any time an investigator receives information during the course of their investigations that leads them to believes that a breach of the code of service discipline the investigator shall suspend their investigation and advise the authority that ordered the SI

Body of the lesson:

68. The SI should remain suspended until such time as any disciplinary investigation has been completed.

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69. SI also have no mechanism to share information with other investigations and it is important for investigations being carried out for different purposes to be able to de-conflict so that each investigation is able to proceed without undue delay.

Questions:

Interim Summary:

PART 4 – CONCLUSION

Summary:

70. The topics covered in this lesson include advising on Convening Orders for BOI and terms of reference for SI . including applicable regulations and policies, the role of AISC, scope of investigation for BOI, Composition of the board, selection of advisors, issues related to concurrent investigations/proceedings, direction with regard to openness of proceedings, direction with regard to attendance of the public, scope of the investigation for SI, selection of an investigator, role of advisors to an SI and issues related to concurrent investigation/proceedings as it pertains to SI

Confirmation:

71. Done in a discussion format. Ask some confirmation questions. No group answers, remind students to raise their hand before speaking. Or instructor may ask particular students to answer questions

Conclusion:

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PART 1 –LESSON IDENTIFICATION

EO 010.03 – Advise on the conduct of administrative investigations

Performance: Advise on the conduct of administrative investigations

Conditions:

a. given: References: including but not limited to relevant factual context, legislation, policies, case law, (may also include prior legal opinions) NDA, QR&O,DAOD

b. denied: nil

Standard: At the conclusion of this lesson the individual candidate shall know and understand how administrative investigations are conducted, and be able to apply this knowledge in their capacity as a legal advisor

Main Teaching Points:
- conduct of a BOI
- conduct of an SI
- conduct of other investigations

Method: This EO will be accomplished by Development Lesson. Students will be required to read any pre-reading packages assigned and be prepared to respond to questions.

Duration: 1 ½ period (60 min)

References: NDA, QR&O, DAOD

Training/Learning Aids: Standard classroom with whiteboard and projection system, handouts, student disk, student desk book, Legal Officer Qualification Course (LOQC) Instructors Handbook

Note to the instructor: This developmental lesson shall be conducted in structured manner, using the list of "questions to the class" provided in the following pages. Instructors are to complement each segment of the developmental lesson by follow-up and direct questions taking into account the flow and direction of the discussion. Interim summaries shall be conducted at the end of each segment to confirm the material was learned and provide a basis from which the discussion can progress to the next segment. A review of the main teaching points will then take place at the end of the period.

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PART 2 – INTRODUCTION

Objective:

1. The instructor shall introduce the conduct of administrative investigations including BOI, SI and other investigations. By the end of the lesson the candidates should have a basic knowledge of these topics which would allow them to provide legal advice as it pertains to this subject

Introduction:

2. During this lesson the candidates will learn how administrative investigations are conducted. It is important for legal officers to understand the procedures involved in the conduct of various types of administrative investigations. During a legal officer's career it is highly likely that they will be assigned as an advisor to a BOI and be called upon to assist investigators of SI.

Outline:

Stage 1 – Logistical matters

Stage 2 – Role of the legal advisor

Stage 3 – Role of legal counsel

Stage 4 – Notice of adverse evidence

Stage 5 – Powers to compel witnesses

Stage 6 – Preparation of questions for witnesses

Stage 7 – Witness preparation

Stage 8 – Witness testimony

Stage 9 – Other evidentiary matters

Stage 10 – Powers of an SI investigator

Stage 11 – Gathering of evidence

Stage 12 – Notice of adverse evidence in an SI

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PART 3 – BODY OF THE LESSON

Stage 1 – Logistical matters

Introduction:

3. Logistical matters associated with BOI may include determination of the location of the BOI, facilities for the BOI to work in, location for witness testimony and all other manner of concern

Body of the lesson:

4. All BOI will be assigned a CAF member to provide logistical support. This member may be tasked with arranging accommodations, travel, access to facilities, equipment and supplies such as computers, printers, recording equipment, filing cabinets, etc.

5. Unless the convening authority otherwise directs, the president of a Board of Inquiry shall fix the date, time and place for its assembly and shall cause notice of the meetings to be given to all members of the board, witnesses and other interested persons.

6. A board of inquiry may re-assemble as often as necessary to:

   a. examine additional witnesses;

   b. further examine any witnesses; or

   c. make any additional findings or recommendations.

7. The BOI will need to:

   a. analyze the convening order;

   b. identify actors and chain of events;

   c. develop an information collection plan;

   d. develop document handling procedures; and

   e. analyze information and formulating witness questions

8. Board members and advisors should review CO, in order to ensure common understanding of terminology. To determine any internal or external constraints upon findings and to understand procedural requirements (e.g., necessity to stop work if possibility of CSD issue emerges, deadline for BOI report submission, etc.).

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9. Prior to hearing the first witness the Board may wish to consider seating arrangement, the use of name cards to identify Board members and the use of visual aids such as maps, drawings and models.

10. Prior to beginning a sitting, the Board should check placement of recording equipment and test it to ensure it is working properly. Confirm that they have a bible and oath/solemn affirmation cards.

Questions:

Interim Summary:

Stage 2 – Role of the legal advisor

Introduction:

11. There is a difference between advisors and experts. Advisors are assigned to support an on-going investigation by assisting in the analysis and interpretation of evidence on a specific subject matter. Advisors simplify the vocabulary used in technical documents that will subsequently assist the Board with the planning and conduct of the investigation. The opinions of Advisors cannot be used as evidence.

12. The legal officer is assigned to help guide the BOI through the BOI process. Legal Officers are not tasked as advisors to BOI through normal tasking procedures but rather are assigned by the OJAG in consultation with the members direct supervisor.

Body of the lesson:

13. It is common for a legal adviser to be appointed to a BOI and often are named in the TOR. Such appointments are made in situations where it is anticipated that certain legal issues will have to be properly addressed at one or more phases of the inquiry. As with all specialist advisers, the extent of the legal officer's involvement should be discussed between the board president and the legal officer(s) appointed, near the outset of the process. In some cases, it may be necessary to have the legal adviser present throughout each phase of the BOI. In others, it may be sufficient to have the legal adviser available to the board by phone, and present only as required. Where feasible, attendance of the advisors, including the legal advisor, to the AISC training is recommended.

14. The role of the legal adviser to a BOI can be distinguished from that of 'commission counsel' at a commission of inquiry created under the Inquiries Act (formerly called 'Royal Commissions'). The role of the commission counsel is to assist the commissioners in their inquiries and it is often the commission counsel who make

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the decisions about which witnesses will be called to testify, what questions will be asked, and often leads the direct examination of witnesses.

15. The commission counsel is also entitled to make submissions to the commissioners, advocating a particular interpretation of the evidence. By way of comparison, the legal adviser to a BOI normally plays an 'advisory' role, procedurally, and does not make submissions as such, or participates in the direct examination or cross examination of witnesses. The legal adviser should be prepared to provide legal advice to the board on matters relating to:

a. their powers;

b. the inquiry process, including aspects of procedural fairness; and

c. evidentiary matters.

16. During the hearings phase of a BOI, it would only be in rare and exceptional circumstances that a legal adviser would directly examine witnesses as part of their testimony before the board. The legal advisers do, however, routinely ensure that oaths are properly administered, that witnesses have been properly informed of their rights and protections under the Charter, the NDA and the Canada Evidence Act.

17. Legal advisors will also ensure that persons who may be adversely affected by evidence are permitted to participate in accordance with the provisions of the regulations and generally, that the principles of procedural fairness are applied.

18. It is vitally important that the legal officer engage with the members of the board as soon as possible and it has even been recommended that the legal officer assigned to a BOI take the AISC training along with the members of the BOI.

19. The roles are responsibilities of a legal officer are many and it is a time consuming task to be assigned to a BOI. The one caution that a legal officer must always be aware of is to not get pulled too deeply into the BOI or the process such that it would appear that the legal officer was conducting the BOI or is a member of the board.

Questions:

Interim Summary:

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Stage 3 – Role of legal counsel

Introduction:

20. Regulations permit a lawyer to be present when a client is giving evidence before a BOI.

Body of the lesson:

21. If legal counsel accompanies a witness, there may be an issue as to the extent of the lawyer's participation. The board president, who is charged with the responsibility of controlling the board's process, will ultimately determine the extent of counsel's participation.

22. Since the proceedings are not adversarial in nature, counsel have no entitlement to make representations before a BOI. The only exception to this rule is in cases where a person has been provided with a Notice of Adverse Evidence (NOAE). Counsel who represent such persons may act on the client's behalf which would include the powers as described above.

23. Witnesses who opt to retain legal counsel for a BOI will normally do so at their own expense. While regulations provide that military defence counsel from the Office of the Director of Defence Counsel Services (DDCS) may provide legal advice to "a person who is the subject of an investigation" (including a BOI), it must be noted that, within the context of a BOI, the provision of DDCS legal services is limited to "legal advice."

24. DDCS counsel are not mandated to act or appear on behalf of persons who are the subject of an administrative investigation, and are not normally made available to attend a BOI

Questions:

Interim Summary:

Stage 4 – Notice of adverse evidence

Introduction:

25. Notice of adverse evidence is given when the BOI president determines that evidence given is likely to have a negative impact on the officer or non-commissioned member.

Body of the lesson:

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26. QR&O 21.10(4) to (6) provide that if the board president determines that the evidence given at any time during the sitting of a BOI appears likely to adversely affect an officer or non-commissioned member, the board president, in addition to receiving the evidence of a witness, may permit the member in question to:

a. examine any evidence taken before being called as a witness;

b. be present during the remainder of the inquiry;

c. make a statement;

d. request that the president ask a witness further questions; and

e. request that the president call further witnesses.

27. DAOD 7002-4 (Examination of Witnesses) is more explicit in its direction. If a BOI determines that "a CF member, DND employee or any other person appears likely to be adversely affected by the evidence," the BOI president must:

a. provide written notice to the person that he or she is likely to be adversely affected by the evidence;

b. advise the person as to whether he or she will be called as a witness by the BOI or requested to provide a statement; and

c. include, with the written notice, a copy of the board's TOR.

28. An adverse finding with respect to a person must be supported by relevant adverse evidence. Adverse evidence refers to evidence that:

a. suggests professional misconduct or incompetence;

b. suggests malfeasance; or

c. otherwise harms a person's reputation.

29. Therefore, if a person may be adversely affected by a BOI, the board president shall:

a. give notice to the adversely affected person;

b. give the person, prior to being called as a witness, the opportunity to review all relevant evidence heard by, or documents submitted to, the BOI;

c. allow the person to be present for the remainder of the investigation;

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d. allow the person to make a concluding statement to the BOI; and

e. advise the person of the right to request that:

i. any witness previously heard be recalled;

ii. additional questions be put to any witness called by the BOI;

iii. additional witnesses be called; and

iv. a letter of closure be provided by the approving authority

30. Determination that evidence received / expected in fact not adverse, and adverse findings will not be made against a NOAE recipient, president of BOI / SI investigator may cancel the NOAE.

31. Prior to cancellation, legal advice shall be sought from legal advisor to BOI or nearest JAG rep if SI

Questions:

Interim Summary:

Stage 5 – Powers to compel witnesses

Introduction:

32. Military witnesses can be summoned to appear before a BOI. More typically, however, serving military personnel are ordered to appear before the board by order of the board president. In practical terms, the board president and the CO of a witness will normally resolve in advance any potential conflicts that might arise relating to the appearance of a witness before the board. Civilian witnesses can be issued a summons, pursuant to paragraph 45(2)(a) of the NDA.

Body of the lesson:

33. Failure to obey a summons issued under the NDA is an offence, punishable on summary conviction, which carries a maximum possible fine of $500 or a maximum of six months imprisonment. However, a BOI has no powers of arrest to bring witnesses before them.

34. Enforcing an NDA summons against a person not subject to the Military Code of Service Discipline requires the involvement of a civilian crown attorney to bring the

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matter before a civilian criminal court. If such a problem is encountered or anticipated, early consultation with the board's legal adviser is recommended.

35. There is no specific form for a summons prescribed by either the NDA or QR&O Chapter 21 (Summary Investigations and Boards of Inquiry). A sample summons is set out in DAOD 7002-4 (Examination of Witnesses).

36. Legal advisers should be consulted and involved in the production of any summons, as well as the coordination for ensuring that any summons is properly served. As a practical matter, a briefing provided either in advance or concurrently with the summons as to the role of the BOI and the reason for the requested participation of the person will usually encourage positive participation in the process.

Questions:

Interim Summary:

Stage 6 – Preparation of questions for witnesses

Introduction:

37. Prior to the start of a BOI it is generally accepted practice to prepare potential questions for witnesses

Body of the lesson:

38. Preparation of questions for witnesses can be done with the assistance of the legal advisor to the board. Review of witness interviews, documents and records should assist the board with formulating appropriate questions.

39. A question bank should never preclude the board from asking questions that were not previously contemplated but are appropriate in the circumstances as the process unfolds

Questions:

Interim Summary:

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Stage 7 – Witness preparation

Introduction:

40. In an effort to organize the appearance of witnesses and reduce unnecessary repetition of evidence, it is an acceptable practice to conduct preliminary interviews in advance of hearings.

Body of lesson:

41. Advisors can and do sometimes participate in this screening process. Such preliminary interviews can permit the board to:

a. establish the relevance of each witness' evidence, as well as the extent of their knowledge of the matter under investigation;

b. determine the order in which witnesses should be called to testify, thereby allowing the evidence to unfold in a chronological sequence that will assist in re-creating the event or events;

c. prepare the primary questions that should be asked of each witness;

d. canvass each witness prior to the day of their testimony to determine whether they have any documents or visual aids that they wish to put into evidence (i.e., time is saved by allowing copies to be made in advance, thereby avoiding the need to recall a witness merely to enter exhibits into evidence); and

e. identify potential problems with any witnesses or their evidence, in order to seek timely legal advice, where necessary.

42. Preliminary interviews are also good opportunities to caution witnesses not to discuss any of their evidence with anyone, including other witnesses, before they have testified. Preliminary interviews can be conducted by telephone, by having witnesses submit written statements, or by having witnesses complete questionnaires.

43. In one case, a type of preliminary interview was conducted when board members gathered together key witnesses and visited a military training area in order to 'walk the ground' while receiving a general description of a fatal training accident. In that case, a re-enactment of the incident was carried out and videotaped. This videotape helped the board members visualize the scene of the accident and better relate the testimony of each witness.

Questions:

Interim Summary:

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Stage 8 – Witness testimony

Introduction:

44. There can be little debate that a critical phase of any inquiry is the period during which the board hears testimony from witnesses. This evidence is often the foundation on which the board will make its subsequent findings. It is the time when the board is most likely to run into legal issues such as perjury, self-incrimination, allegations of offences and adverse evidence. Managing witnesses and receiving testimony in an orderly fashion can be a challenge even for experienced trial judges. Ensuring that all of the rights and entitlements of witnesses are respected is often a significant challenge for board members.

Body of the lesson:

45. A witness log should be established, indicating the name and order in which witnesses testified, as well as the time and duration of each person's testimony. This can be particularly useful when reviewing or referring back to recordings of the evidence. Wherever practical, witnesses should testify in a logical sequence that will assist in re-creating the event or events.

46. Witnesses shall be excluded from the hearing room when they are not testifying, except as provided for in QR&O 21.12 (Meetings Not Open to the Public).

47. Each witness should be called into the hearing room from the waiting room and brought forward to the witness table. Ideally, it will have been determined in advance if a witness wishes to swear an oath or give a solemn affirmation.

48. Witness taking the oath should be directed to hold the book appropriate to their religion (i.e., Bible, Koran, Old Testament, etc.) in their right hand and read the following oath from a card:

> I swear that the evidence to be given by me shall be the truth, the whole truth, and nothing but the truth. So help me God.

49. For witnesses who object to swearing an oath in the above manner, they may take an oath "in such manner and form and with such ceremonies, as the witness declares it to be binding on the person's conscience." Alternatively, witnesses may read the following solemn affirmation:

> I solemnly affirm that the evidence to be given by me shall be the truth, the whole truth, and nothing but the truth.

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50. Following the oath or affirmation, each witness must be identified for the record. CF members should be asked to state their service number, rank and name. Civilian witnesses should provide their name and address.

51. Once the swearing-in and identification have been completed, it is appropriate to elicit initial evidence by inviting the witness to describe, in narrative form, what they know of the events in question.

52. The evidence should be introduced in accordance with the example provided DAOD 7002-1 (Boards of Inquiry). Following each witness' narrative evidence, the members of the board may then question the witness to clarify the evidence given and resolve specific issues.

53. To this end, board members may find it useful to establish ahead of time an order of questioning among themselves for each respective witness. Additionally, it is important to note that any documents to which a witness refers or introduces in evidence must be made exhibits of the BOI. Use of an exhibit stamp and the creation of an exhibit log are recommended.

Questions:

Interim Summary:

Stage 9 – Other evidentiary matters

Introduction:

54. Under the NDA, witnesses can be required to produce to the board, documents and other things under the person's control. 'Other things' can include the production of physical evidence such as military records, electronic information storage media (such as a computer hard drive), physical things and personal property of the witness (e.g., diaries and field message pads).

Body of the lesson:

55. Whether the record or thing to be produced is 'under the person's control' will usually be a question of fact (i.e., does the person have the care and custody of the record or thing). Witnesses in positions of authority, such as COs, will be deemed to have control over all records and things in their unit, other than the personal property of another person.

56. In some cases, it may be that the witness who has been ordered or issued a summons to appear before the board no longer has control over the record or thing sought. This situation occasionally occurs in cases involving military personnel who have been posted or transferred to other duties subsequent to the occurrence of the

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incident under investigation. When this occurs, the board must contact the CO of the unit in possession of the record or thing in question and arrange for the witness to be granted temporary access to it. This process will, therefore, enable the witness to make production of the record or thing as evidence before the board, as required.

57. While it is not necessary to qualify expert witnesses appearing before a BOI in the same, formal manner in which they are qualified in a civilian court, it is nevertheless helpful to briefly review, on the record, their qualifications and experience before they commence providing actual testimony. This evidence will assist in determining the appropriate weight to be given to their expert opinions. Wherever possible, expert witnesses should be requested to provide the BOI with a copy of their curriculum vitae, in order that they can be marked and filed as exhibits.

Questions:

Interim Summary:

Stage 10 – Powers of an SI investigator

Introduction:

58. Officers or NCMs appointed to carry out an SI have limited investigative powers. Commissioned officers however, retain their inherent authority and as such, can order uncooperative subordinates to submit to an interview and answer questions. The same is true of NCMs in that they can require any NCM to whom they are senior to be interviewed by the exercise of their military authority as provided under QR&O 3.20 (Command Generally).

Body of the lesson:

59. The TOR for the investigation may give the investigating officer or NCM additional authority. For example, SI investigators may be authorized access to certain files or records to which they would not normally have access. Similarly, an SI investigator is implicitly authorized to interview and require statements from any and all military members who are under the authority of the officer who ordered the SI and appointed the investigator.

60. Should an occasion arise where key witnesses are not within the convening authority's chain of command, every effort should be made to accommodate the investigation by the CO with authority over the witness.

61. While the authority of an SI investigator over military personnel may be relatively clear, the same is not true with respect to authority over civilians. An SI investigator may request that a civilian witness provide a statement or submit to an interview. However,

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the investigator has no power to compel a civilian, even a public service employee in DND, to provide statements.

62. Conversely, CF members shall provide statements to an SI investigator upon the request of the investigator. "A CF member providing oral or written information to an SI investigator may consult with an advisor who may be of any rank, or a civilian."

Questions:

Interim Summary:

Stage 11 – Gathering of evidence

Introduction:

63. Few military members receive formal training in interviewing techniques. However, given the fact that the most common source of information for an SI is witnesses, an investigator's ability as an effective interviewer may be the determining factor in the usefulness and validity of an SI.

Body of the lesson:

64. Because SI investigators are not empowered to administer oaths or solemn affirmations, they must rely on "unsworn" information from witnesses. The fact that witnesses are able to provide information through this more informal process only increases the need for SI investigators to carefully assess the witnesses and the information obtained from each in order to determine:

a. relevance - how the information provided relates to the matter being investigated;

b. reliability - how well was the witness able to perceive the events about which they are relating; and

c. credibility - to what degree may the information be tainted by bias or individual motive(s) of a witness.

65. SI investigators are not required to tape record and transcribe the information obtained from witnesses. Nevertheless, SI investigators are expected to record all information received in the course of an investigation to a high standard of accuracy and completeness. In the course of an SI, information from a witness will normally come to the investigator by one of these three means:

a. via the provision of written statements;

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b. by making oral responses to questions; and

c. through the provision of documents.

66. The investigator will obtain information in a variety of forms and from a variety of sources and, given that witness interviews will rarely be recorded verbatim, the ultimate reliability and validity of the investigator's findings and recommendations will depend directly on:

a. effective interviewing technique;

b. accurate note-taking (or other methods of primary, information recording);

c. the memory of the investigator(s); and

d. astute assessment of the information and its sources by the investigator(s).

67. Ideally, all witnesses should be requested to provide a written statement setting out their knowledge of the matter under investigation. Once a statement has been provided, the investigator will typically ask follow-up questions to elicit more information or to clarify information already provided.

68. Regulations and orders do not require the use of recording equipment by SI investigators, but their use is permitted. An officer who orders an SI to be conducted may direct that testimony will be recorded using audio or video recording equipment. An investigator may choose to record testimony in a similar manner. In either case, any such recordings must be safeguarded in the same manner as any other record relating to an administrative investigation. Copies must be kept in the file and such recordings will be subject to requests under the *Access to Information Act* or *Privacy Act* in the same manner as any other record. ~~It will either be a matter of direction, as contained in the TOR, or a judgment call on the part of the SI investigator as to whether recording devices should be used when interviewing witnesses. In the event an investigator uses recording devices to to what??? WTF??? This just ends...~~

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69. The role of an SI investigator is to conduct an investigation of the matter described in the TOR and within the limits prescribed by those TOR. The investigator shall make only those findings and recommendations that are specified in the TOR by the authority ordering the SI. Occasionally, the circumstances may require findings and recommendations that are beyond the scope of the TOR. In these cases, the investigating officer should consult with the officer who ordered the SI to determine if the TOR should be amended to cover the additional subject(s) or whether the investigation findings and recommendations should be restricted to the original TOR requirements.

70. While it is clear that an SI investigator is an official agent of the CO or commander who ordered the SI, all SIs should be conducted in such as way as to

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promote confidence in the accuracy and validity of the investigation's outcome. As such, investigators should:

a. not pre-judge the outcome of the investigation but, rather, make their findings based on the information gathered;
b. within allowed time constraints, and any other parameters prescribed in the TOR, make all reasonable efforts to gather all available information that is relevant to the matter being investigated; and

c. make only those findings and recommendations that can be supported by the information gathered and required under their TOR.

Questions:

Interim Summary:

Stage 12 – Notice of adverse evidence in an SI

Introduction:

71. Procedure to be followed in the circumstance of a notice of adverse evidence issued in the course of a SI is very similar to the situation where an NOAE is given during a BOI.

Body of the lesson:

72. If a person has received a NOAE during a SI, the investigator shall give the person a reasonable opportunity to review all relevant evidence and allow the person to make a written statement to the investigator in response to all relevant evidence.

73. The investigator shall advise the person of the right to request that any witness previously heard be re-interviewed and additional questions be put by the investigator to any witness.

74. The person issued an NOAE shall have the right to request that additional witnesses be called and a letter of closure be provided by the final approving authority.

75. A person who has received an NOAE shall be sent a letter of closure. The final approving authority shall provide the letter of closure stating, as applicable, that no finding or recommendation has been made in respect of the person; or if a finding or recommendation has been made in respect of the person the nature of the finding or recommendation and the reason for not concurring with any finding or recommendation if such is the case.

Questions:

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Interim Summary:

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PART 4 – CONCLUSION

Summary:

76. The topics covered in this lesson included various aspects associated with the conducting of an administrative investigation . The candidates have been informed of applicable regulations and policies and the role of AISC. The scope of investigation for BOI and SI. The composition of the board and the selection of advisors. Additionally, the candidates have been informed of issues related to attendance at proceedings and openness of proceedings.

Confirmation:

77. Done in a discussion format. Ask some confirmation questions. No group answers, remind students to raise their hand before speaking. Or instructor may ask particular students to answer questions.

Conclusion:

78. BOI and SI were the focus of this lesson. The processes and procedures followed for convening a BOI or ordering an SI may not be the same for other types of investigations. As it is quite likely that every legal officer will be involved with either a BOI or SI (or both) at some point in their career and therefore it is vital that all legal officers know and understand the administrative investigation process and endeavor to remain current on regulations, policies and procedures that govern administrative investigations.

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PART 1 –LESSON IDENTIFICATION

EO 010.04 – Advise on the administrative investigation report

Performance: Advise on the administrative investigation report
Conditions:

a. **given**: References: including but not limited to relevant factual context, legislation, policies, case law, (may also include prior legal opinions) NDA, QR&O,DAOD

b. **denied**: nil

Standard: At the conclusion of this lesson the individual candidate shall know and understand XXX, and be able to apply this knowledge in their capacity as a legal advisor

Main Teaching Points:

- BOI report
- SI report

Method: This EO will be accomplished by Development Lesson. Students will be required to read any pre-reading packages assigned and be prepared to respond to questions.

Duration: X period (XX min)

References: NDA, QR&O, DAOD

Training/Learning Aids: Standard classroom with whiteboard and projection system, handouts, student disk, student desk book, Legal Officer Qualification Course (LOQC) Instructors Handbook – Module(s) [XXX]

Note to the instructor: This developmental lesson shall be conducted in structured manner, using the list of "questions to the class" provided in the following pages. Instructors are to complement each segment of the developmental lesson by follow-up and direct questions taking into account the flow and direction of the discussion. Interim summaries shall be conducted at the end of each segment to confirm the material was learned and provide a basis from which the discussion can progress to the next segment. A review of the main teaching points will then take place at the end of the period.

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PART 2 – INTRODUCTION

Objective:

1. The instructor shall introduce the subject of advising on administrative investigation reports. By the end of the lesson the candidates should have a basic knowledge of these topics which would allow them to provide legal advice as it pertains to this subject

Introduction:

2. The administrative investigation is concluded by means of a written report. This report is vital in conveying to the convening authority or the investigative authority the findings, and recommendations of the administrative investigations. No matter how well the investigation is conducted, no matter how through the hearings or interviews it will all be of little value if the report is poorly written and does not convey the appropriate message.

Outline:

3. During this lesson the candidates will be introduced to administrative investigation reports and the role of the legal officer in the report writing process It is important for legal officers to understand the requirements of the report and how the report should be written so they are better situated to provide appropriate advice when called upon to do so.

Stage 1 – Legal requirements of BOI report

Stage 2 – Analysis of BOI

Stage 3 – Attributability

Stage 4 – Findings and recommendations of BOI

Stage 5 – Role of legal advisor in BOI report preparation

Stage 6 – Legal requirements of SI report

Stage 7 – Findings and recommendations of SI

Stage 8 – Role of legal advisor in SI report preparation

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PART 3 – BODY OF THE LESSON

Stage 1 – Legal requirements of BOI report

Introduction:

4. The requirements of the BOI report are contained in DAOD 7002-1, Boards of Inquiry. AISC also provides guidance and advice on BOI report drafting and completion and should remain informed of the progress the board is making as it works through the writing phase.

Body of the lesson:

5. A BOI shall produce a report of the investigation such that the analytical process of the BOI can be critically evaluated. Each paragraph in a BOI report shall be numbered to assist with the review process. The report shall consist of the following:

a. a declaration by the BOI containing the signatures of all members indicating their endorsement of the content of the report;

b. a table of contents;

c. an executive summary;

d. a statement by the BOI if required (see the Statement by the BOI block);

e. a contextual narrative (see the Contextual Narrative block);

f. a summary of evidence if required (see the Summary of Evidence block);

g. an analysis, including findings and recommendations;

h. annexes, including:

i. the convening order;

ii. any notice of adverse evidence (NOAE) and any cancellation of an NOAE;

iii. a record of requests to the BOI and decisions by the BOI, including any request made by a person who receives an NOAE and the response to the request;

iv. exhibits;

v. evidence, including: •transcripts of testimony; and

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vi. documents and things obtained and used by the BOI but not introduced as exhibits;

i. any interim reports required by the convening authority; and

j. minutes setting out the comments of the convening authority and other review authorities in respect of the report.

6. The AISC shall provide a recommended template to be used in preparing the report. An Administrative Investigation Review and Staffing Form shall be attached to the report and completed as the report proceeds through the approval process.

7. The president shall ensure that a draft of the report is forwarded to the AISC for review and application of best practices and lessons learned.

Questions:

Interim Summary:

Stage 2 – Analysis of BOI

Body of the lesson:

8. In the case of a complex or highly technical BOI, a summary of evidence shall normally be included in the report. The president may direct that a summary of evidence be prepared to:

a. assist review authorities to understand the evidence;

b. discuss theories of causation; or

c. explain the testimony of experts.

9. The findings of a BOI shall be supported by relevant evidence contained in the report. The exact source of the evidence, such as the name, unit and position of the witness who provided a document, shall be indicated clearly in the Findings section of the report.

10. A BOI shall only make an adverse finding against a person if:

a. the finding is necessary to satisfy the requirements of the convening order;

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b. the BOI has complied with the instructions as to adverse findings under the Adverse Impact of Evidence and Incriminating Statements map in DAOD 7002-4, Examination of Witnesses; and

c. the finding is not expressed in language of criminal or civil liability.

11. Example: A BOI is convened to investigate the circumstances involving a vehicle accident and personal injuries during a road move. The BOI may make a finding that the officer in charge "failed to properly supervise personnel during the road move of G Battery from CFB Shilo to CFB Wainwright during 25-27 June 2009." The BOI shall not make a finding that the officer "negligently performed imposed duties" as such language could imply the contravention of section 124 or 129 of the National Defence Act.

12. An adverse finding respecting a person shall be supported by relevant and credible evidence.

Questions:

Interim Summary:

Stage 3 – Attributably

Introduction:

13. The nature of the assessment of attributably has changed over time. Attributably used to be determined by an assessment on the balance of probability (50+1).

14. This test was based on an assessment of whether any elements of military service may have contributed to the death. Whether any relevant elements of personal history may have contributed to the death and whether the death was attributable to military service. This was deemed to be invasive and onerous, especially when a BOI was convened due to suicide. A new test was developed and the convening orders now reflect this change.

Body of the lesson:

15. The comments of Dr. Lorenzen (who???) sum up the problems with the original test used to determine attributably:

> In asking a BOI to determine whether death was attributable to military service in the case of a suicide, the [...] BOI is essentially being asked to review all aspects of a member's life and any underlying mental health conditions and try to reconstruct the mental state the member was in when the decision to commit suicide was made. [...]. This review is known as a psychological or psychiatric autopsy and is an activity that is the purview of mental health professionals.[...] BOI members do not have the training or

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> expertise to conduct this type of autopsy …the requirement to make a clear finding on whether or not the death was related to service can lead to oversimplification of the complex interplay of internal and external factors that culminates in an individual's decision to commit suicide.

16. Now attributably is assessed on the basis of whether the death was attributable to military service.

17. This finding aims at assessing whether the death arose out of or was directly connected to military service. The Convening Authority recognizes that there will be circumstances where this finding will be difficult to make. In attempting to answer whether the death was attributable to military service, the BOI must look only at elements of military history that may have contributed to the death.

18. A conclusion that the death was attributable to military service will be possible if there is some nexus or causal relationship (not necessarily a direct or proximate causal relationship) between military service and the member's death that is not merely incidental or fortuitous.

Questions:

Interim Summary:

Stage 4 – Findings and recommendations of BOI

Introduction:

19. The findings of a BOI shall be supported by relevant evidence contained in the report. The exact source of the evidence, such as the name, unit and position of the witness who provided a document, shall be indicated clearly in the Findings section of the report.

Body of the lesson:

20. A BOI shall only make an adverse finding against a person if:

a. the finding is necessary to satisfy the requirements of the convening order;

b. the BOI has complied with the instructions as to adverse findings under the Adverse Impact of Evidence and Incriminating Statements map in DAOD 7002-4, Examination of Witnesses; and

c. the finding is not expressed in language of criminal or civil liability.

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21. Example: A BOI is convened to investigate the circumstances involving a vehicle accident and personal injuries during a road move. The BOI may make a finding that the officer in charge "failed to properly supervise personnel during the road move of G Battery from CFB Shilo to CFB Wainwright during 25-27 June 2009." The BOI shall not make a finding that the officer "negligently performed imposed duties" as such language could imply the contravention of section 124 or 129 of the National Defence Act.

22. An adverse finding respecting a person shall be supported by relevant and credible evidence.

Questions:

Interim Summary:

Stage 5 – Role of legal advisor in BOI report preparation

Introduction:

23. There is no mandated or prescribed role for the legal officer in the BOI report preparation.

Body of the lesson:

24. As a subject matter expert the legal officer assigned to a BOI is expected to provide legal advice or advice that has a legal nexus. However, this does not prevent the legal officer from reviewing the report and making suggestions that would aid the board in producing their report.

25. The legal officer must however always be vigilant to refrain from taking over the writing of the report or advising in such a way that they influence the outcome of the report in such a way that the report does not reflect the findings and recommendation of the board but rather those of the legal officer.

26. The legal officer should be available to assist the board during the writing phase, reviewing drafts of the report and making appropriate recommendations throughout the writing process.

Questions:

Interim Summary:

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Stage 6 – Legal requirements of SI report

Introduction:

27. The report of an SI must be delivered in typewritten, memoranda form to the officer who ordered the SI. Whether other records such as witness statements, interview notes, or other documents will be attached to the report is an issue normally specified in the TOR.

Body of the lesson:

28. An SI report is normally prepared in 'synopsis form,' providing a summary of information received and presenting findings and recommendations without lengthy substantiation.

29. In the case of a lengthy or complicated investigation, the format prescribed for BOI minutes may be used and adapted, as necessary for an SI.

30. An SI report is a government record and is subject to the provisions of the Privacy Act (PA) and Access to Information Act (AIA). While there are provisions in the AIA authorizing the exemption of "ongoing investigations" from disclosure, once an SI has concluded and the SI report has been submitted to the officer who ordered the investigation, it should be assumed that much of the report might be disclosed to the public.

31. SI investigators should also be aware that 'other information' obtained and recorded during the investigation, even if it is not submitted as part of the SI report, is part of a government record and subject to the same laws regarding retention and disclosure.

32. Other information' includes notes made by the SI investigator(s). In this regard, notes made by an investigator are not considered personal notes as they are made in the course of conducting government business.

Questions:

Interim Summary:

Stage 7 – Findings and recommendations of SI

Introduction:

33. The findings and recommendations of the investigating officer should be in alignment with the TOR and based solely upon information received during the course of the investigations.

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Body of the lesson:

34. Recommendations of the investigator should be based on information received during the course of the investigation.

35. When the report is completed, the required number of copies, as stated in the TORs, shall be forwarded to the officer who ordered the SI. As the first level of review, the officer who ordered the SI shall:

a. complete a comprehensive review of all findings and recommendations to ensure their support by the evidence in the report;

b. if further evidence, corrections or amendments are required, order that the SI be reopened;

c. ensure that the investigator has applied required principles of procedural fairness during the conduct of the SI;

d. ensure that any person against whom an adverse finding has been made received an NOAE;

e. indicate if concurring or not concurring with each of the findings and recommendations and, if not concurring, provide reasons;

f. state the administrative, operational and technical action taken or contemplated, including any:

   i. write-off;

   ii. administrative deduction;

   iii. change in procedures;

   iv. unsatisfactory condition report action; or

   v. preventive measure;

g. ensure any preventive measure is instituted as soon as possible;

h. add other pertinent comments, including, if applicable, orders for dissemination of information or recommended training that could prevent a recurrence; and

i. advise the investigator of any error, omission or shortcoming relating to the conduct of the SI.

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36. The matter being investigated determines whether the officer who ordered the SI may approve the report or shall submit it to a higher authority for review and approval.

Questions:

Interim Summary:

Stage 8 – Role of legal advisor in SI report preparation

Introduction:

37. A legal advisor is not required by regulation to review an SI report before it is submitted to the initiating authority. However, more and more it has become a policy that a legal officer review the draft report of the investigator and provide advice and recommendations as may be appropriate in the circumstances.

Body of the lesson:

38. The legal officer may review the report and provide advice to the investigator on errors or omissions or offer suggestions that may assist the investigator in producing a complete and thorough report.

39. It is not the legal officers role to write or rewrite the report for the investigator

Questions:

Interim Summary:

PART 4 – CONCLUSION

Summary:

40. The topics covered in this lesson include BOI and SI procedures and reporting including legal requirements of BOI report, analysis of BOI attributably, findings and recommendations of BOI, role of legal advisor in BOI report preparation
legal requirements of SI report, Findings and recommendations of SI and the role of legal advisor in SI report preparation

Confirmation:

41. Done in a discussion format. Ask some confirmation questions. No group answers, remind students to raise their hand before speaking. Or instructor may ask particular students to answer questions.

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Conclusion:

42. All the actions carried out during the administrative investigation are done to gather and elicit information that will assist the board or the investigator in formulating opinions and conclusions and offering recommendations. The report is the only means that board or investigator has to present their findings and recommendations and it must be a solid, well written document. As a legal officer your advice to the board, or the investigator you will be called upon to review drafts and final editions of administrative investigation reports and it is vital that you understand what is required in these reports and how you can assist the board, or investigator, in producing a solid final product.

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PART 1 –LESSON IDENTIFICATION

EO 010.05 – Advise on post report action

Performance: Advise on post report action

Conditions:

a. given: references, including but not limited to relevant factual context, legislation, policies, case law, (may also include prior legal opinions) NDA, QR&O,DAOD

b. denied: nil

Standard: At the conclusion of this lesson the individual candidate shall know and understand post administrative investigation report requirements, and be able to apply this knowledge in their capacity as a legal advisor

Main Teaching Points:
- post BOI report action
- post SI report action

Method: This EO will be accomplished by Development Lesson. Students will be required to read any pre-reading packages assigned and be prepared to respond to questions.

Duration: X period (XX min)

References: NDA, QR&O, DAOD

Training/Learning Aids: Standard classroom with whiteboard and projection system, handouts, student disk, student desk book, Legal Officer Qualification Course (LOQC) Instructors Handbook – Module(s) [XXX]

Note to the instructor: This developmental lesson shall be conducted in structured manner, using the list of "questions to the class" provided in the following pages. Instructors are to complement each segment of the developmental lesson by follow-up and direct questions taking into account the flow and direction of the discussion. Interim summaries shall be conducted at the end of each segment to confirm the material was learned and provide a basis from which the discussion can progress to the next segment. A review of the main teaching points will then take place at the end of the period.

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PART 2 – INTRODUCTION

Objective:

1. The instructor shall introduce the topic of post administrative investigation report action. By the end of the lesson the candidates should have a basic knowledge of these topics which would allow them to provide legal advice as it pertains to this subject

Introduction:

2. As stated in the previous EO, the report of the administrative investigation is vital to the success of the BOI or SI. Once the report is written it is not simply placed upon a shelf. There are a number of processes and actions that must take place to ensure that the BOI or SI is properly concluded and all appropriate post report actions are taken.

Outline:

Stage 1 – Required action under DAOD re: BOI — **Formatted:** Font: Not Bold

Stage 2 – Legal advice to BOI convening authority — **Formatted:** Font: Not Bold

Stage 3 – Legal advice to BOI reviewing authority and approving authority — **Formatted:** Font: Not Bold

Stage 4 – BOI board consultation with the family — **Formatted:** Font: Not Bold

Stage 5 – Letters of closure related to BOI — **Formatted:** Font: Not Bold

Stage 6 – Release of the BOI report — **Formatted:** Font: Not Bold

Stage 7 – Required actions under DAOD re: SI — **Formatted:** Font: Not Bold

Stage 8 – Advice to officer that ordered SI — **Formatted:** Font: Not Bold

Stage 9 – Advice to SI reviewing authority — **Formatted:** Font: Not Bold

Stage 10 – Advice to SI approving authority — **Formatted:** Font: Not Bold

Stage 11 – Letters of closure related to SI — **Formatted:** Font: Not Bold

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PART 3 – BODY OF THE LESSON

Stage 1 – Required action under DAOD re: BOI

Introduction:

3. DAOD 7002-1 provides guidance to boards on not only the preparation of the BOI report but also the follow on procedures that must be followed. The report must be submitted to the appropriate authority with the appropriate accompanying documents and then prescribed reviews and approvals must be completed. In this stage of the lesson the candidates will be introduced to the procedures associated with the staffing and review of BOI reports.

Body of the lesson:

4. The first step that must be taken after the report is written is the submission of the report.

5. The president shall submit the report, with the required number of copies as stated in the convening order, to the convening authority, with an accompanying Administrative Investigation Review and Staffing Form obtained during mandatory BOI training. This form shall accompany the report throughout the review process. The AISC may be contacted for a sample form which may be used by the board.

6. The report will then undergo the first level of review. The convening authority is responsible for the first level of review.

7. As the first level of review, the convening authority shall:

a. complete a comprehensive review of all findings and recommendations to ensure their support by the evidence in the report;

b. if further evidence, corrections or amendments are required, order that the BOI be reassembled;

c. ensure that the members have applied required principles of procedural fairness during the conduct of the BOI;

d. ensure that any person against whom an adverse finding has been made received an NOAE;

e. indicate in the minutes of the report if concurring or not concurring with each of the findings and recommendations and, if not concurring, provide reasons;

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f. state the administrative, operational and technical action taken or contemplated, including any:

i. write-off;

ii. administrative deduction;

iii. change in procedures;

iv. unsatisfactory condition report action; or

v. preventive measure;

g. ensure any preventive measure is instituted as soon as possible;

h. add other pertinent comments, including, if applicable, orders for dissemination of information or recommended training that could prevent a recurrence; and

i. advise the members of any error, omission or shortcoming relating to the conduct of the BOI.

8. The matter investigated determines whether the convening authority may approve the report or shall submit it to a higher authority for review and approval.

9. The convening authority shall submit the report to all applicable higher authorities for review or approval as soon as possible upon completion of the first level of review.

10. If a higher authority requires more than 45 days for review prior to submitting the report to the next level, the higher authority shall advise the authority at the next level of the:

a. reasons for the delay; and

b. expected submission date.

11. The total review and approval process should not take more than six months.

12. After having reviewed the report, any higher authority shall:

a. indicate in the minutes of the report if concurring or not concurring with each of the findings and recommendations and, if not concurring, provide reasons;

b. state the administrative, operational and technical action taken or contemplated, including any:

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i. write-off;

ii. administrative deduction;

iii. change in procedures;

iv. unsatisfactory condition report action; or

v. preventive measure;

c. ensure any preventive measure is instituted as soon as possible; and

d. add other pertinent comments including, if applicable, orders for dissemination of information or recommended training that could prevent a recurrence.

13. The higher authority may also take any other action as set out in the First Level of Review block, as appropriate in the circumstances.

14. The higher authority shall submit the report to the authority at the next level if required by QR&O, a directive or an order, or a higher authority or the higher authority through whom the report was submitted has no authority to approve the report or implement the recommendations made.

15. The final approving authority shall:

a. review the report;

b. approve or not approve each of the findings and recommendations and, if not approving, provide reasons;

c. give direction as appropriate;

d. send a letter of completion to the convening authority;

e. for a BOI relating to the serious injury or death of a CF member, send a letter of closure to the seriously injured CF member or the representative of the deceased CF member; and

f. send the original report, once approved, including all supporting documents and the staff action plan, to the AISC for retention purposes.

16. A convening authority or higher authority who has authority to implement one or more of the recommendations shall prepare and implement a staff action plan which

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provides guidance for implementation of approved recommendations and a system for tracking progress.

17. The staff action plan shall be included with the report and forwarded to the next level of review until it reaches the final approving authority.

Questions:

Interim Summary:

Stage 2 – Legal advice to BOI convening authority

Introduction:

18. Legal advice to a BOI convening authority is usually provided by their unit legal advisor.

Body of the lesson:

19. The legal advisor to the convening authority may be called upon to assist the convening authority with understanding the connection of evidence to recommendations made by the board.

20. The legal advisor may be called upon to confirm the principles of procedural fairness have been followed and advise the convening authority on the way ahead if they have not.

21. The legal officer in this situation is there to assist in any way they can but as per earlier caution they must be mindful of their role and stay within their area of expertise when providing advice.

Questions:

Interim Summary:

Stage 3 – Legal advice to BOI reviewing authority and approval authority

Introduction:

22. Legal advice to the BOI reviewing authority and BOI approval authority is not that different from legal advice to the convening authority.

Body of the lesson:

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23. The legal advisor will provide advice as appropriate to assist the review authority or approval authority with carrying out the tasks required of them to complete the BOI process.

Questions:

Interim Summary:

Stage 4 – BOI board consultation with injured CAF member or family

Introduction:

24. Once the convening authority who convened a BOI to investigate the serious injury or death of a CF member has completed the first level of review of the report, the president shall conduct a preliminary meeting with the seriously injured CF member or a representative of the deceased CAF

Body of the lesson:

25. During this preliminary meeting the convening authority may discuss general information related to the conduct of the BOI. He, or she, will inform the member, or family representative, of the findings and recommendations as they relate to the seriously injured or deceased CF member.

26. The convening authority will inform the member, or the family representative, whether the convening authority did not concur with any of the findings or recommendations and finally they will provide a severed copy of the report, once approved at the highest level.

27. It is vitally important for the convening authority to maintain communications with the member, or family representative, throughout the review process.

28. The president should indicate to the seriously injured CF member or representative that the report is subject to change upon review by higher authorities.

Questions:

Interim Summary:

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Stage 5 – Letters of closure related to BOI

Introduction:

29. There are two possible letters of closure related to a BOI. A letter of closure to a complainant and a letter of closure to a person who received a NOAE

Body of the lesson:

30. After the completion of a BOI, the final approving authority shall, upon request, provide a letter of closure to a person who made a complaint that resulted in the conduct of the BOI.

31. The regulations do not provide guidance on the content of the letter of closure and the final authority should consult with their legal advisor before issuing a letter of closure.

32. A person who has received an NOAE shall also be sent a letter of closure. The final approving authority shall provide the letter of closure stating, as applicable that either no finding or recommendation has been made in respect of the person or if a finding or recommendation has been made in respect of the person the nature or substance of finding or recommendation that has been made.

33. If the final authority does not concur with the findings or recommendations of the board he or she must include this information in the letter of closure and provide the reasons for not concurring with the finding or recommendation if such is the case.

Questions:

Interim Summary:

Stage 6 – Release of the BOI report

Introduction:

34. Release of the report will be controlled by different processing depending on who is seeking a copy of, or information from the report.

Body of the lesson:

35. All requests by the public for information concerning a BOI shall be referred to the Director Access to Information and Privacy (DAIP) at NDHQ.

36. The Government of Canada has existing arrangements and agreements with several provincial and territorial governments concerning access, use and disclosure of

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personal information. The purpose of these agreements is to administer or enforce laws or carry out lawful investigations.

37. Any request from a provincial or territorial government for a copy of a report shall be included with the report and forwarded to the DAIP as soon as possible.

38. A CF member requesting information concerning a BOI should refer to DAOD 1001-1, Formal Requests for Access to Departmental Information and DAOD 1001-2, Informal Requests for Access to Departmental Information.

Questions:

Interim Summary:

Stage 7 – Required actions under DAOD re: SI

Introduction:

39. DAOD 7002-2 governs SI and provides direction on the procedures and processes to be followed once the SI report has been written.

Body of the lesson:

40. When the report is completed, the required number of copies, as stated in the TORs, shall be forwarded to the officer who ordered the SI. As the first level of review, the officer who ordered the SI shall:

a. complete a comprehensive review of all findings and recommendations to ensure their support by the evidence in the report;

b. if further evidence, corrections or amendments are required, order that the SI be reopened;

c. ensure that the investigator has applied required principles of procedural fairness during the conduct of the SI;

d. ensure that any person against whom an adverse finding has been made received an NOAE;

e. indicate if concurring or not concurring with each of the findings and recommendations and, if not concurring, provide reasons;

f. state the administrative, operational and technical action taken or contemplated, including any:

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i. write-off;

ii. administrative deduction;

iii. change in procedures;

iv. unsatisfactory condition report action; or

v. preventive measure;

g. ensure any preventive measure is instituted as soon as possible;

h. add other pertinent comments, including, if applicable, orders for dissemination of information or recommended training that could prevent a recurrence; and

i. advise the investigator of any error, omission or shortcoming relating to the conduct of the SI.

41. The matter being investigated determines whether the officer who ordered the SI may approve the report or shall submit it to a higher authority for review and approval.

Questions:

Interim Summary:

Stage 8 – Advice to officer that ordered SI

Introduction:

42. Similar to the advice given to the convening authority for a BOI the legal advisor will advise the officer that ordered the SI on various aspects of the report and the follow on actions required.

Body of the lesson:

43. The legal officer may advise on sufficiency of the evidence to support findings and recommendations.

44. Advice on the application of the principles of procedural fairness may also be required from the legal officer.

45. The role of the legal officer at this stage in the process is that of a subject matter expert prepared to answer questions of a legal nature and guide an assist the officer that ordered the SI through the review and approval process

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Questions:

Interim Summary:

Stage 9 – Advice to SI reviewing authority

Introduction:

46. Once the officer who has ordered the investigation has concluded his or her review they will forward the report to higher authority for review and approval. A legal advisor will be available to the reviewing authority to provide advice as required.

Body of the lesson:

47. After having reviewed the report, a higher authority shall:

a. indicate if concurring or not concurring with each of the findings and recommendations and, if not concurring, provide reasons;

b. state the administrative, operational and technical action taken or contemplated, including any:

i. write-off;

ii. administrative deduction;

iii. change in procedures;

iv. unsatisfactory condition report action; or

v. preventive measure;

c. ensure any preventive measure is instituted as soon as possible; and

d. add other pertinent comments including, if applicable, orders for dissemination of information or recommended training that could prevent a recurrence.

48. The higher authority may also take any other action as set out in the First Level of Review block, as appropriate in the circumstances.

49. The higher authority shall submit the report to the authority at the next level if it is required by QR&O, a directive or an order, or a higher authority or if the higher authority

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through whom the report was submitted has no authority to approve the report or implement the recommendations made.

50. The legal officer should be prepared to provide advice to the review authority as appropriate

Questions:

Interim Summary:

Stage 10 – Advice to SI approving authority

Introduction:

51. The legal advisor's role in providing advice to the SI approving authority is very similar to the role of the legal advisor to the officer who ordered the investigation and the review authority.

Body of the lesson:

52. The final review authority is responsible for reviewing the report and approving or not approving each of the findings and recommendations. A legal advisor to the final authority may be called up to provide advice on sufficiency of evidence to support findings, procedural fairness and the legal sufficiency of any recommendations.

53. Once the final authority is satisfied with the report and has approved it he, or she shall give direction as appropriate to action recommendations and send a letter od completion to the officer who ordered the SI.

54. If the SI is related to the serious injury or death of a CF member, send a letter of closure to the seriously injured CF member or the representative of the deceased CF member. The final authority may choose to have the legal officer review this letter and they should be prepared to provide advice as appropriate.

55. If the SI requires approval by or on behalf of the CDS, the original report, once approved, including all supporting documents, shall be sent to the AISC for retention purposes.

Questions:

Interim Summary:

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Stage 11 – Letters of closure for NOAE related to SI

Introduction:

56. As is the case with BOI there are two possible types of letter of closure for an SI.

Body of the lesson:

57. After the completion of an SI, the final approving authority shall, upon request, provide a letter of closure to a person who made a complaint that resulted in the conduct of the SI. The final authority may wish to consult with their legal advisor to assist them with this task.

58. A person who has received an NOAE shall be sent a letter of closure. The final approving authority shall provide the letter of closure stating, as applicable that no finding or recommendation has been made in respect of the person or if a finding or recommendation has been made in respect of the person the nature of the finding or recommendation.

59. If the final authority does not concur with the findings and recommendations of the investigator the letter should also include the reason for not concurring with any finding or recommendation if such is the case.

Questions:

Interim Summary:

PART 4 – CONCLUSION

Summary:

60. The topics covered in this lesson include follow on action required once an administrative investigation report has been submitted. You have been informed of the actions required by the various review and approval authorities and what information can be released and should be released to those impacted by the report whether they be CAF members, family representatives or person who received NOAE

Confirmation:

61. Done in a discussion format. Ask some confirmation questions. No group answers, remind students to raise their hand before speaking. Or instructor may ask particular students to answer questions

Conclusion:

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62. Once an administrative investigation report is written the process is not complete. Post report action for all administrative investigations is an important step in the complete BOI/SI process and requires the same amount of diligence and effort as the investigation and report writing phases.

63. Legal officers must be prepared to provide comprehensive advice throughout all stages of administrative investigations.

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PO 011 – ADVISE ON CROWN LIABILITY ISSUES

PERFORMANCE: understand and provide legal advice on crown liability issues

CONDITIONS:

GIVEN: relevant factual context, policy, case law, reference material (including prior legal opinion)

DENIED: nil

ENVIRONMENT: CF unit, base, wing HQ, deployed domestically and internationally, under austere conditions

STANDARD: the legal officer shall, without direct supervision, provide legal advice on the administration of CF service, specifically:

a. Advise on risk assessment
b. Advise on claims for/against the crown
c. Determine claims for/against the crown

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PART 1 –LESSON IDENTIFICATION

EO 011.01 ADVISE ON RISK ASSESSMENT

Performance: Advise on risk assessment

a. **given:** References: including but not limited to relevant factual context, legislation, policies, case law, (may also include prior legal opinions) NDA, QR&O,DAOD
b. **denied:** nil

Standard: At the conclusion of this lesson the individual candidate shall know and understand risk assessment as it relates to Crown liability, when liability of the Crown is triggered, the common law evolution of liability of the Crown and liability of the Crown under the Quebec Civil Code. At the end of this lesson legal officers will be able to apply this knowledge in their capacity as a legal advisor when providing advice to the chain of command.

Main Teaching Points:

- statutory basis for liability of the crown

Method: This EO will be accomplished by Development Lesson. Students will be required to read any pre-reading packages assigned and be prepared to respond to questions.

Duration: 1 period (40 min)

References: NDA, QR&O, DAOD 7004-0 Claims By or Against the Crown and Ex gratia Payments, DAOD 7004-1 Claims and Ex gratia Procedures, DOAD 7004-2 Compensation for Loss or Damage to Personal Property *Crown Liability and Proceedings Act,* Treasury Board Policy on Legal Assistance and Indemnification

Training/Learning Aids: Standard classroom with whiteboard and projection system, handouts, student disk, student desk book, Legal Officer Qualification Course (LOQC) Instructors Handbook – Module(s) [XXX]

Note to the instructor: This developmental lesson shall be conducted in structured manner, using the list of "questions to the class" provided in the following pages. Instructors are to complement each segment of the developmental lesson by follow-up and direct questions taking into account the flow and direction of the discussion. Interim summaries shall be conducted at the end of each segment to confirm the material was learned and provide a basis from which the discussion can progress to the next segment. A review of the main teaching points will then take place at the end of the period.

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PART 2 – INTRODUCTION

Objective: The instructor shall introduce risk assessment as it relates to Crown liability, the *Crown Liability and Proceedings Act*, common law approach to Crown liability and liability of the crown under the Quebec Civil Code . By the end of the lesson the candidates should have a basic knowledge of these topics which would allow them to provide legal advice as it pertains to this subject.

Introduction: For the Government of Canada to continually improve the way it delivers services to Canadians, it is important that its management regime fosters flexibility, seeks opportunity and focuses on results. Integral to such a regime is effective risk management. The principles associated with the Government of Canada's Risk Management Framework provides flexibility to departments and agencies to tailor management solutions to meet their mandate and objectives. It enables strategic, risk-informed oversight and reduces the involvement of the Treasury Board and Treasury Board Secretariat.

Risk assessment is a critical aspect of risk management and is instrumental in the Crown being able to mitigate, or take steps to reduce, its exposure to litigation or a claim for damages.

Outline: During this lesson the candidates will be introduced to risk assessment as it relates to Crown Liability issues. It is important for legal officers to understand risk assessment and the many aspects of Crown liability so they are able to provide effective advice on Crown Liability issues.

Stage 1 *Crown Liability and Proceedings Act*

Stage 2 Common Law

Stage 3 Civil law in Quebec

Stage 4 Absence of Treasury Board volunteer policy

PART 3 – BODY OF THE LESSON

Stage 1 - *Crown Liability and Proceedings Act*

Introduction:

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1. A thorough knowledge of the *Crown Liability and Proceedings Act* will allow legal officers to understand how Crown liability is established. It will also inform them of what actions will trigger potential liability of the Crown and what processes are prescribed by the legislation should someone wish to proceed with an action against the Crown.

2. The *Crown Liability and Proceedings Act* (CLPA) sets out the statutory authority concerning Crown liability for damages regarding torts committed by Crown servants or for situations involving "a breach of duty attaching to the ownership, occupation, possession or control of property." By knowing this Act the legal officer will be in a better position to advise the chain of command of potential risk of claims against the Crown associated with actions of members of the CF or DND employees.

Body of the lesson:

3. The relevant section of the CLPA that sets out the above authority is section 3. This section of the CLPA relates to the liability of the Crown. Liability of Crown servants and agents exists under common law which will be discussed later in this lesson.

4. The CLPA also states when no proceedings can be initiated against the Crown or one of its servants. This does not mean that the Crown can act negligently and that risk analysis is not required. In situations that would not lead to a proceeding under the CLPA, risk assessment may still be an important factor but it would entail an analysis of what liability may attach to the Crown under other instruments, statues or policies.

5. For example, section 9 of the CLPA provides that no proceeding lies against the Crown or one of its servants in respect of a claim where a pension is payable. This is why CF members cannot bring a claim against the Crown for pain and suffering or general damages arising from permanent or partial disability even if the Crown were at fault. Payment is made through various benefit and compensation mechanisms under the New Veterans Charter and through Veterans Affairs. Thus it is not required for the chain of command to assess the risk of Crown liability under the CLPA should a member of the force be injured while on deployment.

Questions:

Interim Summary:

6. The CLPA is the key statutory instrument for an analysis of Crown liability, however it is not the only way that the Crown may be recognized as having incurred liability. The Common law and the Quebec Civil Code have also established grounds for when the Crown will be liable for damages suffered through actions of its servants.

Stage 2 - Common Law

Introduction:

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7. Historically, at common law, it was understood that the Crown could not be sued. This was not because it was immune from being held responsible for damages but because of the feudal principle that it was not possible to sue the Crown in the court that it set up and was responsible for. The process for bringing forward a complaint against the crown was by means of a petition of right. This process was abolished in Canada around the middle of the 20th century.

8. The approach taken under Crown proceeding statutes in Canada is that the same basic procedure is used to sue the Crown that is used to sue other parties.

Body of the lesson:

9. The Crown is liable for the damages for which, if it were a person, it would be liable in respect of a tort committed by a servant of the Crown, or a breach of duty attaching to the ownership, occupation, possession or control of property.

10. The Supreme Court of Canada in National Harbours Board v. Langelier (1968) 2 D.L.R. (3d) 81 summarized the liability of servants of the Crown at common law thus:

> "The appellant corporation has the capacity to be sued and is, for the purposes of the Act which created it, a servant of the Crown. But it does not thereby enjoy an immunity from claims in tort, if it acts wrongfully. A personal liability will result when a person, whether individual or corporate, although a Crown agent and purporting to act as such, commits an unlawful act. The position of an agent of the Crown is not different because the agent is a corporation and not an individual. If a corporation commits a wrongful act, it is liable therefor and it cannot escape liability by alleging that it is not responsible for anything done outside its corporate powers. This is true whether it is purporting to act as a Crown agent or not. If a corporation can be held liable civilly in damages for wrongs which it has itself committed or ordered, it is obvious that a person threatened with the commission of an unlawful act by a corporate Crown agent can seek the assistance of the Court to prevent the corporation from doing that which it is not authorized to do as a Crown agent. The appellant cannot prevent the Court from inquiring into the legal justification for its conduct merely by saying that because it is an agent of the Crown it is immune from suit."

11. The court went on to further state the understanding of the position of servants or agents of the Crown, at common law, in respect of a claim in tort, is this:

a. "First is the proposition that the Crown itself could not be sued in tort.

b. Second is the proposition that Crown assets could not be reached, indirectly, by suing in tort, a department of government, or an official of the Crown. As to

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a government department, there was the added barrier that, not being a legal entity, it could not be sued.

c. Third is the proposition that a servant of the Crown cannot be made liable vicariously for a tort committed by a subordinate. The subordinate is not his servant but is, like himself, a servant of the Crown which, itself, cannot be made liable.

d. Fourth is the proposition that a servant of the Crown, who commits a wrong, is personally liable to the person injured. Furthermore, if the wrongful act is committed by a subordinate, at his behest, he is equally liable, not because the subordinate is his servant, but because the subordinate's act, in such a case, is his own act."

12. Thus, absent legislation, the Crown could not be held liable for torts of its servants. A servant of the Crown could be sued, not as a servant of the Crown, but in their own individual capacity. Any judgments would be enforced against the individual not against the Crown. This will later lead us to an exploration of indemnification of Crown employees and the Treasury Board Policy on Indemnification of and Legal Assistance for Crown Servants later in this lesson.

13. Due to amendments made to the CLPA and the *Federal Courts Act* in 1992, the provincial superior courts now share jurisdiction with the Federal Courts. A plaintiff may choose to bring a proceeding against the Federal Crown in the Federal Court or in a provincial court unless a statute states otherwise. Certain statutes specifically state what level of court and action must be brought in, and if a plaintiff has commenced an action in the federal court they are barred from bringing an action in provincial court for the same matter.

Questions:

Interim Summary:

Stage 3 - Civil law in Quebec

Introduction:

14. In the Province of Quebec the Crown is liable for damages for which if it were a person it would be liable in respect of damages caused by the fault of a servant of the Crown or the damage resulting from the act of a thing in the custody of or owned by the Crown or by the fault of the Crown as custodian or owner.

15. Only damages that are the direct result of someone else's fault can be compensated for or repaired. There is therefore no right to compensation for damages that are the indirect result of someone else's fault, or that result from your own fault.

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16. If the damages result from contractual fault (that is, a person did not respect commitments made in a contract), compensation is only available for damages that could have been anticipated when the contract was made: loss of profits, lost time, money spent to deal with the situation, etc.

Body of the lesson:

17. *Quebec Civil Code*: 1376 C.c.Q. The rules set forth in this code apply to the State and its bodies, and to all other legal persons established in the public interest, subject to any other rules of law which may be applicable to them.

18. Provincial law is considered suppletive in that the Civil Code is applicable for Quebec as a provincial entity. Provinces do not have jurisdiction over the federal state and its bodies, and to all other legal persons, therefore the code has no impact on Canadian federal issues. However in 1953, SCC held that suppletive law in civil extracontractuel matters is to be the law where the action has taken place.

> **See Hamel c. Canada (1999) 3 C.F. 335 (C.A.) Le droit applicable en matière de responsabilité délictuelle de la Couronne est celui de la province ou la cause d'action a pris naissance. Donc, il faut s'en remettre aux principes du droit civil du Québec.**

19. Three classical conditions give rise to indemnity under the Civil Code. These are fault, damages and a causal link between the two. All three aspects must be proven for liability to be established.

20. The Quebec Civil Code refers to a faculty of discerning, which is that the person who is being identified as responsible must have the faculties or the capabilities to understand the consequences of their actions. There is no fault if there is no understanding.

21. It is a question of fact as to whether or not an individual had capacities sufficiently developed to foresee the consequences of their actions. Adult are generally presumed to be capable unless it is proven otherwise. The direct opposite is the presumption for children. By default they are considered not capable of appreciating the consequences of their actions but this is a rebuttable assumption.

22. Fault is not defined in the Civil Code. The C.C.Q. only defines gross fault, as a fault which shows gross recklessness, gross careless or gross negligence, Section 1474 C.C.Q. defines fault as conduct not corresponding to standards generally accepted by the case law... the norm of conduct which, depending on circumstances, manners and law, would impose to ...

23. Acceptable conduct is generally understood to be what a person reasonably cautious and diligent would have done in such circumstances. This standard could be contextualized to apply to a particular situation, such as a trade. The standard applied

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to a trained tradesman would be different than the standard applied to someone with only an apprentice qualification.

24. Contractual: 1458 C.c.Q. Every person has a duty to honour his contractual undertakings. Where he fails in this duty, he is liable for any bodily, moral or material injury he causes to the other contracting party and is liable to reparation for the injury; neither he nor the other party may in such a case avoid the rules governing contractual liability by opting for rules that would be more favourable to them.

25. Extra-contractual: 1457 C.C.Q. Every person has a duty to abide by the rules of conduct which lie upon him, according to the circumstances, usage or law, so as not to cause injury to another. Where he is endowed with reason and fails in this duty, he is responsible for any injury he causes to another person by such fault and is liable to reparation for the injury, whether it be bodily, moral or material in nature. He is also liable, in certain cases, to reparation for injury caused to another by the act or fault of another person or by the act of things in his custody.

26. The limitation period to bring an action under the CCQ is three years.

Questions:

Interim Summary:

Stage 4 - Absence of Treasury Board Volunteer Policy

Introduction:

27. The Volunteers Policy was aimed at persons volunteering their services for the Government of Canada. Its primary objective was to ensure a sustainable volunteer capacity for the future with appropriate protection for volunteers and the Crown with minimum accidents or claims.

28. The Volunteers Policy was rescinded because it was redundant. The policy focused on risk management. Since it was developed, other, more current instruments, such as the Treasury Board Risk Management Framework, have been developed to support organizations in this area. Rescinding this policy helped reduce duplication.

29. Deputy heads have the flexibility to adapt their volunteer programs to the needs of their organization. They have a number of guides and tools at their disposal, such as the inter-departmental committee on Volunteers, the Integrated Risk Management Framework, the Risk Management Guide and Risk Management Policy.

Body of the lesson:

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30. In a dynamic and complex public sector context, risk management plays a significant role in strengthening government capacity to recognize, understand, accommodate and capitalize on new challenges and opportunities. Effective risk management equips federal government organizations to respond actively to change and uncertainty by using risk-based information to enable more effective decision-making. In turn, increased capacity and demonstrated ability to assess, communicate and manage risk builds trust and confidence, both within the government and with the public.

31. In order to foster this type of risk-informed culture and capacity to fully realize performance improvements within federal organizations, strengthened risk management approaches must be reflected across all business practices. Failure to effectively manage risks can result in increased program costs and missed opportunities, which can compromise program outcomes, and ultimately public trust. In contrast, sound risk management is fundamental to effective public administration as it can lead to a more effective, results-based, and high performance government.

32. The Framework for the Management of Risk outlines the risk management principles to guide Deputy Heads in the effective management of their organizations in all areas of work, including policy and program implementation. These principles apply to all Treasury Board policies, including the individual policies of the renewed Treasury Board Policy Suite, and guide the Treasury Board Secretariat in its policy development, enabling and oversight roles. These three core Frameworks are put in place to enable more effective management of federal organizations by promoting accountability, transparency and supporting risk-informed decision-making, which is recognized as a leading management practice.

33. Specifically, the principles contained in the Framework for the Management of Risk have shaped the design and choice of implementation approaches for particular Treasury Board policies (e.g. Policy on Internal Audit, Policy on Internal Control, Policy on Transfer Payments, Policy on Investment Planning), and will continue to be refined and adjusted based on emerging trends and lessons learned from their implementation.

34. To fulfill this role in the domain of risk management, the Treasury Board and the Secretariat provide guidance, tools and expertise to support departments and agencies in implementing a risk-informed approach to management. This also includes performing a leadership role by sharing information and fostering good practices on risk management and risk-informed approaches.

Questions:

Interim Summary:

PART 4 – CONCLUSION

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Summary:

35. The topics covered in this lesson include Crown Liability and Proceedings Act, Crown liability under the Common Law and Civil law in Quebec and the absence of Treasury Board volunteer policy.

Confirmation:

36. Done in a discussion format. Ask some confirmation questions. No group answers, remind students to raise their hand before speaking. Or instructor may ask particular students to answer questions

Conclusion:

37. A thorough knowledge of the Crown Liability and Proceedings Act, jurisprudence and policies that govern claims is essential for legal officers to understand how Crown liability is established. Knowing what actions will trigger potential liability of the Crown and what processes are prescribed by the legislation, policies and procedures should someone wish to proceed with an action against the Crown will assist the legal advisor in providing appropriate legal advice.

38. The Crown Liability and Proceedings Act (CLPA) sets out the statutory authority concerning Crown liability for damages regarding torts committed by Crown servants or for situations involving "a breach of duty attaching to the ownership, occupation, possession or control of property." Knowledge of the Act prepares the legal officer to be in a better position to advise on the issue of the risk of claims against the Crown associated with actions of members of the CF or DND employees.

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PART 1 –LESSON IDENTIFICATION

EO 011.02 Advise on claims for or against the crown

Performance: **Advise on claims for or against the crown**

Conditions:

a. **given**: References: including but not limited to relevant factual context, legislation, policies, case law, (may also include prior legal opinions) NDA, QR&O,DAOD

b. **denied**: nil

Standard: At the conclusion of this lesson the individual candidate shall know and understand claims for or against the Crown and be able to apply this knowledge in their capacity as a legal advisor

Main Teaching Points:

- applicable policies
- indemnification of CF members

Method: This EO will be accomplished by Development Lesson. Students will be required to read any pre-reading packages assigned and be prepared to respond to questions.

Duration: .5 period (20 min)

References: *NDA, Crown Liability and Proceedings Act*, QR&O, DAOD 7004-0, Claims By or Against the Crown and Ex gratia Payments DAOD 7004-1, Claims and Ex gratia Procedures, DOAD 7004-2 Compensation for Loss or Damage to Personal Property, Treasury Board Policy on Legal Assistance and Indemnification

Training/Learning Aids: Standard classroom with whiteboard and projection system, handouts, student disk, student desk book, Legal Officer Qualification Course (LOQC) Instructors Handbook – Module(s) [XXX]

Note to the instructor: This developmental lesson shall be conducted in structured manner, using the list of "questions to the class" provided in the following pages. Instructors are to complement each segment of the developmental lesson by follow-up and direct questions taking into account the flow and direction of the discussion. Interim summaries shall be conducted at the end of each segment to confirm the material was learned and provide a basis from which the discussion can progress to the next segment. A review of the main teaching points will then take place at the end of the period.

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PART 2 – INTRODUCTION

Objective: The instructor shall introduce the subject of claims for or against the crown. By the end of the lesson the candidates should have a basic knowledge of these topics which would allow them to provide legal advice as it pertains to this subject

Introduction: Claims for or against the Crown may arise even when parties involved in the conduct of government business have been acting in good faith. The Treasury Board Directive on Claims and Ex-gratia payments supports the objectives of the Policy on Internal Control by outlining the roles and responsibilities of chief financial officers, managers (including those with delegated authorities to make payments), and departmental security officers in processing claims and ex-gratia payments. This is to put in place a consistent approach which respects government financial and legal authorities and obligations. Claims may include requests for compensation to cover losses, expenditures or damages sustained by the Crown or a claimant, including requests or suggestions that the Crown make an ex gratia payment.

Outline: During this lesson the candidates will be introduced to aspects of claims by or against the Crown including the requirements for a claim, the claims process, settlement authorities and various types of claims. The candidates will also be introduced the Treasury Board Directive on Claims and Ex-gratia payments as well as the DAODs that apply to this subject. It is important for legal officers to understand the claims process and their role within it so they are properly prepared to provide advice.

Stage 1 Standing to bring a claim

Stage 2 Requirements for the claim

Stage 3 Claims process

Stage 4 Legal advisor's role

Stage 5 Settlement authorities

Stage 6 Ex-gratia payments

Stage 7 Per-quod claims

Stage 8 Treasury Board Policy on Indemnification of CF Members

PART 3 – BODY OF THE LESSON

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Stage 1 - Standing to bring a claim

Introduction:

39. Claims include requests for compensation to cover losses, expenditures or damages sustained by the Crown or a claimant, including requests or suggestions that the Crown make an ex gratia payment.

Body of the lesson:

40. In order to have standing to bring a claim against the Crown one must have suffered damages, losses or made expenditures and that the damages, losses and/or expenditures are a result of action, neglect or inaction of the Crown or its servants.

41. There is no standing to bring a claim against the Crown where the claim must be made under other governing instruments or policies, for example under section 11 of the Canadian Human Rights Act (Equal Wages).

42. It is also not possible to seek compensation arising from a contractual dispute, for the loss and recovery of money or for loss or damages related to bodily injury of a member of the CF while on duty. A claim may be made against the Crown, by persons other than CF members, for pain and suffering or general damages arising from permanent or partial disability.

Questions:

Interim Summary:

Stage 2 - Requirements for the claim

Introduction:

43. The requirements for a claim will depend on the nature of the loss. DAOD 7004-1 establishes the process and the requirements to initiate a claim.

Body of the lesson:

44. If a claim is for the loss of use of property, the following information is required:

a) the nature of the claimant's use of the property;
b) if the property was used to make a living, the average net gain per day using the property;
c) the number of days the claimant was denied the use of the property and the reasons for the denial of use;

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d) if replacement property was hired, the cost of that rental or hiring supported by receipts or vouchers; and
e) if a vehicle was involved, the number of days during which the vehicle was held in a garage undergoing repairs.

45. For the purpose of DAOD 7004, claims do not include damage or loss to Crown servants' effects during travel or relocation that may be claimed under the public service or CF integrated relocation programs.

46. Claims for loss or damage to Crown servant effects which are reasonably related to the performance of the servant's duties may be made under the Policy on Claims and Ex gratia Payments.

47. Compensation may be claimed under Section 1 (Compensation For Loss of or Damage to Personal Property) of CBI Chapter 210 (Miscellaneous Entitlements and Grants) if the loss or damage to the personal property of a CF member was attributable to the service of the member and the personal property lost or damaged was necessary for the performance of military duties of the member.

48. No compensation is payable under the DAOD for:

a) items of clothing or material issue for which a commanding officer (CO) may authorize free replacement issue in accordance with the Canadian Forces Supply Manual;
b) cash, jewelry, fur coats, precious metals, gem stones, or coin, stamp or gun collections, except under exceptional circumstances; or
c) items covered by private insurance.

Questions:

Interim Summary:

Stage 3 - Claims process

Introduction:

49. Upon becoming aware of an incident which could lead to a claim, the officer in command of a unit or other element shall contact DCCL or the regional AJAG at the earliest opportunity to discuss whether an investigation is required and what level of investigation is appropriate.

Body of the lesson:

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50. DAOD 7004-1 sets out the requirements for investigating a claim and the information needed before a claims settlement authority can make a determination of the merit of the claim.

51. The nature of the incident or the type of loss may require different information to support the claim. An automobile accident without injury to persons will not require a medical report whereas an accident with injuries likely will.

52. There are different information requirements for damage to property vice loss of property.

53. Often the investigation will form the main source of information that will assist the settlement authority with making a determination on the claim.

54. Under the DAOD there is no prescribed format for a claims application. There are also no proscribed time limits in the DAOD for initiating a claim, making a determination, paying out on a claim or challenging a claim decision.

55. Claims should be in writing and submitted with all appropriate supporting documents that will assist the claims settlement authority with making the appropriate decision.

56. The claimant should be advised of the status of their claim as soon as possible and advised of any issues that may lead to a delay in the claims settlement authority being able to make a determination such as requests for information from outside sources such as doctors or repair shops.

57. When a claim is transferred to DCCL the claimant should be advised of the transfer and that DCCL will be in contact with them regarding their claim.

58. After an incident has occurred risk management is a normal part of dealing with any claim that may arise between a department and other entities.

59. As per TB Guidelines on Claims and Ex-gratia Payments at para 4.3 A clear distinction is drawn between settlement and payment of a claim. Settlement is the process whereby an agreement is reached through negotiation between the respective parties. Payment is the disbursement of money in respect of the settlement or a judgement of the relevant court.

60. Para 4.6 states that: Claims in contract are to be dealt with according to the terms of the contract and the applicable law. Departments are to ensure that the interests of the Crown are protected and all legal rights are exercised.

61. Para 4.7 When a claim is made in tort (all provinces except Quebec) or extra-contractual liability (Quebec only), it is subject to the requirements of the Directive on Claims and Ex-Gratia Payments.

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62. Generally claims by or against the Crown or against its servants are negotiated without recourse to the courts by, or in conjunction with, the Department of Justice in accordance with the relevant authorities and procedures.

Questions:

Interim Summary:

63. The legal advisor should become familiar with all aspects of the TB Policy and Guidelines on Claims and Ex-gratia payments and DAOD 7004 series. Having a broad understanding of the information requirements for the various types of matters that can give rise to claims will properly situate the legal officer to provide advice when called upon.

Stage 4 - Legal advisor's role

Introduction:

64. The legal advisor has many roles to play in the claims process.

Body of the lesson:

65. Often legal advisors are called upon by their unit to guide them through the claim investigation process and to assist them with directing the claim to the appropriate authority.

66. The legal officer may asked to review and provide advice on medical releases signed by CF members and submitted to local medical units by the member's lawyer for information related to a civilian claim for compensation for damages. These releases should trigger the legal advisor to address the issue of per quod claims with the chain of command and the nearest claims officer.

67. Legal officers may also be called upon to assist DCCL with requests for information from units they are responsible for and transferring that information to DCCL.

68. If a claim has been reported and investigated, DCCL or the regional AJAG, in accordance with the authorities prescribed in DAOD 7004-0, shall provide a legal opinion addressing:

a) the liability, if any, of the Crown and any Crown servants, and that of any individuals or corporations potentially subject to a claim by the Crown;

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b) the steps, if any, that should be taken to resolve the claim, taking into account the cost-effectiveness of any such steps; and
c) the terms and conditions on which it would be advisable to resolve the claim.

69. Also in accordance with DAOD 7004-0, DCCL or the regional AJAG may sign a release as a condition of payment being made to resolve a claim by the Crown

70. Unless otherwise specified, investigations for claims purposes shall be conducted in contemplation of litigation and therefore their contents are protected by solicitor-client privilege. Legal officers may also be called upon to provide advice on how a unit should proceed in recovery of damages owed to the Crown or a demand payment against a Crown servant

71. DCCL or the regional AJAG may sign a release as a condition of payment being made to resolve a claim by the Crown.

72. A release shall normally be obtained from a claimant in consideration of payment being made to settle a liability claim. For ex gratia payments a release is not normally required. The legal officer may be required to prepare the release as per Annex A of the TB Guidelines on Claims and Ex-gratia payments and execute the release prior to payment being made.

Questions:

Interim Summary:

Stage 5 - Settlement authorities

Introduction:

73. In some situations settlement authority may depend on the nature and amount of the claim. DAOD 7004-0 includes a settlement authority table which clearly states who has authority to settle claims, what action they may take and the value of any settlement they may offer.

Body of the lesson:

74. The Deputy Minister (DM) of the Department of National Defence (DND) has the authority to settle claims against the Crown on the basis of liability and the DM can make Ex gratia payments.

75. The CF chain of command has no authority to settle claims using operations and maintenance (O&M) funds. The funds allocated to the chain of command are not appropriated for the purpose of claims settlement.

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76. The following persons have been authorized to accept an amount in settlement of claims by the Crown, to recover from a Crown servant amounts owing to the Crown and to pay amounts in settlement of a liability claim against the Crown:

a) the Director Claims and Civil Litigation (DCCL), for amounts up to $200,000
b) Assistant Judge Advocates General (AJAGs), for amounts up to $25,000
c) JAG legal officers on operations, for amounts up to $10,000.
d) DCCL, AJAGs and JAG legal officers while on operations also have the authority to make Ex gratia payments up to $2,000.
e) The JAG has the lawful authority to make Ex gratia payments for any amount.

77. Not all claims against the Crown are covered by the TB claims policy. Claims arising from contract disputes, claims for losses and recovery of money, claims for damages occasioned to personal effects belonging to CF members and DND employees while on relocation or travel status and claims related to bodily injury while on duty are not covered.

Questions:

Interim Summary:

Stage 6 - Ex-gratia payments

Introduction:

78. Ex gratia payment is a benevolent payment made by the Crown. The payment is made in the public interest for loss or expenditure incurred where the Crown has no obligation of any kind or has no legal liability or where the claimant has no right of payment or is not entitled to relief in any form.

Body of the lesson:

79. An ex gratia payment is used only when there is no other statutory, regulatory or policy vehicle to make the payment.

80. Claims also include requests or suggestions that the Crown make an ex gratia payment.

81. As per the Treasury Board Guidelines on Claims and Ex-gratia Payments issued in support of the TB Policy on Claims and Ex-gratia payments, managers with delegated authority to requisition payment are responsible for considering the following when deciding whether to make an ex gratia payment:

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a) Compensation from other sources, such as federal or provincial statutes, private or public programs, contract provisions and commercial insurance or recovery from third parties;
b) The Directive is not used to fill perceived gaps or compensate for the apparent limitations in any act, order, regulation, policy, agreement or other governing instruments-if, for example, a particular subject is governed by another instrument and that instrument does not provide for such a payment, the Directive cannot be used to expand that instrument and an exception to the governing instrument would need to be sought;
c) If there does not appear to be a governing instrument, all other possible sources of compensation are reviewed (e.g., statutory or regulatory schemes, other Treasury Board policies or directives, program funding, and grants or contributions);
d) Payment may be made ex gratia if, after the review, there is no other source of funds or the sources provide incomplete compensation, no liability on the part of the Crown, and no limitation, restriction or prohibition imposed in existing schemes; and
e) The amount of the payment may be reduced when the acts or omissions of any person, including persons for whom a payment is being considered, contributed to the damages or loss incurred.

Questions:

Interim Summary:

Stage 7 - Per-quod claims

Introduction:

82. If a CF member is injured or killed due to the deliberate conduct or the negligence of another person, the Crown may be able to recover medical expenses, pay received by the member while disabled and burial expenses where applicable from the responsible party. This is known as a "per quod servitium amisit" claim. The Crown has such a claim even if the member is injured or killed while not performing military duties.

Body of the lesson:

83. Per quad claims are not permitted in all jurisdictions. Under current law per quod claims are only permitted if the incident occurred in the province of Alberta, Saskatchewan, Manitoba, Ontario, Nova Scotia, or Newfoundland and Labrador.

84. If a situation arise that may result in the Crown having a per quod claim, the CO shall provide to DCCL or the nearest regional JAG representative, as requested, the following information:

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a) the monthly rate of pay and allowances of the CF member from the date of injury to the date of return to duty, release or death, as applicable;
b) the inclusive dates of all periods spent by a CF member in hospital, on sick leave or absent from duty, including half days off duty, that are attributable to the injury;
c) particulars of any medical or dental expenses incurred other than in a hospital in treating the injured CF member; and
d) receipts, forms and other documents detailing the expenses incurred by the Crown in treating the injured CF member in a CF or civilian hospital.

Questions:

Interim Summary

Stage 8 - Treasury Board policy on indemnification of CF members

Introduction:

85. Under the Policy on Indemnification of and Legal Assistance for Crown Servants, Crown servants are indemnified against personal civil liability incurred by reason of an act or omission. Provided the Crown servant has met the criteria set out in the Policy, the Crown makes no claim against that Crown servant who may be personally liable.

Body of the lesson:

86. The objective of the policy is to protect Crown servants from personal financial losses or expenses incurred while they were acting within the scope of their duties or in the course of their employment, and were not acting against the interests of the Crown protect the Crown's interest and its potential or actual liability arising from the acts or omissions of its Crown servants and ensure continued and effective public service to Canadians

87. Decisions in respect to a request for legal assistance or indemnification are the responsibility of the approval authority for the organization where the incident giving rise to the request first arose.

88. Pursuant to the designation made by the Deputy Minister, DCCL shall determine if a Crown servant involved in an incident may be indemnified in accordance with the Policy. All requests for indemnification of a Crown servant shall be forwarded to DCCL.

89. The approval authority may seek the advice of any officials who may have knowledge of the facts, as well as the legal advice of the Department of Justice Canada prior to making this decision. The decision should be made before legal counsel engages with the Crown servant to avoid a potential conflict situation, which would be detrimental to the interests of both the Crown servant and the Crown.

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90. Nothing above affects any obligation of a Crown servant in respect of the care, custody or control of money, or the application of QR&O Chapter 38, Liability for Public and Non-Public Property.

91. Deciding whether to approve legal assistance requests of Crown servants who meet the three basic eligibility criteria in the following situations:

a) when they are sued or threatened with a suit;
b) when they are charged or likely to be charged with an offence;
c) when they are named in a legal action or under threat of being named in a legal action; or
d) when they are faced with serious personal liability before any court, tribunal or other judicial body.

92. QR&O 19.41 - ADMISSION AND ACCEPTANCE OF LIABILITY

(1) No officer or non-commissioned member shall, without the authority of the Minister:

a. admit liability to a person who is not a member of the Canadian Forces; or
b. accept liability on behalf of the Crown for a loss or damage arising out of or occasioned by the performance of service duties by the member or by another.

(2) No officer or non-commissioned member shall, without the authority of the Minister, accept liability on behalf of the Crown for the defence of civil or criminal proceedings brought against another officer or non-commissioned member by a member of the public.

93. Where the Crown is liable as a result of incidents involving Crown servants, no claims to recover such liability are to be made by the Crown against the Crown servants provided that the applicable criteria were met.

94. Legal assistance is not to be approved or paid as an ex gratia payment. The policy on ex gratia payments does not permit the use of the ex gratia payment process when other policies apply to the situation.

Questions:

Interim Summary

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PART 4 – CONCLUSION

Summary:

95. The topics covered in this lesson included types of claims, the claims process and the role of the legal advisor in the claims process. You have been informed of the treasury Board Policy and Guidelines on Claims and Ex-Gratia Payments as well as the DAOD 7004 series.

Confirmation:

96. Done in a discussion format. Ask some confirmation questions. No group answers, remind students to raise their hand before speaking. Or instructor may ask particular students to answer questions

Conclusion:

97. The candidates should now have the knowledge required to provide advice on claims issues as they affect the CF and DND. The candidates should now understand the various aspects of orders, directives, polices and guidelines that shape the claims process and be able to provide advice on claims and ex-gratia payments.

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PART 1 –LESSON IDENTIFICATION

EO 011.03 determine claims for or against the crown

Performance: determine claims for or against the crown

Conditions:

a. given: References: including but not limited to relevant factual context, legislation, policies, case law, (may also include prior legal opinions) NDA, QR&O,DAOD

b. denied: nil

Standard: At the conclusion of this lesson the individual candidate shall know and understand how claims are determined for, or against , the Crown and be able to apply this knowledge in their capacity as a legal advisor

Main Teaching Points:
- recover debts owed to the crown
- approval of payment of claims

Method: This EO will be accomplished by Development Lesson. Students will be required to read any pre-reading packages assigned and be prepared to respond to questions.

Duration: .5 period (20 min)

References: *NDA*, QR&O, DAOD, *Financial Administration Act*

Training/Learning Aids: Standard classroom with whiteboard and projection system, handouts, student disk, student desk book, Legal Officer Qualification Course (LOQC) Instructors Handbook – Module(s) [XXX]

Note to the instructor: This developmental lesson shall be conducted in structured manner, using the list of "questions to the class" provided in the following pages. Instructors are to complement each segment of the developmental lesson by follow-up and direct questions taking into account the flow and direction of the discussion. Interim summaries shall be conducted at the end of each segment to confirm the material was learned and provide a basis from which the discussion can progress to the next segment. A review of the main teaching points will then take place at the end of the period.

PART 2 – INTRODUCTION

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Objective: The instructor shall introduce determination of claims for or against the Crown. By the end of the lesson the candidates should have a basic knowledge of these topics which would allow them to provide legal advice as it pertains to this subject

Introduction: In previous lessons the candidates were introduced to claims authority, treasury board policies and other aspects of claims for or against the Crown. In this lesson the candidates will explore determination of claims for or against the Crown. How claims are determined, any limitations that may arise as well as how claims issues are coordinated between the OJAG and DCCL

Outline: During this lesson the candidates will be introduced to determination of claims for or against the Crown. It is important for legal officers to understand the limitations placed upon statutory decision-makers in terms of when monies may, and may not, be paid from the Consolidated Revenue fund (CRF) and other sources of public funds.

Stage 1 Requirement under the *Financial Administration Act*

Stage 2 Limitation Periods

Stage 3 Limitations on administrative deductions

Stage 4 Co-ordination between OJAG and DCCL

PART 3 – BODY OF THE LESSON

Stage 1 - Requirements under the *Financial Administration Act*

Introduction:

98. The *Financial Administration Act* (FAA) can be considered a keystone statute in the administration of the federal government, particularly the executive branch. It is the principal authority for the Treasury Board to legislate for and otherwise regulate the management of the Consolidated Revenue Fund (CRF) – essentially, the repository for money levied in taxes by the federal government and other sources of income for the federal public administration. It also establishes the Treasury Board as the employer of the Federal Public Administration.

99. Although the CF is not part of the Federal Public Administration, the FAA impacts upon its administration.

Body of the lesson:

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100. Prior to 2000, much of the direction for the financial administration of the CF was contained in Volume III of the QR&O. With the 1998 amendment to the NDA, much of the content in Volume III – particularly provisions concerning the pay, allowances, reimbursement of expenses, and other financial benefits for members of the CF – shifted to the Compensation and Benefits Instructions. There remain vestigial provisions within QR&O Volume III, including pay for select CF personnel whose pay must be established in regulations (e.g. military judges) and other financial direction that must, or should, be made by way of regulations.

101. The defence budget is allocated to the Department, and not to the CF. Candidates will recall that, under the NDA, the CF and Department are separate entities. The Deputy Minister, as a Deputy Head, is ultimately responsible to the Minister and to the Clerk of the Privy Council, for the management of the budget allocated to the Department and which supports the operations of the CF.

102. Consequently, ss. 32 and 34 of the Financial Administration Act are of vital concern for any CF decision-maker who will approve the expenditure of public funds. Pursuant to s. 32, "...no contract or other arrangement providing for a payment shall be entered into with respect to any program for which there is an appropriation by Parliament or an item included in estimates then before the House of Commons to which the payment will be charged unless there is a sufficient unencumbered balance available out of the appropriation or item to discharge any debt that, under the contract or other arrangement, will be incurred during the fiscal year in which the contract or other arrangement is entered into."

103. Section 34 states:

> (1) No payment shall be made in respect of any part of the federal public administration unless, in addition to any other voucher or certificate that is required, the deputy of the appropriate Minister, or another person authorized by that Minister, certifies
>
> > (a) in the case of a payment for the performance of work, the supply of goods or the rendering of services,
> >
> > > (i) that the work has been performed, the goods supplied or the service rendered, as the case may be, and that the price charged is according to the contract, or if not specified by the contract, is reasonable,
> > >
> > > (ii) where, pursuant to the contract, a payment is to be made before the completion of the work, delivery of the goods or rendering of the service, as the case may be, that the payment is according to the contract, or

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(iii) where, in accordance with the policies and procedures prescribed under subsection (2), payment is to be made in advance of verification, that the claim for payment is reasonable; or

(b) in the case of any other payment, that the payee is eligible for or entitled to the payment.

104. In short, contracts may be made – by those authorized to do so – only if public monies have been allocated for that purpose and are available. Payment can only be made if goods are provided, or service rendered, in accordance with a previously agreed to contract. Anyone exercising such authority on behalf of the Crown must demonstrate an understanding of obligations pursuant to the *Financial Administration Act*. This is the principal reason anyone in such a position must complete the related 'distributed learning'.

105. Pursuant to subs. 155(3) of the Financial Administration Act, "the Receiver General may recover any over-payment made out of the Consolidated Revenue Fund on account of salary, wages, pay or pay and allowances out of any sum of money that may be due or payable by Her Majesty in right of Canada to the person to whom the over-payment was made." This also reflects obligations under QR&O Chapters 201 and 203

Questions:

Interim Summary:

Stage 2 - Limitation Periods

Introduction:

106. The litigation limitations periods for initiating a claim against the Crown or for the Crown to initiate a claim/action against another party is 3 years in Quebec and 6 years in the rest of Canada.

Body of the lesson:

107. Limitation periods are crucial considerations whenever the Crown initiates a claim against another party or if the party initiates a claim against the Crown. Under the common law, the Crown is not normally liable under tort or contract. The principal legislation that makes the Crown liable is the *Crown Liability and Proceedings Act* (*CLPA*), which states the following:

3. The Crown is liable for the damages for which, if it were a person, it would be liable

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(a) in the Province of Quebec, in respect of

(i) the damage caused by the fault of a servant of the Crown, or

(ii) the damage resulting from the act of a thing in the custody of or owned by the Crown or by the fault of the Crown as custodian or owner; and

(b) in any other province, in respect of

(i) a tort committed by a servant of the Crown, or

(ii) a breach of duty attaching to the ownership, occupation, possession or control of property.

108. However, pursuant to s. 9 of the *CLPA*:

9. No proceedings lie against the Crown or a servant of the Crown in respect of a claim if a pension or compensation has been paid or is payable out of the Consolidated Revenue Fund or out of any funds administered by an agency of the Crown in respect of the death, injury, damage or loss in respect of which the claim is made.

109. The limitation period is established at s. 32 of the *CLPA*:

32. Except as otherwise provided in this Act or in any other Act of Parliament, the laws relating to prescription and the limitation of actions in force in a province between subject and subject apply to any proceedings by or against the Crown in respect of any cause of action arising in that province, and proceedings by or against the Crown in respect of a cause of action arising otherwise than in a province shall be taken within six years after the cause of action arose.

110. Consequently, the default limitation period is 6 years, save where an applicable provincial statute establishes a lower limitation period. Legal officers must take care to note the relevant limitation periods for different types of actions in each province. In addition to their own research abilities, legal officers can also rely upon colleagues called to the Bar of the provinces in question and, through their chain of command, to the Claims and Civil Litigation section of DND/CF LA.

111. By way of example, the following general limitation periods are relevant to many claims or actions that a unit legal advisor may encounter (however, this list is not exhaustive and must not be used as an alternative to thorough research):

In Quebec, Articles 2875 to 2933 – in particular Art. 2925 – of the Civil Code of Quebec, S.Q. 1991, c. 64 establish 3-year limitation periods for most circumstances that would be tortious wrongdoing under the common law.

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However, actions in defamation are limited to a 1-year limitation period. In some cases, a 10-year limitation period would apply (e.g. for acquisition of immovable property); however, pursuant to s. 32 of the CLPA, 6 years would be the applicable maximum;

Alberta. 2 years commencing when the cause of action is discovered. *Limitations Act*, R.S.A. 2000, c. L-12, s. 3(1)(a);

British Columbia. 2 years commencing when the cause of action is discovered. *Limitation Act*, R.S.B.C. 1996, c. 266, ss. 3(2), 6;

Manitoba. 2 years commencing when the cause of action arises. *Limitation of Actions Act*, C.C.S.M. c. L150, s. 2(1)(g). However, a court can grant leave to continue or begin an action if not more than 12 months have elapsed between date the action was "discovered" and date of application for leave, subject to ultimate limitation period. Limitation of Actions Act, C.C.S.M. c. L150, s. 14(1);

New Brunswick. 2 years commencing when the cause of action is discovered. *Limitation of Actions Act*, S.N.B. 2009, c. L-8.5. (NB: This provision came into force 1 May 2010. It was 6 years prior to this amendment);

Newfoundland and Labrador. 2 years commencing when the cause of action is discovered. *Limitations Act*, S.N.L. 1995, c. L-16.1, ss. 5(b); 13; 14;

N.W.T. 6 years commencing when the cause of action arises. *Limitation of Actions Act*, R.S.N.W.T. 1988, c. L-8, s. 2(e);

Nova Scotia. 6 years commencing when the cause of action arises. *Limitation of Actions Act*, R.S.N.S. 1989, c.258, s. 2(1)(e). However, within 4 years of expiry of general limitation period, court may disallow the limitation period, having regard to circumstances of the case – Listed are enumerated factors to consider including date of "discovery" of claim, Limitation of Actions Act, R.S.N.S. 1989, c.258, s. 3;

Nunavut. 6 years commencing when the cause of action arises. *Limitation of Actions Act*, R.S.N.W.T. 1988, c.L-8, s. 2(e);

Ontario. 2 years commencing when the cause of action is discovered. *Limitations Act*, 2002, S.O. 2004, c. 31, ss. 4,5. Transitional Rules: Apply if a cause of action arose before January 1, 2004 and a proceeding has not yet been commenced: (1) Claim not "discovered" until after Jan 1, 2004, then 2 years from discovery, s. 24(5)(1); (2) Claim "discovered" before Jan 1, 2004, then 6 years from discovery, s. 24(5)(4); (3); If former limitation period expired before Jan 1, 2004, then no proceeding shall be commenced, s. 24(3);

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Prince Edward Island. 6 years commencing when the cause of action arises. *Statute of Limitations*, R.S.P.E.I. 1988, c. S-7, s. 2(1)(g);

Saskatchewan. 2 years commencing when the cause of action arises. *Limitations Act*, S.S. 2004, c. L-16.1. For actions against a municipality, there is a 1 year limitation period to both file and serve the claim;

Yukon. 6 years commencing when cause of action arises. *Limitation of Actions Act*, R.S.Y. 2002, c. 139, s. 2(1)(e), (f);

112. These limitation periods are distinct from the limitation periods established at QR&O Chapter 203.

113. QR&O 203.04, a Governor in Council regulation made under subs. 12(1) of the *NDA*, concerns overpayments, and states:

> (1) It is the duty of every officer or non-commissioned member to be acquainted with the rates of pay, allowances and other financial benefits and reimbursable expenses to which that officer or non-commissioned member may be entitled, and the conditions governing their issue.
>
> (2) If an officer or non-commissioned member accepts a payment in excess of the entitlement due, the officer or non-commissioned member shall report and refund the amount of the overpayment to the accounting officer of the base or other unit or element where the officer or non-commissioned member is present.
>
> (3) Refund of the amount of an overpayment shall normally be made by an officer or non-commissioned member in either one lump sum or by monthly deductions in the pay account in amounts not less than the monthly rate at which the overpayment was made. In exceptional circumstances, the Chief of the Defence Staff may extend the period of recovery and authorize a lesser rate of repayment.

114. The recovery of overpayments is subject to the limitation period established at s. 32 of the *CLPA*. See also, *Spinks v. Canada*, [1996] 2 FC 563; 134 DLR (4th) 223.

115. QR&O 203.05, a Treasury Board regulation created under subs. 12(3) of the *NDA*, and which states:

> (1) Any sum of money payable under the QR&O or CBI that is not claimed within a period of twelve months after the date on which it might have been claimed is forfeited, except when
>
> a.the circumstances disclose sufficient reason for the delay in submitting the claim; and
>
> b.the payment is approved by the Chief of the Defence Staff.

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(2) The provisions of paragraph (1) do not apply to any unpaid balance of pay and allowances remaining in the pay account of an officer or non-commissioned member.

Questions:

Interim Summary:

Stage 3 - Limitations on administrative deductions

Introduction:

116. Administrative deductions represent a mechanism for recovery of a debt owed to the Crown by a Crown servant – in our case, a member of the CF. Where an appropriate authority determines that the Crown has a claim against a Crown servant, a demand shall be made. Often such claims arise from either overpayment of pay, allowances or other financial benefits or from loss or damage of public (or non-public) property that was either in the care of a member of the CF (e.g. issued kit and equipment) or for which the loss or damage is attributable to a Crown servant.

117. Candidates should have noted in the prior lesson that, where a member of the CF identifies an underpayment of pay or other financial benefits, the member has one year (12 months) from the date on which such a benefit could have been claimed to submit a claim. However, pursuant to s. 32 of the CLPA, in conjunction with QR&O 203.04 – Overpayments, the Crown has up to six years to recover overpayments.

Body of the lesson:

118. Claim against a Crown Servant - Demand for Payment

119. Following a determination that a claim (by the Crown) against a Crown servant should proceed, a demand for payment shall be made.

120. If the Crown servant fails to provide payment as demanded, a determination shall be made if legal authority exists to permit the amount claimed to be recovered from any money that may be due or payable by the Crown to the Crown servant.

121. If legal authority exists, the applicable delegated authority shall:
a) notify the Crown servant of the proposed recovery and of the Crown servant's right to make representation; and
b) consider the Crown servant's representation, if any, before making a final decision.

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122. Section 155(1) of the *Financial Administration Act* concerns options of recovery where a person is indebted to the Crown:

> (1) Where any person is indebted to
>
> a. Her Majesty in right of Canada, or
>
> b. Her Majesty in right of a province on account of taxes payable to any province, and an agreement exists between Canada and the province whereby Canada is authorized to collect the tax on behalf of the province,
>
> the appropriate Minister responsible for the recovery or collection of the amount of the indebtedness may authorize the retention of the amount of the indebtedness by way of deduction from or set-off against any sum of money that may be due or payable by Her Majesty in right of Canada to the person or the estate of that person."

123. This provision is reiterated as a Note to QR&O 38.01

124. Chapter 38 of the QR&O establishes the liability that members of the CF have concerning public and non-public property. This often arises in the context of military equipment issued to a CF member which is either not returned or returned in a non-serviceable condition.

125. QR&O 38.01 establishes:

> (1) An officer or non-commissioned member is liable to reimburse the Crown for any financial loss that is incurred where the member:
>
> a. wilfully or negligently makes any improper purchase at public expense;
>
> b. wilfully or negligently causes, permits or contributes to damage to or the loss, deficiency, theft, destruction, deterioration or improper expenditure of public property or any property under the control of the Minister;
>
> c. has a deficiency in any personal equipment that is in his care or custody, unless he can show that such deficiency was not caused by his wilfulness or his negligence;
>
> d. is the occupant of a married quarter in connection with which damage to or loss of public property or any other property under the control of the Minister occurs during his occupancy, other than loss or damage occasioned by reasonable wear and tear, accidental fire, lightning, tempest, acts of God, the Queen's enemies, riots or insurrections; or

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e. is a member of a group occupying or using a cubicle, room, hut, tent or building as single sleeping quarters or dining or recreational accommodation, in which damage occurs or damage to or loss of barrack stores or any similar property under the control of the Minister occurs, unless he can show that such damage or loss was not caused or contributed to by his wilfulness or his negligence.

(2) Every officer or non-commissioned member who wilfully or negligently causes, permits or contributes to damage to or the loss, deficiency, theft, destruction, deterioration or improper expenditure of any non-public property is liable to reimburse the non-public property organization concerned for the financial loss incurred.

126. However, the scope of recovery by way of administrative deduction is limited. QR&O 38.03 provides the full details of this limitation; however, the general effect of the article is as follows:

Where the loss or damage is due to negligence on behalf of an officer or NCM, an administrative deduction can be ordered by:

a commanding officer, except when: the amount of the proposed deduction exceeds $ 200; the officer or non-commissioned member concerned objects on the grounds that the proposed deduction is unwarranted or excessive; or, a loss of or deficiency in public funds is involved;

an officer commanding a formation designated by the Chief of the Defence Staff or an officer commanding a command, except when: the officer or non-commissioned member concerned objects to a deduction exceeding $ 50 when proposed by an officer commanding a formation or $ 100 when proposed by an officer commanding a command, on the grounds that the proposed deduction is unwarranted or excessive; or, a loss of or deficiency in public funds is involved; or

the Chief of the Defence Staff, except when: the officer or non-commissioned member concerned objects to a proposed deduction exceeding $250 on the grounds that the proposed deduction is unwarranted or excessive.

127. Where wilfulness is not involved and liability arises only by reason of negligence on the part of an officer or non-commissioned member:

no administrative deduction shall be imposed if the negligence is of a minor character (i.e. it does not involve recklessness, undue carelessness

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or intentional commission of a wrongful act or an intentional omission to perform a legal duty); or

where the negligence is not of a minor character, an administrative deduction shall not exceed: where the amount involved is $ 25 or less the full amount; where the amount involved is more than $ 25 and not more than $ 100, one-half of the amount or $ 25 whichever is the greater; where the amount involved is more than $ 100 and not more than $ 300, one-third of the amount or $ 50 whichever is the greater; where the amount involved is more than $ 300 and not more than $ 500, one-quarter of the amount or $ 100 whichever is the greater; or, where the amount involved is more than $ 500, one-fifth of the amount or $ 125 whichever is the greater, subject to the limitation that where liability arises out of his negligence in operating a motor vehicle the deduction shall not exceed $ 250.

128. Where an appropriate authority is precluded from ordering an administrative deduction, he shall report the matter to the next higher authority, and will provide all available evidence and any relevant statements.

129. Where the Chief of the Defence Staff is precluded from ordering an administrative deduction because of the objection of the officer or non-commissioned member concerned, the matter shall be referred to the Judge Advocate General for advice as to further steps to be taken to recover the Crown's or the non-public property organization's loss. In such cases, the right of the Crown or of the non-public property organization concerned to recover the full amount of the financial loss incurred shall not be prejudiced because a deduction in a lesser amount was proposed under this article.

Questions:

Interim Summary:

Stage4 – Co-ordination between OJAG and DCCL

Introduction:

130. Legal Opinion for a Claim for or against the Crown

131. If a claim has been reported and investigated, DCCL or the regional AJAG, in accordance with the authorities prescribed in DAOD 7004-0, Claims By or Against the Crown and *ex gratia* Payments, shall provide a legal opinion addressing:

a) the liability, if any, of the Crown and any Crown servants, and that of any individuals or corporations potentially subject to a claim by the Crown;

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b) the steps, if any, that should be taken to resolve the claim, taking into account the cost-effectiveness of any such steps; and
c) the terms and conditions on which it would be advisable to resolve the claim.

Questions:

Interim Summary:

PART 4 – CONCLUSION

Summary:

132. The topics covered in this lesson include determination of claims by or against the Crown. Responsibilities under the FAA, limitation periods and administrative deductions

Confirmation:

133. Done in a discussion format. Ask some confirmation questions. No group answers, remind students to raise their hand before speaking. Or instructor may ask particular students to answer questions

Conclusion:

134. During this lesson the candidates were introduced to determination of claims for or against the Crown. It is important for legal officers to understand the limitations placed upon statutory decision-makers in terms of when monies may, and may not, be paid from the Consolidated Revenue fund (CRF) and other sources of public funds.

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PO 012 Advise on Arrangements and Agreements

PERFORMANCE: understand and provide legal advice on arrangements and agreements

CONDITIONS:

GIVEN: relevant factual context, policy, case law, reference material (including prior legal opinion)

DENIED: nil

ENVIRONMENT: CF unit, base, wing HQ, deployed domestically and internationally, under austere conditions

STANDARD: the legal officer shall, without direct supervision, provide legal advice on the administration of CF service, specifically:

a. Advise on procurement and provision of services policy
b. Advise on MOU
c. Advise on other arrangements

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PART 1 –LESSON IDENTIFICATION

EO 012.01 ADVISE ON PROCUREMENT AND PROVISION OF SERVICES POLICY

Performance: Advise on provision of services policy

a. given: References: including but not limited to relevant factual context, legislation, policies, case law, (may also include prior legal opinions) NDA, QR&O,DAOD

b. denied: nil

Standard: At the conclusion of this lesson the individual candidate shall know and understand the CF provision of services policy and the how contracts play a role in provision of services and be able to apply this knowledge in their capacity as a legal advisor

Main Teaching Points:

- Advise on contracts
- Advise on provision of service

Method: This EO will be accomplished by Development Lesson. Students will be required to read any pre-reading packages assigned and be prepared to respond to questions.

Duration: .25 period (10 min)

References: NDA, QR&O, DAOD, Treasury Board Contracting Policy, Provision of Services to Non-Defence Agencies Policy, CANFORGEN 121/14, Procurement Administration Manual: http://dgmssc.ottawahull.mil.ca/matknet/documents/PAM/manual_ProcurementAdministrationManualPAM_v1_e.pdf

Training/Learning Aids: Standard classroom with whiteboard and projection system, handouts, student disk, student desk book, Legal Officer Qualification Course (LOQC) Instructors Handbook – Module(s) [XXX]

Note to the instructor: This developmental lesson shall be conducted in structured manner, using the list of "questions to the class" provided in the following pages. Instructors are to complement each segment of the developmental lesson by follow-up and direct questions taking into account the flow and direction of the discussion. Interim summaries shall be conducted at the end of each segment to confirm the material was learned and provide a basis from which the discussion can progress to the next segment. A review of the main teaching points will then take place at the end of the period.

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PART 2 – INTRODUCTION

Objective: The instructor shall introduce provision of services policy and advising on contracts. By the end of the lesson the candidates should have a basic knowledge of these topics which would allow them to provide legal advice as it pertains to this subject.

Introduction: Provision of services is an issue that arises in one of two situations. One is the provision of service by DND/CF to non-defence agencies and the other is the procurement of services for DND/CF through contracts for service. As a legal officer you may be called upon to provide advice to the chain of command on these issues and therefore it is important for the legal officer to understand the governing policies and how they are applied.

Outline: During this lesson the candidates will be introduced to provision of services and the Provision of Services to Non- Defence Agencies Policy as well as the Treasury Board Contracting Policy and other guiding instruments. As a legal officer you may be called upon to provide advice on provision of services and how this is facilitated within DND and CF.

Stage 1 Advise on provision of services
Stage 2 Advise on contracts

PART 3 – BODY OF THE LESSON

Stage 1 Advise on provision of services

Introduction:

1. Provision of services is governed by the Provision of Services to Non-Defence Agencies Policy (POSP). Defence personnel are entrusted with resources to fulfil the Defence Services Program as determined by Parliament. Occasions will arise when non-defence agencies request the use of these resources. These requests may be received at any level within Defence, and may seek the use of any component of Defence capacity.

2. Under normal circumstances, Defence personnel do not have authority to use resources for a purpose not directly in support of the Defence Services Program. There are occasions, however, when it is consistent with the purpose of government policy to provide a service in response to a request from a non-defence agency, even though the service is outside the immediate scope of the Defence Services Program.

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Ref: PROVISION OF SERVICES TO NON-DEFENCE AGENCIES, B-GS-055-000/AG-001

Body of the lesson:

3. Legal officers are often called upon to provide advice on requests for services such as the use of tents by a local charitable organization or use of facilities by a local high school or similar requests. There is often a desire on the part of the chain of command to support, to do the right thing, to be helpful. The role of the legal officer is to scrutinize the request and provide advice to the chain of command on whether or not the request should be supported and if so, by what means.

4. In order to provide advice the legal officer must scrutinize the nature of the request and review the appropriate policies and instruments that govern the type of request received.

5. The legal officer must refer to the Provision of Support to Non-Defence Agencies Policy and see if the request meets the conditions contained within the policy. If the request does not meet the conditions of the policy perhaps some other instrument such as an MOU, technical arrangement or contract may be appropriate in the circumstances.

6. The conditions for determining if a service request should be recommended for approval is found in **sec. 3, para 21-23 of the POSP**. This section states that service may be provided to a non-defence agency if provision of the service would be consistent with the purpose of government policy.

7. There are four conditions that must be considered. The first two are mandatory and must be met before a service may be provided. The approving authorities may exercise discretion, depending on the situation, in complying with the second two conditions.

8. Advice not to approve a request may be appropriate if provision of that service will:

a. result in an unacceptable degradation of Defence readiness or capability to carry our Defence activities; or

b. adversely affect the confidence or respect the public has for Defence.

9. The second two conditions are discretionary and require the exercise of good judgement on the part of the approving authority. A service request should not be approved and should not be provided if that service will:

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a. place Defence in competition with a private industry; or

b. be provided on a continuing basis in situations where other responsible government departments or the private sector should be encouraged to develop their own capabilities."

10. The legal officer should always be prepared to consult with the appropriate directorate or department to assist in determining the appropriateness of the request and the proper instrument to be used to satisfy the request.

11. Provision of services in emergency situations and assistance to provincial/territorial and federal law enforcement agencies will be covered in the OpLaw module of the LOQ course

Interim Summary:

Conclusion:

Stage 2 Advise on contracts

Introduction:

12. The rules and principles governing government contracting are outlined in the Treasury Board Contracting Policy. The objective of government procurement contracting is to acquire goods and services, including construction services, in a manner that enhances access, competition and fairness and results in best value to Canada.

13. Legal officers engage in the contracting process on a limited basis in most circumstances. Contracting officers are generally available to provide information and advice to commanders when it is required. On deployed operations legal officers may have a more expanded area of responsibility as it relates to contracting.

Body of the lesson:

14. Government contracting shall be conducted in a manner that will:

a) stand the test of public scrutiny in matters of prudence and probity, facilitate access, encourage competition, and reflect fairness in the spending of public funds;

b) ensure the pre-eminence of operational requirements;

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c) support long-term industrial and regional development and other appropriate national objectives, including aboriginal economic development;

d) comply with the government's obligations under the North American Free Trade Agreement, the World Trade Organization - Agreement on Government Procurement and the Agreement on Internal Trade.

15. Treasury Board Contracting Policy applies to all departments and agencies, including departmental corporations and branches designated as departments for purposes of the Financial Administration Act, except those included within the meaning of paragraph (c) of the definition of "department" found in section 2 of that Act.

16. The policy covers:

a) contracting authority;
b) policy requirements;
c) monitoring;
d) procedural requirements;
e) bidding and selection:
f) contract award;
g) contract administration;
h) leases and
i) service contracts

17. The above list is not exhaustive but is meant to give a general understanding of the key areas covered by the policy.

18. The following transactions are not covered by the policy:

a) revenue-producing contracts (sales and concession contracts, leases of Crown property) and the like;

b) contracts related to the acquisition of land (which are covered by separate statutes and regulations);

c) the transfer of goods, services or real property between departments, Crown Corporations, provinces, municipalities and the Territories;

d) grants and contributions;

e) shared cost programs in which the government is not the contracting authority;

f) any contract not funded by Parliament in which the government acts as an agent for other parties;

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g) leases and contracts for the fit-up of an office or residential accommodation pursuant to the Federal Real Property Act and its Regulations; and

h) Interchange-Canada agreements.

19. The Minister responsible for National Defence may acquire logistics support, supplies and services from states allied or associated with Canada under a mutual logistic support arrangement during the execution of combined exercises, training, deployments, operations, or other cooperative efforts, provided all related transactions are executed within the approved resource envelope for the activity being supported and subject to a Request and Authorization from the Minister of Public Works and Government Services when required. Logistic support, supplies and services are specifically defined as food, water billeting, transportation (including airlift), petroleum, oils, lubricants, clothing, communications services, medical services, ammunition, base support (and construction incident to base operations support), storage services, use of facilities, training services, spare parts and components, repair and maintenance services, calibration services, port and airport services, and the temporary use of general purposes vehicles and other non-lethal items of military equipment to the extent that such use is permitted under the national laws of the signatories.

Ref: Part II - Departmental Index to Exceptional Contracting Limits, Exceptional Contracting Limit number 62 of the Treasury Board Contracting Policy

20. DMPP 4 is the Departmental OPI for contracting process, procedures and policy.

21. Depending on the role that the legal officer will be assigned to during deployed operations he, or she, may be required to complete the Contracting Direct with Trade Course (formerly the Contracting Certification Course) in order to exercise contracting authority. Additionally, the legal officer will have to be briefed on the scope of their duties before being granted contracting authority.

22. CANFORGEN 121/14 contains information related to changes to contracting documents which have been modified to include information about the office of the Procurement Ombudsman and the implementation of the new treasury board travel directive.

23. The updated documents are now available in Procurement Administration Manual (PAM) and have gone into immediate effect. The PAM can be found at: http://dgmssc.ottawa-hull.mil.ca/MATKNET/English/Procurement/PAM/Page01_e.htm.

24. The Treasury Board Contracting Policy is a comprehensive and detailed document that every legal officer should acquaint themselves with even if they are not directly involved in contract issues as it addresses such topics as the role of Public

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Works and Government Services Canada, standing offers, statements of requirements and other topics that a legal officer may be exposed to during the course of their career.

Questions:

Interim Summary

PART 4 – CONCLUSION

Summary:
25. The topics covered in this lesson included provision of service agreements and providing legal advice to the chain of command on contracts. You have been informed of these topics so that in your day to day duties as a legal officer you will be able to provide appropriate legal advice.

Confirmation:

26. Done in a discussion format. Ask some confirmation questions. No group answers, remind students to raise their hand before speaking. Or instructor may ask particular students to answer questions

Conclusion:

27. Topics covered in this lesson included advising on contracts and provision of services. As a legal officer you may be called upon to provide advice in a variety of circumstances related to these two subjects. It is vitally important to remain current on the policies that govern these areas of administration.

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PART 1 –LESSON IDENTIFICATION

EO 012.02 ADVISE ON MOU AND OTHER ARRANGEMENTS

Performance: Advise on Memorandum of Understanding and other arrangements

Conditions:

a. given: References: including but not limited to relevant factual context, legislation, policies, case law, (may also include prior legal opinions) NDA, QR&O,DAOD

b. denied: nil

Standard: At the conclusion of this lesson the individual candidate shall know and understand memorandum of understanding, the process through which they are developed and approved and the role of the legal officer in this process. At the end of this lesson the candidates will be able to apply this knowledge in their capacity as legal advisors.

Main Teaching Points:
- Memorandum of Understanding
- Other arrangements

Method: This EO will be accomplished by Development Lesson. Students will be required to read any pre-reading packages assigned and be prepared to respond to questions.

Duration: 1period (40 min)

References: NDA, QR&O , DAOD 7014-0, DAOD 7014-1, MoU Writing Guidelines,

Training/Learning Aids: Standard classroom with whiteboard and projection system, handouts, student disk, student desk book, Legal Officer Qualification Course (LOQC) Instructors Handbook – Module(s) [XXX]

Note to the instructor: This developmental lesson shall be conducted in structured manner, using the list of "questions to the class" provided in the following pages. Instructors are to complement each segment of the developmental lesson by follow-up and direct questions taking into account the flow and direction of the discussion. Interim summaries shall be conducted at the end of each segment to confirm the material was learned and provide a basis from which the discussion can progress to the next segment. A review of the main teaching points will then take place at the end of the period.

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PART 2 – INTRODUCTION

Objective: The instructor shall introduce the topic of memorandum of understanding, the applicable policies associated with Memorandum of Understanding (MoU) and their development, the use of MoU, their structure and format and the role of the legal advisor in the MoU process and other arrangements. By the end of the lesson the candidates should have a basic knowledge of these topics which would allow them to provide legal advice as it pertains to this subject

Introduction: The DND and the CF are committed to using MoUs to set out the terms of cooperative working arrangements with external organizations when the arrangements are intended to have no legal or contractual obligations for the DND and the CF. Although MoUs are non-legally binding arrangements, they carry significant political and moral weight, and the responsibilities reflected in MoUs are to be carried out in good faith.

Outline: During this lesson the candidates will be introduced to MoU, the applicable policies associated with them and their development. The students will also be instructed on the role of the National Defence MoU Coordinator (NDMOUC), the role of the legal advisor in the MoU process and the structure and format of MoU. Finally the candidates will be introduced to other agreements such as service level agreements, support agreements and mutual support agreements. It is important for legal officers to understand these topics so they are able to provide appropriate legal advice to the chain of command.

Stage 1 Applicable policies

Stage 2 NDMOUC

Stage 3 Nature and purpose of MoU

Stage 4 Role of the legal advisor in the MoU review process

Stage 5 MoU development

Stage 6 MoU structure and format

Stage 7 Technical arrangements under MoU

Stage 8 Service level arrangements

Stage 9 Mutual support arrangements

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PART 3 – BODY OF THE LESSON

Stage 1 Applicable policies

Introduction:

28. DAOD 7014 outlines the policies and procedures for the development and approval of MoU for DND and the CF. The OJAG has also developed MoU guidelines that every legal officer should be familiar with and refer to when involved in the legal review of a MoU. These orders and directives explain the status of MoU, how MoU are prepared and who has the authority to sign them.

29. Even though these particular DAODs should be consulted as the MoU is being prepared, legal advice should also be obtained to ensure that the MoU is the appropriate instrument to use in the given situation and that the MoU complies with the relevant law.

Body of the lesson:

30. A Memorandum of Understanding (MoU) is a written, approved, non-contractual, non-legally binding arrangement that may be developed at any level within the DND and the CF, by which the DND or the CF and other participants external to the DND and the CF decide to cooperate in a project, program or similar undertaking.

Ref: DAOD 7014-0 para 2

31. MoU are generally categorized as international and domestic. A domestic MoU is one that is between the CF and another federal government department, a Crown corporation or agency, province, territory or municipality or, on an exceptional basis, a non-government organization, an industry association or a commercial entity within Canada.

32. An international MoU is one between the CF a foreign armed force, military alliance or command within an alliance, a department or ministry of a foreign government, an international organization or, on an exceptional basis, an international non-government organization, a foreign industry association or a foreign commercial entity.

33. Prior to entering into an MoU the DND and the CF must ensure compliance with all applicable federal laws and government policies, directives and guidelines; and all appropriate financial, contracting and applicable project authorities and approvals in any case involving the acquisition of goods or services. Any non-compliance with DAOD 7014 will be reported to the OJAG by the NDMOUC.

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34. When entering into an MoU, either domestic or international, various internal stakeholders must be contacted. The unit legal adviser and the NDMOUC should be contacted for guidance on how to draft an MoU. Particularly, the NDMOUC should be consulted to determine whether an MoU already exists to cover the specific situation at issue. The NDMOUC may also seek legal advice to ensure that an MoU is the most appropriate instrument to utilize under the circumstances. If there are financial obligations under the MoU, the Director Financial Operations 3-3 (D Fin Ops 3-3) should also be consulted to ensure that contemplated financial arrangements are permissible under legislative or government policy.

35. As noted he DAOD 7014 series provides the guidance for MoU development and approval however, it does not apply to any arrangement pertaining to non-public property that may be entered into by the Chief of the Defence Staff or an officer in their non-public capacity.

36. When a DND or CF office of primary interest is contemplating the initiation of an arrangement dealing with non-public property, legal advice should be sought from the appropriate subject matter legal advisor.

Questions:

Interim Summary:

Stage 2 DNDMOUC

Introduction:

37. The NDMOUC is responsible for monitoring the implementation of the DAOD 7014 series, establishing instructions to implement the DAOD, and advising the OJAG on amendments to this DAOD as required.

Body of the lesson:

38. The ND MOUC is also responsible for controlling the inventory of all DND and CF MOU and reviewing final drafts of MoU to ensure compliance with the DAOD and notifying the OJAG of any non-compliance.

39. Where an international MoU is contemplated the NDMOUC must coordinate with the Director International and Operational Law (DIOL) in the Office of the JAG regarding consultation with the Department of Foreign Affairs, Trade and Development (DFATD) on international MoUs.

40. The role is currently filled by Debbie-Lyn Tasheff (JAG/SJSLA Directorate)

Questions:

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Interim Summary

Stage 3 Nature and purpose of the MoU

Introduction:

41. A MoU is a written, approved, non-contractual, non-legally binding mutual working arrangement between the DND/CF and external participants for the purpose of cooperating on a project, program or similar undertaking

42. While a MoU may contain contract like language it is not a binding arrangement, it is not a provision of service arrangement and it is not a service level arrangement. between two defence agencies.

43. Canada holds the position that MoU are not legally binding. When working in conjunction with other nations on International MoU the legal officer must be cognizant that not all nations take the same perspective. The United States sees MoU as a form of contract that is legally binding upon the parties.

Questions:

Interim Summary:

Stage 4 Role of the legal adviser in the MOU review process

Introduction:

44. Each MoU undergoes two review process the initial review to determine if an MoU is the appropriate instrument and a final review to ensure all required aspects of the document have been completed.

Body of the lesson:

45. The appropriate legal officer will be identified depending on which department or organization is developing the MoU. Once identified the legal officer must review the needs of the department and what they are trying to achieve through the implementation of a MoU. Once the legal officer has confirmed that an MoU is appropriate in the circumstances they will provided guidance to the MoU drafter and direct them to DAOD 7014-1 and the MoU Writing Guidelines

46. Once the MoU is drafted the legal officer will do a final review and recommend any changes to ensure that the document is written properly and contains all the required sections and all optional sections necessary. Additionally the legal advisor will review the document to ensure that appropriate language and terminology is correct, that the drafter has not included information that is at cross purposes of the MoU and

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that it does not contain any provisions that are outside the scope of authority of the signatory. If changes are recommended the legal officer will have to do an additional review of the final document once the changes are complete.

Questions:

Interim Summary:

Stage 5 MOU development

Introduction:

47. There are three phases in MoU development. Initiation, Preparation and Completion.

Body of the lesson:

Initiation Phase

48. Before an MoU is initiated the departmental MoU OPI will confirm with their local legal advisor that an MoU is the appropriate instrument to achieve the desired goal. The DND MOUC will then determine whether arrangement already exists and provide guidance on MoU preparation and examples, registers the MoU and assigns an MoU number, conducts admin review to ensure departmental compliance with the DAO and the MoU writing guidelines and coordinates other mandatory reviews.

49. Legal, financial and acquisition authority advice must be obtained by the DND or CF MoU office of primary interest (OPI) during the MoU initiation phase.

50. DCMFA – Ensures financial resources are used IAW applicable policy/regulations and establishes accountability and financial control

Preparation Phase

51. MoU Preparation is the second phase. After initial queries to determine that an MoU is the proper instrument the MoU will be drafted by the department that is seeking to initiate the MoU. The appropriate legal advisor must be consulted by the DND or CF MoU OPI before moving on to the MOU preparation phase. It is at this stage that the legal officer may get pulled in to further assist and may feel tempted to draft the document for the department. This should be avoided. It is important for those that will be using the MoU to do the work to ensure they know the nature of the instrument they will be using. Guidance is the role of the legal officer at this stage.

52. MoUs are structured in a prescribed way as set out in the table in DAOD 7014-1. This structure must be followed when preparing an MoU. Every MoU must contain the

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sections designated in the table as "mandatory". Sections designated as "optional" are included only if required. The table shows the sequence of sections in an MoU and the criterion for including each section.

53. The MoU writing guidelines will also assist the drafter in ensuring the prescribed MoU structure, format and wording are used and that the document contains all the mandatory provisions as well as the appropriate optional components.

Completion Phase

54. The MoU development process concludes with the completion phase. The completion phase consists of the review process, approval and distribution. During the completion phase the final reviews are conducted by the various departments. Some are required and some are optional. The review process must include review by the NDMOUC as well as the finance, security and legal advisors.

55. All reviews must be completed before any MoU is approved. DCMFA reviews the document to ensure financial resources are used in accordance with applicable policy/regulations and establishes accountability and financial control. When the review process is completed, the appropriate authority will approve the MoU as per the authority table in DAOD 7014-0.

56. The OPI responsible for the MoU must send it to the NDMOUC the original DND or CF MoU with the signatures of all participants and a scanned electronic copy of same. The original delegation of authority letter, if applicable, and a scanned electronic copy of same must also be forwarded to the ND MOUC

57. An original MoU will be forwarded to the external participant or participants with the signatures of all participants. Finally, each office of collateral interest will receive a paper copy of an original MoU with signatures of all participants.

Note: DAOD 7014-1 refers to D Law/Materiel, which no longer exists; SJS LA is now the department that will do reviews once done by D Law/Materiel.

Questions:

Interim Summary:

Stage 6 MOU structure and format

Introduction:

58. The MoU writing guidelines and the DAOD clearly set out the structure and format to be followed when developing a MoU.

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http://www.forces.gc.ca/en/about-reports-pubs-military-law/daod-mou-writing-guidelines.page

Body of the lesson:

59. Mandatory sections include:

a. Introduction;
b. Objectives and Scope;
c. Financial Arrangements;
d. Settlement of Disputes;
e. Amendments;
f. Duration;
g. Withdrawal;
h. Termination and
i. Effective Date and Signatures.

60. If there are no financial implications, the Financial Arrangements section shall read: "This MoU will not impose any financial responsibilities on its participants, except that each participant will be responsible for the funding costs it incurs in its own interest, related to the support of the MoU."

61. The MoU must include an effective date and proper signature blocks. When the DND concludes an MoU, it is in the name of the Minister of National Defence (MND) or the DND. When the CF concludes an MoU, it is in the name of the Chief of the Defence Staff (CDS). If the MoU is with a foreign government, that participant must be described as being represented by the minister, ministry, department or armed forces of that state.

62. Optional sections are described thoroughly in the MoU Writing Guidelines

Questions:

Interim Summary:

Stage 7 Technical arrangements under MoU

Introduction:

63. Technical Arrangements under MoU are used to specify aspects of the MoU that are of a very technical nature or require specific compliance from both or either party.

Body of the lesson:

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64. A MoU may provide in broad language the requirements of the two parties, such as support, infrastructure etc. without going into detail of very specific requirements. A technical arrangement can be used to expand upon the broad aspects of the MoU and provide the specific details of the various services, support, access to infrastructure etc that may be required.

65. For example a MoU between the CF and a foreign military may simply enumerate transportation support as one of the areas that the MoU covers. A technical arrangement under the MoU could detail the provision of inspection and certification of vehicles by the transportation section of the foreign military because the CF does not have the infrastructure or personnel to fulfill this requirement on its own.

66. Technical arrangements can also exist independent of an MoU such as the one signed in April, 2013 by Foreign Affairs Minister John Baird which detailed consular contingencies and formalized consular cooperation between the Canada and Cyprus thus ensuring Cyprus's support in case of consular emergencies.

Questions:

Interim Summary:

Stage 8 Service level arrangements

Introduction:

67. Service level arrangements are normally negotiated between the government and non-governmental organizations. A service may be provided to a non-defence agency if provision of the service would be consistent with the purpose of government policy. Within the context of this general guidance there are four conditions must be considered prior to approving the provision of a service. The first two conditions must be met before a service may be provided. Approving authorities may exercise discretion, depending on the situation, in complying with the second two conditions.

Body of the lesson:

68. The conditions that must be met are that the provision of service will not result in an unacceptable degradation of Defence readiness or capability to carry our Defence activities or adversely affect the confidence or respect the public has for Defence.

69. The two discretionary conditions require the exercise of good judgment on the part of the approving authority. A service should not be provided if that service will place Defence in competition with a private industry or be provided on a continuing basis in situations where other responsible government departments or the private sector should be encouraged to develop their own capabilities.

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Ref: Provision of Services to Non-Defence Agencies, also referred to as the Provision of Services Policy para 22-23

70. It is important for those considering provision of services arrangements to determine if the provision of the service would be consistent with the overall aims of government policy. The more clear the alignment with government policy, the stronger the case for providing the service. Also they must consider if the decision to provide a service will reflect well on the defence establishment as a whole.

71. If there is any chance that either action or inaction would be received unfavorably by the public, then the approving authority must act accordingly. If the approving authority is concerned about the potential public response, then the request must be referred to a superior approving authority for approval.

72. Additionally it must be determined if the private sector willing and able to provide the service. In general, there is a stronger case to provide a service when there is no alternative in the potential customer's local area. However, given the trend toward national and global markets for certain types of services, consideration should also be given as to whether a supplier outside the local area could provide the service at a reasonable cost.

73. One area that is of special concern is the perception that the DND/CF would be taking business from other government departments or local businesses by providing a service. It must be determined if the service would duplicate a service which should otherwise be provided by another government organization or a business. Where it is determined that duplication would result, the service should not be provided.

74. The DND and CF must be careful not to create a situation wherein if the service were provided would it create an expectation for similar services in the future or jeopardize the ability of the private sector to create the means to meet such needs in the future.

75. There is a stronger case to provide a service which meets a one-time need, and will not make the non-defence agency dependent on Defence to provide the service on a continuing basis.

76. Finally the approving authority must ascertain if it is actively seeking revenue opportunities. Approving authorities must be very judicious in seeking revenue opportunities and must ensure that marketing efforts do not raise concerns regarding competition with the private sector. Provision of services to non-Defence agencies that would require the expansion of or maintenance of capacity beyond DSP requirements must be avoided. Creating or maintaining capacity in excess of Defence needs would not be a legitimate use of DND resources.

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77. There may be situations when an approving authority believes it is appropriate to provide a service even though there may be competition with the private sector, or the service would be provided on a continuing basis. These situations should arise very rarely, and an approving authority must exercise caution in providing a service in this event and it may be appropriate to consult with a superior approving authority. Assistant Deputy Minister (Finance and Corporate Services)/DFPP guidance may be sought regarding policy application. Approving authorities will be held accountable for their decisions through the reporting process.

78. Approving authorities must ensure that the provision of services has been documented in order to provide a measure of accountability concerning decisions and approvals made in response to a request for service. Documentation can be in the form of a Provision of Services Record or a Provision of Services Register, depending on the criteria outlined in the Provision of Services Policy. Once completed, a copy is to be retained locally as part of the audit trail for the provision of services.

79. Approving authorities must identify those requests for service which have the potential of being politically sensitive. When an approving authority has reason to believe, based on departmental policy or their knowledge of the local situation, that a decision to provide or withhold a service may be sensitive or have a broader impact on Defence, then the request shall be referred to a superior approving authority.

80. There are four main types of services that can be provided by defence agencies. The types of service are differentiated based on the manner in which the recoverable cost is calculated:

Type 1 – service provided to an OGD;
Type 2 – service provided in compliance with an Act, Regulation, or agreement;
Type 3 – service provided to use surplus Defence capacity; and
Type 4 – service provided to meet any other request for service.

Ref: Provision of Services to Non-Defence Agencies, also referred to as the Provision of Services Policy para 27

81. Services are provided on a cost recovery basis but the Approving authorities are authorized, within limits prescribed by the Minister as identified in Annex of the Provision of Services Policy, to provide a service at less than the recoverable cost where they consider it consistent with the purpose of government policy.

82. Approving authorities will face situations when they are called upon to charge less than the recoverable cost for a service. It will not always be evident if such a request is clearly prompted by necessity and consistent with the purpose of government policy. Approving authorities must make their decision based on their knowledge of the local situation and their experience.

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83. The calculation of recoverable cost will normally include charges against both the local budget of the approving authority, such as Temporary Duty (TD) and central costs, such as military pay, which represent a cost to the Department. Unless otherwise directed, when payment for a service has been received, the approving authority must ensure that only those expenses actually charged to their budget are coded back to their budget, and central costs are coded to the Department.

84. When direction is issued by a superior approving authority to provide a service at less than recoverable cost, the superior approving authority should ensure appropriate funding is provided to reimburse incremental costs incurred by the unit responsible for providing the service.

Questions:

Interim Summary:

Stage 9 Mutual support arrangements

Introduction:

85. Mutual support arrangements are often also referred to as Mutual Logistical Support Arrangements or MLSA. MSLA are highly flexible international MoUs designed to facilitate the reciprocal provision of logistics support, supplies and services between cooperating defence forces. DND or CF MoU OPI who anticipate developing an MLSA must be aware of the Interim Policy Direction – Mutual Logistics Support Arrangements

Ref: http://dmcs-prk.mil.ca/dmcs/FilesO/DMCS98387.PDF

Body of the lesson:

86. More on this topic will be covered during the OP LAW module but these are generally negotiated when nations are cooperating on deployed joint operations. An understanding governing support can be captured in a broad Mutual Support Agreement (MSA) or in a more focused Host Nation Support Agreement (HNSA).

87. The bulk of Canadian MSAs are concluded with NATO-member countries. DND/CF has entered into reciprocal MSAs for various types of logistic support many times to ensure support for deployed troops.

88. NOTE: In some circumstances the term arrangement and agreement are used interchangeably as some nations refer to these types of relationships as agreements and others prefer the term arrangement.

Questions:

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Interim Summary:

PART 4 – CONCLUSION

Summary:

89. The topics covered in this lesson include MoU, nature and purpose of MoU and other arrangements as well the role of the legal advisor in the MoU process. You have been informed of policies and procedures on the development and approval of MoU as well as key aspects of other arrangements used by the CF

Confirmation:

90. Done in a discussion format. Ask some confirmation questions. No group answers, remind students to raise their hand before speaking. Or instructor may ask particular students to answer questions

Conclusion:

91. As a legal officer you may be called upon to provide advice on MoU and other similar types of arrangements used by the DND and the CF both domestically and internationally. The role of the legal officer is key to ensuring that these documents conform to established policies and procedures. The introduction to MoU and other arrangements that you have just received is just that an introduction. It is important for all legal officers to remain current on the policies, directives and procedures that shape these documents so that they can provide appropriate advice when called upon to do so.

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PO 013 ADVISING ON MATTERS IN CONJUNCTION WITH THE DEPARTMENT OF JUSTICE AND OTHER GOVERNMENTAL DEPARTMENTS

PERFORMANCE: Understand and provide legal advice on matters in conjunction with the Department of Justice and OGD
Conditions:

GIVEN: Relevant factual context, policy, case law, reference material (including prior legal opinion)

DENIED: nil

ENVIRONMENT: CF unit, base, wing HQ, deployed domestically and internationally, under austere conditions

STANDARD: The legal officer shall, without direct supervision, provide legal advice on the administration of CF service, specifically:

a. Advise on legal issues relating to public property and non public property
b. Advise on provision of health services
c. Advise on official language issues
d. Advise on access to information (ATI) and privacy issues
e. Advise on other areas of law, impacting the CF, in conjunction with DOJ

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PART 1 –LESSON IDENTIFICATION

EO 013.01

Title: ADVISE ON LEGAL ISSUES RELATING TO PUBLIC PROPERTY AND NON-PUBLIC PROPERTY

Performance: Advise on legal issues related to public and non-public property

Conditions:

a. given: References: including but not limited to relevant factual context, legislation, policies, case law, (may also include prior legal opinions) *NDA*, QR&O,DAOD

b. denied: nil

Standard: At the conclusion of this lesson the individual candidate shall know and understand public and non-public property, and be able to apply this knowledge in their capacity as a legal advisor

Main Teaching Points:

- Public property
- Non- public property

Method: This EO will be accomplished by Development Lesson. Students will be required to read any pre-reading packages assigned and be prepared to respond to questions.

Duration: .5 period (20 min)

References: *Constitution Act* 1867, *Constitution Act* 1982, *NDA* s.2, s.37-41, *Financial Administration Act*, QR&O 38.01, QR&O 27.07 DAOD 9003-1,

Training/Learning Aids: Standard classroom with whiteboard and projection system, handouts, student disk, student desk book, Legal Officer Qualification Course (LOQC) Instructors Handbook – Module(s) [XXX]

Note to the instructor: This developmental lesson shall be conducted in structured manner, using the list of "questions to the class" provided in the following pages. Instructors are to complement each segment of the developmental lesson by follow-up and direct questions taking into account the flow and direction of the discussion. Interim summaries shall be conducted at the end of each segment to confirm the material was

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learned and provide a basis from which the discussion can progress to the next segment. A review of the main teaching points will then take place at the end of the period.

PART 2 – INTRODUCTION

Objective: The instructor shall introduce the topics of public and non-public property. By the end of the lesson the candidates should have a basic knowledge of these topics which would allow them to provide legal advice as it pertains to this subject

Introduction: Section 2 and sections 38 to 41 of the *NDA* create NPP as a legally distinct form of Crown property. Public Property is defined in s.2 *NDA* and further touched upon in s.37 *NDA*

Public property and NPP are two distinct types of Crown property, which are vested in, and administered by, agents of the Crown. Although both Public and NPP may be vested in the same individual, each retains its distinct legal identity and remains subject to a separate accountability framework.

The NPP accountability framework, established pursuant to the *NDA*, is distinct from the Public accountability framework and unique to NPP. The allocation and expenditure of NPP is subject to the direction of the MND and CDS.

Outline: During this lesson the candidates will be introduced to public and non-public property. It is important for legal officers to understand how public property and non-public property entities are addressed within the DND and CF.

Stage 1 Public property

Stage 2 Non-public property

PART 3 – BODY OF THE LESSON

Stage 1 Advise on public property

Introduction:

1. Public property is property, which is dedicated to the use of the public. It is a subset of state property. The term may be used either to describe the use to which the property is put, or to describe the character of its ownership (owned collectively by the population of a state).

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Body of the lesson:

2. In the modern representative democracy, "public property" is said to be owned by the people as a commons or held in trust by the government for common benefit. In many Commonwealth realms, such property is said to be owned by the Crown. Examples include Crown land, Crown copyright, and Crown dependencies.

3. In Canada, *The Public Debt and Property* are under the exclusive legislative authority of the Parliament of Canada rather than Queen or local authority, according to **article 91 1A of the *Constitution Acts*, 1867 and 1982**.

4. CDS and base/unit commanders must make decisions on how to use public assets and non-public assets under their control in accordance with their official delegated public and non-public duties and responsibilities

5. If the CDS or base/unit commanders elect to use a publicly owned asset under their control for a non-public purpose, such as morale and welfare programs, then that property is NPP by operation of law.

6. Such an action would constitute an administrative decision and would have to be made pursuant to delegated lawful authority and within the mandate that defines how that public asset will be managed, administered or used.

Questions:

Interim Summary:

Stage 2 advise on non-public property

Introduction:

7. Non-public property is defined in **s. 2 *NDA*** as all money and property, other than issues of materiel, received for or administered by or through messes, institutes or canteens of the Canadian Forces.

8. The non-public property of a unit or other element of the Canadian Forces shall vest in the officer from time to time in command of that unit or other element, and shall be used for the benefit of officers and non-commissioned members or for any other purpose approved by the Chief of the Defence Staff in the manner and to the extent authorized by the Chief of the Defence Staff.

Ref: *NDA* s.38(1)

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9. **DAOD 9003-1 Non-Public Property Governance Framework**, Chief of Military Personnel and the Non-Public Property Board (NPPB) provides for the delegation of authority by the CDS to the Chief of Military Personnel (CMP) for the administration and management of NPP and the personnel management of the Staff of the Non-Public Funds, Canadian Forces, and prescribes the composition and role of the NPPB and other committees.

Body of the lesson:

10. The CDS has overall responsibility under the *NDA* for NPP. Officers in command of units and other elements are assigned specific responsibilities under the *NDA* for NPP. In the exercise of responsibility for NPP, the CDS involves the chain of command through membership on the NPPB. The NPPB is chaired by the CMP and deliberates on matters on behalf of the CDS.

11. `The CEO CFPSA is responsible to the CMP for the administration of NPP. The chain of command for NPP is the CDS through the CMP and the CFPSA to officers in command of bases, wings and units.

12. The property included in the definition under s. 2 *NDA* includes movables, immovables, real property interests of every kind (freehold, leasehold), intellectual property, personalty, funds, rights, etc.

13. The definition of NPP is not limited to ownership or a legal interest in the property and can include Crown public property "managed" by a NPP organization – including real property. An example of this would be CANEX resale businesses and concessions or the various military museums located on bases, wings and stations across Canada.

14. Additionally, all money and property contributed to or by officers, non-commissioned members, units or other elements of the Canadian Forces for the collective benefit and welfare of those officers, non-commissioned members, units or other elements. This includes mess dues and donations. It also includes all money and property derived from, purchased out of the proceeds of the sale of, or received in exchange for, money and property as described above.

15. Non-public property accounts shall be audited as the minister may from time to time direct. However, this authority competes with that of the auditor general. As the auditor general cannot audit or include NPP holdings in the accounts of Canada without cabinet approval.

Ref: QR&O 27.07

16. Under ***NDA* section 41(3)**, the *Financial Administration Act* (*FAA*) does not apply to NPP. NPP is a category of Crown property that is not subject to the rules and regulations for the administration of Public property.

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17. Because NPP is not subject to the *FAA*, it is also not subject to the regulations made pursuant to the *FAA*, such as the Government Contracts Regulations (GCR). The CEO CFPSA, as approved by CMP, establishes the policies and procedures governing contracting for NPP purposes.

18. Notwithstanding, as a matter of policy, the CDS has directed that the management of NPP be aligned closely with the Public accountability framework. An example of this is the Delegation of Signing Authorities for NPP, which is consistent with the separation of the responsibilities contained in the *FAA*.

19. The legal liability of the CDS or a CO, when acting within the scope of their duties in their NPP capacity under the *NDA*, is not a personal liability, but is a liability only in their capacity as CDS or CO. The Crown indemnifies them when they are acting within their NPP capacity.

20. In effect, the liability of the CDS or a CO is similar to that of a corporation president or a trustee when acting within the scope of their duties. A personal liability may occur, however, in case of gross negligence, wilful misconduct, or a violation of certain legislation such as the *Environmental Protection Act*.

21. Pursuant to **section 40 of the *NDA*,** the conditions under which and the extent to which an officer or non-commissioned member is liable to make restitution in respect of loss or damage to non-public property resulting from the negligence or misconduct of that officer or non-commissioned member shall be as prescribed by the Minister.

Questions:

Interim Summary

PART 4 – CONCLUSION

Summary:

22. The topics covered in this lesson include public and non-public property and how they are to be managed within the DND and the CF. The nature and use of public and non-public property and the authorities associated with the control of NPP. The relevant references to assist the legal officer in providing advice on these topics are the ***NDA*, the *FAA*, DAOD 9003-1 Non-Public Property Governance Framework as well as the capstone document MORALE AND WELFARE PROGRAMS IN THE CF A-PS-110-001/AG-002**

Confirmation:

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23. Done in a discussion format. Ask some confirmation questions. No group answers, remind students to raise their hand before speaking. Or instructor may ask particular students to answer questions

Conclusion:

24. Public and Non-Public property are topics which can be difficult to negotiate. The information you have received in this lesson is but a brief glimpse into this subject area. As legal officer you are likely to be called upon to provide advice on Public and Non-Public property at some point in your career.

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PART 1 –LESSON IDENTIFICATION

EO 013.02

Title: ADVISE ON PROVISION OF HEALTH SERVICES

Performance: Advise on provision of health services

Conditions:

a. given: References: including but not limited to relevant factual context, legislation, policies, case law, (may also include prior legal opinions) NDA, QR&O,DAOD

b. denied: nil

Standard: At the conclusion of this lesson the individual candidate shall know and understand the provision of health services within the CF context, and be able to apply this knowledge in their capacity as a legal advisor

Main Teaching Points:

- Scope of provision of health services
- Use of medical information

Method: This EO will be accomplished by Development Lesson. Students will be required to read any pre-reading packages assigned and be prepared to respond to questions.

Duration: .75 period (30 min)

References: *NDA, Privacy Act, Access to Information Act*, QR&O chapter 34, CFAO 34-21, CFAO 34-45, DAOD (Various sections of numerous DAOD), CF HSvc Spectrum of Care, MSI 4200-38

Training/Learning Aids: Standard classroom with whiteboard and projection system, handouts, student disk, student desk book, Legal Officer Qualification Course (LOQC) Instructors Handbook – Module(s) [XXX]

Note to the instructor: This developmental lesson shall be conducted in structured manner, using the list of "questions to the class" provided in the following pages. Instructors are to complement each segment of the developmental lesson by follow-up and direct questions taking into account the flow and direction of the discussion. Interim

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summaries shall be conducted at the end of each segment to confirm the material was learned and provide a basis from which the discussion can progress to the next segment. A review of the main teaching points will then take place at the end of the period.

PART 2 – INTRODUCTION

Objective: The instructor shall introduce the scope of provision of health services including spectrum of care, use of medical information and the regulations that govern this as well as the impact on the chain of command among other topics . By the end of the lesson the candidates should have a basic knowledge of these topics which would allow them to provide legal advice as it pertains to this subject

Introduction: During this lesson the candidates will be instructed on various aspects of the provision of health care that have an administrative law context. This is considered to be an introduction to these topics and not an in depth analysis of the subject overall. At th end of the lesson the candidates should be able to identify the purpose of the Spectrum of Care document, who is authorized to receive medical treatment within the CF Spectrum of Care model, the authorized and non-authorized uses of medical information and how the use of medical information impacts the chain of command

Outline: During this lesson the candidates will be introduced to aspects of the provision of health services within the CF. It is important for legal officers to understand these topics in order that the legal officer can provide relevant legal advice when called upon to do so.

Stage 1 Spectrum of care

Stage 2 Recipients of health care services

Stage 3 Authorities

Stage 4 Use of medical information statutes and regulations

Stage 5 Unauthorized use of medical information

Stage 6 Impacts on CoC

PART 3 – BODY OF THE LESSON

Stage 1 Spectrum of care

Introduction:

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25. The Canadian Forces (CF) Spectrum of Care document was first published on 21 December 1998 to describe the health benefits and services available and publicly funded for CF members and other eligible persons. It is published by the Surgeon General under the authority of Chief Military Personnel (CMP) and is updated regularly.

Ref: http://cmp-cpm.forces.mil.ca/health-sante/pub/soc-gds/cmc-smc-eng.asp

26. The CF Spectrum of Care document provides direction to CF health care providers, Base/Wing Surgeons, Dental Detachment Commanders, CF chain of command and CF members.

Body of the lesson:

27. The Spectrum of Care document authorizes the use of public funds to ensure that CF members have access to a standard of health services that is comparable overall to that received by Canadians under provincial health care plans.

28. Inclusions and exclusions apply everywhere in Canada and abroad, regardless of what health services are covered by provincial or allied health plans. The Spectrum of Care's primary focus is not on equity with the provinces, but rather on operational benefit: i.e having the right person available for operations with the right level of health fitness.

29. The spectrum of care consists of six parts:

1. Comprehensive Medical Care;
2. Supplemental Health Care;
3. Occupational Health Care;
4. Preventive Medicine;
5. Health Promotion; and
6. Comprehensive Dental Care.

30. On behalf of the Department of National Defence (DND) and CF, Commanders are responsible to ensure that the health services requirements of CF members and eligible persons are met. The Commander CF Health Services Group (H Svcs Gp) will develop and maintain an organizational structure to assist CF health care personnel and enable Commanders, within the chain of Command, to fulfill their responsibilities for the provision of health care to entitled members.

Questions:

Interim Summary:

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Stage 2 Recipients of health care services

Introduction:

31. All Regular Force personnel are covered by the Spectrum of Care (SoC) from the time of enrolment to the effective date of release from the CF. Reserve Force personnel are covered only during specified periods of eligibility based on their duty status and the relatedness of their illness or injury to military service as per **QR&O 34.07.**

Body of the Lesson:

32. QR&O 34.07 - ENTITLEMENT TO MEDICAL CARE

(1) In Canada, medical care authorized in this article shall be provided:
a. in a medical facility operated by the Canadian Forces or, where authorized by the commanding officer of an officer or non-commissioned member on the advice of the appropriate senior medical officer, in a medical facility operated by another department of the federal government or a civilian medical facility; and
b. by a medical officer of the Canadian Forces or, where authorized by the commanding officer of an officer or non-commissioned member on the advice of the appropriate senior medical officer, by a medical doctor employed by another department of the federal government, a civilian medical doctor or such other health care personnel as may be authorized by the Chief of the Defence Staff.

(2) Where emergency medical care is required and the Canadian Forces medical facilities or medical personnel described in paragraph (1) have been determined to be unavailable or where the urgency of the situation precludes such a determination, medical care may be obtained from other sources and the receipt of that care shall be reported to the parent unit by the member concerned as soon as possible.

(3) Outside Canada, medical care shall be provided in accordance with article 34.10 (Medical Care in Foreign Countries).

(4) Subject to paragraphs (5) to (8), medical care shall be provided at public expense to a member of:
a. the Regular Force;
b. the Special Force;
c. the Reserve Force;
d. a force of a North, Atlantic Treaty Organization State in Canada in connection with his official duties, where reciprocal agreements for the provision of free medical care are provided for by that State; or
e. any other military force, as directed by the Minister.

(5) Unless the Minister otherwise directs, a member of the Canadian Forces or of a force of a North Atlantic Treaty Organization State or other military force is not entitled to medical care at public expense:
a. beyond the 21st day of a period of absence without authority;
b. beyond the date of his release, except as may be provided under the Veterans Treatment Regulations to a former member of the Canadian Forces; or

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c. where he has failed to comply with regulations governing the provision of medical care, except that the charges for medical care obtained may be paid from public funds if subsequent action is taken to recover the cost from the member.

(6) Subject to paragraph (5), a member of the Reserve Force whose need for medical care is attributable to the performance of duty is entitled:
a. for the remaining period of duty to medical care at public expense; and
b. after termination of the period of duty to such medical care at public expense as the attending physician may consider necessary and as authorized by the officer commanding the command.

(7) Subject to paragraph (5), a member of the Reserve Force whose need for medical care is not attributable to the performance of his duty and is not a result of his misconduct or imprudence is entitled:
a. where the requirement arises while he is on active service or on Class "C" Reserve Service, to medical care in accordance with paragraph (6);
b. where the requirement arises while he is on Class "A" or "B" Reserve Service, to receive at public expense medical care in whole or in part which is not provided for under his provincial health care plan until the date upon which the period of duty terminates or the date upon which he is returned to his home, whichever is the earlier, unless otherwise authorized by the Minister; or
c. where the requirement arises while he is on any duty not mentioned in subparagraphs (a) and (b) and unless the Minister otherwise directs, to medical care in accordance with paragraph (6).

(8) A member of the Reserve Force who is not on active service, Class "B" Reserve Service or Class "C" Reserve Service and who, in the opinion of the officer commanding the command, unreasonably refuses to accept the medical care prescribed shall not be granted any further medical care for that specific condition, effective the date of refusal.

(9) A person subject to the Code of Service Discipline under paragraphs 60(1)(d), (e), (f), (g), (h), (i) or, (j) of the National Defence Act who is held in service custody shall, where the person requires medical care during confinement, be given medical care at public expense until the person is discharged from service custody or from hospital, whichever is the later.

33. From time-to-time, other persons may be authorized for specific services or for specified periods of time. Some examples are: Cadets during summer training, visiting military forces, foreign military exchange personnel and their dependents, CF dependents in Canada, and foreign service locations, CF recruit applicants and civilian food handlers.

Ref: CFAO 34.21 MEDICAL CARE -CANADIAN FORCES PERSONNEL IN BRITISH INSTALLATIONS AND BRITISH FORCES PERSONNEL IN CANADIAN INSTALLATIONS

CFAO 34-45 -- MEDICAL EXAMINATIONS AND CARE -CADET INSTRUCTORS AND CADETS

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MSI 4200-38 Instructions: Issue of Drugs and Consumable Medical Supplies to Dependants, Public Servants and Contractors

QR&O 34.21-34.31, Medical care of dependents

34. Within the limits provided in the SoC document, CF members and other eligible persons will be provided comprehensive coverage, whether serving in Canada or abroad, including hospitalization and physician services, supplemental health benefits including drugs and health practitioner's benefits, occupational health services and dental services.

35. Eligible persons will be excluded from any deductible fees or co-payments for care and services provided by or authorized by the CF.

36. All eligible persons will be provided emergency health services from the nearest appropriate military facility and where no military facility exists the nearest appropriate civilian treatment facility.

37. QR&O 34.012 Medical liability – Good Samaritan assistance details that in circumstances where there is an emergency situation a medical officer may render medical care to any person, whether on or off a defence establishment when that action may be lifesaving , cause a reduction in the degree of injury or relieve emotional pain and suffering.

38. QR&O 34.012 would not apply in circumstances where the medical officer derives remuneration or other benefit from such assistance.

39. All persons eligible for coverage under the SoC document will remain responsible for all costs related to health care services not authorized, or for services from sources other than those designated and authorized by the senior Health Services authority. Payment will not be made, nor costs reimbursed, for treatments or therapies if they are deemed to be controversial, not scientifically founded or proven, not medically beneficial or provided solely for cosmetic purposes.

40. Of note, eligible persons residing in Canada will not be entitled to routine health services outside Canada. Emergency coverage will be as per the coverage established from time to time under the PSHCP.

41. Access to health care will, by necessity, be slightly different from base to base and dependent on: the base role, the size of the military population, the base location, the type and size of facilities available and the number and type of military and civilian health care personnel available. The local HCC and Dental Detachment Commander will be responsible to clearly publish any changes to the procedures and routines for accessing both regular and emergency health care.

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42. Due to the shortage of physicians in many parts of Canada and the transient nature of many CF families the incidence of CF families having difficulty finding a family physician has been on the rise. There has been a growing trend of support for CF/civilian medical co-operation activities to try and establish better access to medical facilities and practitioners.

43. To this end there have been arrangements between bases and local medical authorities which have resulted in community clinics being established on defence property with civilian medical and office staff. Greenwood Kingston Family Health Clinic is a partnership between Annapolis Valley Health and 14 Wing Greenwood to provide primary health care services to military families. The family health clinic team from Annapolis Valley Health consists of Family Physicians, Nurse Practitioners, a family practice nurse, dietician and a receptionist team that work in collaboration to provide quality health care. Greenwood Kingston Family Health Clinic provides health care to family members of both regular forces and fulltime Reserve of Military personnel.

Questions:

Interim Summary:

Stage 3 Authorities

Introduction:

44. The *Constitution Act* places responsibility upon the Federal Government for providing medical care to members of the Canadian Forces (CF). This is because the *Canada Health Act* and the provincial health insurance acts exclude members of the CF from the list of "insured persons" for the purpose of provincial health care coverage. Therefore, the CF provides its members with comprehensive health care comparable to that guaranteed to all Canadian citizens under the *Canada Health Act*.

Body of the lesson:

45. The Spectrum of Care Committee (SCC) has been established to oversee the Spectrum of Care of CF members and to develop and implement the Spectrum of Care document. The SCC must represent CF operational needs and is chaired by Assistant CMP with representation from all three Environments. Its recommendations must be endorsed by CMP, presented at least annually or as required to Armed Forces Council (AFC) and Program Management Board (PMB), and may result in Memoranda to Cabinet if necessary to ensure that resources are allocated to support Spectrum of Care decisions.

46. Decisions to include or exclude a health service are based upon five principles:

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1. the treatment, service, or item adheres to the scientific principle of evidence based medicine; this principle would eliminate any new medical procedures or remedies that have not been adequately investigated and scientifically found to provide a significant health benefit (e.g. homeopathic remedies);
2. the treatment, service, or item is necessary for the purpose of maintaining health and mental well-being or preventing disease; it permits the diagnosis or treatment of an injury, illness or disability;
3. the treatment, service, or item is not for purely experimental, research or cosmetic purposes;
4. the treatment, service, or item is funded by at least one province or federal agency; this principle is in keeping with Public Service Health Care Plan (PSHCP) criteria; and
5. the benefit sustains or restores a serving member to an operationally effective and deployable status.

47. Requests for amendments, additions, or deletions of health services must be addressed through the CF Health Services chain of command to Director Medical Policy or Director Dental Services as applicable.

48. The Spectrum of Care document consists of guidelines that are regularly updated in response to changes in technologies and in provincial health care plans. It does not constitute a list of rights, and the final decision as to whether or not a service is provided, approved, and/or funded for a specific CF member is made by the applicable senior medical or dental authority which is Currently Brig Gen J-R Bernier, Surgeon General and Commander CF Health Services Group

Questions:

Interim Summary:

Stage 4 Use of medical information statues and regulations

Introduction:

49. Use of medical information, just like other types of information is controlled by the various statutes and regulations. The *Privacy Act* (PA), the *Access to Information Act* (AIA) as well as the appropriate DAOD all assist with determining what information can be released and to whom. The *Access to Information Act* provides the public with the means of obtaining records held by government institutions. The *Privacy Act* protects a person's personal information from disclosure to third parties and it provides, under certain circumstances, a person access to their own personal information. DAOD are orders that apply to military personnel and directives that apply to DND employees

Body of the lesson:

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50. Medical Information is particularly sensitive as it can be of an extremely private and personal nature. The control of this information and it security is therefore of high importance. This does not mean that medical information cannot be shared. In certain circumstances it may have to be shared such as between attending physician and specialist for referral of, or reporting on, a patient.

51. Medical information may also be released as per request of the member on the basis of a waiver allowing release of information to a third party. This is most often the case when a member has been involved in a civilian car accident and their legal counsel requires access to certain medical documents as preparation for a claim or litigation.

52. The purpose of the *Privacy Act* is to extend the present laws of Canada that protect the privacy of individuals with respect to personal information about themselves held by a government institution and that provide individuals with a right of access to that information.

53. This information can be used for an administrative purpose. An Administrative purpose is defined in the Act as " in relation to the use of personal information about an individual, means the use of that information in a decision making process that directly affects that individual" and includes medical information. "information relating to the education or the medical, criminal or employment history of the individual ..."

54. **S.7 of the *Privacy Act*** states:
Personal information under the control of a government institution shall not, without the consent of the individual to whom it relates, be used by the institution except

(a) for the purpose for which the information was obtained or compiled by the institution or for a use consistent with that purpose; or
(b) for a purpose for which the information may be disclosed to the institution under subsection 8(2).

55. Thus information collected for medical purposes may be disclosed to other medical practitioners for the purpose or coordinating, facilitating or other assisting in the care and treatment of CF members without the members express consent.

56. An exemption to disclosure of personal information under **section 28 of the *Privacy Act*** includes medical information if the disclosure would be contrary to the best interests of the applicant.

57. The Canadian Forces Health Services Privacy Office provides senior level impartial and independent support, advice, consultation, interpretation and recommendations verbally and in writing to all levels of management and staff regarding the design, development and implementation of CF H Svc Gp operational policies, guidelines, frameworks, criteria and processes of information management activities, modifications required to information programs, systems and applications that have

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implications on privacy rights and on the collection, use, disclosure, retention and disposal of personal information explaining sections of the *Access to Information* and *Privacy (ATIP) Acts* and related DND policies and procedures.

Questions:

Interim Summary:

Stage 5 Unauthorized use of medical information

Introduction:

58. As stated earlier medical information like other information gathered must be used or the purpose it was intended. Misuse of medical information could lead to a redress of grievance, litigation or administrative or disciplinary proceedings.

Body of the lesson:

59. Disclosure of medical information contrary to the legislation, regulations and or policies that govern the collection and use of that information could lead to administrative and/or disciplinary proceedings.

60. All persons entrusted with the collection, care, security and disclosure of medical information but be aware of the regulations, policies and procedures associated with the collection, care and control of this information and always abide by them.

61. Any questions or concerns related to the access to, sharing of or use of private medical information should be brought to the attention of the appropriate legal advisor before information is released, used or shared.

62. Questions often arise concerning the release of casualty information to next of kin, units, fellow soldiers and media. Public Affairs officers should seek input from the appropriate legal office prior to releasing the private medical information of members of the CF.

63. One means used to balance the rights of the individual to protection of their private information and the disclosure of information is to have members sign medical information releases that will clearly establish what medical information can be released and to whom should the member be incapacitated and unable to consent to release of information after they become ill or injured.

Questions:

Interim Summary:

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Stage 6 Impact on CoC

Introduction:

64. The chain of command is required to make decisions that relate to the operational capabilities and the effectiveness of the units and sections under its command. It is imperative the chain of command know the capabilities and limitations of the members within the unit. Medical information and information about medical employment limitations is information that must be taken into account when planning future tasking and operations. How does the CF balance the needs of the chain of command and the privacy rights of the members when it relates to medical information and the release and use of this information?

Body of the lesson:

65. As per **DAOD 5019-3** specific diagnosis and treatment of a CF member, and any other information obtained during a medical or social work examination or interview, shall not be disclosed to or discussed with the CO or any non-medical personnel unless the disclosure is required by law, for example: to satisfy the requirements of a court order, or the CF member has provided an informed written consent.

66. However, where the member has been placed under medical employment limitations a CF medical care provider shall fully describe and explain, by appropriate means, to the CO of a CF member any medical employment limitations (MELs) assigned to the CF member, including any limitations on the use of weapons or complex machinery or equipment; and any time required away from the workplace for medical reasons.

67. A CF medical care provider may be required by law in certain circumstances to disclose information about a CF member to a third party without the consent of the CF member.

68. In situations where access to medical information or release of information is contemplated by the chain of command the unit legal advisor should be consulted if the CO if there is a concern about the proper disclosure, use or release of information.

Questions:

Interim Summary:

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PART 4 – CONCLUSION

Summary:

69. The topics covered in this lesson include the Spectrum of Care, the authority for provision of care to eligible persons, use and unauthorized use of medical information and the impact on the chain of command.

Confirmation:

70. Done in a discussion format. Ask some confirmation questions. No group answers, remind students to raise their hand before speaking. Or instructor may ask particular students to answer questions

Conclusion:

71. As a legal officer the candidates may be requested to provide advice on many aspects of provision of health services and it is imperative that they are aware of the regulations and policies that govern the provision of services, medical information and use of medical information.

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PART 1 –LESSON IDENTIFICATION

EO 013.03

Title: ADVISE ON OFFICIAL LANGUAGE ISSUES

Performance: Advise on official language issues

Conditions:

a. **given**: References: including but not limited to relevant factual context, legislation, policies, case law, (may also include prior legal opinions) NDA, QR&O,DAOD

b. **denied**: nil

Standard: At the conclusion of this lesson the individual candidate shall know and understand *Official Languages Act* and the policies and directives that pertain to official languages in the DND and CF, and be able to apply this knowledge in their capacity as a legal advisor

Main Teaching Points:

- Applicable legislation
- Applicable policies

Method: This EO will be accomplished by Development Lesson. Students will be required to read any pre-reading packages assigned and be prepared to respond to questions.

Duration:.25 period (10 min)

References: NDA, QR&O, DAOD, *Official Languages Act*, *Official Languages (Communications with and Services to the Public) Regulations*, A-AD-102-001/AG-001 Official Languages in DND and the CF

Training/Learning Aids: Standard classroom with whiteboard and projection system, handouts, student disk, student desk book, Legal Officer Qualification Course (LOQC) Instructors Handbook – Module(s) [XXX]

Note to the instructor: This developmental lesson shall be conducted in structured manner, using the list of "questions to the class" provided in the following pages. Instructors are to complement each segment of the developmental lesson by follow-up and direct questions taking into account the flow and direction of the discussion. Interim summaries shall be conducted at the end of each segment to confirm the material was

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learned and provide a basis from which the discussion can progress to the next segment. A review of the main teaching points will then take place at the end of the period.

PART 2 – INTRODUCTION

Objective: The instructor shall introduce the topic of official languages. By the end of the lesson the candidates should have a basic knowledge of these topics which would allow them to provide legal advice as it pertains to this subject

Introduction: English and French are the official languages of Canada. In accordance with the *Official Languages Act*, the composition and operation of DND and CF must reflect this reality.

While the provisions of the *Official Languages Act* apply to DND, the Regular Force and the Reserve Force, some of the obligations that arise from the Treasury Board (TB) official languages policy apply only to institutions for which TB is the employer (DND civilian personnel). It is therefore necessary to develop related policies and direction for the specific needs of CF

Outline: During this lesson the candidates will be introduced to the official languages policy of the CF and the regulations that govern official languages for the government of Canada. It is important for legal officers to understand official language policies and regulations in order to be able to provide effective legal advice.

Stage 1 Applicable legislation

Stage 2 Applicable policies

Stage 3 Rights and obligations

PART 3 – BODY OF THE LESSON

Stage 1 Applicable legislation

Introduction:

72. The purpose of the *Official Languages Act* is to ensure respect for English and French as the official languages of Canada and ensure equality of status and equal rights and privileges as to their use in all federal institutions, in particular with respect to their use in parliamentary proceedings, in legislative and other instruments, in the administration of justice, in communicating with or providing services to the public and in carrying out the work of federal institutions;

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73. It is also intended to support the development of English and French linguistic minority communities and generally advance the equality of status and use of the English and French languages within Canadian society and it sets out the powers, duties and functions of federal institutions with respect to the official languages of Canada.

Body of the lesson:

74. To comply with the letter and spirit of the *Official Languages Act*, DND and CF must implement this Act in all components and are committed to:

a) ensuring equality of status for the use of English and French throughout the organization;
b) ensuring that the public can communicate with and receive services from DND and/or CF, in Canada or abroad, in either language, where such an obligation exists under the Official Languages (Communications with and Services to the Public) Regulations;
c) ensuring that, in bilingual units, the work environment is conducive to the effective use of both official languages;
d) ensuring that Francophones and Anglophones have equal opportunity for employment and career advancement within DND and CF;
e) ensuring that DND and CF workforce tend to reflect equitably the existence of the two official language communities in Canada; and
f) promoting the vitality of English and French linguistic minority communities by supporting their development, as well as fostering the full recognition and use of both English and French in Canadian society.

75. ADM (Per) is responsible for formulating policies and overseeing the implementation of the official languages program in DND and CF.

76. Official languages is overseen by the Official Languages Commissioner (OLC). The primary role of the OLC is to ensure recognition of the status of each of the official languages of Canada and that federal institutions comply with the spirit and intent of the *Official Languages Act.*

77. The OLC provides for independent oversight and monitoring of the application of the *Official Languages Act.*

78. The OLC has the authority to receive complaints, conduct investigations and make recommendations that will promote the equality of the two official languages and provide people with the right to use the language of their choice within federal institutions.

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79. A-AD-102-001/AG-001 Official Languages in DND and the CF provides further instructions on how complaints and investigations pertaining to official languages are dealt with in the CF and DND. This publication provides information concerning the duties of the OLC as well as CF and DND procedures for dealing internally with official languages complaints. It should be consulted when dealing with a complaint and subsequent investigation of a violation of a member's official languages rights.

Questions:

Interim Summary:

Stage 2 Applicable policies

Introduction:

80. English and French are the official languages of Canada. In accordance with the *Official Languages Act*, the composition and operation of DND and CF must reflect this reality.

81. DND and CF official languages program stems from the 1988 *Official Languages Act* and takes into account the necessity for DND and CF to rapidly increase its strength in times of crisis and tension. This program has been developed to provide an infrastructure that will allow the employment of unilingual Canadians, either English-speaking or French-speaking

82. While the provisions of the *Official Languages Act* apply to DND, the Regular Force and the Reserve Force, some of the obligations that arise from the Treasury Board (TB) official languages policy apply only to institutions for which TB is the employer (DND civilian personnel). It is therefore necessary to develop related policies and direction for the specific needs of CF.

Body of the lesson:

83. To comply with the letter and spirit of the *Official Languages Act*, DND and CF must implement this Act in all components and are committed to ensuring equality of status for the use of English and French throughout the organization.

84. The DND and CF are further committed to ensuring that the public can communicate with and receive services from DND and/or CF, in Canada or abroad, in either language, where such an obligation exists under the *Official Languages (Communications with and Services to the Public) Regulations*

85. Official Languages policy ensures that, in bilingual units, the work environment is conducive to the effective use of both official languages and ensures that Francophone

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and Anglophones have equal opportunity for employment and career advancement within DND and CF.

86. The policy is further responsible for ensuring that DND and CF workforce tend to reflect equitably the existence of the two official language communities in Canada and promote the vitality of English and French linguistic minority communities by supporting their development, as well as fostering the full recognition and use of both English and French in Canadian society.

87. DOL, on behalf of ADM(Per), is responsible for developing and interpreting policies, developing and managing the official languages awareness program, processing external complaints and acting as a point of contact between DND and external agencies and organizations.

88. DOL is responsible for reporting on the official languages program and for developing official languages strategic planning.

Questions:

Interim Summary:

Stage 3 Rights and obligations

Introduction:

89. Part VII of the *Official Languages Act*, Advancement of English and French, sets out the legal framework for the advancement of official languages by federal institutions.

90. Subsection 41(1) of the OLA specifically sets out the commitments of the Government of Canada to enhance the vitality of OLMCs in Canada, and support and assist their development and to foster the full recognition and use of both official languages in Canadian society.

Body of the lesson:

91. Subsection 41(2) of the OLA provides that every federal institution has the duty to ensure that positive measures are taken for the implementation of these commitments.

92. The strategy of the DND and the CF for the purpose of section 41 of the *Official Languages Act* consists of the following six objectives:

1. awareness;
2. consultation;
3. communication;

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4. cooperation and liaison;
5. programs and services; and
6. planning and reporting on positive measures.

93. CF members shall receive IT&E in the official language of their choice to promote equal career opportunity and optimize course success rates.

94. Training and education is designed to promote the development of the knowledge, expertise, confidence, judgment and sense of accomplishment of CF members by encouraging active participation and shared responsibility for learning. As such, training and education is an integral part of the career of every CF member and a requirement for advancement.

95. The extent to which a CF member understands the content of training and education provided has a direct impact on their safety and job performance which, in turn, contributes to determining their suitability for employment and advancement.

96. It is important to note that, with the training and education provided, CF members may move frequently between units and geographic areas. Accordingly, in the circumstances as set out in DAOD 5039-6, the CF is committed to ensuring that CF members receive IT&E in the OL of their choice.

97. Service members are entitled to receive personal and central services in the official language of choice. This includes but is not limited to: health and well-being, personal or career development services. General safety, logistics, publications, technical and administrative, financial, computer, library, staffing and classification services bust all be offered in official language of choice.

98. Grievance processes, disciplinary proceedings and administrative actions must also be conducted in the official language of choice

99. In certain locations not all services will be available in the member's official language, in these circumstances every effort must be made to ensure that the member fully understands the information that is being conveyed to them.

100. Certain aspects of the CF have a positive obligation to provide services in both official languages, generally where it will entail interaction with the public. These include public affairs, search and rescue units and recruiting centers.

101. Units are either designated as English units, French units or bilingual units and it is important that CF members know the designation of their unit.

102. Language designation is not determined by geographical location but rather is based upon the role and place of the unit within the DND/CF structure.

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103. Where neither French no English is the members first official language there is no onus on the DND and CF to provide services to the member in their first language.

Questions:

Interim Summary:

PART 4 – CONCLUSION

Summary:

104. The topics covered in this lesson include official languages and the acts and policies that govern official languages in the DND and CF. The *Official Languages Act* and DAOD 5039 series are the key instruments to understanding official language duties and responsibility in order to ensure compliance.

Confirmation:

105. Done in a discussion format. Ask some confirmation questions. No group answers, remind students to raise their hand before speaking. Or instructor may ask particular students to answer questions

Conclusion:

106. English and French are the official languages of Canada. Most provinces have English as their official language. Only Quebec has French as its official language and only one province, New Brunswick has established itself as a bilingual province.

107. While provinces can choose to provide provincial services in both official language, all federal government departments and institutions must provide services in both official language.

108. The DND and CF must provide services in both official languages in order to be in compliance with the *Official Languages Act*. The CF has a robust second language policy and has implemented a variety of programs to promote both official languages to ensure compliance with the *Official Languages Act*.

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PART 1 –LESSON IDENTIFICATION

EO 013.04

Title: ADVISE ON ACCESS TO INFORMATION (ATI) AND PRIVACY ISSUES

Performance: Advise on access to information (ATI) and privacy issues

Conditions:

a. given: References: including but not limited to relevant factual context, legislation, policies, case law, (may also include prior legal opinions) NDA, QR&O,DAOD

b. denied: nil

Standard: At the conclusion of this lesson the individual candidate shall know and understand the *Access to Information Act* and *Privacy Act*, and be able to apply this knowledge in their capacity as a legal advisor

Main Teaching Points:

- key issues
- applicable regulations

Method: This EO will be accomplished by Development Lesson. Students will be required to read any pre-reading packages assigned and be prepared to respond to questions.

Duration: .5 period (20 min)

References: NDA, QR&O, DAOD 1002, Access to Information Act, Privacy Act, Privacy Regulations, TB Policy on Privacy Protection, TB Directive on Privacy Practices, TB Policy on Access to Information, TB Guidelines on Access to Information

Training/Learning Aids: Standard classroom with whiteboard and projection system, handouts, student disk, student desk book, Legal Officer Qualification Course (LOQC) Instructors Handbook – Module(s) [XXX]

Note to the instructor: This developmental lesson shall be conducted in structured manner, using the list of "questions to the class" provided in the following pages. Instructors are to complement each segment of the developmental lesson by follow-up and direct questions taking into account the flow and direction of the discussion. Interim summaries shall be conducted at the end of each segment to confirm the material was learned and provide a basis from which the discussion can progress to the next

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segment. A review of the main teaching points will then take place at the end of the period.

PART 2 – INTRODUCTION

Objective: The instructor shall introduce the *Access to Information* and *Privacy Act* requests, the protection of information and how this achieved through legislation, regulation and other instruments. By the end of the lesson the candidates should have a basic knowledge of these topics which would allow them to provide legal advice as it pertains to this subject

Introduction: Some aspects of collecting, safeguarding and disclosure of information was covered earlier in this PO but specifically in relation to medial information. This part of the lesson will cover these topics generally.

Outline: During this lesson the candidates will be introduced to *Access to Information Act* and *Privacy Act* requests, subordinate regulations and policies as well as the fundamentals of the protection of information collected by government agencies, role of DAIP, role of the Minister and the role of legal officers in relation to requests under ATIA and PA. It is important for legal officers to understand these topics in order to be adequately prepared to provide advice when called upon to do so.

Stage 1 ATIP requests

Stage 2 Protection of personal information

PART 3 – BODY OF THE LESSON

Stage 1 ATIP requests

Introduction:

109. The purpose of the *Access to Information Act* is to extend the present laws of Canada to provide a right of access to information in records under the control of a government institution in accordance with the principles that government information should be available to the public, that necessary exceptions to the right of access should be limited and specific and that decisions on the disclosure of government information should be reviewed independently of government.

110. The Act is intended to complement and not replace existing procedures for access to government information and is not intended to limit in any way access to the type of government information that is normally available to the general public.

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111. The purpose of the *Privacy Act* is to protect the privacy of individuals with respect to personal information about themselves held by a government institution and to provide individuals with the right of access to such information.

112. The *Privacy Act* also gives the individual the right to request that corrective action be taken in cases where their personal information contains inaccuracies or omissions.

113. Both the *Access to Information Act* and the *Privacy Act* came into force in 1983.

Body of the lesson:

ATIA Requests

114. The ATIA sets out who has the right to access records under the control of a government institution. Section 3 of the ATIA defines a record as: "any documentary material, regardless of medium or form" and includes corporate and transitory records.

115. Corporate records are records that are created, collected or received in the initiation, conduct, control or completion of a business or operational activity. Additionally, they must be a record that is used to commit resources, give direction or declare an opinion or position on the business subject or issue.

116. Transitory records are those documents that are required for a limited time to ensure the completion of a subsequent record.

117. As per section 67.1 of the ATIA it is an indictable offence to destroy, mutilate, alter, conceal or falsify government records and anyone convicted of such an offence could face a maximum fine of $10,000 or two years imprisonment.

Access

118. Access to information is available to Canadian citizens, permanent residents (IAW *Immigration and Refugee Act*), any person present in Canada, whether or not they are a Canadian citizen or permanent resident and corporations present in Canada. The usual manner of requesting information is by mail but requests may be submitted by fax or email. The Access to Information Request Form may be used when submitting a request but it is not mandatory as long as the request is in writing.

119. Government institutions must respond to the request within 30 days or seek an extension. Extensions will only be granted once in relation to each request and must be justifiable such as a large number of records, third party consultation or consultation that cannot reasonably be completed within the original timeframe. If a response is not received by the requestor within 30 days, and no extension has been granted, it will be deemed that the request was refused.

120. ATIA requests are processed by the DAIP ATI Tasking team. They are then forwarded to a Tasking Liaison Officer who identifies the Office of Primary Interest (OPI)

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and forwards the request appropriately. The OPI may then rely on subject matter experts (SME) to process the request. Once the ATI request has been reviewed by the SME, the file needs to be endorsed by an officer within that organization of minimum rank of LCol/Cdr (or civilian equivalent) prior to being forwarded to the COS VCDS for final disposition.

121. If the subject of the ATI request is determined to be of a sensitive nature by the LCol/Cdr or higher (i.e. MPCC, Strategic Review, Transformation, Detainees, etc), the finalized file must then be returned with a note to that effect to the VCDS ATIP/MI Coordinator who will then forward the ATI request to the SA VCDS for additional review or comments as required prior to sending it to the COS VCDS for final approval or disposition.

122. Information may also be sent to the DAIP ATI Operations Team or the Information Support Team (IST)

123. The IST is part of the Strategic Joint Staff (SJS), which provides military analysis and decision support to the CDS. The IST plays an important role in identifying sensitive operational information and they are responsible for reviewing records that contain operational information to ensure consistency and appropriate protection before information is released.

Exemptions and Exclusions

124. The general principle with respect to disclosure of government information is to provide the information to the public on request. However, there are exclusions and exemptions under the Act.

125. Exclusions include:

a) information under the control of CBC,
b) information under the control of Atomic Energy Canada
c) Cabinet confidences are excluded under the Act.

126. Exemptions fall into two categories, mandatory and discretionary. Mandatory exemptions normally require the institution to refuse to disclose the records in whole or in part. Mandatory exemptions may be waived such as in cases where the information is publicly available. Discretionary exemptions provide the institution an option and they may disclose information that they believe is not injurious or where the value of disclosing the information outweighs any potential injury.

127. Exemptions are subject to two different types of tests, exemptions subject to class test and those subject to injury test.

128. Exemptions that are subject to Class test include whole categories of information that if disclosed would be sufficiently detrimental to warrant not disclosing any information that falls into this class.

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129. Exemptions that fall into the category of injury test include information that could reasonably be expected to have a detrimental effect in the interest specified in the exemption. In order for information to be exempt under the injury test the assessment must be based on degree to which the injury is specific, how current it is and how probable. A assertion of exemption that a vague injury may happen sometime in the future would likely not withstand a challenge.

130. The AIA provides a list of these exemptions in order to ensure that information is not withheld arbitrarily. The Act also provides for an independent review by the Information Commissioner (IC) or the Federal Court of Canada (FCC) with respect to any refusal to disclose information

131. Section 13. (1) of the ATIA states

> "Subject to subsection (2), the head of a government institution shall refuse to disclose any record requested under this Act that contains information that was obtained in confidence from
>
> (a) the government of a foreign state or an institution thereof;
> (b) an international organization of states or an institution thereof;
> (c) the government of a province or an institution thereof;
> (d) a municipal or regional government established by or pursuant to an Act of the legislature of a province or an institution of such a government; or
> (e) an aboriginal government."

132. Section 14 of ATIA details a further exemption related to government affairs. It states

> "The head of a government institution may refuse to disclose any record requested under this Act that contains information the disclosure of which could reasonably be expected to be injurious to the conduct by the Government of Canada of federal-provincial affairs, including, without restricting the generality of the foregoing, any such information:
> a) on federal-provincial consultations or deliberations; or
> b) on strategy or tactics adopted or to be adopted by the Government of Canada relating to the conduct of federal-provincial affairs."

133. Exemptions related to requests for information that may have information that could be injurious to the security of Canada can be found in s15. (1) of the ATIA. Section 15(1) states:

> "The head of a government institution may refuse to disclose any record requested under this Act that contains information the disclosure of which could reasonably be expected to be injurious to the conduct of international affairs, the defence of Canada or any state allied or associated with Canada or the detection, prevention or suppression of subversive or hostile activities, including, without restricting the generality of the foregoing, any such information:
>
> (a) relating to military tactics or strategy, or relating to military exercises or operations undertaken in preparation for hostilities or in connection with the detection, prevention or suppression of subversive or hostile activities;
> (b) relating to the quantity, characteristics, capabilities or deployment of weapons or other defence equipment or of anything being designed, developed, produced or considered for use as weapons or other defence equipment;
> (c) relating to the characteristics, capabilities, performance, potential, deployment, functions or role of any defence establishment, of any military force, unit or personnel or

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of any organization or person responsible for the detection, prevention or suppression of subversive or hostile activities;
(d) obtained or prepared for the purpose of intelligence relating to
(i) the defence of Canada or any state allied or associated with Canada, or
(ii) the detection, prevention or suppression of subversive or hostile activities;
(e) obtained or prepared for the purpose of intelligence respecting foreign states, international organizations of states or citizens of foreign states used by the Government of Canada in the process of deliberation and consultation or in the conduct of international affairs;
(f) on methods of, and scientific or technical equipment for, collecting, assessing or handling information referred to in paragraph (d) or (e) or on sources of such information;
(g) on the positions adopted or to be adopted by the Government of Canada, governments of foreign states or international organizations of states for the purpose of present or future international negotiations;
(h) that constitutes diplomatic correspondence exchanged with foreign states or international organizations of states or official correspondence exchanged with Canadian diplomatic missions or consular posts abroad; or
(i) relating to the communications or cryptographic systems of Canada or foreign states used
(i) for the conduct of international affairs,
(ii) for the defence of Canada or any state allied or associated with Canada, or
(iii) in relation to the detection, prevention or suppression of subversive or hostile activities."

134. Exemptions under section 23 of the Act. The head of a government institution may refuse to disclose any record requested under this Act that contains information that is subject to solicitor-client privilege.

135. The above noted sections of the Act are not an exhaustive representation of all exemptions but are addressed here as a representation of the types of exemptions that a legal advisor is more likely to be exposed to in the course of his or her duties. The legal advisor should be vigilant about determining if any request under the ATIA is covered by an exemption. As well it is important for the legal advisor to determine the scope of their review of information subject to an ATIA request. Is the review to ensure the solicitor/client privilege is maintained and exemptions under section 23 of the Act exercised or is the expectation of the client that the legal advisor will review the information and provide advice on all possible exemptions or exclusions? This of course raises the question is it the responsibility of the legal advisor to do this?

136. Oversight of the *Access to Information Act* is carried out by the Office of the Information Commissioner. The power of the OIC is broad and includes the ability to summon persons to give evidence or produce documents, they can administer oaths, enter premises occupied by other governmental departments, and examine or make copies of any record relevant to an investigation that has been initiated due to a complaint. Grounds for complaint to the OIC include fees, time limits, refusal of access etc.

***Privacy Act* Requests**

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137. The purpose of the *Privacy Act* is to extend the present laws of Canada that protect the privacy of individuals with respect to personal information held about themselves by a government institution and that provide individuals with a right of access to personal information about themselves.

Ref: s.2 *Privacy Act*

138. Personal information means information about an identifiable individual that is recorded in any form including race, origin, colour, religion, age, marital status and education, medical, criminal or employment history as well as home address, fingerprints and blood type. Personal information also includes correspondence sent to a government institution, personal opinions and views, the views or opinions of others about the individual and the name of the individual where it appears with other information related to the person that if the name were disclosed it would reveal information about the person.

139. Personal information does not include information that the individual is or was a government employee, their title, business address or telephone number, employment classification, salary range, or the responsibilities of the position that they fill.

140. The name of an individual on a document prepared by that individual in the course of employment is also not considered personal information. Personal opinions or views given in the course of employment (i.e., professional opinions or views), Information about an individual who is or was performing services under contract for a government institution, Information relating to a discretionary benefit of a financial nature and Information about an individual who has been dead for twenty years is also not considered personal information for the purposes of the Act.

Access

141. Every individual who is a Canadian citizen anywhere in the world, is a permanent resident within the meaning of the *Immigration and Refugee Act*, is an inmate within the definition of part 1 of the *Corrections and Conditional Release Act*, or who is present in Canada, has the right to and shall, on request, be given access to any record.

142. There are two methods of access to information in records held by DND and the CF. The first method is a formal request for access. This is accomplished by submitting a request in writing to the Director Access to Information and Privacy (DAIP) at NDHQ. There are no fees associated with this request but unlike ATIP requests email requests cannot be processed as signature is required. The same time limits and conditions apply to PA requests as apply to ATIP requests.

143. A formal request under the *Privacy Act* will be forwarded to the DAIP Privacy tasking Team who will identify the Office of Primary Interest (OPI) and forward the request to them for action.

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144. The second method is an informal request for access to the information. Individuals making informal requests for their personal information must request their personal information directly from the office of primary interest (OPI) responsible for the physical custody and management of their personal information. This can be done orally or in writing but the requestor must provide the personal information bank (PIB) number from the Table of PIBs found in DAOD 1002-2, or provide a clear description of the requested information that corresponds to a PIB in the table. If the request is for information that is not described in the Table of PIBs, a formal request must be submitted to the DAIP.

145. Informal requests might frequently result in the CoC contacting their local legal advisor to provide recommendation, guidance and advice pertaining to what can and cannot be released through an informal request. The legal advisor's role is to review the nature of the request, determine if the information corresponds to a PIB in the table, determine if any information is subject to exemptions under the Act and to advise the CoC on what information can be released and what should not be released and the best method to achieve as much compliance with the request as possible within the boundaries of the Act, regulations and policies.

146. Information may be disclosed without consent as long as the purpose for which the information was obtained or compiled by the institution or for use consistent with that purpose and Section 8 of the Privacy Act details to whom information can be disclosed.

Ref: Section 8(2)(a) *Privacy Act*

Exemptions and Exclusions

147. Exemptions under the *Privacy Act* are the same as for the ATIA, mandatory and discretionary and exemptions that are subject to the class test and those that are subject to the injury test.

148. The *Privacy Act* does not apply to:

a) Library or museum material preserved solely for public reference or exhibition purposes
b) Material placed in Library and Archives of Canada, National Gallery of Canada, Canadian Museum of Civilization, Canadian Museum of Nature, National Museum of Science and Technology, Canadian Museum for Human Rights, or Canadian Museum of Immigration at Pier 21 by or on behalf of persons or organizations other than government institutions
c) Personal information that the Canadian Broadcasting Corporation collects, uses or discloses for journalistic, artistic or literary purposes and does not collect, use or disclose for any other purpose
d) Cabinet confidences.

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149. Oversight of the *Privacy Act* is carried out by the Office of the Privacy Commissioner. The power of the OPC is broad and includes the ability to summon persons to give evidence or produce documents. They can administer oaths, enter premises occupied by other governmental departments, and examine or make copies of any record relevant to an investigation that has been initiated due to a complaint. Grounds for complaint to the OPC include processing issues such as time limits, refusal of access etc., and compliance with sections 4-8 of the Act.

Role and Responsibilities of the Minister

150. For the DND, it is the MND that holds the position of "head of a government institution" referred to in section 15(1) of the Act.

151. Pursuant to section 73 of the *Access to Information Act* and the *Privacy Act*, the Minister of National Defence, as the head of a government institution under these Acts, has the power to designate senior personnel to exercise or perform all of the powers, duties and functions of the head of a government institution under these Acts.

152. In the Access to Information and Privacy Act Designation Order signed by the MND on 12 March 2014 he has designated the following individuals to exercise or perform all the powers, duties and functions of the head of a government institution:

a) the Deputy Minister
b) the Corporate Secretary
c) the Director Access to Information and Privacy,
d) Deputy Directors Access to Information and Privacy;

153. The MND has also made the following designations under sections 73 of the ATIA and PA:

a) those persons holding the position of Access Team Leader to exercise or perform the powers, duties and functions in respect of the application of section 9 of the Access to Information Act regarding extensions and section 11 regarding fees;
b) those persons holding the position of Access Team Leader to exercise or perform the powers, duties and functions in respect of the application of sections 27 and 28 of the Access to Information Act regarding the conduct of all consultations;
c) those persons holding the position of Access Team Leader to exrecise or perform the powers, duties and functions in respect of the response to requests made under the Access to Information Act if no records exist;
d) those persons holding the position of Privacy Team Leader, to exercise or perform any of the powers, duties and functions of the head of an institution under the Privacy Act, other than under sub-paragraphs 8(2)(j), (m) &(e); and
e) those persons holding the position of Privacy Senior Analyst, to exercise or perform the powers and duties in respect of the application of section 26 of the Privacy Act.

Role and Responsibilities of DAIP

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154. DAIP is responsible for establishing procedures for processing requests and documenting decisions in relations to ATIP requests. They are also responsible for the following:

a) Exercising discretion
b) Protecting the identity of applicants
c) Validating the identity of requesters for Privacy Act requests
d) Duty to assist and principles for assisting requesters
e) Addressing obstruction of the right of access
f) Posting summaries of completed ATI requests
g) Requests for correction of personal information
h) Ensuring Privacy Impact Assessments (PIA) are completed and Personal Information Banks (PIB) are registered
i) Establishing a plan for addressing privacy breaches

Questions:

Interim Summary:

Stage 2 Protection of Personal Information

Introduction:

155. As stated earlier in the lesson personal information for the purposes of requests under the *Privacy Act* is Information about an identifiable individual that is recorded in any form including a person's race, origin, colour, religion, age, marital status.

156. Education, medical, criminal, or employment history is considered personal information

157. Any identifying numbers or symbols that would be particular to one individual such as a Social Insurance Number, Service Number or PRI number.

158. The home address, fingerprints, and blood type of an individual are just some examples of what would be considered to be personal information.

159. The DND and CF must be vigilant about the collection and safeguarding of personal information. The *Privacy Act* prohibits the government from collecting information on a person unless it relates directly to a program or activity undertaken by the institution that is doing the collecting.

160. Any person on whom personal information is held by the government is entitled to be given access to their information held in personal information banks and to other

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personal information about themselves under the control of a government institution, provided the applicant can provide enough information to locate the record.

Ref: s.12 *Privacy Act*

161. Sections 10 and 11of the *Privacy Act* clearly states what information can be held in personal information banks and how that information is to be recorded and maintained.

10. (1) The head of a government institution shall cause to be included in personal information banks all personal information under the control of the government institution that

(a) has been used, is being used or is available for use for an administrative purpose; or

(b) is organized or intended to be retrieved by the name of an individual or by an identifying number, symbol or other particular assigned to an individual.

(2) Subsection (1) does not apply in respect of personal information under the custody or control of the Library and Archives of Canada that has been transferred there by a government institution for historical or archival purposes.

11. (1) The designated Minister shall cause to be published on a periodic basis not less frequently than once each year, an index of

(a) all personal information banks setting forth, in respect of each bank,

(i) the identification and a description of the bank, the registration number assigned to it by the designated Minister pursuant to paragraph 71(1)(b) and a description of the class of individuals to whom personal information contained in the bank relates,

(ii) the name of the government institution that has control of the bank,

(iii) the title and address of the appropriate officer to whom requests relating to personal information contained in the bank should be sent,

(iv) a statement of the purposes for which personal information in the bank was obtained or compiled and a statement of the uses consistent with those purposes for which the information is used or disclosed,

v) a statement of the retention and disposal standards applied to personal information in the bank, and

(vi) an indication, where applicable, that the bank was designated as an exempt bank by an order under section 18 and the provision of section 21 or 22 on the basis of which the order was made; and

(b) all classes of personal information under the control of a government institution that are not contained in personal information banks, setting forth in respect of each class

(i) a description of the class in sufficient detail to facilitate the right of access under this Act, and

(ii) the title and address of the appropriate officer for each government institution to whom requests relating to personal information within the class should be sent.

(2) The designated Minister may set forth in the index referred to in subsection (1) a statement of any of the uses and purposes, not included in the statements made pursuant to subparagraph (1)(a)(iv), for which personal information contained in any of the personal information banks referred to in the index is used or disclosed on a regular basis.

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(3) The designated Minister shall cause the index referred to in subsection (1) to be made available throughout Canada in conformity with the principle that every person is entitled to reasonable access to the index.

162. When the Government of Canada collects personal information, that information must not be disclosed within, or external to, the CF or DND without the consent of the person in question, unless it is being disclosed in accordance with section 8 of the *Privacy Act*.

163. A privacy breach involves improper or unauthorized collection, use, disclosure, retention and/or disposal of personal information. Any suspected breach of privacy information is to be reported up the CoC to DAIP.

164. A complete list of acceptable disclosure of personal information can be found at subsection 8(2) of the *Privacy Act*.

165. The DND and the CF are committed to providing everyone with a right of formal or informal access to their personal information under the control of the DND or the CF, subject to specific exemptions contained in the *Privacy Act*. Further, DND and the CF are committed to providing protection against unauthorized disclosure of personal information and to facilitate this have imposed strict controls over how the DND and the CF collect, use, retain, store, disclose and dispose of personal information. Finally, they are committed to responding to *Privacy Act* requests within the statutory 30-calendar day time limit or such extended periods of time as may be allowed under the Act.

166. Consistent with the *Privacy Act* and the policy requirements in the Treasury Board's policy on Privacy and Data Protection, the DND and the CF must ensure that internal policies and directives pertaining to formal and informal privacy requests are established and promulgated and training sessions and awareness briefings are conducted to promote the existence and requirements of the *Privacy Act* and to instruct DND employees and CF members on policy and procedures. The DND and CF will ensure that guidance is provided to DND employees and CF members seeking advice on the *Privacy Act*; and that compliance is monitored and violations of the Privacy Act are noted, reported and remedied.

Ref: DAOD 1002-0

167. DAOD 1002-1 provides additional information and guidance on *Privacy Act* requests, responsibilities, procedures and complaints process. DAOD 1002-2 provides a table of Personal Information Banks.

Questions:

Interim Summary:

PART 4 – CONCLUSION

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Summary:

168. The topics covered in this lesson include *Access to Information Act* and *Privacy Act* requests, the process for ATIP requests and the responsibilities of the DND and CF regarding the collection, maintenance and disclosure of information.

Confirmation:

169. Done in a discussion format. Ask some confirmation questions. No group answers, remind students to raise their hand before speaking. Or instructor may ask particular students to answer questions

Conclusion:

170. The purpose of the *Access to Information Act* is to provide the right of access to Government information in records under the control of government institutions. There are exceptions to this right but the exceptions are limited and specific.

171. Every individual who is a Canadian citizen, or who is a permanent resident within the meaning of the Immigration Act, or who is present in Canada, has the right to and shall, on request, be given access to any record under the control of a government institution subject to any exemptions or limitations.

172. Personal information under the control of a government institution shall not without the consent of an individual to whom it relates be disclosed by the institution except in accordance with section 8 of the *Privacy Act*.

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PART 1 –LESSON IDENTIFICATION

EO 013.05

Title: Advise on other areas of law, impacting on the CF, in conjunction with the DOJ

Performance: Advise on other areas of law, impacting on the CF, in conjunction with the DOJ

Conditions:

a. given: References: including but not limited to relevant factual context, legislation, policies, case law, (may also include prior legal opinions) NDA, QR&O,DAOD

b. denied: nil

Standard: At the conclusion of this lesson the individual candidate shall know and understand how legal officers may provide advice on areas of law that impact on the CF but the subject matter is an area that falls within the core responsibility of the Department of Justice to provide advice, and be able to apply this knowledge in their capacity as a legal advisor

Main Teaching Points:

- Labour law issues
- Environmental law issues
- Federal provincial jurisdictional issues
- Aboriginal law issues

Method: This EO will be accomplished by Development Lesson. Students will be required to read any pre-reading packages assigned and be prepared to respond to questions.

Duration: 1 period (40 min)

References: NDA s. 10.1,

Training/Learning Aids: Standard classroom with whiteboard and projection system, handouts, student disk, student desk book, Legal Officer Qualification Course (LOQC) Instructors Handbook – Module(s) [XXX]

Note to the instructor: This developmental lesson shall be conducted in structured manner, using the list of "questions to the class" provided in the following pages.

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Instructors are to complement each segment of the developmental lesson by follow-up and direct questions taking into account the flow and direction of the discussion. Interim summaries shall be conducted at the end of each segment to confirm the material was learned and provide a basis from which the discussion can progress to the next segment. A review of the main teaching points will then take place at the end of the period.

PART 2 – INTRODUCTION

Objective: The instructor shall introduce areas of law impacting on the CF but which are handled in conjunction with the Department of Justice. By the end of the lesson the candidates should have a basic knowledge of these topics which would allow them to provide legal advice as it pertains to this subject

Introduction: The interface between the DND/CF and the Department of Justice on legal issues is through the Department of National Defence/Canadian Forces Legal Advisory (DND/CF LA)

DND/CF LA is responsible for the provision of legal advice to the DND and to the CF in all areas of the law, except military law and military justice as per s. 10.1 of the NDA.

DND/CF LA is jointly responsible to the Ministers of Justice and National Defence

Outline: During this lesson the candidates will be introduced to various areas of law that do not fall within the realm of the military but may have an impact on the DND and CF. These areas of law are handled by the Department of Justice in conjunction with the DND and CF. It is important for legal officers to understand the relationship between the OJAG and DND/CF LA and how the two departments work together in a complementary relationship.

Stage 1 Labour law issues

Stage 2 Environmental law issues

Stage 3 Federal-provincial jurisdictional issues

Stage 4 Aboriginal law issues

PART 3 – BODY OF THE LESSON

Stage 1 Labour law issues

Introduction:

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173. Labour Law issues fall under the umbrella of the Public and Labour Law section of DND/CF LA

Body of the lesson:

174. PLL is responsible for advising on Canada Labour Code (Occupational Health and Safety) and civilian labour and employment law.

175. Consultation with PLL on labour law issues will generally arise in the context of DND civilian employees.

176. Health and safety issues will be handled through consultation with PLL.

177. Strikes or work to rule action or other such labour issues will also be an area of law where PLL can provide advisory services to the DND and the CF. As more and more bases have interaction with civilian entities and business providing contracted services, such as SERCO, the interaction with PLL has become even more vital.

Questions:

Interim Summary:

Stage 2 Environmental law issues

Introduction:

178. The DND and the CF are accountable for the impact that defence activities have on the environment. The DND and the CF have put in place policies to ensure DND employees and CF members respect the environment, exercise environmental stewardship, and protect public and non-public properties and assets held in trust

179. Materiel, Environment and Real Property, also known as MERP is the directorate that liaises with the DND and the CF on environmental law issues.

Body of the lesson:

180. As part of the objective of respect for the environment and exercising environmental stewardship, the DND and the CF adopted a code of environmental stewardship.

181. Due to the nature of CF operations it is imperative that there is close consultation with MERP to ensure that there is minimal environmental impact and that operations and actions are in compliance with all laws and regulations pertaining to the environment.

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182. Any activity contemplated by the DND or the CF that may have an environmental component, such as exercises, salvage operations, changes to bases, wings or units should start with consultation with MERP to ensure all aspects of the activity are fully explore and all environmental requirements complied with.

183. MERP is the resource for legal officers to tap into when environmental issues arise on their bases, wings or units.

184. Since the early 1990s, Defence Construction Canada has provided environmental science and environmental engineering services to DND. Now, these services make up a significant part of the Corporation's business. Increasingly, as DND is faced with more environmental challenges, DCC's environmental capabilities continue to expand to meet these needs.

185. Environmental Services works with DND to meet environmental performance targets, comply with regulatory requirements, assess for due diligence purposes, and manage risk

186. Some of the service line's key practice areas include:

- environmental assessments based on the *Canadian Environmental Assessment Act;*
- site assessments (historical reviews, environmental characterizations);
- site remediation and decommissioning;
- hazardous material surveys and abatement;
- environmental support for project and program management;
- sustainable development strategy support;
- unexploded explosive ordnance (UXO) related services (geophysical surveys, avoidance, clearance);
- biological servives;
- policy, compliance and advisory services;
- waste management auditing and planning; and
- environmental monitoring and compliance auditing.

Questions:

Interim Summary:

Stage 3 Federal-provincial jurisdictional issues

Introduction:

From time to time issues may arise that require consultation between legal officers and the provincial department of justice lawyers.

Body of the lesson:

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The CF may have occasion to seek the assistance and support of provincial department of justice lawyers in order to resolve issues.

Usually this falls in the context of criminal or civil litigation.

Examples:

- Cooperation with provincial crown prosecutors for prosecution of traffic tickets issued by Military Police on Defence establishments
- Representation by provincial crown prosecutors in small claims court for the advancement of claims for cost recovery for kit held by released reserve force members
- Prosecution of offences such as protection of property violations
- Consultation and cooperation in areas of provincial regulation that impact Federal property such as environmental issues, wetlands and wildlife

Questions:

Interim Summary:

Stage 4 Aboriginal law issues

Introduction:

187. The Department of Justice Aboriginal Affairs Portfolio provides expert legal services and legal policy advice to the Crown and to client departments, notably Indian and Northern Affairs Canada (INAC), on a broad range of Aboriginal law issues that affect government as a whole, including: Aboriginal rights and title; duty to consult; treaty rights; the fiduciary relationship of the Crown with Aboriginal peoples; constitutional and Charter issues relating to Aboriginal law; and, more broadly, the role of the law in support of reconciliation between the Crown and Aboriginal Canadians.

Body of the lesson:

188. Aboriginal law issues within DND and the CF fall under Public Law Advisory Services within their Aboriginal Law Advisory Service

189. Aboriginal Law Advisory Services (ALAS) advise on real property including duty to consult

190. ALAS provides litigation support to DND and the CF as well as negotiation services.

191. ALAS is involved in policy development and international issues as well.

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Questions:

Interim Summary:

PART 4 – CONCLUSION

Summary:

192. The topics covered in this lesson include areas of law wherein there is an impact on the DND or CF but they do not fall within the context of military law. In these circumstances the DND and the CF rely upon DND/CF LA to provide legal advice not the office of the JAG. However, that does not mean the OJAG legal officers do not have a role to play or should remain completely detached from these types of issues.

Confirmation:

193. Done in a discussion format. Ask some confirmation questions. No group answers, remind students to raise their hand before speaking. Or instructor may ask particular students to answer questions

Conclusion:

194. The OJAG is responsible for providing legal advice on military matters to the DND and the CF. When legal issues outside of a direct military context have an impact on the DND or the CF the DND/CF turn to the lawyers that work in the various departments of the DND/CF Legal Advisory.

195. The DND/CF LA works in cooperation with and in conjunction with the DND and the CF on many issues including aboriginal law, environmental law and labour law to name but a few. It is important for the OJAG to maintain a good working relationship with DND/CF LA because there are areas of law that directly or indirectly impact the DND and the CF and may impact on military operations.

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EO 014.01

PART 1 -- LESSON IDENTIFICATION

TITLE: Advise on jurisdiction related to Investigations

Performance. Advise on jurisdiction related to Investigations

Conditions.

given: Assistance as required; References; Resources as required;
denied: Direct supervision

Standard. The legal officer shall advise on jurisdiction related to disciplinary investigations

Main Teaching Points:

- Limitations arising from investigations
- Applicable MP policy WRT investigations
- Canadian Forces Command and Organisation

Method. This EO will be accomplished by a combination of Self-Study and Developmental Lesson. Students will be required to read [...] and be prepared to respond to Module questions. The concepts will then be reviewed and expanded during this developmental lesson.

Duration. 1 Period. (interactive lecture (IL))

References. *Constitution Act, 1867*, ss. 91(7), 92(14); *Constitution Act, 1982*, including the *Canadian Charter of Rights and Freedoms*, s. 7; *Criminal Code*, ss. 2 "peace officer" (g)(i) and (ii), 786; QR&O, chap. 22, 106; DCAARs; DPM Police Advisory 04/03 – "Military Police Jurisdiction with Regard to Persons" – 25 Dec 2003; CFAO 22-4 *Security and Military Police Services*; DAOD 5016-0, *Standards of Civilian Conduct and Discipline*; A-SJ-100-004/AG-000 *Military Police Policies and Technical Procedures*, Chap. 2 and 6; 2120-0 (DPM Police Ops) DPM Police Advisory 25/06 Jurisdiction 1 Dec 2006; B-GG-005-027/AF011, *Military Justice at the Summary Trial Level* (MJSTL), Vol. 2.2, Chap. 5 & 6, Annex C; 2120-0 (DPM Police Ops) DPM Police Advisory 16/08 MP Reports – Timeliness 8 July 2008; JAG Policy Directive, 010/00, Charge Screening Policy, 10 Jul 00, update 31 Mar 09; [Relevant JAG Corporate Legal Advice~(through *JAGNet*)]; [Relevant portion of the *JAGNet Digest*].

Training/ Learning Aids. Standard classroom with whiteboard and projection system/handouts; CD materials; Legal Officer Qualification Course (LOQC) Instructors Handbook – Module(s) [Number]

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Note to the instructor. The interactive lectures (IL) shall be conducted in structured manner, using the list of "questions to the class" provided in the following pages. Instructors are to complement each segment of the IL by follow-up and direct questions taking into account the flow and direction of the discussion. Interim summaries shall be conducted at the end of each segment to confirm the material was learned and provide a basis from which the discussion can progress to the next segment. A review of the main teaching points will then take place at the end of the period, by Enabling Checks (EC).

PART 2 – INTRODUCTION

Objective: The Legal Officer (LO) shall describe and explain the fundamental concepts of jurisdiction pertaining to investigation in the particular context the CF operate. After the completion of the IL, the LO shall be able to address jurisdictional investigation aspects in providing a broader legal advice on military jurisdiction.

Introduction: Introduce the lesson by emphasizing the importance of delineating clearly the jurisdiction pertaining to investigations in MJ. For instance through application of this knowledge, LO will be able to provide more effective legal advice on military jurisdiction generally. In particular, the following lesson will give them the following:

- understanding of the basic references limiting the jurisdiction of investigations in the CF context;
    - Who can be investigated;
    - Where can it be investigated;
    - What could be investigated;
    - By whom it could be investigated;
    - Until when do we have to investigate;
- understanding of how investigation between various investigative bodies and functions interplay;
- understanding of how the role and functions of the chain-of-command have an impact of the investigative jurisdiction in the CF;
- description of what role they could anticipate in providing legal advice during investigation;
- awareness of ways to mitigate legal risk resulting from jurisdictional conflicts during investigations by preventing them in the first place.

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PART 2 – INTRODUCTION (cont'd)

Outline: The LOC instructor shall introduce the lesson outline

- Stage 1: Limitations arising from investigations
    - By whom: authorities to investigate
    - Who: Jurisdiction limited over the persons
    - Where: Jurisdiction limited in space
    - What: Jurisdiction limited over the matters
    - Until when: Jurisdiction limited by time
- Stage 2: Applicable MP policy WRT investigations
    - Sub-divisions of investigative jurisdiction: CFNIS, MP Dets, Units
    - Description of civilian-military police cooperation
    - Legal Advisor – CFNIS/MP/Units Relationships
- Stage 3: Canadian Forces Command and Organisation
    - Unit Discipline Investigations
    - Legal Advisor – Units Relationships
    - Interaction between chain-of-command and conduct of investigations

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PART 3 – BODY OF THE LESSON

Stage 1 – Limitations arising from investigations

1. **Introduction**: Indicate that you will focus the first part of the lesson on the aspects that imposed limitation on jurisdiction to investigate in disciplinary matters. Use the PowerPoint slide to view each of 4 aspects and discuss them briefly.

2. **Suggested Questions**:

Q. You've read the reference on the subject, why do CF have the authority to investigate in disciplinary matters?

Q. How is jurisdiction to investigate limited?

Q. Have you experienced a situation where an investigative body was precluded from investigating? What was the challenge? How was it resolved?

3. **Note to instructor**: Emphasize the importance of the limitations to CF investigative function which is under an exceptional legal regime compared to the ordinary civilian one. Some cases have been determined neither on the merits of the case nor on Charter issues but solely on basis that the investigative body did not have jurisdiction to gather evidence in the first place. Investigative jurisdiction is first limited by law. Better understanding of those limitations reduces legal risk that investigations be inappropriately conducted; hence ensuring DND/CF resources are used more effectively within legal parameters.

4. **Q.** By whom a disciplinary investigation can be conducted in the CF?

A. An investigation can be conducted by a 'peace officer' as defined by the *Criminal Code of Canada*, s. 2. In CF context, the peace officer status is limited to two groups:

a. CCC s. 2 (g)(i) military police (MP) while fulfilling the purposes of *NDA* s. 156. MP investigative powers are drawn from paragraph 156(*b*) which then referred to regulations, in particular QR&O 22.02(2) and *Defence Controlled Access Area Regulations* (SOR/86-957) http://laws-lois.justice.gc.ca/eng/regulations/SOR-86-957/ (DCAARs);

b. CCC s. 2 (g)(ii) all CF while employed on duties that are prescribed in regulations requiring powers of peace officer, in particular QR&O 22.01(2) and DCAARs;

5. In *R. v. Nolan*, [1987] 1 R.C.S. 1212, the issue was: is someone appointed pursuant to *NDA* s. 156 a peace officer *generally speaking* or only when fulfilling purposes for which he or she was appointed (more restrictive). The SCC chose the latter as the liberal interpretation could trigger an division of powers debate over *Constitution Act, 1867* ss. 91(7) (Defence) – 92 (14) (Administration of justice). In other

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words, when MP officers/CF members are 'peace officer' for the purpose of the *NDA*, it does not make them 'peace officer' according to provincial law.

6. **Q.** Who could be investigated by CF investigative bodies?

A. Once 'peace officers' for the purpose of the *NDA*, they could investigate the following persons:

a. those who are subject to the *Code of Service Discipline* (CSD) (*NDA*, ss. 60-65);

b. all persons on 'defence establishments'.

7. Those 'persons' include civilians such as DND employees, contractors, general public, and trespassers. See also DPM Police Advisory 04/03 – Military Police Jurisdiction with Regard to Persons – 25 Dec 2003. Sometimes, jurisdiction over persons is referred by the Latin expression *rationae personae*.

8. **Q.** What is the physical limit of CF investigative jurisdiction?

A. The geographical limitation is related to the type of persons who can be investigated:

a. for those who are subject to the CSD the jurisdiction is not geographically limited;

b. for all persons they have to be on 'defence establishments'.

9. 'Defence establishment' as defined at *NDA*, s. 2 means 'any area or structure under the control of the Minister, and the materiel and other things situated in or on any such area or structure'. CF bases and stations are normally understood as fitting in such definition. But it is not limited to those; it could also include training or operational areas, either permanent or temporary, here in Canada or abroad, that were designed as such by the MND. A 'Defence establishment' is amongst what is defined as a 'controlled access area' (DCAARs, s. 2) for which a 'security guard' (DCAARs, s. 2) could exercise control access duties. An example of a valid exercise of control access duties by a MP officer is given in the decision *R. v. Haynes*, 1994 CanLII 4160 (NS CA), http://canlii.ca/t/1mr11. See also DPM Police Advisory 25/06 – Jurisdiction - 1 Dec 2006. Sometimes, jurisdiction over location is referred by the Latin expression *rationae loci*.

10. **Q.** What can be investigated?

A. Pursuant to QR&O chap. 106, disciplinary investigations are conducted to determine whether or not a 'service offence' has been committed. The purposes and objectives of an investigation are reconstructing events, gathering evidence, identifying elements of the alleged offence and identifying those responsible (QR&O 106.02 (note B)). At minimum, a disciplinary investigation shall, as a

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minimum, collect all reasonably available evidence bearing on the guilt or innocence of the person who is the subject of the investigation (QR&O 106.03).

11. A 'service offence' means an offence under the *NDA*, the *Criminal Code* or any other Act of Parliament, such as the *Controlled Drugs and Substances Act* (S.C. 1996, c. 19), committed by a person while subject to the CSD (*NDA*, s.2). See also *R v Généreux*, [1992] 1 S.C.R. 259, at 293 where Lamer C.J. agrees with Cattanach J. in *MacKay v. Rippon*, [1978] 1 F.C. 233 (T.D.), at pp. 235-36). Please note that in the case of non-purely military offences (*NDA*, para. 130(1)(*a*)), the Court Martial Appeal Court has recently stated that "only those whose commission is directly connected to discipline, efficiency and morale in the military may be prosecuted as service offences under the CSD". According to CMAC existence of such a military nexus depends on the circumstances of each case. (*Moriarity v. R.*; 2014 CMAC 1, paras. 64-66, leave to SCC requested, 35755).

12. According to A-SJ-100-004/AG-000 *Military Police Policies and Technical Procedures*, (MPPTP) ch. 2, Annex H, para. 5, all complaints alleging that a service offence may have been committed shall be investigated except where a complaint is determined to be frivolous or vexatious. However, it does not cover alleged misconduct which does not tantamount to an offence by DND civilian employees as per DAOD 5016-0, *Standards of Civilian Conduct and Discipline*. Sometimes, jurisdiction over matter is referred by the Latin expression *rationae materiae*.

13. **Q**. How does time impact jurisdiction to investigate?

A. For service offences, as they are penal in nature, the default is that there is no time limitation legally set *per se* to initiate and conduct an investigation. However, time is always considered. When a complaint is made an investigation shall be conducted as soon as practical to determine whether there are sufficient grounds to justify the laying of a charge (QR&O 106.02(1)). In addition, 2120-0 (DPM Police Ops) DPM Police Advisory 16/08 MP Reports – Timeliness 8 July 2008 http://vcds.mil.ca/sites/cfpm/resources/Advisories/2008/16-08.pdf stresses the requirement to ensure that MP investigations and reports be completed in as timely a fashion as possible and must provide reasons for each period of 30 days.

14. The time taken in investigating could impact trial jurisdiction later in the disciplinary process. First, some offences that have limitation periods (example 6 months) within which you have to lay charge otherwise jurisdiction is lost (*NDA*, s. 69; *Criminal Code*, s 786). An example of such an offense would be drug possession (*CDSA*, s. 4) of no more than 30g of cannabis. Second, it could also impact the mode of trial. Subsection 163(1.1) *NDA* provides that the summary trial has to commence within one year after the day on which the service offence is alleged to have been committed. Although not in force yet, Bill C-15 (S.C. 2013, ch. 24) recently amended subsection 163(1.1) *NDA*. In addition to the 1 year limit, it provides that a commanding officer may not try an accused person by summary trial unless the charge is laid within six months

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after that day. Regulations would provide the process for the accused person to waive the 6 months limitation period (Bill C-15, s. 35 which adds *NDA*, subs. 163(1.2)).

15. One last point. Although the duty to "act as expeditiously as the circumstances permit" applies only once charges are laid (*NDA*, s. 162), gross lack of diligence in conducting investigation or in delaying action upon its outcome could result, in the most egregious cases, in a stay of proceedings (*R v. Perrier*, CMAC-434 (2000-11-24)). Sometimes, jurisdiction over time is referred by the Latin expression *rationae tempori*.

Interim Summary: Use the prepared PPT presentation to do a quick review of the material.

Note to instructor: Use hyperlinks to discuss case law giving examples on each limitation.

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PART 3 – BODY OF THE LESSON (Continued)

Stage 2 – Applicable MP policy WRT investigations

1. **Introduction**: Indicate that, once basic limitations of investigative jurisdiction have been explained, you will focus the second part of the lesson on main features of military police policies which further delineates CF who will investigative. Use the PowerPoint slide to view each of features and discuss them briefly.

2. **Suggested Follow-on Questions**

Q. Are disciplinary investigations in the CF limited to MP? If so, why? If not, what are the other investigative body (ies)?

Q. What happens if an investigation could be done either by MP or the civilian police? What if they have to collaborate/cooperate on the same case?

Q. Is it better for LOs to wait after CFNIS/MP would have completed their investigation before getting involved?

3. **Note to instructor:** Emphasize the importance of being aware of CFPM policies on those issues. Coordination and cooperation are essential between CF investigative bodies, LOs and, where applicable, civilian police. In addition to law, investigative jurisdiction is limited by policy considerations. Better understanding of those considerations ensures appropriate level of resources is allocated to relevant type of investigations and reduces the risk of negative outcome due to lack of coordination between stakeholders.

4. Bring students' attention to A-SJ-100-004/AG-000 *Military Police Policies and Technical Procedures*, (MPPTP) ch. 2, Annex H and ch. 6 where most of these policies WRT investigative jurisdiction could be found. Relevant extracts from a 2007 version of the document is reproduced at *MJSTL,* Annex M and Annex C. Remind them however that the MPPTP is a living document, updated on a periodical basis. What they have in their material is a "picture" that may be outdated. It is therefore important to check with the most current available version in dealing with real MP investigation jurisdictional issues. As MPPTP is not accessible via internet or DWAN, LOs must ask to local MP prior getting access.

5. **Q.** Once it has been determined that the alleged offence is amongst those for which CF would have jurisdiction, what does determine who or which organization will assume the investigation?

A. Generally speaking, the more serious the circumstances of the alleged offence, the more specialized the investigative body would be. The following organizations could conduct investigations, depending on certain criteria:

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a. Canadian Forces National Investigation Services (CFNIS): The CFNIS provides DND/CF with a criminal/service investigation services in Canada and abroad, in support of the MJ system (MPPTP, ch. 6, p. 6-9, para. 22). Its primary mandate is to investigate complaints pertaining to:

i. Serious and/or Sensitive service offences against persons, property and the Department (MPPTP, ch. 6, p. 6-10, para. 24):

1) A serious or sensitive investigation is one which, by the nature of allegation, or through those who are, or may be implicated, could have a strategic or national impact;

2) Traditionally, a *serious offence* has been generally defined as any indictable or hybrid offence under a federal statute or its equivalent offence under the NDA.

3) Traditionally, a *sensitive offence* has been generally defined as any offence involving sensitive material; or where the subject or the victim of the offence is a senior officer, a CO, personnel in a position of trust, or the civilian equivalent;

4) However according to current MP policies, these are not firm boundaries; strict dollar values, ranks or specific offences are not the main criteria to be considered;

5) Investigations that have the potential to reach across provincial or national boundaries may be considered serious, even if the allegations themselves are not inherently serious or sensitive;

6) In short, seriousness relates to the nature of the offence where sensitivity relates to the matter (ex: materiel, information or human resources) involved

ii. Sexual offences occurring on a Defence Establishment (MPPTP, ch. 6, Annex A, Appendix 4, p. 6A4-1/1);

iii. Allegations involving military police officers;

iv. Offences that civilian police has waived jurisdiction.

b. Base/Wing Military Police and MP Dets: can conduct investigations regarding offences that involve either members or civilians. The military police have the jurisdiction to investigate any non-serious or non-sensitive offence. Examples of such offences are found in Appendix 2 and 3 to

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MPPTP, ch. 6, Annex A. In addition, they may also have jurisdiction over serious and sensitive offences over which the NIS has waived jurisdiction;

c. Units: Units have traditionally assumed responsibility for conducting investigations into minor breaches of discipline. The offences referred to at paragraph (1) of *QR&O* 108.17 may be considered to fall into this category, provided the circumstances surrounding the commission of the offence are sufficiently minor in nature such that no right to elect court martial would arise, and the alleged perpetrator is not a senior officer or civilian. They would not investigate offences that are serious and sensitive or which are likely to be tried by court martial.

This list is meant to be a guideline rather than an exhaustive group. For example, although they do not appear on this list, allegations of the negligent discharge of a weapon are often investigated at the unit level. If there is any question about whether an investigation should be referred to the military police, the unit legal advisor or the military police should be contacted for advice.

6. **Note to instructor:** Explain to students that in the last part of the lesson, the discussion would expand on the impact of the chain-of-command, which had traditional the investigative jurisdiction, on the conduct of investigations.

7. **Q.** How do military and civilian police collaborate?

A. MPPTP ch. 6, p. 6-12 and 6-13, para. 29-31 read as follows:

29. **General**. From time to time during the course of MP investigations, the assistance of civilian police agencies may be required in some cases. When civil police are called or requested, it must be remembered that a harmonious working relationship will benefit both organizations.

30. **Arrest**. In cases where a criminal offence has been committed on, in or with respect of DND property, and evidence gathered leads to a possible arrest outside a Defence Establishment, the MP will contact the civilian police having primary jurisdiction and request them to accompany the investigator to effect the arrest.

31. **Serving Legal Documents**. In cases where legal documents (i.e., summons or subpoena) are being served outside a Defence Establishment, it would be appropriate to advise civilian police of the matter. When executing a warrant (ie., arrest or search) outside a Defence Establishment, civilian police shall be advised and their attendance requested.

8. **Note to instructor:** Bring students' attention to the fact that where a civilian police department is located close to the Base/Wing, protocols have been already in

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place with local Military Police, sometimes on an informal basis through MP liaison officer, sometimes more formally through a Technical Arrangement or a Memorandum of Understanding. Such protocols would deal with process to request assistance or how 911 emergency services operate.

9. **Q.** What if a case could be investigated either by the civilian or military police?

A. A decision will be made on whether proceedings will be instituted in the military justice system, the civilian justice system or not at all. The following factors will be considered:

1) The circumstances of the incident;

2) The interests of military discipline, and

3) Whether the military or the civilian agencies have better resources to accomplish the task.

10. For example, while the CF has the authority to investigate and prosecute cases of spousal assault, these cases are usually dealt with in the civilian system so that the abused spouse is able to utilize the victim assistance and social services available through the civilian justice system. Another example, as a matter of policy, all alcohol influenced driving offences involving DND vehicles occurring in Canada will be processed in civilian court (*MPPTP*, ch. 5, para 44(a)).

11. In cases of doubt regarding the appropriate jurisdiction, the unit legal advisor should be consulted. (*MJSTL*, ch. 5, p. 5-6, para. 33) Sometimes, notwithstanding that there may be evidence on all essential elements of an offence, it may be appropriate to recommend against the laying of a charge where it would be more appropriate for the matter to be dealt with by another authority having jurisdiction to so act (JAG Policy Directive, 010/00, Charge Screening Policy, 10 Jul 00, update 31 Mar 09, para. 14).

12. Keep also in mind that for civilian offences that are incorporated in the definition of 'service offence' through paragraph 130(1)(*a*) *NDA*, CMAC has recently held that "only those whose commission is directly connected to discipline, efficiency and morale in the military may be prosecuted as service offences under the CSD." For CMAC, the existence of such a military nexus depends on the circumstances of each case. (*Moriarity v. R.*; 2014 CMAC 1, paras. 64-66, leave to SCC requested, 35755).

13. Q. What is the nature of relationship between Legal Officers and the military police during the investigation?

A. Legal officers must ensure that reasonable steps have been taken to obtain all current and available information/evidence relating to a matter before providing legal advice without being involved in the investigation.

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14. While the legal officer may find it necessary to speak to the investigator to clarify certain issues, he/she should abstain from personally conducting any further investigation that may be warranted or from interviewing witnesses. If it is deemed that the investigation report lacks information and/or essential evidence, or is deficient in any respect, the legal officer should provide a summary of the deficiencies noted to the individual to whom the report was referred along with a recommendation that the report be returned to the investigator with a request for further investigation. Where this has occurred, the legal officer should refrain from providing further advice until the investigating authority has had an opportunity to complete the investigation. Legal officers should also monitor the status of such investigations to ensure that any resulting delay in proceeding does not become excessive. The service authority requesting further investigation should also discuss, with the investigating authority, a reasonable timeline for the completion of the investigation. (JAG Policy Directive, 010/00, Charge Screening Policy, 10 Jul 00, update 31 Mar 09, p. 5 and 6, para. 10).

15. **Note to the Instructor**: Use the prepared PPT presentation to do a quick review of the material.

16. **Interim Summary**: Use hyperlinks to show access to A-SJ-100-004/AG-000 *Military Police Policies and Technical Procedures*, (MPPTP) ch. 2 and. 6 on the webpage of the *MJSTL* to raise awareness on the policies. Use hyperlinks to show CFPM advisories webpage on DWAN. Show them the absence of webpage to the entire MPPTP, hence showing the need to request access to MP.

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PART 3 – BODY OF THE LESSON (Continued)

Stage 3 – Canadian Forces Command and Organisation

1. **Introduction**: Indicate that, after basic limitations of investigative jurisdiction and role of main investigative bodies have been explained, the lesson will discuss on the impact of CF Command and Organisation on investigative jurisdiction. Use the PowerPoint slide to view each of features and discuss them briefly.

2. **Suggested Follow-on Questions**

   Q. Are disciplinary investigations conducted by units of lesser legal value than CFNIS/MP investigations?

   Q. If LO provides legal advice in support of the conduct of a unit disciplinary investigation, does it preclude him or her to provide legal advice re potential charges in the future?

   Q. Who has the final word over a particular investigation: the chain-of-command or the military police? How does a local commanding officer can change the course of an investigation?

3. **Note to instructor:** Emphasize the importance of acknowledging the traditional interest of the chain of command in conducting disciplinary investigation. Having an understanding of that legitimate interest would assist in effectively protecting the ethical principles in conducting any disciplinary investigations: independence, accountability and impartiality. Stress again the relevance of cooperation between unit authorities, unit legal advisers, and military police to ensure investigations are conducted in harmonious way. Better understanding of the interaction and sometimes tensions between stakeholders the reduces legal risk that investigations be inappropriately conducted or impeded; hence ensuring DND/CF resources are used more effectively within legal parameters.

4. **Q.** In broad terms, describe the conduct of Unit Discipline Investigations (UDI)?

   A. In essence, UDIs should not be different than MP investigations: there are just not as formalized and sophisticated. But again, the investigator's role is to reconstruct the events that occurred at the time of the alleged offence. The investigation shall, as a minimum, gather all readily available evidence bearing on the guilt or innocence of the person who is the subject of the investigation, identify those responsible and identify the required elements of the specific offence in order to support a charge. (See *MJSTL*, ch. 5, p. 5-3, para. 13).

5. Traditionally, UDIs have common characteristics:

   a. Usually conducted by unit charge layer: There is no impediment for the unit charge layer to have conducted the UDI. It is important that it is

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conducted properly and that the rights of the potentially accused persons be respected.

b. Variable levels of training and experience of the investigator: Keep in mind there is currently no training requirement such as legally imposed prerequisite training to be appointed investigator for the purpose of an UDI. Having said that, it is highly advisable to restrain that role to few individuals within a particular unit. The common sense choice would be to assign senior NCMs, because of the level of training, experience and awareness WRT to maintenance of discipline in the CF.

c. Rarely sophisticated: Although UDIs do not need to be as sophisticated as MP investigation report, they must cover essential elements. With respect to any *physical* evidence collected during the investigation, such as documents, a weapon, clothing etc., these items must be protected and kept secure. This is important to ensure the items are not misplaced or tampered with. (This can be done by placing the evidence in a secure place to which only one member has access and has overall responsibility for safekeeping the evidence.)

d. Legal advice usually sought only at QR&O 107.03 stage: Sometimes, in particular in more complex cases, by not 'disturbing' the legal advisor early on about the conduct of an UDI, investigators increase the risk of having to 'disturb' the legal advisor anyway but in 'fixing' the problem rather than preventing it in the first place.

e. Not always fully or properly documented: Again UDI reports do not need to be as documented as MP investigation report. However they must cover essential elements. A sample of unit investigation report is included in in the course materials under "Precedent Forms and Samples". It is expected that a standard form will be developed for the Unit Disciplinary Investigators and Charge Layers Course (still under construction).

f. Difficulty with cautions not uncommon: Given the strict requirements of the law relating to the use of statements made by an accused as evidence, those members conducting unit investigations should only take statements from in exceptional circumstances. The suspect must be cautioned about the right to remain silent. The caution form that must be used to a suspected person where no charge has been laid is the one found at QR&O 101.12(3). Where a charge has been laid, the caution form must be the one at QR&O 101.12(2). If the suspect or the accused person has been questioned previously about the circumstances under investigation the supplementary caution found at QR&O 101.12(4) should be used. These cautions do not have to be given to every witness before questioning or obtaining a statement, only those who are suspected of committing an offence or have already been charged.

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g. Fewer problems with routine charges: Such as the 'Baby-5' minor offences (QR&O 108.17) in units where these offences occur on a regular basis (ex: AWOL or drunkenness charges in basic military training facilities). For more info, see *MJSTL*, ch. 5, p. 5-3 and 5-4, paras. 13-19.

6. **Q.** Describe your relationship as Legal Advisor with Units in conducting investigations?

A. As a general rule, the earlier you are involved with the units, the more beneficial is the impact as it greatly reduces legal risk of an investigation inappropriately conducted.

7. For example, the questioning a suspect or an accused person presents numerous challenges to the gathering of admissible evidence such as the detention of the individual and obligation to provide the individual with a meaningful right to legal counsel. Legal advisors should stress to units that their legal advice should be obtained before any statement or interview is sought from a suspect.

8. Questions concerning the handling and storage of evidence should also be referred to the unit legal advisor. The role Legal Advisors starts even before there is any investigation pointing on the radar screen; here again, preventive law is the most efficient approach.

9. Gauge competence and train or coach, as required. Consider group training of unit investigators. For your info, a particular unit investigator/charge layer course is in the process of being created for NCMs' professional development, (Unit Disciplinary Investigators and Charge Layers Course).

10. Encourage early contact where alleged offence or issues are not routine. Early legal advice should improve the quality and efficiency of a unit investigation. This advice could be given verbally and should include: the elements of the offence suggested by the information at hand (e.g. complaint, first witness statement); potential defences; what type of evidence is needed (both inculpatory and exculpatory); and the treatment of potential witnesses.

11. Where advice is given verbally, it should be recorded in accordance with JAG Policy Directive 006/00, *Professional Standards Review*, para. 7. A copy of this policy and a copy of the suggested format for recording verbal advice (Annex A to the Policy) are included in the course materials.

12. Encourage the standardization of "investigation report" Standardized reports have two major benefits: it facilitates understanding, and act as a 'checklist' for investigators. A sample of unit investigation report is included in in the course materials under "Precedent Forms and Samples". It is expected that a standard form will be developed for the Unit Disciplinary Investigators and Charge Layers Course (still under development). Although the Military Rules of Evidence do not apply to summary trials, statements that would be inadmissible under the Rules of Evidence should not be attached to an investigation report.

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13. Know when to recommend referral to Military Police (MP): When Legal Advisors during the course of investigation believe that the allegations are too serious to be investigated by the units, they should recommend transferring the file to local MP up to CFNIS, as the case may be. For that matter, it is also advisable to maintain close contact with unit investigators throughout the course of their investigations.

14. **Q.** What can commanders know about investigations concerning their people?

A. Generally, commanders have the operational need to know who in their command is under investigation. To ensure commanders are appropriately advised of MP investigations:

a. the local MP Advisor and/or the CFNIS Detachment commander will determine, in consultation with the CO, the appropriate briefing protocol. Established CFNIS protocols will be in writing to ensure the commander is briefed as agreed upon;

b. the local MP Advisor, in consultation with the commander, should be prepared to advise the CFNIS on the operational concerns of the commander; and

c. the local MP Advisor should have a good appreciation of their commander's operational mandate in order to easily identify the operational impact of various investigations.

15. Commander's Responsibilities. Commanders must at the same time exercise caution to avoid both the reality and the appearance of inappropriate involvement in an ongoing investigation that could endanger the proper conduct of the investigation and/or the reputation of the commander. To minimise the potential difficulties, commanders requiring more detailed information regarding an investigation should seek legal advice from their legal officer before requesting a briefing from MP/CFNIS personnel.

16. An example of the information commanders require and can expect to receive would be that a financial officer under their command is being investigated for fraud and the investigation is anticipated to take another two months to complete. This would put the commander in a position to properly assess if such a person should be deployed to an operational setting where they would be handling large amounts of cash or whether some other finance officer should be deployed or whether the person under investigation should be suspended from duty, if that action would not jeopardise the investigation.

17. Information Not Required. An example of information a commander would not normally require would be when a search warrant was to be executed or in what order witnesses would be interviewed. Such decisions are made by those with carriage of the investigation, and the knowledge of such details carries a risk of inadvertent disclosure to the wrong parties that could endanger the investigation and/or the reputation of the commander.

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18. Local Senior MP Advisors Information Passage To Commanders. As a minimum, relevant GO/CAD entry information of applicable significance, as well as incidents which will require further MP reporting, should be briefed to commanders. A Military Police Occurrence Notice (MPON) or similar format should be used. Verbal briefings may suffice depending on the severity of the information and the briefing protocol established with respective commanders.

19. Format for the Protocol Briefing on Information from MP Investigation. A formal Protocol Briefing on Information from MP Investigation is a useful mechanism to ensure consistency of information passage and to promote cooperation and reasonable expectations of Commanders. A sample briefing protocol is attached as Appendix 1.

20. Ref: *MPPTP*, ch. 6, Annex A, p. 6A-5 to 6A-7, paras. 11 to 16, "Responsibility to Inform Commanders", including Appendix 1, http://www.forces.gc.ca/en/about-reports-pubs-military-law-summary-trial-level/annex-c-mil-police-investigation-policy.page?

21. **Q.** How could a commanding officer influence the conduct of an investigation?

A. MP's authority is derived from the *NDA* and the *CC*. MP investigation shall not be influenced by the CF chain of command. When exercising MP powers under the *NDA*, the individual MP member is held personally accountable. (*MPPTP*, ch. 6, p. 6-2, para 7).

22. In addition, the more a commanding officer gets involved in the conduct of an investigation, the more he or she would be precluded from conducting the summary trial, if charges are laid (*NDA*, s. 163(2)(*a*); QR&O 108.09).

23. Furthermore, in the case of CFNIS/MP investigations, any officer or non-commissioned member or any senior official of the Department who has improperly interfered with an investigation – which include intimidation and abuse of authority - may be subject to an interference complaint made by the member of the MP who conducts or supervises the investigation (*NDA*, s. 250.19). In the most egregious cases, it could tantamount to obstruction of a peace officer (*Criminal Code*, s. 129).

24. CFPM is the Commander of the CF Military Police Group

Q. Describe the relationship between VCDS and CFPM in conducting investigations?

A. The primary role of the Canadian Forces Provost Marshal (CFPM) is to act as the Commander of the CF Military Police Group, exercising command and control over Military Police units involved in policing duties.

25. Bill C-15 protects CFPM tenure, duties and functions. Bill C-15 (S.C. 2013, ch. 24) statutorily protect CFPM tenure. It also lists the main duties and functions of the CFPM (section 18.4 of the *NDA*).

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26. CFPM acts under general supervision of VCDS who could issue instructions to CFPM The CFPM acts under the general supervision of the Vice Chief of the Defence Staff, who may issue general instructions or guidelines that are to be made public (new section 18.5(2) of the *NDA*), as well as instructions or guidelines in respect of a particular investigation that are to be made public unless the CFPM considers that it is not in the best interests of the administration of justice to do so (new sections 18.5(3) to 18.5(5) of the *NDA*).

Note to the Instructor: Use the prepared PPT presentation to do a quick review of the material

Interim Summary: Use hyperlinks to show relevant portions of MPPTP and QR&O with regards to the role of the chain of command in various types of investigations.

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PART 4 – CONCLUSION

Summary: Review essential material from the whole lesson

- understanding of the basic references limiting the jurisdiction of investigations in the CF context;
    - Who can be investigated;
    - Where can it be investigated;
    - What could be investigated;
    - By whom it could be investigated;
    - Until when do we have to investigate;
- understanding of how investigation between various investigative bodies and functions interplay;
- understanding of how the role and functions of the chain-of-command have an impact of the investigative jurisdiction in the CF;
- description of what role they could anticipate in providing legal advice during investigation;
- awareness of ways to mitigate legal risk resulting from jurisdictional conflicts during investigations by preventing them in the first place

Confirmation: Done in a discussion format. Ask some confirmation question

Conclusion: recap while this lesson and material presented in important. Make a link from your introduction to the conclusion.

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Type	Definition	Example
Comparisons	Bridges the gap between present knowledge and what is to be learned.	Unfamiliar aircraft can be explained by comparing them to familiar versions.
Reasons	Satisfies students' natural desire to know "why". Makes teaching points easier to accept.	Teaching Point – Select 100% oxygen if smoke is detected in the cockpit. Reason: Otherwise the regulator will mix oxygen with ambient (contaminated) air resulting in toxins being inhaled into the body.
Examples	Verbal illustrations are used to back up a statement or to clarify an idea. Can be real or created, but must be believable.	In discussing the need to observe safety precautions with a piece of equipment, the instructor may relate an example of how failure to observe precautions resulted in an accident.
Statistics	Used as support for the emphasis that a figure provides.	On average, tutored students score better than 98% of their classroom taught counterparts.
Testimony	Quotes from subject matter experts are used to add credibility to teaching points; they should be short and relevant. Ideally, the expert is someone most students can identify with.	If the instructor is reviewing the procedures employed in a given tactic they may cite personal experience, emphasizing the importance of doing these procedures correctly.

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PO 014 ADVISE ON DISCIPLINARY JURISDICTION

PART 1 -- LESSON IDENTIFICATION

TITLE: EO 014.02 Advise on disciplinary jurisdiction related to custody

Performance. Advise on disciplinary jurisdiction related to custody

Conditions.

given: Assistance as required; references; resources as required;
denied: Direct supervision

Standard. The legal officer shall advise on disciplinary jurisdiction related to custody

Main Teaching Points:

- Limitations arising from circumstances of custody
- Applicable MP policies

Method. This EO will be accomplished by a combination of Self-Study and Developmental Lesson. Students will be required to read [...] and be prepared to respond to Module questions. The concepts will then be reviewed and expanded during this developmental lesson.

Duration. 1 Period. (interactive lectures (IL))

References. *National Defence Act*, part. III, division 3, ss. 153-159.9; QR&O, vol. I, chap. 22; QR&O, vol. II, chap. 105; QR&O, vol. IV, Appendix 1.4 – *Regulations for Service Prisons and Detention Barracks* (P.C. 1967-1703; 6 September, 1967); DPM Police Advisory 28/09 – "Investigative Detention" – 12 Nov 2009; DPM Police Advisory 20/09 – "Provision of Legal Counsel Contact Information to Persons arrested or Detained for Operation while Impaired" – 6 Jul 2009; A-SJ-100-004/AG-000 *Military Police Policies and Technical Procedures*, Chap. 5 and 7; *Military Justice at the Summary Trial Level* (MJSTL), Vol. 2.2, Chap. 7; *JAGNet* #162888 Military Law Digest Article Pre-Trial Custody.

Training/ Learning Aids. Standard classroom with whiteboard and projection system/handouts; CD materials; Legal Officer Qualification Course (LOQC) Instructors Handbook – Module(s) [Number]

Note to the instructor. The interactive lectures (IL) shall be conducted in structured manner, using the list of "questions to the class" provided in the following pages. Instructors are to complement each segment of the IL by follow-up and direct questions taking into account the flow and direction of the discussion. Interim summaries shall be conducted at the end of each segment to confirm the material was learned and provide a basis from which the discussion can progress to the next segment. A review of the

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main teaching points will then take place at the end of the period, by Enabling Checks (EC).

PART 2 – INTRODUCTION

Objective: The Legal Officer (LO) shall describe and explain the fundamental concepts of jurisdiction pertaining to custody in the particular context the CF operate. After the completion of the IL, the LO shall be able to address disciplinary jurisdiction issues related to custody in providing a broader legal advice on military jurisdiction.

Introduction: Introduce the lesson by emphasizing the importance of delineating clearly the jurisdiction pertaining to custody in MJ. For instance through application of this knowledge, LO will be able to provide more effective legal advice on military jurisdiction generally. In particular, the following lesson will give them the following:

- understanding of the circumstances limiting CF jurisdiction in relation to custody;
    - Which are legal authorities to put in custody
    - Who can be put in custody;
    - Why someone could be put in custody;
    - Where can that person be put in custody;
    - When is the custody jurisdiction lost;
- understanding of how CF jurisdiction in relation to custody is further detailed by MP policies.

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PART 2 – INTRODUCTION (cont'd)

Outline: The LOC instructor shall introduce the lesson outline

- Stage 1: Limitations arising from circumstances of custody
    - Custody in general
    - Legal authorities to put in custody
    - Conditions for custody
    - Location of custody
- Stage 2: Applicable MP policies WRT custody
    - Beginning of jurisdiction
    - End of jurisdiction
    - Transfer

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PART 3 – BODY OF THE LESSON

Stage 1 – Limitations arising from circumstances of custody

1. **Introduction**: Indicate that you will focus the first part of the lesson on the circumstances that imposed limitations on CF jurisdiction to put someone in custody. Explain that the scope of the study would be limited to the jurisdictional aspect of custody at the initial stages. Custody review process and show cause hearing would be covered in future classes. Use the PowerPoint slide to view each of 5 types of circumstances and discuss them briefly.

2. **Suggested Questions**:

Q. Why do CF have the authority to put someone in custody?

Q. How is CF jurisdiction to put someone in custody limited?

Q. Have you experienced a situation where a CF had to be put in custody? What was the challenge? How was it resolved?

Custody in general

3. Custody refers to the "care and control of a thing or person". It also includes the "keeping, guarding, care, watch, inspection, preservation of a [person], carrying with it the idea of the [person] being within the immediate personal care and control of the person in whose custody [the person] is subjected" (*Black Law Dictionary*, 5th ed. St. Paul, Minnesota: West Publishing Company, 1979) at 347. Under the *Code of Service Discipline* it is also possible for someone to be retained in custody until the completion of the court martial or summary trial for any offence charged.

4. The NDA refers to two types of custody. *Service Custody* is defined as "[t]he holding under arrest or in confinement of a person by the Canadian Forces, and includes confinement in a service prison or detention barracks." *Civil Custody* is defined as "[t]he holding under arrest or in confinement of a person by the police or other competent civil authority and includes confinement in a penitentiary or civil prison." (*NDA*, s. 2).

5. Pre-trial custody involves the retention of someone before that person has been tried or found guilty of an offence. There are specific conditions that must be met and procedures that must be followed for a person to be retained in pre-trial custody. These requirements and procedures are in place to ensure that the person is treated fairly and that the person's individual rights are respected.

6. **Q.** What is the cardinal principle in relation to jurisdiction on custody?

A. Default position is the subject's liberty.

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7. In Canada, like in many democratic countries, liberty of the individual is the norm. It is a right recognized by common law (*Magna Carta 1215*, clause 39; *Habeas Corpus Act 1679*) and enshrined in the *Canadian Charter of Rights and Freedoms* (ss. 7, 9 and 10) In *R v Grant*, [2009] S.C.C. 32 at paragraph 54, the Supreme Court stated:

> "The s. 9 guarantee against arbitrary detention is a manifestation of the general principle, enunciated in s. 7, that a person's liberty is not to be curtailed except in accordance with the principles of fundamental justice. As this Court has stated: "This guarantee expresses one of the most fundamental norms of the rule of law. The state may not detain arbitrarily, but only in accordance with the law". Section 9 serves to protect individual liberty against unlawful state interference. A lawful detention is not arbitrary within the meaning of s. 9, unless the law authorizing the detention is itself arbitrary. Conversely, a detention not authorized by law is arbitrary and violates s. 9."

8. By virtue of their enrolment, service members have their freedom of movement limited in comparison with civilian citizenry, based on operational requirements. Nevertheless, they are still entitled in a penal context to protection against arbitrary detention.

9. Once someone has been arrested it is not necessary or appropriate in every case to retain the arrested person in custody. In general, anyone who is arrested must be released unless the circumstances justify holding the person in custody. The circumstances of each case must be examined to determine whether retention in custody is appropriate.

Legal authorities to put in custody

10. **Q.** Where does the legal authority to put someone in custody in the CF context?

A. It comes from three main sources:

a. First, sections 153 to 159.9 of the NDA part III, division 3 which governs most of the situations. In particular, section 158(1) *NDA* which provides that default is to release the arrested person as soon as practicable unless custody is necessary.

b. Second, the *Criminal Code of Canada* where here again the default is to release the person as soon as practicable (s. 497(1) CCC) unless is necessary or the person is suspected of having committed serious offences.

c. Third, the authority could also come from provincial mental health legislation, which give powers to 'peace officers', on the request of healthcare professional or a relative, to put someone in custody, without the authorization of the court, where they have reasons to believe the individual is a danger to himself or someone else. (see for example *An Act*

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respecting the Protection of persons whose mental state presents a danger to themselves or to others, CQLR c P-38.001, s. 8).

11. In *R. v. Major B.M. Wellwood*, a 2014 court martial (citation unavailable), a MP Officer had to act pursuant to provincial mental health legislation to put a CF member in custody. Maj Wellwood opposed the MP officer saying that the chain-of-command would deal with it from then on. The MP officer maintained he had to personally put the individual in custody. At some point, the altercation became physical and the MP Officer left. Amongst other things, Maj Wellwood was charged under *NDA* s. 130 of having obstructed a peace officer in the execution of his duties (s. 129 *Criminal Code*). At the trial, part of the debate was to determine if the MP Officer was a 'peace officer' for the purpose of the provincial legislation. Maj Wellwood was found guilty by a court martial panel.

12. Since custody pursuant to provincial mental health legislation does not relate to military justice as it is not penal in nature, the scope of the lesson will be then focus only to custody under the *NDA* and the *Criminal Code*, in particular the former as this course is aimed at military justice.

Conditions for Custody

13. **Q.** What are the conditions to put someone in custody by the CF?

A. The conditions are similar but they slightly vary depending if the person who wants to put someone in custody is acting under the *Criminal Code* or the *NDA*.

Under the *Criminal Code*

14. Pursuant to s. 497(1) CCC when someone (including civilians) on 'defence establishments' is arrested under the *Criminal Code*, the peace officer shall, as soon as practicable,

a. release the person from custody with the intention of compelling their appearance by way of summons; or

b. issue an appearance notice to the person and then release them.

15. Pursuant to subs. 497(1.1) CCC a peace officer shall not release a person if the peace officer believes, on reasonable grounds,

a. that it is necessary in the public interest that the person be detained in custody or that the matter of their release from custody be dealt with under another provision of this Part, having regard to all the circumstances including the need to
   i. establish the identity of the person,
   ii. secure or preserve evidence of or relating to the offence,

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iii. prevent the continuation or repetition of the offence or the commission of another offence, or
iv. ensure the safety and security of any victim of or witness to the offence; or

b. that if the person is released from custody, the person will fail to attend court in order to be dealt with according to law.

16. If a person is arrested for an indictable offence that was allegedly committed outside the territorial division where the arrest takes place, certain specific rules as to where the person should be brought to would apply. See ss. 503 (3) and (3.1) *Criminal Code*.

Under the *National Defence Act*

17. When someone (that is to say those who are subject to the *Code of Service Discipline* which may include civilians in certain circumstances) has been arrested pursuant to the NDA that person must be released from custody as soon as practicable unless the person who made the arrest believes, on reasonable grounds, that in all the circumstances the person arrested should be retained in custody. The power of arrest must be exercised carefully and in a manner that will respect the fundamental right that one's liberty is not to be restricted unnecessarily and in an arbitrary manner.

18. Pursuant to *NDA* s. 158(1)(a) to (f), the circumstances to be considered by the person in authority include the following:

a. the gravity of the alleged offence;
b. the need to establish the identity of the arrested person;
c. the need to secure or preserve evidence of or relating to the alleged offence;
d. the need to ensure that the arrested person will appear before a service tribunal or civil court to be dealt with according to law;
e. the need to prevent the continuation or repetition of the alleged offence or the commission of any other offence; and
f. the necessity to ensure the safety of the arrested person or of any other person.

19. Normally, it is not considered a sufficient reason to retain a person in custody because the investigation involving that person is not yet complete. As well, the mere possibility of the person going absent without leave, without some indication that the accused intends to go "AWOL", is not normally sufficient grounds to retain the person in custody (See *QR&O* 105.12 Note). However, the likelihood of the person arrested going absent without leave should be considered because, if absent, the arrested person would not be available for trial and such an act would constitute an "other offence".

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20. Keep in mind that CF members' authority to arrest and eventually detain a person non-subject to CSD outside 'Defence establishments' is limited to rare circumstances, such as 'citizen arrest'-type situations.

21. Once it is decided that the arrested person will be retained in custody or released, the person who made the arrest must inform the arrested person of that decision (*QR&O* 105.12(2)).

Location of custody

22. **Q.** Where arrested person to be taken in custody?

A. Where the conditions for custody have been met and the arrested person is to be retained in custody, the arrested person must be placed in service custody or civil custody (*NDA* 158(2)). However, where practical, a person who is to be retained in custody should be placed in service custody (*NDA* s. 158(2) and QR&O 105.13 Note A).

23. It is the responsibility of the person who makes the arrest and decides it is necessary to hold the person in custody to have that person taken under escort and committed into the custody of the member in charge of a guard or a guard room, or to any member of the military police. Any member to whom the custody of an arrested person has been committed has a duty to receive and keep that person.

24. Anyone responsible for placing an arrested person in custody can use such force as is reasonably necessary to do so. To determine what amount of force is reasonably necessary, the circumstances in existence at the time must be considered. For example, if the arrested person is highly intoxicated and has difficulty walking, it may be reasonable to physically assist and move the person. Similarly, a person who is violent may have to be physically restrained, such as by the use of handcuffs. However, if the arrested person is cooperative and able to move without assistance, it would not be reasonable to physically or forcibly move the person (*NDA* s. 158(3) and QR&O 105.14).

Interim Summary: Use the prepared PPT presentation to do a quick review of the material.

Note to instructor: Use hyperlinks to discuss case law giving examples on each limitation.

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PART 3 – BODY OF THE LESSON (Continued)

Stage 2 – Applicable MP policies WRT custody

1. **Introduction**: Indicate that, once basic limitations of custodial jurisdiction have been explained, you will focus the second part of the lesson on main features of military police policies which provide further detail. Use the PowerPoint slide to view each of features and discuss them briefly.

2. **Suggested Follow-on Questions**

i. **Q.** How does MP jurisdiction to detain begin?

ii. **Q.** How does MP jurisdiction to detain end?

iii. **Q.** When and how should a person in custody be transferred?

3. **Note to instructor:** Emphasize the importance of being awareness of CFPM policies on those issues. Coordination and cooperation are essential between CF (MP and Units), LOs and, where applicable, civilian police. In addition to law, jurisdiction on custody is limited by policy considerations. Better understanding of those considerations ensures appropriate level of resources is allocated and reduces the risk of negative outcome due to lack of coordination between stakeholders when someone is put in custody.

4. **Comments on the references** Bring students' attention to A-SJ-100-004/AG-000 *Military Police Policies and Technical Procedures*, (MPPTP) ch. 5 where most of these policies WRT custody jurisdiction could be found. (As those chapters are not readily available, you have to put a request to DPM PA to have access to the most current version and make a copy for the candidates). Remind them however that the MPPTP is a living document, updated on a periodical basis. What they have in their material is a "picture" that may be outdated, or will be soon to be. It is therefore important to check with the most current available version in dealing with real MP custody jurisdictional issues. As MPPTP is not accessible via internet or DWAN, LOs must ask to local MP prior getting access.

5. In addition, DPM Policy Advisories provide further details on more discrete points. There are published on a punctual basis. For example, on custody, there is the DPM Police Advisory 28/09 – Investigative Detention which clarifies and summarizes for investigators the essential criteria to be adhere to when they have "Reasonable grounds to suspect" that an individual is connected to an offence and they want to detain in order to investigate (para. 5).

6. Finally, chap. 7 of *Military Justice at Summary Trial Level* (v. 2.2) which is reproduced at "JAG-#162888-v1-Military Law Digest Article Pre-Trial Custody" provides additional guidance on jurisdiction as it pertains to pre-trial custody.

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7. **Beginning of jurisdiction**: MP's jurisdiction to put someone in custody is part of their general operations. Chap. 5 of the MPPTP, its annexes and appendices provides more details on why, when and how MP jurisdiction to detain should be exercised.

8. MP officers could use two statutory "routes" to exercise their jurisdiction to arrest and eventually to detain: 1) the 'service offences' route; and 2) the '*Criminal Code* offences' route (MPPTP, chap. 5, p. 5-6/39, para. 16). The normal and preferred route is the first one, while the second one is the exception.

9. Annex C to chapter 5 of the MPPTP (Annex C) outlines procedures to be followed when detaining persons who commit offences while under MP jurisdiction. Amongst other concepts, it describes with an example when a detention occurs (MPPTP, chap. 5, Annex C, p. 5C-2/26, para b.). It emphasizes that:

a) putting someone in custody moves part of the responsibility for safety, custody and protection on MP's shoulders (*Ibid.*, para 3);

b) MP's actions must be governed by applying the "reasonable grounds" threshold (*Ibid.*, para 4);

c) MP's jurisdiction to detain depends on authority, location, suspect status, existence of a warrant or not, type of offences and circumstances relating the suspect (*Ibid.*, para 5). The DPM Police Advisory 28/09 Investigative detention provides additional guidance to MP personnel as it pertains to detention for investigative purposes;

10. The annex also elaborates on the procedures in effecting a detention, putting the emphasis on what are the obligations for the MP when exercising its jurisdiction to detain, depending on various circumstances (*Ibid.*, paras 9 to 16).

11. Annex gives also examples where questioning and/or interaction with potential witnesses may end up to putting persons under psychological detention (i.e. they feel compel to cooperate with or follow MP personnel or answer their questions). In that sense, care must be exercised as custody jurisdiction might be triggered even if it was not MP personnel's intent in the first place (paras 33-34).

12. **End of jurisdiction.** At several times, Annex C stresses the importance for MP personnel to refrain themselves from exercising custody jurisdiction, reaffirming the obligation to release the person as soon as practicable unless they believe on reasonable grounds that it is necessary in the interest of the public or the CF to continue the detention (*Ibid.*, paras 11b, 19, 20).

13. However, in releasing someone, MP personnel do not have jurisdiction to set conditions without first going through the custody review process (*Ibid.*, para 21 to 24).

14. **Transfer.** In some circumstances, custody jurisdiction could or should be transferred.

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a) **CF members in civilian police custody** MP personnel has jurisdiction to hold in custody such individuals, but it has to be "in connection with an arrest made, or a charge laid, under the *Code of Service Discipline*" (Annex C, para 38). So if a CF member is suspected of having committed a *Criminal Code* offence outside DND jurisdiction, according to the Annex C, MP personnel cannot take jurisdiction to detain such an individual.

b) **Civilians arrested by MP personnel** Even though CF MP personnel has jurisdiction to arrest civilians (such as dependants living on DND property, DND employees, or visitors) as 'peace officer' under the *Criminal Code* (Annex C, para 39; see also *R. v. Haynes*, 1994 CanLII 4160 (NS CA); 130 NSR (2d) 311)), they do not by practice detain those individuals in CF detention barracks. They will contact their civilian counterpart to detain them.

c) **Visiting forces/NATO** If a member of a visiting force is suspected of having committed an offence against the law of the sending state, jurisdiction to detain him is transferred to MP personnel only when an appropriate arrest order is signed by the Minister of National Defence in accordance with the *Visiting Forces Act*, s. 10 (Annex C para 40). They should not be detained in civil custody but in CF custodial facility (Annex C para 41).

Unless diplomatic immunity applies, the default is that member of a visiting force being suspected of having committed an offence under Canadian law (like the *Criminal Code*) shall be dealt with in the same way as any Canadian citizen. The CO or officer in charge of the visiting force should be notified as soon as practicable (Annex C para 42).

Civil courts have primary right to exercise jurisdiction (*Visiting Forces Act*, s. 5). But it can be waived by the Attorney General (*Visiting Forces Regulations*, s. 3). Amongst NATO nations however, allies have mutually agreed that military authorities of a sending State have the right, in certain circumstances, to exercise jurisdiction over persons subject to the military law of that state (*NATO SOFA*, Article VII). In the right to exercise jurisdiction is concurrent between civil and military authorities, particular rules apply (*NATO SOFA*, Art. VII, para 3).

For more details see:

Visiting Forces Act (R.S.C., 1985, c. V-2);

Visiting Forces Regulations (C.R.C., c. 1598)

Agreement between the Parties to the North Atlantic Treaty regarding the Status of their Forces, Canadian Treaty Series 1953, [NATO SOFA] Number 13, reproduced at QR&O Vol IV Appendices – Appendix 2.4

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15. **Note to the Instructor**: Use the prepared PPT presentation to do a quick review of the material.

16. **Interim Summary**: Use hyperlinks to show access to A-SJ-100-004/AG-000 *Military Police Policies and Technical Procedures*, (MPPTP) ch. 5 and. 7 on the webpage of the *MJSTL* to raise awareness on the policies. Use hyperlinks to show CFPM advisories webpage on DWAN. Show them the absence of webpage to the entire MPPTP, hence showing the need to request access to MP.

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PART 4 – CONCLUSION

Summary: Review essential material from the whole lesson

- understanding of the circumstances limiting CF jurisdiction in relation to custody;
    - Which are legal authorities to put in custody;
    - Who can be put in custody;
    - Why someone could be put in custody;
    - Where can that person be put in custody;
    - When is the custody jurisdiction lost;
- understanding of how CF jurisdiction in relation to custody is further detailed by MP policies;

Confirmation: Done in a discussion format. Ask some confirmation question

Conclusion: recap while this lesson and material presented in important. Make a link from your introduction to the conclusion.

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CREST

Type	Definition	Example
Comparisons	Bridges the gap between present knowledge and what is to be learned.	Unfamiliar aircraft can be explained by comparing them to familiar versions.
Reasons	Satisfies students' natural desire to know "why". Makes teaching points easier to accept.	Teaching Point – Select 100% oxygen if smoke is detected in the cockpit. Reason: Otherwise the regulator will mix oxygen with ambient (contaminated) air resulting in toxins being inhaled into the body.
Examples	Verbal illustrations are used to back up a statement or to clarify an idea. Can be real or created, but must be believable.	In discussing the need to observe safety precautions with a piece of equipment, the instructor may relate an example of how failure to observe precautions resulted in an accident.
Statistics	Used as support for the emphasis that a figure provides.	On average, tutored students score better than 98% of their classroom taught counterparts.
Testimony	Quotes from subject matter experts are used to add credibility to teaching points; they should be short and relevant. Ideally, the expert is someone most students can identify with.	If the instructor is reviewing the procedures employed in a given tactic they may cite personal experience, emphasizing the importance of doing these procedures correctly.

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PO 014 ADVISE ON DISCIPLINARY JURISDICTION

PART 1 -- LESSON IDENTIFICATION

TITLE: EO 014.03 Advise on jurisdictional considerations relating to trial

Performance. Advise on jurisdictional considerations relating to trial

Conditions.

given: Assistance as required; references; resources as required;
denied: direct supervision

Standard. The legal officer shall advise on jurisdictional considerations relating to trial

Main Teaching Points:

- Advise on jurisdictional considerations relating to (election) to trial
  - Limitations pertaining to the right to elect court martial
- Advise on jurisdictional considerations relating to charge laying
  - Authority to lay charges
- Advise on jurisdictional considerations relating to charge referral
  - Limitations on jurisdiction of person making referral
  - Types of referral
- Advise on jurisdictional considerations relating to Trial & Punishment
  - Limitations on powers of trial and punishment
- Advise on jurisdictional considerations relating to the review of a summary trial
  - Types of review

Method. This EO will be accomplished by a combination of Self-Study and Developmental Lesson. Students will be required to read at various points during the lesson to learn basic concepts. The concepts will then be expanded, discussed and applied to military context in class.

Duration. 2 Periods. (interactive lectures (IL))

References. National Defence Act, R.S.C. 1985, c. N-5, ss. 249(3), 249(4),Queen's Regulations and Orders for the Canadian Forces (QR&O) - Volume I - Administration ch. 4.02, 5.01,Volume II –Disciplinary, ch. 107.2,107.09,108.9 and Note, 108.14, 108.15, 108.16, 108.17,108.18, 108.19, 108.195, 108.34,109, 116.02; B-GG-005-027/AF-011 *Military Justice at the Summary Trial Level* v. 2.2, ch. 7, p. 11-18 to 11-23, paras 72-94, ch. 8, ch. 11, section 6 "Referral", paras. 72-94, ch. 15, sections 2, 3, 6; Annex M; *Guide for Referral Authorities* pp. 2-6

Training/ Learning Aids. Standard classroom with whiteboard and projection system/handouts; CD materials; Legal Officer Qualification Course (LOQC) Instructors Handbook – Module(s) [Number]

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Note to the instructor. The interactive lectures (IL) shall be conducted in structured manner, using the list of "questions to the class" provided in the following pages. Instructors are to complement each segment of the IL by follow-up and direct questions taking into account the flow and direction of the discussion. Interim summaries shall be conducted at the end of each segment to confirm the material was learned and provide a basis from which the discussion can progress to the next segment. A review of the main teaching points will then take place at the end of the period, by Enabling Checks (EC).

PART 2 – INTRODUCTION

Objective: The Legal Officer (LO) shall describe and explain the fundamental concepts of jurisdiction pertaining to trials in the particular context the CF operate. After the completion of the IL, the LO shall be able to address jurisdictional trial aspects in providing a broader legal advice on military jurisdiction.

Introduction: Introduce the lesson by emphasizing the importance of delineating clearly the jurisdiction pertaining to trial in MJ. For instance through application of this knowledge, LO will be able to provide more effective legal advice on military jurisdiction generally. In particular, the following lesson will give them the following:

- understanding jurisdictional considerations relating to (election) to trial
- understanding jurisdictional considerations relating to charge laying
- understanding jurisdictional considerations relating to charge referral
- understanding jurisdictional considerations relating to trial & punishment
- understanding jurisdictional considerations relating to review of a summary trial

PART 2 – INTRODUCTION (cont'd)

Outline: The LOC instructor shall introduce the lesson outline

- Stage 1: Jurisdictional considerations relating to election of trial
  - Limitations pertaining to the right to elect court martial
- Stage 2: Jurisdictional considerations relating to charge laying
  - Authority to lay charges
- Stage 3: Jurisdictional considerations relating to charge referral
  - Limitations on jurisdiction of persons making referral
  - Types of referral
- Stage 4: Jurisdictional considerations relating to trial & punishment

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- Limitations on powers of trial and punishment

- Stage 5: Jurisdictional considerations relating to review of a summary trial
  - Types of review

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PART 3 – BODY OF THE LESSON

Stage 1 – Jurisdictional considerations relating to election of trial

1. **Introduction**: Indicate that you will focus the first part of the lesson on the aspects that imposed limitation on jurisdiction to the election of the mode of trial. Use the PowerPoint slide to view each aspect and discuss them briefly.

Limitations pertaining to the right to elect the mode of trial

2. Right to elect the mode of trial is the default for CF members charged for allegedly having committed an offence. However, this right of to elect is limited by rank of the accused person, the seriousness of the offence and the potential sentence. Sometimes, these are too high or serious that the matter has to go to court martial. Sometimes, the circumstances are minor enough that right to elect court martial is not offered.

A-Rank of the accused person

3. Make reference to *NDA* s. 163(1)(*a*) for commanding officers. Maximum rank officer cadet and warrant officer.

4. Make reference to *NDA* s. 164(1)(*a*) for superior commanders. Maximum rank major and chief warrant officer. However, make reference to Bill C-15, clause 36 (not yet in force). New maximum lieutenant colonel.

5. Summarize MJSTL, p. 11-5, paras 17 and 18:

> **Jurisdiction over Persons at Summary Trial**
> 17. Only service members below the rank of lieutenant-colonel can be tried by way of summary trial. Civilians cannot be tried by summary trial.
>
> 18. With respect to service members subject to summary trial, the CO of the accused's unit, or the CO of the unit where the accused is present when proceedings are taken, has jurisdiction over the accused.(QR&O 101.01(1)(b)(i) and 108.16 Notes B and C. Whether a summary trial can be held with respect to a particular charge and who can actually preside over the summary trial is affected by both the rank of the accused, the specific charge that has been laid and any prior involvement the specific officer may have had with the case. This is discussed in more detail in Section 2 of this Chapter.

B-Seriousness of the offence

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6. The *NDA* provides that jurisdiction

7. Make reference to *NDA* s. 163(1)(*d*) for commanding officers.

8. Make reference to *NDA* s. 164(1)(*d*) for superior commanders.

9. See QR&O 108.07 for jurisdiction over offences. Subs. (2) for military offences. Subs. (3) for civilian offences. Have students read QR&O 108.07 (2) and (3) to see the list of offences.

10. In terms of seriousness of the offence, only the less serious ones do not give right to elect trial by court martial where the likely punishment is also limited (See QR&O 108.17 and MJSTL, p. 11-13, para. 50).

11. See also MJSTL, pp. 12-1, paras 5 and 6:

Circumstances in which an Election must be Offered

5. Certain offences can only be tried by court martial (All except those at QR&O 108.07(2) and (3)). Where an offence can be tried by both court martial or by summary trial an accused has the right to elect to be tried by court martial for all but the most minor of service offences, unless the CO decides to refer the matter directly to court martial.

6. The service offences for which an accused does not automatically have the right to an election are:

a. *NDA* section 85, Insubordinate Behaviour;
b. *NDA* section 86, Quarrels and Disturbances;
c. *NDA* section 90, Absence Without Leave;
d. *NDA* section 97, Drunkenness; and
e. *NDA* section 129, Conduct to the Prejudice of Good Order and Discipline, but only where the offence relates to military training, maintenance of personal equipment, quarters or work space, or dress and deportment.

12. This passage is reaffirmed in JAG-#162884 v1 Military Law Digest Article Election to Court Martial, at para 5 and 6.

C-Potential sentence

13. Jurisdiction is also limited (and therefore the right to elect not offered) if the presiding officer having regard to the gravity of the offence considers that his or her powers of punishment is not adequate.

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14. Make reference to *NDA* s. 163(1)(*b*) for commanding officers.

15. Make reference to *NDA* s. 164(1)(*b*) for superior commanders.

16. Punishment powers limits are at

a) Commanding Officers: QR&O 108.24
b) Delegated Officers: QR&O 108.25
c) Superior Commanders: QR&O 108.26

17. Even for the five 'minor' offences, potential sentence must also be minor to not offer right to elect. Make reference to QR&O 108.17 (1)(*b*).

18. Summarize MJSTL, p. 12-2, paras 7 and 8:

> 7. An election may still be required for these offences where, based on the circumstances surrounding the offence, the officer exercising summary trial jurisdiction concludes that a punishment of detention, reduction in rank or a fine in excess of 25 percent of monthly basic pay would be warranted if the accused were found guilty of the offence. If the officer determines that these punishments are not warranted, the accused can be tried by summary trial with no opportunity to elect trial by court martial.
>
> 8. This means that in many cases the accused must be offered the right to elect to be tried by court martial before an officer having summary trial jurisdiction will be in a position to conduct a summary trial.

19. This passage is reaffirmed in JAG-#162884 v1 Military Law Digest Article Election to Court Martial, at paras 7 and 8.

20. In rare cases, it might even occur that circumstances are so serious, that the potential sentence for such a 'minor offence' would be over presiding officer's punishment powers .

Stage 1 – Jurisdictional considerations relating to election of trial: Interim Summary

Interim Summary: Use the animated PPT presentation to do a quick review of stage 1 by summarizing key message on each considerations. For most offences under the *National Defence Act* that a commanding officer may try by summary trial (QR&O 108.07(2)), the right to elect the mode of trial is the default rule. However, that right is limited:

- From LCols and above, there is no summary jurisdiction (about to change for LCols)

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- There is no summary jurisdiction for most serious offences
- If warrants serious punishments, it might be more suitable to sent it to court martial
- For minor offences, allegedly committed by lower ranks, warranting low punishments: summary jurisdiction might be exclusive

Note to instructor:

In practice, the right to elect is not offered very often (7.39 % of all summary trials in 2010-2011, 4.67% in 2009-2010, JAG Annual Reports) because the vast majority of disciplinary matters fall within the parameters of what is considered 'minor offence'.

Nevertheless, stress the importance for LOs of the election, not only for the accused persons but for the entire summary proceedings. It can be argued that an accused who has been offered right to elect and has declined it has validly waived court martial and all its procedural safeguards. This is why no undue influence should be exercised on the accused when offered with an election.

Use hyperlinks to show references.

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PART 3 – BODY OF THE LESSON (Continued)

Stage 2 – Jurisdictional considerations relating to charge laying

21. **Introduction**: Indicate that you will focus the second part of the lesson on the Jurisdictional considerations relating to charge laying. These considerations pertain to various aspects of the authority to lay charge.

22. The lesson is divided in four Teaching Points (TPs):

a) Who could lay charges
b) Factors to be considered for who would be authorized
c) Uniformed standard in drafting charges to be maintained
d) Laying charges is one aspect of maintenance of discipline

23. Use the PowerPoint slide to view each aspect and discuss them briefly.

Authority to lay charges

A-Who could lay charges

24. Make reference to QR&O 107.02. Three people may lay charges under the CSD: a) CO; b) officer/NCM authorized by a CO; c) CFNIS officer/NCM.

25. For clarity, make reference to QR&O 108.09 and its Note. This provision is applicable to presiding office of summary trial only. Charge layers are not legally precluded from charging when they conduct themselves the investigation.

26. Summarize MJSTL, ch. 8, p. 8-1, paras 3 to 5:

Authority to Lay a Charge

3. The following members have the authority to lay charges under the *Code of Service Discipline*:

a. a CO;

b. an officer or NCM authorized by a CO to lay charges; and

c. an officer or NCM of the Military Police assigned to investigative duties with the NIS.

4. Matters investigated by Military Police will be referred to the unit for the laying of charges.

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5. NIS personnel will lay charges, when appropriate, in all cases where they have done the investigation.

27. This passage is reaffirmed in JAG-#162881 v1 Military Law Digest Article Laying of Charges, at paras 3 to 5.

28. Make also reference to MJSTL, Annex M (CFNIS, Standard Operation Procedure ch. 2, para 2, *CFNIS Policy to Lay Charges,* Revised October 2001).

B-Factors to be considered for who would be authorized

29. Summarize MJSTL, ch. 8, pp. 8-1 and 8-2, para 6:

6. A CO should consider a number of factors when determining who will be authorized to lay charges. If the CO is considering personally laying a charge or contemplating authorizing an officer who is a delegated officer to lay charges it must be remembered that a presiding officer's jurisdiction to try a charge is limited where that officer has laid the charge or caused it to be laid. In such cases the officer who laid the charge could only conduct the summary trial if it is not practical in the circumstances to have another officer do so. Therefore in the ordinary course of events that officer should not conduct the trial. Instead it would have to be conducted by another delegated officer, or CO, as appropriate.

30. This passage is reaffirmed in JAG-#162881 v1 Military Law Digest Article Laying of Charges, at para 6.

31. The CO might also consider the following factors:

a) Unit's size;
b) Unit personnel's background;
c) Unit's offence rate;
d) Nature of offences most commonly committed in that unit;

C-Uniformed standard in drafting charges to be maintained

32. Summarize MJSTL, ch. 8, p 8-2, paras 7-8:

7. The CO should be mindful that the designation of specific members as charge laying authorities was introduced to ensure a consistent approach towards the laying of charges within the unit; assist in maintaining a high standard of charge drafting; and enhance accountability. One approach to meeting these objectives is to designate a limited number of personnel within a unit to lay charges such as the unit Adjutant, or senior NCM such as the RSM, unit Chief Warrant Officer, or Coxswain. In some units COs have delegated the authority to lay charges to all NCMs holding the appointment of Master Corporal and above.

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8. Regardless of how many personnel are designated, a CO should ensure that a perception is not created that only the persons designed to lay charges have a role in maintaining discipline within a unit. Any member can make a complaint or accusation that a service offence has been committed. Further there is an obligation for all members to report and deal with breaches of the *Code of Service Discipline*. Even if an officer or NCM is not *authorized* by a CO to lay charges, there is nothing to prohibit a member drafting a charge and submitting the charge to a member who is authorized to formally lay the charge. For example, a CO may only authorize the Chief Warrant Officer and all Master Warrant Officers to lay a charge. However, a policy could be implemented in the unit that NCMs of the rank of Sergeant and above will draft any charges arising from accusations that are brought to their attention.

33. This passage is reaffirmed in JAG-#162881 v1 Military Law Digest Article Laying of Charges, at paras 7 and 8.

D-Laying charges is one aspect of maintenance of discipline

34. Make reference to QR&O 4.02 and 5.01.

35. Summarize also MJSTL, ch. 1, p 1-10, paras 34-36:

34. Discipline does not simply consist of the imposition of punitive sanctions. The maintenance of discipline in Canada's modern armed forces relies on a blend of both collective discipline (imposed discipline of recruit camp) and self-discipline (individual acceptance of the requirement to obey). Within each of the Army, Navy and Air Force the nature of military service may require a different blend of collective and self-discipline. The maintenance of discipline, and in particular the development of self-discipline, requires that a positive role be played by military leaders.

35. The essence of discipline is found in the *Mainguy Report,* which inquired into disciplinary problems in the Canadian Navy in 1949:

> When we come to deal with discipline, we shall only point out that the only discipline which in the final analysis is worthwhile is one that is based upon *pride in a great service, a belief in essential justice, and the willing obedience that is given to superior character, skill, education and knowledge*. Any other form of discipline is bound to break down under stress. (emphasis added)

36. A good leader will maintain discipline by means of personal example, skill, integrity and knowledge. The term *essential justice* is closely related to legal concepts such as *natural justice* or *fundamental justice*. What *essential justice* means is ensuring subordinates have an opportunity to be heard, and to deal consistently with any grievances or problems; in other words, to be fair. The *Code of Service Discipline* is used when the more positive means of ensuring a habit of obedience have been unsuccessful. It is readily apparent that the authority to command, fairness and the ability to sanction behaviour inconsistent with the institutional values of the military, all integral parts of

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military law, are essential to the development of the habit of obedience so necessary for the creation of an effective armed force.

36. This passage is reaffirmed in JAG-#162887 v1 Military Law Digest Article Introduction to Military Justice, at paras 34 to 36.

Interim Summary: Use the animated PPT presentation to do a quick review of stage 2 by summarizing key message on each considerations.

- Charges layer are: COs, officers/NCMs designated by COs and CFNIS investigators
- Experience, knowledge, and unit's background are to be considered in selecting charge-layers
- It is easier to maintain consistency with few charge-layers
- Maintenance of discipline is broader than just laying charges; it requires good leadership

Note to instructor: Stress the importance for LOs of assisting units to ensure the consistency and professionalism of the charge-layers. LOs' assistance does involve independent legal opinion in a dispassionate fashion. Sometimes C2's authorities have lost the broader perspective because of their involvement: it is then LOs' duty to protect the process and politely but firmly remind charge-layers' duties, responsibilities, and limits of their powers and authority.

Use hyperlinks to show references.

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PART 3 – BODY OF THE LESSON (Continued)

Stage 3 – Jurisdictional considerations relating to charge referral

37. **Introduction**: Indicate that you will focus the third part of the lesson on the Jurisdictional considerations relating to charge referral. Explain this part will be sub-divided in two groups: 1) Limitations on jurisdiction of persons making referral; and 2) Types of referral. Use the PowerPoint slide to view each aspect and discuss them briefly.

38. Describe referral as being a process by which an authority having initially jurisdiction over the offence must by regulations or could by discretion transfer the case to another person's jurisdiction.

39. For example, before commencing a summary trial, an officer having summary trial jurisdiction must make several determinations in order to ascertain whether the officer would be precluded from trying the case.

40. Even where it has been determined that an officer has summary trial jurisdiction, that jurisdiction can be lost at any time (including during the summary trial) due to a change in the circumstances of the case.

1) <u>Limitations on jurisdiction of persons making referral</u>

A-Temporal

41. Reaffirm *NDA*. s. 69 and QR&O 108.05 including notes about disciplinary jurisdiction limited by time. Some civilian offences within commanding officers and superior commanders' summary jurisdiction have a time limitation of 6 months (QR&O 108.05, Note B).

42. Reaffirm duty to act expeditiously once a charge is laid *NDA* s. 162 and to s. 11(*b*) of the *Charter*. For pre-charge delay, reaffirm *R v Perrier* CMAC.

43. For need to refer charges due to time limitations for the summary trial, make reference to *NDA* s. 163(1.1)(QR&O 108.06) for commanding officers and s. 164(1.1)(QR&O 108.12) for superior commanders. Explain the one-year limit to begin the summary trial. According to QR&O 108.05 Note A "A summary trial begins once paragraphs (1) and (2) of article 108.20 (*Procedure*) have been complied with."

44. However, make reference to Bill C-15, clauses 35 and 36(2) (not yet in force) amending ss. 163(1.1) and 164(1.1) . Additional requirement: charge is laid within six months after the day on which the service offence is alleged to have been committed. Inform that future regulatory scheme will detail how accused persons could waive that time limitation.

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45. If matter is not within the time limitations applicable to summary trials, commanding officers need to refer charge for courts martial as they do not have those time limitations.

B-Personal (rank - status)

46. Make reference to QR&O 108.16(1)(a)(i) which implicitly refers to *NDA* ss. 163(1)(a) and 164(1)(a) on maximum ranks within COs and superior commanders' jurisdiction. For delegated officers, jurisdiction as it pertains to rank could come from CO's delegation terms. If the accused person is of a rank that is not within the authority's jurisdiction, the case must be referred to another proper jurisdiction. Then, it depends on the rank of the accused person whose case could be sent either to delegated officer, commanding officer and superior commander.

47. Sometimes the rank is too high for any summary trial. For a Brigadier General (*R v Ménard*, 2010 CM 1012) or currently for a lieutenant-colonel (*R v LCol Nauss*, 2013 CM 3008), the case is sent for court martial, even for a relatively minor offence (*NDA* s. 129 negligent discharge).

48. Soon with implementation of Bill C-15, superior commanders would have summary jurisdiction over lieutenant-colonels.

49. The status is if the accused person is civilian or a service member. Civilians cannot be tried by summary trial. (MJSTL, ch. 11, p. 11-5, para. 17). Civilians include former CF members (*NDA* ss. 163(1)(a) and 164(1)(a) *a contrario*).

C-Arising from conflict of interest

50. Before commencing a summary trial, an officer having summary trial jurisdiction1 must make several determinations in order to ascertain whether the officer would be precluded from trying the case. Amongst other things he or she must considered

a) any limitations on the officer's power to try the offence, having regard to the prohibition on presiding where the officer: conducted or supervised the investigation; laid or caused the charge to be laid; issued a search warrant in the matter (QR&O 108.10 and 108.16(1)(a)(ii));

b) whether it would be inappropriate for the officer to try the case having regard to the interests of justice and discipline (QR&O 108.16(1)(a(v)).

51. Summarize MJSTL, ch. 4, p. 4-2, paras 6-10:

Disinterested and Unbiased

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6. Presiding officers must act impartially and separate their personal interests and beliefs from their decision-making powers and duties. If a presiding officer has a direct personal or financial interest in the outcome of a case, that officer cannot preside over the matter.

7. It is essential that the presiding officer must be seen to be impartial and without having any preference for any position. Not only is it important that the presiding officer be unbiased, but more importantly that there be no appearance or apprehension of bias. The test to ensure fairness is whether a reasonably informed bystander would perceive bias on the part of an adjudicator.

8. However, it cannot be forgotten that in relation to summary trials, presiding officers will always have an interest in the discipline of the unit. Discipline within the CF depends upon the personal interaction between members who serve together. The officers responsible for the conduct of operations are the ones to whom the *habit of obedience* must be directly owed.

9. In order to enhance impartiality, presiding officers are required to take an oath or solemn affirmation at the commencement of every trial, and authorities superior to a presiding officer authority are prohibited from interfering in the conduct of the trial. Further, *QR&O* indicate that a CO who has carried out or supervised an investigation; signed a search warrant; or laid a charge or caused it to be laid should not preside at the summary trial.

10. In the final analysis members must know and believe that leaders will deal fairly and objectively with all members' problems, including lapses of discipline.

52. See for example *R v Jenner*, 2010 CM 1008 where the offender presided over at the summary trial of a subordinate with whom he was engaged in a sexual relationship at the time of the offence. Make also a summary of MJSTL, ch. 11, pp. 11-15 and 11-16, paras 58-63.

D-Seriousness of offence

53. Another aspect an officer having summary trial jurisdiction must considered before commencing a summary trial is any limitations on the officer's power to try the offence, having regard to the specific offence charged (QR&O 108.16(1)(a)(ii)).

E-Inadequate powers of punishment

54. Another aspect an officer having summary trial jurisdiction must considered before commencing a summary trial is the adequacy of the presiding officer's powers of punishment having regard to the gravity of the alleged offence (QR&O 108.16(1)(a)(iii)).

F-Elections

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55. Of course, where election was offered and where the accused person has elected to be tried by court martial, officer having summary trial jurisdiction cannot preside over a summary trial. See QR&O 108.16(1)(b). Moreover, he has lost jurisdiction.

56. For example, he cannot change or quash the RDP to cause a non-electable charge to be redrafted. That would be considered an abuse of process and at least a perception of unfairness, not only for the accused person but also for any other accused persons charged with the same offence but who have not elected court martial.

G-Mental Disorder

57. Lastly, the officer having summary trial jurisdiction must consider whether there are reasonable grounds to believe that the accused is unfit to stand trial or was suffering from a mental disorder at the time the alleged offence was committed. If the answer to either of those questions is 'yes', he or she cannot preside over a summary trial. See QR&O 108.16(1)(a)(iv).

58. **Interim Summary**: Use the animated PPT presentation to do a quick review of stage 3a by summarizing key message on each limitations on jurisdiction of persons making referral

- Temporal: Charge laid 6 months after commission/waiver (C-15)
- Personal (rank – status): 1yr has elapsed since commission for trial
- Arising from conflict of interest: Presiding officer is in a real or reasonably perceived conflict of interest
- Seriousness of the offence: Rank of the accused is too high for the presiding officer
- Inadequate powers of punishment: Circumstances are too serious for punishment powers
- Elections : Accused has elected court martial
- Mental Disorder : Accused was (at the time of the offence) or is mentally ill (not fit to stand trial)

59. **Note to instructor:** Stress the importance for LOs of assisting units to determine when it is required to refer. Sometimes it is clear as it is set by regulations: for example when accused's rank or status is beyond presiding officer's jurisdiction or when accused has elected court martial. In other situations, it is based on an assessment of the facts (real or apparent conflict of interest; sufficient punishment powers; mental disorder). Use hyperlinks to show references.

2) <u>Types of referral</u>

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A-Referral by charge layer to a presiding officer

60. Make reference to QR&O 107.09

61. Summarize MJSTL, ch. 8, p. 8-9, paras. 46-47:

> 46. Once a charge is laid, the member, including a member of the NIS, who has laid the charge must refer it to either the accused's CO, the CO of the base, unit or element in which the accused was present when the charge was laid, or to a delegated officer. The member who laid the charge must provide a copy of the RDP to the accused. This initial referral like any subsequent referrals by a presiding officer or referral authority, will be recorded on the RDP.
>
> 47. The CO or delegated officer to whom a charge has been referred must cause a copy of the RDP to be placed on the Unit Registry of Disciplinary Proceedings.

62. This passage is reaffirmed in JAG-#162881 v1 Military Law Digest Article Laying of Charges, at paras 46 and 47.

63. When a charge is referred to a CO from the member who laid the charge the CO must cause the charge to be proceeded with in accordance with *QR&O* 108, or not proceed with the charge, if in that officer's opinion the charge should not be proceeded with. See *QR&O* 107.09(3).

B-Referral by a delegated officer to a commanding officer

64. Make reference to QR&O 107.09(2).

65. Summarize MJSTL, ch. 8, pp. 8-9 and 8-10, para 48:

> 48. When a charge is referred to a delegated officer, the delegated officer must cause the charge to be proceeded with in accordance with *QR&O* 108, which involves taking the steps necessary to commence summary proceedings, or refer the charge to the CO with a recommendation that the charge not be proceeded with, if in the delegated officer's opinion the charge should not be proceeded with.

66. This passage is reaffirmed in JAG-#162881 v1 Military Law Digest Article Laying of Charges, at para 48.

67. When a charge is referred to a CO from a delegated officer, the CO must cause the charge to be proceeded with in accordance with *QR&O* 108, or not proceed with the charge, if in that officer's opinion the charge should not be proceeded with. See *QR&O* 107.09(3).

C-Referral by a commanding officer to a superior commander

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68. Make reference to QR&O 107.09(3) and 108.195.

69. Should the CO refer the charge to a superior commander, the superior commander must either cause the charge to be proceeded with in accordance with *QR&O* 108, or not proceed with the charge, if in that officer's opinion the charge should not be proceeded with.

70. Summarize MJSTL, ch. 11, p. 11-20, para 81:

> **Referral to a Superior Commander by CO.** When a CO refers a charge to a superior commander, the superior commander may do one of the following:
>
> a. not proceed with the charge if in the superior commander's opinion the charge should not be proceeded with;
>
> b. when the accused is a NCM below the rank of warrant officer, refer the case back to the CO or to another CO with directions to proceed with the summary trial unless the accused has elected trial by court martial;
>
> c. try the accused if the superior commander has the power to do so and if in the superior commander's opinion, it would be appropriate to do so;
>
> d. if the superior commander is not a referral authority, refer the charge to a referral authority, or where appropriate, to another superior commander; or
>
> e. if the superior commander is a referral authority, refer the charge to the DMP, or where appropriate, to another superior commander.

D-Referral to an alternate presiding officer

71. Make reference to QR&O 108.16(3) a, b, c, d, *in fine*.

72. These are some examples where referring to an alternate presiding officer would be appropriate:

a) If the officer determines that he does not have the required language ability, the officer should, refer the charge to another officer who has the required language ability; (QR&O 108.16 Note A)

b) If the trial of an officer cadet or non-commissioned member of another unit can be held just as conveniently by the commanding officer of the officer cadet or non-commissioned member, the charge should be referred to that commanding officer. (QR&O 108.16 Note B)

73. Where a charge is referred to another commanding officer, the accused must be sent to that commanding officer's unit before that commanding officer would have

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jurisdiction (*see sub-subparagraph (1)(b)(i) of article 101.01 – Meaning of "Commanding Officer"*).(QR&O 108.16 Note C)

E-Submission by a commanding officer to a referral authority

74. Make reference to chap. 109 of QR&O, in particular Articles 109.03 and 109.04.

75. Summarize MJSTL, ch. 11, pp. 11-22 and 11-23, paras 87-92.

Application to Referral Authority For Disposal of a Charge

87. Applications to a referral authority can be made by a CO, a superior commander, or by any member of the NIS. QR&O detail the form that the application must take, what must be included in the application, what must accompany the application and the action which is to be taken by a referral authority on receipt of the application.

88. All applications must be in the form of a letter and forwarded directly to the appropriate referral authority. The application must include the reasons for the application, a brief summary of the circumstances surrounding the commission of the alleged offence and the evidence disclosed by the investigation that supports the charge, and any recommendation that may be considered appropriate concerning the disposal of the charge. Other documentation that must accompany the application includes the following:

1. the RDP;
2. a copy of any report of investigation conducted pursuant to Chapter 106;
3. when an application is forwarded by a member of the NIS, the written reasons provided by the CO or superior commander for not proceeding with the charge;
4. the accused's conduct sheet, if there is one; and
5. the record of service or a certified copy of the certificate of service of the accused, if available.

89. If an application is forwarded to a referral authority, who is not the immediate superior in matters of discipline of the CO or superior commander who is making the application, a copy of the application must be forwarded to the officer's immediate superior in matters of discipline. Further, if an application is forwarded by a member of the NIS, a copy of the application must be sent to the CO or superior commander who decided not to proceed with the charge, and to the officer to whom that CO or superior commander is responsible in matters of discipline.

90. When an application is made to a referral authority for disposal of a charge, the commanding officer or superior commander shall cause a copy of the application and the RDP, together with a copy of the report of investigation conducted in accordance with Chapter 106 to be placed on the Unit Registry. Also see Chapter 16, Post-trial Administration.

91. When an application is made to the referral authority, the accused's CO must cause the accused to be advised of the application and inquire whether the accused:

1. wants legal counsel to be appointed by the Director of Defence Counsel Services (DDCS) to represent the accused;
2. intends to retain legal counsel at the accused's own expense; or
3. does not require legal counsel at that time.

92. When the accused wants legal counsel to be appointed by the DDCS to represent the accused, the CO must determine if the accused prefers a particular legal advisor, or if the accused is willing to accept any

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legal advisor. The CO must also inform the DDCS of the accused's wishes. Should the accused request to be represented by a particular legal advisor, the DDCS must attempt to have that officer made available for that purpose, but if that legal advisor is not available, the DDCS must ensure that another legal advisor is made available.

F-Referral by a referral authority to DMP

76. Make reference to QR&O 109.05

77. Summarize MJSTL, ch. 11, p. 11-23, paras 93-94.

Action by Referral Authority
93. Upon receipt of an application for disposal of a charge, the referral authority must either forward the application to the DMP, with any recommendations regarding the disposal of the charge that the referral authority considers appropriate, or direct that a CO or superior commander try the accused by summary trial in respect of the charges referred.

94. A referral authority will only be able to direct that a CO or superior commander try the accused by summary trial if:

a. the charge was referred because the CO or superior commander did not consider their powers of punishment to be adequate to try the accused by summary trial; and

b. the referral authority believes the CO or superior commander has adequate powers of punishment to try the accused by summary trial.

G-Referral by a commanding officer to a delegated officer

78. Make reference to QR&O 108.10 and 108.19(2). Remind the class that the status of delegated officers is dependent upon a CO having delegated the powers of trial and punishment (*NDA*, s 163(4); QR&O 108.03).

79. Also refer to MJSTL, ch. 11, p. 11-20, para 80:

80. If the case has been referred to the CO for any reason other than the accused electing to be tried by court martial, the CO may do one of the following:

a. not proceed with the charge if, in the CO's opinion, the charge should not be proceeded with;

b. refer the charge back to the delegated officer or to another delegated officer for trial;

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c. try the accused if the CO has the power to do so, and in the CO's opinion it would be appropriate to do so;

d. refer the charge to a superior commander or, where appropriate, to another CO; or

e. refer the charge to a referral authority.

80. Keep in mind though that QR&Os provide for 'a referral back' to the delegated officer. If the charge is sent directly from the charge layer to the CO, QR&O does not provide for referral from CO to delegated officer. Having said that, decision to refer the charge to a delegated officer is often made under CO's authority. Therefore, in practice, make sure that if a charge is referred to a delegated officer, CO's involvement is limited to assigning delegated officer to avoid precluding him from reviewing the summary trial, as the case may be.

H-Referral by CFNIS to a commanding officer

81. Make reference to QR&O 107.12 and its Note.

82. Legally speaking, the referral from a charge-layer of the CFNIS (QR&O 107.02 (c))is not different from any other charge-layer (QR&O 107.09 (1)(a) and (b)). However in practice, the CFNIS would come to the unit's where the accused person is to serve RDP. Very often, the C2 would know at essentially the same time than the accused person that he or she is charged with an offence.

83. Here again the chain of command could chose to proceed with the charge or not.

84. The difference lies in what the CFNIS can do next if the officer having summary jurisdiction decides not to proceed with the charges.

Interim Summary: Use the prepared PPT presentation to do a quick review of the material.

Note to instructor: Use hyperlinks to show references.

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PART 3 – BODY OF THE LESSON (Continued)

Stage 4 – Jurisdictional considerations relating to trial and punishment

85. **Introduction**: Indicate that you will focus the fourth part of the lesson on the Jurisdictional considerations relating to trial and punishment. Explain that those considerations consist mainly of limitations on powers of trial and punishment. Use the PowerPoint slide to view each aspect and discuss them briefly.

Limitations on powers of trial and punishment

A-Alleged Offence

86. Jurisdiction to impose punishment is first and foremost limited by the nature of the alleged offence, in terms of maximal punishment, even before considering the type of judicial forum.

87. For the summary trial, make reference to offences that are of its jurisdiction:

a) QR&O 108.07 (2) : Offences in the CSD proper – "military offences" (*LDN*, ss. 72-130; QR&O 103.05 to 103.615);

b) QR&O 108.07 (3): *Criminal Code* and *Controlled Drugs and Substances Act* – "civilian offences" (through *NDA*, s. 130);

B-Rank of alleged offender

88. Jurisdiction to impose punishment is also limited by the rank of alleged offender, in terms of types and degree of punishment.

89. Make reference to tables to QR&O 108.24, 108.25 and 108.26 and bring attention to column "D – Applicable to".

90. Make reference to MJSTL, ch. 14, pp. 14-6 to 14-12, paras. 29, 34, 39, 41 to 45, 49, 56, 58.

91. This passage is reaffirmed in JAG-#162886 v1 Military Law Digest Article Powers of Punishment same paras.

C-Temporal limitations

92. Jurisdiction to impose punishment is also limited by time, in particular in terms of duration for some type of punishment.

93. Make reference to tables to QR&O 108.24, 108.25 and 108.26 and bring attention to column "C – Maximum Amount" for applicable types of punishment.

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94. Make reference to MJSTL, ch. 14, pp. 14-7, 14-10 to 14-12, paras. 29, 45, 49, 56.

95. This passage is reaffirmed in JAG-#162886 v1 Military Law Digest Article Powers of Punishment same paras.

96. Keep also in mind that once sentence is passed, it has to be served forthwith. Two exceptions: a fine to be paid over a certain period of time and suspension of detention. First day of the sentence is the one of the decision by the presiding officer.

D-Powers of punishments

97. Jurisdiction to impose punishment is also limited by the very fact that the matter is dealt with by summary trial.

98. Some *NDA*, s. 139 punishments are not available. The punishments that can be imposed at summary trial are limited to detention, reduction in rank, forfeiture of seniority, severe reprimand, reprimand, fine and minor punishments.

99. Summarize MJSTL, ch. 14, pp. 14-5 to 14-6, paras. 21 to 23.

100. This passage is reaffirmed in JAG-#162886 v1 Military Law Digest Article Powers of Punishment same paras.

E-Rank or position of presiding officer

101. Jurisdiction to impose punishment is also limited by rank or position of presiding officer.

102. Make reference to tables to QR&O 108.24, 108.25 and 108.26 and bring attention to column "B – Authorized Punishment" for applicable types of punishment.

103. Summarize MJSTL, ch. 14, p. 14-6, paras. 24 to 28 and Annexes S, T, and U.

104. This passage is reaffirmed in JAG-#162886 v1 Military Law Digest Article Powers of Punishment same paras.

F-Consequence of absence of election to court martial

105. Jurisdiction to impose punishment is also limited if election to court martial was not offered in the first place.

106. Make reference to QR&O 108.17(1)(*b*). If no election was offered, presiding officer's punishment powers is limited by 108.17(1)(*b*). Should the presiding officer

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believe in the course of the summary trial that circumstances would now justify going beyond that, he or she must offer the right to elect.

107. For more info see:

a) A-LG-050-000/AF-001 *Guide for Accused and Assisting Officers* (2002-08-31) para. 3

b) *Guide for Referral Authorities*, p. 3, paras. 9-10.

108. However, if election is offered and accused However, if election is offered and accused refuses to make an election, it should be treated as an election to be tried by court martial and the accused shall be so informed (QR&O 108.17(4)).

G-Location of unit

109. For some types of punishment and in some circumstances, jurisdiction to impose punishment would be, in practice, limited by the location of the unit.

110. The unit's operational posture might put it in a situation where it could not pass the sentence so it could be effectively served.

111. For example, even for period not exceeding 14 days, if there is no detention barrack facility where the unit is located, detention could only be served in Canadian Forces Prison and Detention Barracks (CFPDB) in CFB Edmonton. And in the case of a ship at sea, it is likely that such a detention sentence would not be served according to the regulations as there are no detention cells on a ship and no practical way to send the offender to CFPDB.

112. Being at sea diminishes the sentencing options or, at least, makes them pointless. For example, if a summary trial occurs at sea and the offender is sentenced to 7 days of confinement to ship or stoppage of leave, such a punishment becomes pointless if the ship's journey is due to last for more than that period. This is why, where there is a need to hold a summary trial, it is usually held prior the ship goes alongside.

H-Nature of delegation of powers where applicable

113. Jurisdiction of a delegated officer to impose punishment could be further limited by his commanding officer.

114. Make reference to QR&O 108.10(3) and 108.25.

115. Summarize MJSTL, ch. 14, p. 14-6, paras. 26 to 28 and Annex U.

116. This passage is reaffirmed in JAG-#162886 v1 Military Law Digest Article Powers of Punishment same paras.

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Interim Summary: Use the prepared PPT presentation to do a quick review of the material.

Note to instructor: Use hyperlinks to show references.

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PART 3 – BODY OF THE LESSON (Continued)

Stage 5 – Jurisdictional considerations relating to review of a summary trial

117. **Introduction**: Indicate that you will focus the fifth part of the lesson on the Jurisdictional considerations relating to review of a summary trial. Explain that those considerations consist mainly of differences between types of review. Use the PowerPoint slide to view each aspect and discuss them briefly.

Types of review

A-Authority to review

118. Authority to review summary trial is drawn from *NDA*, ss. 249(3) and 249(4).

119. It is also drawn from QR&O 108.45 (Review on request by the service member) and 116.02 (Review authorities – Summary Trials).

120. On review authority under QR&O 108.45, MJSTL, ch. 15, p. 15-2, paras 7 and 8:

> **Review Authority**
> 7. The term *review authority* is defined in *QR&O*. In the context of a review conducted under *QR&O* 108.45, the term review authority only refers to the officers mentioned in *QR&O* 108.45(2). When determining who can act as a *QR&O* 108.45 review authority, you must consider the status of the presiding officer who tried the case, as follows:
>
> a. when a delegated officer presided at the summary trial, the review authority is the CO of the unit.
>
> b. when a CO presided at the summary trial, the review authority is the next superior officer to whom the CO of the unit is responsible in matters of discipline; and
>
> c. when the presiding officer is a superior commander, the review authority is the next superior officer to whom the superior commander is responsible in matters of discipline.
>
> 8. A checklist detailing the role of the review authority in the review process under *QR&O* 108.45 is attached at Annex V.

121. On review authority under QR&O 116.02, MJSTL, ch. 15, pp. 15-6 and 15-7, paras 29 and 30:

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29. A second form of summary trial review is provided for in *QR&O* 116.02. There are a number of significant differences between a review conduct under this article and a review conducted pursuant to *QR&O* 108.45.

30. For example, a wider group of officers can act as a review authority for a *QR&O* 116.02 review than is available under *QR&O* 108.45. While an officer having authority to act as a review authority also refers to the following military authorities:

a. the CDS;
b. an officer commanding a command;
c. an officer commanding a formation; and
d. a CO when the offender is under the CO's command and the presiding officer at the summary trial was not a superior commander.

B-Temporal limitations

122. Time limitation for putting a request for review under QR&O 108.45 is 14 days of the termination of the summary trial. The request for review must be delivered to the review authority within that period. (QR&O 108.45(5)). This period can be extended by the review authority in the interest of justice (QR&O 108.45(16)).

123. Once started, following steps of the review process have to meet timings (see QR&O 108.45 (6), (7), (8), (9), (10), (11), (12), (13)). Indicate it will be review in details at a later session.

124. MJSTL, ch. 15, p. 15-4, para 6:

Procedural Requirements – Timings

14. A request for review must be delivered to the review authority and the officer who presided at the summary trial within 14 days of the termination of the summary trial. The review authority may, in the interests of justice, extend the period for making a request for review, based on what is reasonable in the circumstances.

125. For review under QR&O 116.02 , there is no time limits placed on the review authority for determination (See MJSTL, ch. 15, p. 15-7, para 33). However as it is COs driven-process, it should go to CO first if not on CO's own motion. Caution: If process under 108.45 was not followed where it could reasonably have been followed, be careful not to create a precedent to circumvent regulatory delays by using 116.02 too loosely.

C-Standing to request Judicial review

126. Make reference to *Federal Court Act*, R.S.C. 1985, c. F-7, s. 18 and 18.1.

127. Becomes more relevant when internal review process is exhausted.

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128. Summarize MJSTL, ch. 15, p. 15-11, paras 50 to 52:

> 50. In addition to the review procedures contained in *QR&O* which relate to summary trials, anyone found guilty at a service tribunal may apply for civilian judicial review. Civilian judicial review is available through two means: by application to the Federal Court of Canada; or by application to the superior court of the province where the summary trial took place (if applicable).
>
> 51. Judicial review is not the same as an appeal. It is the purpose of judicial review to evaluate whether the tribunal has exceeded its jurisdictional limits. To initiate this evaluation, the offender must make an application to the civilian court for prerogative relief. Prerogative relief originated with the exercise of the extraordinary power held by the Crown in situations where the government was directly interfering with someone's liberty or property. Therefore, prerogative relief can be issued by a superior court only where proper cause is shown and not as a matter of right.
>
> 52. The application requirements and procedures related to civilian judicial review are set out in the statute or rules of procedure which apply to the court being asked to conduct the review.

Interim Summary: Use the animated PPT presentation to do a quick review of stage 5 by summarizing key message on jurisdictional issues as it pertains to reviews

A. Authority to review is determined by rank/positions depending if under QR&O 108.45 or 116.02

B. Delay for review under 108.45 is 14 days. No delay for review under 116.02

C. Summary trial can be judicially reviewed before civilian jurisdiction – Not an appeal

Note to instructor: Explain to students that, although reviews are relatively rare in Canadian military justice, they raise jurisdictional issues in particular in terms of who is the reviewing authority and when he or she must exercise his/her authority. In the case of a judicial review – which is a process external to the CF – LOs should be made aware that, although it is not an appeal, a civilian judge might consider the control of constitutionality of the summary trial system as being within his/her jurisdiction. In that sense, LOs must be vigilant and cautious in providing legal advice pertaining on the operation of that system.

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PART 4 – CONCLUSION

Summary: Review essential material from the whole lesson

- Understanding the jurisdictional considerations relating to election of trial
  - Limitations pertaining to the right to elect court martial
- Understanding the jurisdictional considerations relating to charge laying
  - Authority to lay charges
- Understanding the jurisdictional considerations relating to charge referral
  - Limitations on jurisdiction of persons making referral
  - Types of referral
- Understanding the jurisdictional considerations relating to trial & punishment
  - Limitations on powers of trial and punishment
- Understanding the jurisdictional considerations relating to review of a summary trial
  - Types of review

Confirmation: Done in a discussion format. Ask some confirmation question

Conclusion: recap while this lesson and material presented in important. Make a link from your introduction to the conclusion.

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CREST

Type	Definition	Example
Comparisons	Bridges the gap between present knowledge and what is to be learned.	Unfamiliar aircraft can be explained by comparing them to familiar versions.
Reasons	Satisfies students' natural desire to know "why". Makes teaching points easier to accept.	Teaching Point – Select 100% oxygen if smoke is detected in the cockpit. Reason: Otherwise the regulator will mix oxygen with ambient (contaminated) air resulting in toxins being inhaled into the body.
Examples	Verbal illustrations are used to back up a statement or to clarify an idea. Can be real or created, but must be believable.	In discussing the need to observe safety precautions with a piece of equipment, the instructor may relate an example of how failure to observe precautions resulted in an accident.
Statistics	Used as support for the emphasis that a figure provides.	On average, tutored students score better than 98% of their classroom taught counterparts.
Testimony	Quotes from subject matter experts are used to add credibility to teaching points; they should be short and relevant. Ideally, the expert is someone most students can identify with.	If the instructor is reviewing the procedures employed in a given tactic they may cite personal experience, emphasizing the importance of doing these procedures correctly.

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PO 015 - ADVISE ON LEGAL ISSUES RELATED TO CUSTODY

PART 1 -- LESSON IDENTIFICATION

Title: EO 015.01 - ADVISE ON ARREST

Performance: Advise on Arrest

Conditions:

Given: Assistance as required; references; resources as required;

Denied: Direct supervision.

Standard: The legal officer shall advise on legal issues related to arrest.

Main Teaching Points:

- Persons Subject to Arrest;
- Basis for Arrest;
- Persons Empowered to Arrest;
- Conditions of Arrest; and
- Types of Arrest.

Method: This EO will be accomplished by oral lecture. Students will be required to attend lectures and be prepared to respond to Module questions during EC.

Duration: 2 Periods (2 x 40 minutes)

References:

Canadian Charter of Rights and Freedoms ["*Charter*"]

Criminal Code of Canada, R.S.C. 1985, c. C-46 ["*Criminal Code*"]

Interpretation Act, R.S.C., 1985, c. I-21

National Defence Act, R.S.C. 1985, c. N-5 ["*NDA*"]

Visiting Forces Act, R.S.C. 1985 c. V-2 ["*VFA*"]

Defence Controlled Access Area Regulations (SOR/86-957) ["*DCAAR*"]

Queen's Regulations and Orders for the Canadian Forces ["*QR&O*"]

Malette v. *Shulman* (1990) 67 D.L.R. (4th) 321 (ON C.A.)

R. v. Courchene (1989) 52 C.C.C. (3d) 375 (ON C.A.)

R. v. Dempsey (1987), 77 N.S.R. (2d) 284 (NS C.A.)

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R. v. Feeney [1997] 2 S.C.R. 13

R. v. Haynes 1994 CanLII 4160 (NS C.A.)

R. v. Hufsky (1988) 40 C.C.C. (3d) 398 (S.C.C.)

R. v. Manninen [1987] 1 S.C.R.1233

R. v. Nolan [1987] 1 S.C.R. 1212

R. v. Ross [1989] 1 S.C.R. 3

R. v. Therens (1985) 18 C.C.C. (3d) 481 (S.C.C.)

R. v. Whitfield [1970] S.C.R. 46

Greenspan, E.L. et al, *2012 Martin's Annual Criminal Code* (Aurora: Canada Law Book, 2011)

Military Justice at the Summary Trial Level, Version 2.2 [B-GG-005-027/AF-011]

Salhany, R.E., *Canadian Criminal Procedure,* 6th ed. (Aurora: Canada Law Book, 1998)

Training/ Learning Aids: Computer access; CD materials; Legal Officer Qualification Course (LOQC) Instructors Handbook – Module(s) [Number]

Note to the Instructor: Nil.

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PART 2 – INTRODUCTION

Objective: The Legal Officer (LO) shall describe and explain custody in the particular contexts that the CF operates in. On completion of this EO, the LO shall be able to address legal issues related to arrest in providing broader legal advice on custody.

Introduction: Introduce the lesson by emphasizing the importance of arrest. For instance, through application of this knowledge the LO will be able to provide more effective legal advice on custody generally.

Outline: The LOQC instructor shall introduce the lesson outline:

- Stage 1: Persons Subject to Arrest;
    - Who Can be Arrested and Why;
- Stage 2: Basis for Arrest;
    - Circumstances that Could Justify Arrest and the Exercise of Discretion;
- Stage 3: Persons Empowered to Arrest;
    - Peace Officers (Military Police);
    - Peace Officers (Civilian Police);
    - Officers and NCMs;
    - Security Guard (Commissionaires and Others);
- Stage 4: Conditions of Arrest;
    - Detention Before Arrest;
    - Requirement to Submit to Arrest;
    - Lawful Use of Force;
    - Indicators of Arrest;
    - Powers Incidental to Arrest;
    - Rights Upon Arrest;
    - Special Reporting Requirements in Certain Cases;
- Stage 5: Types of Arrest;
    - Arrest with Warrant; and
    - Arrest without Warrant.

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PART 3 – BODY OF THE LESSON

Stage 1 – Persons Subject to Arrest

Introduction

1. The focus in the first part of the lesson will be on the considerations pertaining to persons subject to arrest. Explain that those considerations consist mainly of who can be arrested and why.

Who Can be Arrested and Why

2. Section 9 of the *Charter* guarantees the right not to be arbitrarily detained or imprisoned. Thus any law which authorizes an infringement of a person's liberty must be constitutionally compliant. The primary sources of authority for arrest or detention in the CF are ss.153-159.9 of the *NDA*, the *Criminal Code* and provincial mental health legislation.

3. Section 154(1) of the *NDA* states that "every person who has committed, is found committing or is believed on reasonable grounds to have committed a service offence, or who is charged with having committed a service offence, may be placed under arrest." "Service offence" means an offence under the *National Defence Act*, the *Criminal Code* or any other Act of Parliament, committed by a person while subject to the *Code of Service Discipline* (Part III of the *NDA*) [*QR&O* 1.02].

4. Thus anyone subject to the *Code of Service Discipline* can be arrested [*NDA* s. 154(1) and *QR&O* 105.01 Note A]. There is also authority to arrest persons who are no longer subject to the *Code of Service Discipline*, but who were subject to that *Code* at the time the alleged offence was committed [*NDA* s. 155(3) and *QR&O* 105.02].

5. Those who are subject to the *Code of Service Discipline* are listed in the *NDA* [*NDA* s. 60(1)] and include:

a. officers and NCMs of the Regular Force;

b. officers and NCMs of the Special Force;

(i) *QR&O* 1.02 defines *special force* as "such component of the Canadian Forces as may be established pursuant to subsection 16(1) of the *National Defence Act*";

c. officers and NCMs of the Reserve Force in certain circumstances;

(i) undergoing drill or training, whether in uniform or not;

(ii) in uniform;

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(iii) on duty;

(iv) called out under Part VI in aid of the civil power;

(v) called out on service;

(vi) placed on active service;

(vii) in or on any vessel, vehicle, or aircraft of the Canadian Forces or in or on any defence establishment or work for defence;

(viii) serving with any unit or other element of the regular force or the special force; or

(ix) present, whether in uniform or not, at any drill or training of a unit or other element of the Canadian Forces [*NDA* s. 60(1)(c)].

d. persons who are attached or seconded as an officer or NCM to the CF [*QR&O* 102.05 and *VFA* s.27(3)];

e. persons not otherwise subject to the *Code of Service Discipline* serving as an officer or NCM of any forces raised and maintained outside Canada and commanded by an officer of the CF;

f. persons not otherwise subject to the *Code of Service Discipline* who accompany any unit or element of the CF which is on service [*NDA* s. 33] or active service [*NDA* s. 31] in any place;

(i) A person who "accompanies a unit or other element of the CF that is on service or active service" is defined as:

(a) a person who participates in movements, manoeuvres, or certain specified duties with any unit or element;

(b) a person who is accommodated, or provided with rations, by the unit or element, whether at the expense of the unit or of the individual in any country or place designated by the Governor-in-Council;

(c) a dependant, outside of Canada, of a member serving beyond Canada with that unit or element ; or

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(d) a person embarked in a vessel or aircraft of that unit or element [*NDA* s. 61(1)].

g. persons attending educational institutions established under section 47;

(i) *NDA* s. 47 provides for the establishment of institutions for the training and education of officers and NCMs, officers and employees of DND, candidates for enrolment in the CF or employment by DND, and other persons whose attendance is authorized by or on behalf of the Minister. This would include the CF College and the Royal Military College of Canada, among other institutions;

h. alleged spies for the enemy;

i. a person, not otherwise subject to the *Code of Service Discipline*, who, in respect of any service offence alleged or committed by the person is in civil or service custody;

(i) For example, while accompanying the CF in Germany, the dependant of a member is subject to the *Code of Service Discipline*. On the return to Canada, the dependant is no longer subject to the *Code of Service Discipline*; however, if upon the dependant's return to Canada that dependant is arrested and placed in custody by civil authorities and it is alleged that the dependant committed a service offence while in Germany, the dependant can be arrested pursuant to *NDA* s. 60(1)(i); and

j. a person, not otherwise subject to the *Code of Service Discipline*, who is serving with the CF who has agreed to be subject to the *Code*.

6. When an offence has occurred either on or off DND property, the status of the alleged offender is the primary factor in determining whether the Military Police have jurisdiction to arrest the person. The jurisdiction of the Military Police to arrest persons subject to the *Code of Service Discipline* exists no matter where the alleged offence took place. For example, the Military Police can arrest a member who is involved in a fight at a bar away from the base.

7. Whether the Military Police hold the member, or turn the member over to the civilian police in such a circumstance, depends on the offence and any arrangements that have been made with the civilian police for such cases. Where practical, a person who is to be retained in custody should be placed in service custody rather than civil custody [*QR&O* 105.13 Note A].

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8. Persons not subject to the *Code of Service Discipline* may also be subject to arrest by the Military Police acting as a Peace Officer, where for example, an offence has been committed on CF property or in relation to a Defence establishment. In order to do so, however, there has to be a link or a factor linking the alleged offence to the military organization. Furthermore, the link will be sufficient if the alleged offence occurred in a military establishment. Finally, the Military Police will need to have conducted the arrest in relation to the alleged offence within a certain perimeter surrounding the military establishment and within a reasonable delay after the alleged offence occurred.

a. *Nolan v. R.* (1987), 34 C.C.C. (3d) 289 (S.C.C.), and *R. v. Haynes* (1994), 4 M.V.R. (3d) 217 (N.S.C.A.). In *Nolan v. R.*, the Military Police pursued a vehicle which had been traveling at excessive speed while exiting the confines of the base and stopped the accused on a public highway. The Military Police made a breathalyser demand, however the civilian accused refused to comply with the demand. The Supreme Court of Canada held that the Military Police officer was acting within his lawful duties as prescribed in the *Government Property Traffic Regulations*, C.R.C. 1978 c. 887, and the *Defence Establishment Trespass Regulations*, C.R.C. 1978, c. 1047, (repealed and replaced by the *Defence Controlled Access Area Regulations* SOR/86-957), and QR&O 22.01(2) and therefore fell within the definition of Peace Officer pursuant to then s. 134 of the *NDA* (now s. 156). Therefore, the Military Police officer had the power to follow the civilian driver when he left the base and went onto a public street, and had the authority to issue a breathalyser demand; and

b. The authority for Military Police officers to arrest civilians for an offence in relation to CF property is arguably very narrow. In both *Nolan v. R.* and *R. v. Pile* [1982] 14 M.V.R. 96 (Ont. C.A.) the nexus for Military Police authority related to the enforcement of military law or regulations. As stated by Callaghan J. in *R. v. Pile* at p.105:

> "A military policeman, while acting as a Peace Officer and exercising authority or duties conferred upon him by the Act, is not subject to municipal or provincial restraint so long as his actions arise as a result of incidents which took place on or in respect to the defence establishment."

c. Section 31(1) of the *Criminal Code* states that: "[e]very Peace Officer who witnesses a breach of the peace and every one who lawfully assists the Peace Officer is justified in arresting any person whom he finds committing the breach of the peace or who, on reasonable grounds, he believes is about to join in or renew the breach of the peace."

9. Additionally, the dependants of officers and non-commissioned members on service or active service in any place out of Canada who are alleged to have committed

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an offence under the laws applicable in that place may be arrested by a member of the Military Police and may be handed over to the appropriate authorities of that place [*NDA* s.272].

10. Provincial mental health legislation invariably contains provisions which permit Peace Officers to apprehend persons who are or appear to be suffering from a serious mental disorder, and to convey them to a mental health facility for evaluation and treatment. An apprehension under a provincial mental health act is not an arrest, although it is sometimes erroneously referred to as such.

11. As a general rule, any medical intervention in which a doctor touches the body of a patient without the patient's consent will constitute a battery that is actionable in damages and may, in some circumstances, constitute an assault. Provincial mental health legislation provides authority to apprehend, examine, detain and treat individuals without their consent where, for reasons of mental health, they pose a danger to themselves or others. The common law exception of implied consent in emergency situations [see, for example, *Malette* v. *Shulman* (1990) 67 D.L.R. (4th) 321 (ON CA)] is too limited to be of assistance in this situation.

Interim Summary: N/A.

Note to Instructor: Nil.

Stage 2 - Basis for Arrest

Introduction

12. The focus in the second part of the lesson will be on basis for arrest. This part will explore circumstances that could justify arrest and the exercise of discretion. Use the PowerPoint slide to view each aspect and discuss them briefly.

Circumstances that Could Justify Arrest and the Exercise of Discretion

13. There are two types of arrest: arrest without a warrant and arrest with a warrant. A Warrant for Arrest is written authorization for the arrest of any specified person for the offence(s) specifically indicated in the warrant.

14. Warrants will be discussed at length in Stage 5. At this point it is sufficient to understand that the existence of a Warrant for Arrest – either military or civilian – is a circumstance that justifies arrest.

15. As discussed in Stage 1, any person subject to the *Code of Service Discipline* may be arrested without warrant who:

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a. has committed;

b. is found committing;

c. is believed on reasonable grounds to have committed; or

d. is charged with having committed

a service offence [*NDA* s.154(1) and *QR&O* 105.01].

16. While this blanket provision will cover most instances where an arrest could be justified, the *NDA* does provide some more specific examples:

a. In accordance with *NDA* s.155 (reproduced at QR&O 105.04), members may be arrested under certain circumstances if they are engaged in a "quarrel, fray or disorder," even if their actions may not rise to the level of a service offence;

b. Section 252 of the *NDA* states that: "Any Peace Officer who on reasonable grounds believes or, if no Peace Officer is immediately available, any officer or non-commissioned member who believes on reasonable grounds that a person is a deserter or an absentee without leave may apprehend that person and forthwith bring the person before a justice.

17. It is important to make clear that it is not necessary that a person be charged with a service offence before being placed under arrest. Similarly, it is not always necessary to arrest a person who meets any of the above grounds. Note that all of the aforementioned *NDA* sections which authorize arrest use "may" rather than "shall" or any synonym of that term. Whenever arrest is an option, the circumstances of the individual case should be considered to determine if arrest is appropriate [*QR&O* 105.01 Note B]. Some factors which should be taken into consideration include:

a. the gravity of the offence committed or alleged to have been committed;

b. the need to establish the identity of the person;

c. the need to secure or preserve evidence of or relating to the offence committed or alleged to have been committed;

d. the need to prevent the continuation or repetition of the offence committed or alleged to have been committed or the commission of any other offence; and

e. the necessity to ensure the safety of the person or any other person.

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18. Grounds for warrantless apprehension under most provincial mental health acts are reasonable and probable grounds to believe that:

a. the person in question is suffering from a mental disorder;

b. the person is in a condition that presents a danger to himself/herself or others;

c. an examination of the person is required for his or her safety or for the safety of others; and

d. the delay occasioned by the obtaining of a warrant would be dangerous.

Police will usually obtain medical advice before determining whether or not there are reasonable and probable grounds for an apprehension.

19. There is often a tendency to utilize the Code of Service Discipline in situations in which the utilization of a provincial mental health act would be more appropriate. In many such cases, persons who might pose a danger to themselves are arrested for conduct that, while unlawful, is more a manifestation of their mental condition. The problem with this approach is that these individuals:

a. rarely receive timely, or any, treatment;

b. are usually inadequately supervised while they are being held; and

c. are often released with no improvement in their condition.

The better approach would be to place them in the hands of health care professionals that are trained to supervise and treat them, and that are legally authorized to do so with or without their consent.

20. One of the grounds for retaining a person who has been arrested and placed in custody under the NDA is "the necessity to ensure the safety of [this person] or any other person" [s. 158(1)(f)]. While this could lengthen the period of custody of a potentially suicidal individual, it does not assist in the provision of treatment. In the absence of authority provided by mental health legislation, the person in custody would have to consent to any required treatment.

Interim Summary: N/A.

Note to Instructor: Nil.

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Stage 3 - Persons Empowered to Arrest

Introduction

21. The focus in this part of the lesson will be on persons empowered to arrest or detain. Explain that this part will be sub-divided into four sections:

a. Peace Officers (Military Police);

b. Peace Officers (Civilian Police);

c. Officers and NCMs; and

d. Security Guards (Commissionaires and Others).

Use the PowerPoint slide to view each aspect and discuss them briefly.

Peace Officers (Military Police)

22. Military Police personnel who are appointed for the purposes of section 156 of the *NDA* are Peace Officers with respect to persons subject to the *Code of Service Discipline*. Section 2 of the *Criminal Code* includes members of the Military Police as Peace Officers when exercising their authority over someone subject to the *Code of Service Discipline*, even if the offence was committed by that person off the military establishment (see also *R. v. Courchene* (1989) 52 C.C.C. (3d) 375 (Ont C.A.)). The contents of *NDA* s.156 are reproduced in *QR&O* 105.04(2).

23. The Military Police have a broader authority than other members of the CF to arrest or detain, as they can arrest any person subject to the *Code of Service Discipline*, regardless of the person's rank or status. Furthermore, unlike other members, the Military Police have the authority to arrest a person subject to the *Code of Service Discipline* who it is believed is *about to commit* a service offence[*NDA* s.156(a)]. This includes the authority to arrest someone for an anticipated breach of a condition or conditions on which a person was released from custody.

24. Only the Military Police have the authority to arrest dependants of service members who are accompanying the members on service or active service in any place out of Canada, when the dependant is alleged to have committed an offence under the laws applicable in that place [*NDA* s. 272 and *QR&O* 105.03]. Of note, for the purposes of *NDA* s. 272, "dependant" means a spouse of a CF member, or any other person who is wholly or mainly maintained by a member or in the member's custody, charge or care.

Peace Officers (Civilian Police)

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25. Members are subject to the civil laws of Canada. Therefore, members can also be arrested by civilian authorities including civilian police officers.

26. Commanding Officers have a duty to assist civil authorities in detecting and apprehending officers and NCMs under their command whose arrest is required on a criminal charge, provided that the civilian police produce a warrant or satisfactory evidence of their capacity to act. In addition, anyone who neglects or refuses to deliver an officer or NCM for whom a warrant has been issued or to assist in the lawful apprehension of an officer or NCM accused of an offence punishable by a civil court, is guilty of a service offence. In most cases the arrest of service members for civilian criminal offences by the civilian police will be co-ordinated with the Military Police.

Officers and NCMs

27. Service members may arrest other service members and even civilians in certain circumstances. The alleged offence, as well as the respective ranks of the members, are important factors to be considered in determining the lawfulness of an arrest by a member.

28. When the required grounds are present:

a. Commissioned officers may arrest or order the arrest of NCMs, other officers of equal or lower rank, and any officer of higher rank who is engaged in a quarrel, fray or disorder [*NDA* s.155(1)];

b. NCMs may arrest or order the arrest of any other NCM of lower rank, and any NCM of equal or higher rank who is engaged in a quarrel, fray or disorder [*NDA* s.155(2)]; and

c. Any Commanding Officer may designate another person to arrest a person who is neither an officer nor NCM but was subject to the *Code of Service Discipline* at the time of the alleged commission of a service offence [*NDA* s. 155(3) and *QR&O* 105.02].

29. When a service member is ordered by a superior to arrest a person, a duty to effect an arrest is specifically imposed upon them. This means that the member must carry out the order and effect the arrest even if the member would not normally have been able to do so because of the member's rank or status [*QR&O* 105.07].

Security Guard (Commissionaires and Others)

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30. Although not an arrest, it must be noted that any person who is not subject to the *Code of Service Discipline* who is found in or on a "Controlled Access Area" in contravention of applicable regulations may be removed. Under s.2 of the *Defence Controlled Access Area Regulations*, a "Controlled Access Area" means any defence establishment, work for defence or materiel and includes any restricted area within such place or materiel.

31. A Peace Officer, Commissionaire, officer or NCM, employee or other individual engaged directly or indirectly by the CF or DND who is assigned to enforce access regulations may remove such an individual. Only as much force as is necessary may be used in order to remove the person. Removal of a person under this regulation does not impair further legal proceedings which may be taken against them [*DCAAR* ss.2, 10].

Interim Summary: N/A.

Note to Instructor: Nil.

Stage 4 - Conditions of Arrest

Introduction

32. The focus in this part of the lesson will be on conditions of arrest. Explain that this part will be sub-divided into eight sections:

a. Detention Before Arrest;

b. Requirement to Submit to Arrest;

c. Lawful Use of Force;

d. Indicators of Arrest;

e. Powers Incidental to Arrest;

f. Right to be Informed of the Reason for Arrest;

g. Right to Counsel; and

h. Special Reporting Requirements in Certain Cases.

Use the PowerPoint slide to view each aspect and discuss them briefly.

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Detention Before Arrest

33. If a person is detained by a Peace Officer or other agent of the state, and this detention interferes with the person's liberty or freedom of action, then s.10 of the *Charter* gives the person detained the following rights:

a. to be informed promptly of the reasons for the arrest or detention;

b. to retain and instruct counsel without delay and to be informed of that right; and

c. to have the validity of the detention determined by way of *habeas corpus,* and to be released if the detention is not lawful.

Habeas Corpus is directly translated to mean "you have the body". The term refers to a type of writ that can be issued by the court and is most often used to require the release of someone being illegally detained.

34. Section 10 of the *Charter* does not apply to all cases when someone is stopped. As part of their regular duties or as part of an investigation, Peace Officers, members or investigators may have to stop people for various reasons including to obtain information, to issue provincial offences notices, eg. to issue speeding tickets, or for security or safety checks. One example is random roadside checks used to check for licenses, registration, or vehicle safety.

35. Section 10 does apply if a Peace Officer or someone authorized to enforce the law has assumed physical control over the movement of a person. For example, a driver is stopped by the Military Police and during the stop the MP forms the suspicion that the driver is impaired. If the driver is required to wait in the Military Police car for the roadside breathalyser screening device to arrive, this could constitute a detention for the purposes of section 10.

36. Section 10 also applies if a Peace Officer or agent of the state does not physically control the movement of the person, but interferes with that person's liberty or freedom of action by means of compulsion or coercion and the person believes there is no choice but to submit or face legal sanctions [*R. v. Therens* (1985) 18 C.C.C. (3d) 481 (S.C.C.)]. For example, if a driver is stopped by a Peace Officer for a random spot check, and although the driver is not confined or under the physical control of the officer during any questioning or inspection of the driver's vehicle, if the driver feels compelled to submit to avoid legal consequences, s.10 of the *Charter* would apply [*R. v. Hufsky* (1988) 40 C.C.C. (3d) 398 (S.C.C.)].

Requirement to Submit to Arrest

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37. There is a legal requirement to submit to a lawful arrest. It is an offence for a person subject to the *Code of Service Discipline* to resist or wilfully obstruct another member who is performing a duty related to the arrest, custody or confinement of a person subject to the *Code of Service Discipline.* It is also an offence to refuse to assist another member in the performance of a duty pertaining to the arrest of a person subject to the *Code of Service Discipline*, when called upon to do so [*NDA* s.102 and *QR&O* 103.35].

Lawful Use of Force

38. Regardless of who is effecting an arrest, only force that is reasonably necessary in the circumstances can be used to effect an arrest [*NDA* s. 154(2)]. The use of excessive force may lead to liability under the criminal or civil law [*QR&O*s 105.09 and 22.01 Note B]. Similarly, the *Criminal Code* also allows the use of force when carrying out an arrest [*Criminal Code* s.25(1) and s.26], while imposing criminal responsibility for the use of excess force[*Criminal Code* s.25]. For example, if someone is peacefully submitting to the arrest, it would not be a reasonable use of force for the member to throw the arrested person to the ground.

39. In addition, the *Criminal Code* includes the offences of obstructing a Peace Officer, resisting arrest and assaulting a Peace Officer which further impose duties to submit to an arrest and to assist Peace Officers in the execution of their duty in effecting arrests [*Criminal Code* ss.129 and 270]. Obstruction of a Peace Officer requires a specific act performed to prevent a Peace Officer form performing their duty or an omission of something that one is legally required to do. Examples of obstruction could include deliberately concealing or destroying evidence or refusing to provide one's name where the Peace Officer has reasonable grounds to believe that the person has committed an offence.

Indicators of Arrest

40. The member who carries out an arrest must touch the arrested person while explaining that the person is under arrest. Touching is not required if the person being arrested acknowledges the arrest by actions or words. This according to 10 *Halsbury's Laws of England*, 3rd ed., 342 (para. 631) as quoted and confirmed in *R. v. Whitfield* [[1970] S.C.R. 46, 1 C.C.C. (3d) 481] when the Supreme Court of Canada accepted that an accused was placed under arrest when, while the accused was attempting to escape in his vehicle, the police officer reached through the window, grabbed the accused's shirt and said "you are under arrest".

41. The requirement to actually touch the arrestee in the absence of their acknowledgement is explained further by Moreland, *Modern Criminal Procedure* (New

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York, Bobbs, 1959) at 21 as cited in R.E. Salhany, *Canadian Criminal Procedure,* 6th ed. (Aurora: Canada Law Book Inc., 1998) at 3-3 as follows:

> Mere words, however, do not constitute an arrest. There must be some actual restraint of the person by the arrestee or he must submit in a situation where the officer has the power of control. So to merely say to the accused that he is under arrest is not enough unless he submits and the officer is in a position to effect a seizure if desired.

Powers Incidental to Arrest

42. Powers which exist incidental to arrest include the search of the person being arrested and the search of the immediate surroundings. The purposes of such a search include: guaranteeing the safety of the police or the arrested person, preventing escape, and securing evidence. Section 8 of the *Charter* guarantees that "[e]veryone has the right to be secure against unreasonable search or seizure." According to the notes on s.8 in *Martin's Criminal Code*:

> In order for a search to be incidental to arrest the police must be attempting to achieve some valid purpose connected to the arrest. The three main purposes of search incident to arrest are ensuring the safety of the police and public, the protection of evidence from destruction at the hands of the arrestee or others and the discovery of evidence. ...The police must have one of the purposes for a valid search in mind and the officer's belief must be a reasonable one so there is some reasonable basis for doing what the police officer did... Furthermore, searches that are truly incidental to arrest will usually occur within a reasonable period of time after the arrest. *R. v. Caslake* (1998), 121 C.C.C. (3d) 97 (S.C.C.).

A search incidental to arrest could include a search of a motor vehicle, or other areas immediately surrounding an arrested person.

43. Any search should be conducted in a reasonable fashion in view of the circumstances. Except where the arrested person may be an imminent threat, all searches must be conducted by someone of the same gender as the arrested person, and be conducted in an area that affords maximum privacy.

Rights Upon Arrest

44. Persons who have been arrested or detained must, without delay, be informed:

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a. that they are under arrest or are being detained;

b. of the reason for the arrest or detention;

c. that they have the right to retain and instruct counsel without delay;

d. that they have the right to have access to free and immediate advice from duty counsel provided by the DDCS or other duty counsel in the jurisdiction where the person is arrested or detained and how duty counsel may be contacted; and

e. of the existence and availability of Legal Aid plans, where applicable [*QR&O* 105.08(1)].

45. The above information should be provided in the following form:

> You are under arrest for *(reason for arrest)*. It is my duty to inform you that you have the right to retain and instruct counsel without delay. You have the right to have access to free and immediate advice from duty counsel provided by the Director of Defence Counsel Services at the following phone number... Advice may also be available to you from other duty counsel at the following number ... . Legal Aid may also be available to you at the following number... Do you understand? Do you want to exercise this right?

It is not essential to use this exact wording, as long as the person is made aware of the information set out above. However, it is recommended that the above format be used to ensure that all of the required information is provided [*QR&O* 105.08 Note A].

46. Certain circumstances may make it impossible to provide the required information to an arrested person immediately following the arrest, such as where the person is unconscious or attempting to escape from custody. In such circumstances, the required information is to be provided to the arrested person as soon as possible [*QR&O* 105.08(2)].

47. The right to be informed of the reason for arrest or detention is found in the *Charter*. Section 10(a) of the *Charter* states that: "Everyone has the right on arrest or detention to be informed promptly of the reasons therefor." That said, the complete legal description of the alleged offence need not be provided, rather, the offence need only be described in general terms [*QR&O* 105.08 Note B].

48. The right to counsel is also fundamental to Canadian criminal law and is also codified in the *Charter*, which states at s.10(b) that: "Everyone has the right on arrest or detention ...to retain and instruct counsel without delay and to be informed of that right". The right to counsel includes the right to consult counsel in private. Where the arrested

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person has indicated that they wish to exercise the right to counsel, there is a duty on the arresting authorities to refrain from attempting to elicit evidence from an arrested person until the arrested person has had a reasonable opportunity to do so [*R. v. Manninen* [1987] 1 S.C.R.1233; *R. v. Ross* [1989] 1 S.C.R. 3; re: privacy: *R. v. Dempsey* (1987), 77 N.S.R. (2d) 284 (NS CA)].

49. In a military context, the right to counsel without delay is tempered slightly in deference to military operations, in that the opportunity to contact counsel is to be provided as soon as practical under the circumstances [*QR&O* 105.08(3)]. The other aspects of the right to counsel, including privacy while consulting counsel and restrictions on certain police activities until the right has been exercised, apply equally to those arrested under the *Code of Service Discipline* as they do to those arrested pursuant to the *Criminal Code*.

50. The other right upon arrest which is enumerated in the *Charter*, the right "to have the validity of the detention determined by way of *habeas corpus* and to be released if the detention is not lawful" [*Charter* s.10(c)], will be addressed in another EO.

Special Reporting Requirements in Certain Cases

51. Special reporting requirements exist where an officer or NCM above the rank of Sergeant is arrested. Immediately upon the arrest of such a member, the CO must send a report of the circumstances to the Director General Military Careers (DGMC) at NDHQ, by message [*QR&O* 105.11].

52. Additionally, where an officer or NCM has been arrested by a civil authority, the member shall cause the fact of the arrest to be reported to their Commanding Officer [*QR&O* 19.56].

Interim Summary: N/A.

Note to Instructor: Nil.

Stage 5: Types of Arrest

Introduction

53. The focus in this part of the lesson will be on types of arrest. Explain that this part will be sub-divided into two sections:

a. Arrest with Warrant; and

b. Arrest without Warrant.

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Use the PowerPoint slide to view each aspect and discuss them briefly.

Arrest with Warrant

54. Arrests can be made when a warrant for arrest has been issued. Warrants for arrest exist both in the military justice system and in the civilian justice system. Arrest warrants under the *Criminal Code* may be issued only for contraventions of civil legislation or for breaches of civil recognisances, court orders, etc.. Where a CF member has been, or will be, charged with a service offence (including a s.130 offence), a warrant for the member's arrest, if one is to be issued, should be issued pursuant to the *NDA*.

55. A *NDA* warrant for arrest may be issued by a CO (including an acting CO if they have powers of punishment) or a delegated officer for the arrest of any person subject to the *Code of Service Discipline* where that person:

a. has committed;

b. is believed on reasonable grounds to have committed; or

c. is charged under the *NDA* with having committed

a service offence [*NDA* s. 157 and *QR&O* 105.05].

56. The form that a *NDA* warrant should be issued in is found at *QR&O* 105.06. The warrant names the person who is authorized to effect the arrest, the name of the issuing officer, the service number, rank and name of the person who is to be arrested, and the alleged offence. The warrant provides direction with respect to where the person is to be taken once arrested. There is also a place on the warrant to indicate, if necessary, that the arrest of an officer of higher rank than the officer issuing the warrant for arrest is required by the exigencies of the service. The warrant must be signed and dated by the issuing officer and must indicate the service number, rank, name, appointment and unit of the issuing officer. One warrant may be issued with respect to several offences of the same nature, and a single warrant for arrest may be issued for the arrest of more than one person [*NDA* s. 157(3) and *QR&O* 105.05 (3)].

57. *NDA* warrants contain "Feeney" provisions authorizing entry into a dwelling-house specified in the warrant if the person issuing the warrant is satisfied by information on oath that there are reasonable grounds to believe that the person to be arrested is or will be present in the dwelling-house. They also authorize entry into the dwelling-house without prior announcement if doing so could expose the person executing the warrant imminent bodily harm or death, or could result in the loss or destruction of evidence relating to the commission of an indictable offence [*QR&O* 105.06, *Criminal Code* ss.529-529.4 and *Interpretation Act* s.34.1].

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58. The member named in a warrant for arrest as being authorized to carry out an arrest, as well as anyone called upon by that member to assist, are authorized to effect an arrest, and to use reasonable force in doing so [*NDA* s. 154(2), *QR&O* 105.09 and Note and 105.05 Note]. Special considerations apply with respect to the rank of the member ordering or effecting an arrest and the person who is to be arrested, as follows:

a. *Arrest of a Superior:* An officer issuing a warrant for the arrest of a superior must certify on the warrant that the exigencies of the service require that a warrant for arrest be issued against a superior officer [*NDA* s. 157(2) and *QR&O* 105.05]. An example of when the *exigencies of the service* require an officer to issue a warrant again a superior officer, is when no officer equal or higher in rank to the officer subject to the warrant is available; and

b. *Arrest of a Subordinate:* Unless it is essential to do so, a member should not physically participate in the arrest of any member who is subordinate in rank. Instead, the member should have another member who is equal to or junior in rank to the person being arrested, carry out the arrest [*QR&O* 105.10]. The reason for this is to avoid potentially putting the member being arrested in a worse position than they are already in (by, for example, potentially striking a superior).

59. While civilian police officers are generally not authorized to act on CO's *NDA* warrants, warrants issued under s.252 may be addressed to a civilian police officers who may therefore act on them. Where a CO's warrant is issued and delivered to the Military Police, they will be entered into the Canadian Police Information Centre (CPIC) database.

60. Civilian arrest warrants may be issued for the arrest of service members for the contravention of civil legislation or breaches of civil court orders. If the Military Police become aware that a civilian arrest warrant has been issued for a member, they will normally contact the police force who investigated the charge related to the warrant and coordinate the arrest of the member. Where a member becomes aware of the existence of a civilian arrest warrant issued against another member, the Military Police should be advised. In addition, civilian arrest warrants and warrants of committal may be issued and enforced against members for civilian criminal offences or other offences, including breaches of civilian court orders. CF members can also be arrested on DND property by civilian police [*QR&O* 19.51(1) and (2)].

Arrest without Warrant

61. The basis for an arrest without warrant and who may perform them was discussed at length in Stages 2 and 3, and will not be elaborated upon again here. It is

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sufficient to reiterate that any person subject to the *Code of Service Discipline* may be arrested without warrant who:

a. has committed;

b. is found committing;

c. is believed on reasonable grounds to have committed; or

d. is charged with having committed

a service offence [NDA s.154(1) and QR&O 105.01].

Members may also be arrested without warrant under s.155 of the *NDA* if they are engaged in a "quarrel, fray or disorder," even if their actions may not rise to the level of a service offence, and deserters and absentees may specifically be arrested without warrant under s.252.

62. Warrantless entries into dwelling-houses for the purposes of effecting an arrest are authorized under s.529.3 of the *Criminal Code*, but only where all of the conditions for the obtaining a "Feeney" warrant [ss.529-529.2] exist, and where "by reason of exigent circumstances it would be impractical to obtain a warrant".

Interim Summary: N/A.

Note to Instructor: Nil.

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PART 4 – CONCLUSION

Summary: Review essential material from the whole lesson.

- Stage 1: Persons Subject to Arrest;
    - Who Can be Arrested and Why;

- Stage 2: Basis for Arrest;
    - Circumstances that Could Justify Arrest and the Exercise of Discretion;

- Stage 3: Persons Empowered to Arrest;
    - Peace Officers (Military Police);
    - Peace Officers (Civilian Police);
    - Officers and NCMs;
    - Security Guard (Commissionaires and Others);

- Stage 4: Conditions of Arrest;
    - Detention Before Arrest;
    - Requirement to Submit to Arrest;
    - Lawful Use of Force;
    - Indicators of Arrest;
    - Powers Incidental to Arrest;
    - Rights Upon Arrest;
    - Special Reporting Requirements in Certain Cases;

- Stage 5: Types of Arrest;
    - Arrest with Warrant; and
    - Arrest without Warrant.

Confirmation: Done in a discussion format.

Suggested confirmation questions:

Q1 – Who can be arrested under the *Code of Service Discipline*?

A1 – Anyone who is currently subject to the *CSD*, and anyone who was at the time of the alleged offence.

Q2 – What are the two types of arrest?

A2 – Arrest with a warrant and arrest without a warrant.

Q3 – When can a MP arrest a CF member downtown?

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A3 – Regular Force and Special Force – at all times for service offences, as those members are always subject to the *CSD*; Reserve Force – at all times that the member meets one of the requirements in *NDA* s.60(1)(c).

Q4 – How is an arrest perfected?

A4 – Either by touching the person being arrested and informing them that they are under arrest, or by them acknowledging through words or actions that they are under arrest.

Q5 – Can a warrant for the arrest of a CF member be issued by a Commanding Officer other than their own?

A5 – Yes, in accordance with s.157(1) of the *NDA*, *every* CO may (and every Delegated Officer) may issue a warrant for the arrest of *any* other person triable under the *CSD*.

Conclusion: Recap that lesson and material presented is important because it is the students as future DJAs and Legal Officers in general who will be providing advice regarding this and all other MJ topics to COs and MP across the country and around the world.

From the *NDA*:

9.2 (1) The Judge Advocate General has the superintendence of the administration of military justice in the Canadian Forces.

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PO 015 - ADVISE ON LEGAL ISSUES RELATED TO CUSTODY

PART 1 -- LESSON IDENTIFICATION

TITLE: EO 015.02 REVIEW UNIT DELEGATION, DESIGNATIONS AND AUTHORIZATIONS

Performance: Review Unit Delegation, Designations and Authorizations

Conditions:

Given: Assistance as required; references; resources as required;

Denied: Direct supervision

Standard: The legal officer shall review unit delegations, designations and authorizations.

Main Teaching Points:

- CF Command and Organization;
- Distinguish Between Power, Authority, Duty and Responsibility;
- What can be Delegated, Designated or Authorized;
- Who can Receive a Delegation, or be Designated or Authorized; and
- Who can Delegate, Designate or Authorize.

Method: This EO will be accomplished by a combination of Self-Study and Interactive Lecture. Students will be required to read Modules 1 and 2 and be prepared to respond to Module questions. The concepts will then be reviewed and expanded during this developmental lesson.

Duration: 1 period Distributed Learning (DL), 1 period Interactive Lecture (IL) (40 minutes).

References:

Canadian Charter of Rights and Freedoms ["Charter"]

National Defence Act, R.S.C. 1985, c. N-5 ["NDA"]

Queen's Regulations and Orders for the Canadian Forces ["QR&O"]

Barber, K., Editor, *Canadian Oxford Dictionary*, 2nd Edition (Don Mills: Oxford UP), 2004.

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Garner, B.A., Editor, *Black's Law Dictionary*, 8th Edition (St. Paul: Thompson West), 2005.

Training/ Learning Aids: Computer access; CD materials; Legal Officer Qualification Course (LOQC) Instructors Handbook – Module(s) EO 015.02 1-5

Note to the Instructor: A review of the main teaching points will take place at the end of the Interactive Lecture period, by Enabling Check (EC).

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PART 2 – INTRODUCTION

Objective: The Legal Officer (LO) shall describe and explain custody in the particular context in which the CF operates. On completion of this EO, the LO shall be able to review unit delegations, designations and authorizations in providing broader legal advice on custody.

Introduction: Introduce the lesson by emphasizing the importance of reviewing unit delegations, designations and authorizations. For instance, through application of this knowledge, LO will be able to provide more effective legal advice on custody generally, and aid their clients in avoiding issues post-trial.

Outline: The LOQC instructor shall introduce the lesson outline:

- Stage 1: CF Command and Organization
  - MOOs;
  - CFOOs;
  - QR&Os Related to Organization, Command, Delegations, Designations and Authorizations;

- Stage 2: Distinguish Between Power, Authority, Duty and Responsibility
  - Power;
  - Authority;
  - Duty;
  - Responsibility;

- Stage 3: What can be Delegated, Designated or Authorised;
  - Power of Arrest;
  - Charge Laying Authority and Authorization;
  - Designation of Custody Review Officers;
  - Delegation of Powers of Trial and Punishment;
  - Specific Designations Pertaining to Custody (Visitors, Correspondence);
  - Jurisdictional Concerns (Continuity);

- Stage 4: Who can Receive a Delegation, or be Designated or Authorized;
  - Prerequisites and Limitations for Delegations;
  - Prerequisites for Designations and Authorizations;

- Stage 5: Who can Delegate, Designate or Authorize;
  - Under the Authority of the Chief of the Defence Staff; and
  - As a Commanding Officer.

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PART 3 – BODY OF THE LESSON

Stage 1 – CF Command and Organization

Introduction

1. The focus in the first part of the lesson will be the considerations pertaining to CF command and organization. Explain that while CF command and organization have already been covered in the MAL portion of the LOQ course, the focus in this lecture will be put on their impact on disciplinary powers related to custody. Use the PowerPoint slide to review each aspect and discuss them briefly.

Ministerial Organizational Orders (MOOs)

2. The organizational power of the MND over the CF is exercised through the issuance of Ministerial Organization Orders (MOO), which are the authority for the creation, amalgamation or disbandment of units of the CF. A MOO describes the unit, states whether it belongs to the Regular or Reserve Force, and specifies to which command the unit is allocated. When applicable, a MOO may also specify the powers of the officer in command of an organization. It is under the authority of a MOO that the CDS can issue a Canadian Forces Organization Order (CFOO), which provides greater detail concerning the make-up of the unit and its chain of command [*NDA* ss.12(1), 12(2) and 17] (Sample MOO in PowerPoint).

Canadian Forces Organization Orders (CFOOs)

3. CFOOs are orders from the Chief of the Defence Staff (CDS), promulgated to formalize the organization of the CF, and are published for each command, formation, unit or other element of the CF. Importantly for Military Justice purposes, CFOOs indicate the status of the person in command (Commanding Officer, Officer Commanding a Formation or Officer Commanding a Command). They will also include whether that person has been designated to have a higher level of authority than their position would normally exercise, and will stipulate whether they have the authority to themselves designate Commanding Officers. CFOOs also normally specify who the unit's next superior officer in matters of discipline is (Sample CFOO in PowerPoint).

NDA Sections and *QR&O*s Related to Organization, Command, Delegations, Designations and Authorizations

4. Sections 14 to 18.2 of the *NDA* delineate the authorities exercised by the Minister and the CDS in organizing the CF. These authorities are elaborated upon in Chapter 2 of *QR&O* Volume 1 (Administration). Section 2 of Chapter 3 of the same volume of *QR&O*s examines specifies command relationships in various circumstances. As a Legal Officer, it is important to understand these provisions and the differences between the different levels of authority.

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5. Section 163(4) of the *NDA* states that a "...commanding officer may, subject to regulations made by the Governor in Council and to the extent that the commanding officer deems fit, delegate powers to try an accused person by summary trial to any officer under the commanding officer's command..." By virtue of s.157(1) of the *NDA*, delegation of this authority also includes delegation of the authority to issue warrants for arrest, but does not include the authority to issue search warrants. Limitations on this delegation are contained both in the section itself and in QR&O 108.10, and will be discussed at a later stage of this lesson.

6. In addition to designations made in CFOOs, Commanding Officers can designate "Custody Review Officers" to exercise their authority to release members under their command from service custody [*NDA* s.153 and *QR&O* 105.17 Note].

7. The term "authorization" is used specifically to refer to those individuals who have been authorized to lay charges under the *Code of Service Discipline* by a Commanding Officer under *QR&O* 107.02.

8. *QR&O* 1.02 generally defines "Commanding Officer" as:

a. except when the Chief of the Defence Staff otherwise directs, an officer in command of a base, unit or element, or

b. any other officer designated as a commanding officer by or under the authority of the Chief of the Defence Staff;

9. Solely for the purposes of proceedings under the *Code of Service Discipline*, *QR&O* 101.01 further defines "Commanding Officer" as:

a. in addition to the officers mentioned in the definition of commanding officer in *QR&O* 1.02, a detachment commander; and

b. includes, in relation to an accused person,

(i) the commanding officer of the base, unit or element to which the accused belongs or, except in the case of a detention barrack, the commanding officer of the base, unit or element in which the accused is present when proceedings are taken under the Code of Service Discipline in respect of the accused,

(ii) where the accused is a commanding officer, the next superior officer to whom the commanding officer is responsible in matters of discipline or such other officer as the Chief of the Defence Staff may designate, and

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(iii) the executive officer of a ship, where there is no superior commander on board or in company with the ship and the accused is a non-commissioned member above the rank of sergeant or an officer below the rank of major.

The powers of punishment of a detachment commander are subject to such limitations as may be imposed by Chief of the Defence Staff, or the detachment commander's commanding officer.

Interim Summary: N/A.

Note to Instructor: Nil.

Stage 2: Distinguish Between Power, Authority, Duty and Responsibility

Introduction

10. The focus in the second part of the lesson will be on distinguishing basic notions regarding terminology used in the *NDA* and in *QR&O*s. Although some of them were covered in the MAL portion of the LOQ course, the focus will be put here on their impact on disciplinary powers related to custody. Use the PowerPoint slide to view each concept and discuss them briefly.

Power

11. *Black's Law Dictionary* defines power as "the legal right or authorization to act or not act...." This term implies a discretion.

Authority

12. *Black's Law Dictionary* defines authority as "the right or permission to act legally on another's behalf...." This term implies a discretion.

Duty

13. *Black's Law Dictionary* defines a duty as "a legal obligation that is owed or due to another and that needs to be satisfied...."

Responsibility

14. The *Canadian Oxford Dictionary* defines responsibility as "the state or fact of being responsible," as well as "authority, the ability to act independently and make decisions."

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Interim Summary: The aforementioned terms are used throughout the *NDA* and *QR&Os*, and it is important that we as Legal Officers understand the distinctions between them.

Note to Instructor: N/A.

Stage 3: What can be Delegated, Designated or Authorized

Introduction

15. The focus in this part of the lesson will be on what can be delegated, designated or authorized as it pertains to the *Code of Service Discipline*. Explain that this part will be sub-divided into six sections, covering from the initial stage of the process until the summary trial:

a. Powers of Arrest;

b. Charge-Laying Authority and Authorization;

c. Designation of Custody Review Officers;

d. Delegation of Powers of Trial and Punishment;

e. Specific Designations Pertaining to Custody (Visitors, Correspondence); and

f. Jurisdictional Concerns (Continuity).

16. The powers and authorities listed in the previous paragraph are, by both statute and regulation, entrusted to commanding officers. As noted in Stage 1, the CDS and other officers authorized by him/her through CFOO may designate other officers under their command to be "designated" commanding officers. Such designated COs have the same powers, authorities, duties and responsibilities as actual COs do, subject to any specific limitations imposed upon them by either the CDS or the officer who designated them.

17. Section 49 of the *NDA* states that: "Any power or jurisdiction given to, and any act or thing to be done by, to or before any officer or non-commissioned member may be exercised by, or done by, to or before any other officer or non-commissioned member for the time being authorized in that behalf by regulations or according to the custom of the service."

18. Section 50 of the *NDA* states that: "Orders made under this Act may be signified by an order, instruction or letter under the hand of any officer whom the authority that made those orders has authorized to issue orders on its behalf, and any order,

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instruction or letter purporting to be signed by any officer appearing therein to be so authorized is evidence that the officer is so authorized."

Power of Arrest

19. With respect to persons subject to the *Code of Service Discipline*, all officers and NCMs have been authorized by statute to exercise the power of arrest under certain circumstances, and with certain limitations. These were discussed at length in EO 015.01.

Charge-Laying Authority and Authorization

20. By regulation, the following persons may lay charges under the *Code of Service Discipline*:

a. a commanding officer;

b. an officer or non-commissioned member authorized by a commanding officer to lay charges; and

c. an officer or non-commissioned member of the Military Police assigned to investigative duties with the Canadian Forces National Investigation Service. [*QR&O* 107.02]

Designation of Custody Review Officers

21. Section 153 of the *NDA* defines "custody review officer," in respect of a person in custody, as:

a. the officer who is the person's commanding officer, or an officer who is designated by that officer; or

b. if it is not practical for an officer referred to in paragraph (a) to act as the custody review officer, the officer who is the commanding officer of the unit or element where the person is in custody or an officer who is designated by that officer.

Delegation of Powers of Trial and Punishment

22. In accordance with s.164(4) of the *NDA*, and as limited by *QR&O* 108.10, a Commanding Officer may delegate their powers of trial and punishment to any officer under their command.

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Specific Designations Pertaining to Custody (Visitors, Correspondence)

23. In accordance with QR&O 105.32, no person shall be admitted to the place where an officer or non-commissioned member is held in custody, without the permission of the commanding officer, unless that person is:

a. the member's commanding officer or a member designated by that commanding officer;

b. the Officer of the Watch or Day;

c. the orderly officer;

d. a chaplain;

e. a medical officer;

f. a person immediately responsible for the member's custody;

g. the member's assisting officer, legal counsel or adviser; or

h. where the member does not have legal counsel, a witness for the member.

24. *QR&O* 105.33 specifies that: An officer or non-commissioned member held in custody shall be permitted to send letters and telegrams and to read all correspondence addressed to the member, except that the commanding officer may direct that all letters, telegrams and other correspondence originated by or addressed to the member be scrutinized by an officer designated for that purpose by the commanding officer, and an officer so designated may withhold or return to the sender all or any part of such correspondence that he considers detrimental to:

a. the morale of the person in custody;

b. good order; or

c. security.

Jurisdictional Concerns (Continuity)

25. An important consideration for DJAs, and one which is often overlooked, is ensuring that all of the aforementioned delegations, designations and authorizations remain valid. Factors which can affect their validity include:

a. Change of Command; and

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b. Posting of the Delegate/Person Designated/Authorized.

23. It is also important to consider continuity if any members are in service custody when a change of command or posting out takes place – the wellbeing and rights of members in custody must be considered at all times.

Interim Summary: N/A.

Note to Instructor: Nil.

Stage 4: Who can Receive a Delegation, or be Designated or Authorized

Introduction

24. The focus in this part of the lesson will be on who can receive a delegation, be designated or authorized as it relates to custody. Specifically, it will examine:

a. Prerequisites and Limitations for Delegations; and

b. Prerequisites for Designations and Authorizations.

Prerequisites and Limitations for Delegations

25. Section 163(4) of the *NDA* states: A commanding officer may, subject to regulations made by the Governor in Council and to the extent that the commanding officer deems fit, delegate powers to try an accused person by summary trial to any officer under the commanding officer's command, but an officer to whom powers are delegated may not be authorized to impose punishments other than the following:

a. detention not exceeding fourteen days;

b. severe reprimand;

c. reprimand;

d. a fine not exceeding basic pay for fifteen days; and

e. minor punishments.

26. Further limitations are detailed in *QR&O* 108.10:

a. a commanding officer may not delegate his powers of trial and punishment to an officer who:

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(i) has not been trained, in accordance with a curriculum established by the Judge Advocate General, and certified by the Judge Advocate General as being qualified to perform the duties of a delegated officer, or

(ii) is below the rank of captain;

b. a commanding officer may only delegate powers of trial and punishment in respect of officer cadets and non-commissioned members below the rank of warrant officer; and

c. a commanding officer may not delegate powers of trial and punishment in respect of the civil offences referred to in paragraph (3) of *QR&O* 108.07

d. Powers of trial and punishment shall be delegated in writing and the delegated officer shall be identified by name or by reference to the officer's appointment or the duties the officer performs.

Prerequisites for Designations and Authorizations

27. The only prerequisite to be designated as a Custody Review Officer is that the member be an "officer". In both the *NDA* and *QR&O*s, an officer is defined as:

a. a person who holds Her Majesty's commission in the Canadian Forces;

b. a person who holds the rank of officer cadet in the Canadian Forces; and

c. any person who pursuant to law is attached or seconded as an officer to the Canadian Forces.

28. With respect to charge-laying authority, any officer or non-commissioned member may be so authorized by a commanding officer, without limitation. This authorization need not be in writing, however, it is advisable to do so [*QR&O* 107.02].

29. With respect to the specific designations relating to custody:

a. any officer or non-commissioned member may be designated by the CO of the member in custody to visit that member [*QR&O* 105.32]; and

b. only an officer may be designated by a commanding officer to scrutinize the mail and other correspondence of a person in service custody [*QR&O* 105.33].

Neither of these designations must, by regulation, be in writing however it would be advisable to do so.

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Interim Summary: N/A.

Note to Instructor: Nil.

Stage 5: Who can Delegate, Designate or Authorize

Introduction

30. The focus in this last part of the lesson will be on who can delegate, designate or authorise as it pertains to the *Code of Service Discipline*.

Under the Authority of the Chief of the Defence Staff

31. As discussed in Stage 3, the CDS and those officers that he/she has authorized via CFOO may designate other officers under their command as "designated" commanding officers, and may impose such limitations as they see fit upon them.

As a Commanding Officer

32. Commanding officers may, as both authorized and limited by statue and regulation, delegate their powers of trial and punishment, authorize other officers or NCMs to lay charges and designate Custody Review Officers. They may also designate members to visit persons in service custody, and designate officers to review the correspondence of those in custody.

Interim Summary: N/A.

Note to Instructor: Nil.

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PART 4 – CONCLUSION

Summary: Review essential material from the whole lesson:

- Stage 1: CF Command and Organization
  - MOOs;
  - CFOOs;
  - QR&Os Related to Organization, Command, Delegations, Designations and Authorizations;

- Stage 2: Distinguish Between Power, Authority, Duty and Responsibility
  - Power;
  - Authority;
  - Duty;
  - Responsibility;

- Stage 3: What can be Delegated, Designated or Authorised;
  - Power of Arrest;
  - Charge Laying Authority and Authorization;
  - Designation of Custody Review Officers;
  - Delegation of Powers of Trial and Punishment;
  - Specific Designations Pertaining to Custody (Visitors, Correspondence);
  - Jurisdictional Concerns (Continuity);

- Stage 4: Who can Receive a Delegation, or be Designated or Authorized;
  - Prerequisites and Limitations for Delegations;
  - Prerequisites for Designations and Authorizations;

- Stage 5: Who can Delegate, Designate or Authorize;
  - Under the Authority of the Chief of the Defence Staff; and
  - As a Commanding Officer.

Confirmation: Done in a discussion format. Ask some confirmation questions:

Suggested confirmation questions:

Q1 – CFOOs are published under whose authority?

A1 – The Chief of the Defence Staff.

Q2 – What is the difference between a power and an authority?

A2 – With a power you have the right to act or not act in your own right, while with an authority you are acting on someone else's behalf.

Q3 – Can an Ordinary Seaman be authorized to lay charges?

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A3 – Yes.

Q4 – Can a Chief Warrant Officer act as a Custody Review Officer?

A4 – No.

Q5 – Who can designate commanding officers?

A5 – The CDS and any officer authorized by him/her through CFOO.

Conclusion: The information presented in this lesson is important to you as Legal Officers and future DJAs because so many of the *Code of Service Discipline*-related powers, authorities, duties and responsibilities granted or entrusted in the *NDA* and *QR&O* are dependent upon position or status. An improper delegation or authorization can lead to the quashing of a summary trial, at the very least, and it is your responsibility as Legal Officers to forestall this, if possible, by being vigilant in reviewing the delegations, authorizations and designations of your clients.

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PO 015 - ADVISE ON LEGAL ISSUES RELATED TO CUSTODY

PART 1 -- LESSON IDENTIFICATION

Title: EO 015.03 Review Custody-Related Documents

Performance: Review custody related documents.

Conditions:

Given: Assistance as required; references; resources as required; and

Denied: Direct supervision.

Standard: The legal officer shall review custody related documents.

Main Teaching Points:

- Types of Custody-Related Documents
- Military Police Policies

Method: This EO will be accomplished by Developmental Lessons. Students will be required to read Modules 1 and 2 first on more straightforward content and be prepared to respond to Module questions. The concepts will then be reviewed, expanded, detailed for military context during Modules 3, 4, and 5. This developmental lesson will focus on reviewing custody related documents.

Duration: 0.25 Period (Interactive Lecture).

References:

Canadian Charter of Rights and Freedoms ["*Charter*"]

National Defence Act, R.S.C. 1985, c. N-5 ["*NDA*"]

Queen's Regulations and Orders for the Canadian Forces ["*QR&O*"]

Military Justice at the Summary Trial Level, Version 2.2 [B-GG-005-027/AF-011]

Military Police Policies and Technical Procedures Manual [A-SJ-100-004/AG-000].

Military Law Digest Article - *Arrest* (JAG # 162879)

Military Law Digest Article - *Pre-Trial Custody* (JAG #162888)

R v Fondren [2011 CM 4006]

Training/ Learning Aids: Computer access; CD materials; Legal Officer Qualification Course (LOQC) Instructors Handbook – Module(s) EO 015.02 1-5.

Note to the Instructor: Nil.

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PART 2 – INTRODUCTION

Objective: The Legal Officer (LO) shall describe and explain custody in the particular context the CF operate. After the completion of the IL, the LO shall be able to review custody related documents in providing broader legal advice on custody.

Introduction: Introduce the lesson by emphasizing the importance of reviewing custody-related documents. For instance, through application of this knowledge the LO will be able to provide more effective legal advice on custody generally.

Outline: The LOQC instructor shall introduce the lesson outline:

- Stage 1: Types of Custody-Related Documents;
  - Account in Writing;
  - Report of Custody;
  - Direction on Release from Custody;
  - Request Custody-Related Documents from Unit;
  - Guard Report;
  - Civil Court Reports;
  - Warrants for Arrest;

- Stage 2: Military Police Policies;
  - Receipt for Person in Custody (CF 376);
  - Custody – Person Intake Form;
  - Personal Property Envelope (CF 1008);
  - Record of Inmate's Mail;
  - Observation of Persons in MP Custody; and
  - Other SAMPIS Entries.

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PART 3 – BODY OF THE LESSON

Stage 1 – Types of Custody-Related Documents

Introduction

1. The focus in the first part of the lesson will be on the types of custody-related documents. Explain that templates of the various documents pertaining to custody will be reviewed here. Use the PowerPoint slide to view each type of document and discuss them briefly.

Account in Writing (DND 2879)

2. The person who commits an arrested person into service custody shall prepare and sign an account in writing setting out why the arrested person is being committed to custody. The account in writing must be delivered at the time of *committal*, to the member into whose custody the person under arrest is being committed [*NDA* s. 158(4) and *QR&O* 105.16(1)].

3. The form that should be used for the account in writing is provided at *QR&O* 105.16(3). A copy of both the form and a completed sample form are provided at Annex J to *Military Justice at the Summary Trial Level*, v.2.2. The specific information to be provided on an account in writing includes:

a. the name of the member into whose custody the person under arrest is being committed;

b. the service number, rank (if applicable), and name of the person arrested;

c. the time and date of the arrest;

d. the time and date of the committal;

e. the time and date when it was determined that the person should be retained in custody after considering the circumstances and the factors contained in *QR&O* 105.12, and the specific reasons for the retention in custody;

f. the time and date of delivery of the account in writing; and

g. the signature, appointment and unit of the member who committed the person into custody [*QR&O* 105.16(3)].

4. The account in writing may be the only information available at the time the decision to retain the arrested person in custody is reviewed, and therefore, the reasons for the committal should be in as much detail as possible having regard to the circumstances. It is essential that this information is provided in detail to ensure that the decision making process is conducted fairly.

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5. At the time of committal into service custody there is a further obligation to provide the person being held with the name and rank of the person who ordered the committal as well as a copy of the account in writing [*QR&O* 105.16(2)].

Report of Custody (DND 2880)

6. Once the person arrested is committed into custody, there are further reporting requirements that have to be met. The member into whose custody the person has been committed is responsible for preparing a *Report of Custody* for the Custody Review Officer [*NDA* s.158.1(1) and *QR&O* 105.17].

7. The Custody Review Officer is the CO of the person in custody, or any other officer designated by the CO. However, if it is not practical for the CO or the CO's designate to act as the Custody Review Officer, the CO of the unit or element where the person is being held in custody or any other officer designated by that CO, may act in their stead [*NDA* s. 153 and *QR&O* 105.17 Note].

8. The Report of Custody must be in writing and must contain the following:

a. the name of the person in custody;

b. an account of the alleged offence, as far as it is known; and

c. the name and rank (if applicable) of the person who committed the person into service custody [*NDA* s. 158.1(2) and *QR&O* 105.17].

9. Prior to delivery of the report to the Custody Review Officer, a copy of the report and the account in writing must be provided to the person in custody. Upon receiving these documents, the person in custody must be given an opportunity to make representations regarding the person's release from custody [*NDA* s. 158.1(3) and *QR&O* 105.17]. The ability to make such representations ensures that the Custody Review Officer is able to make an informed decision concerning the person's continued retention in custody and that the process is procedurally fair.

10. There is no requirement that the person in custody make representations, but if the person chooses to do so, the representations can be made in writing or verbally by or on behalf of the person in custody. If the representations are not in writing, they must be reduced to writing or recorded by any other means [*NDA* s. 158.1(4) and *QR&O* 105.17]. It is the responsibility of the member who has custody of the arrested person to ensure that all representations are reduced to writing or recorded.

11. The member into whose custody the arrested person is committed must deliver the Report of Custody, along with a copy of the Account in Writing and any representations made, to the Custody Review Officer as soon as practicable, but not later than 24 hours after the person has been arrested. If the person in custody chooses

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not to make representations, the member must submit with the Report of Custody, a statement confirming that the person in custody was given an opportunity to make representations and chose not to do so [*NDA* s. 158.1(5) and *QR&O* 105.17].

Direction on Release from Custody (DND 2882)

12. Subsection 158.6(1) of the *National Defence Act* provides: The Custody Review Officer may direct that the person be released without conditions or that the person be released and, as a condition of release, direct the person to comply with any of the following conditions:

a. remain under military authority;

b. report at specified times to a specified military authority;

c. remain within the confines of a specified defence establishment or at a location within a geographical area;

d. abstain from communicating with any witness or specified person, or refrain from going to any specified place; and

e. comply with such other reasonable conditions as are specified.

13. The Direction on Release from Custody should be in the form specified at *QR&O* 105.22 and conditions, if any, must be clearly indicated, unambiguous and acknowledged by the individual concerned by signing the form.

Request Custody-Related Documents from Unit

14. While the note to *QR&O* 105.18 confirms that Custody Review Officers *should*, not *must* obtain the advice of the unit legal advisor prior to making a decision on conditions of release, it is imperative that DJAs be proactive in obtaining copies of the Account in Writing, Report of Custody and Direction on Release from Custody forms for their own review. In this way, DJAs are able to align and guide the unit to avoid any undue harm.

15. An example of a situation where intervention by the DJA, had they been aware of the situation, would have been beneficial is the case of *R v Fondren* [2011 CM 4006]. One of the conditions of release for Private Fondren, who had been arrested for a very minor case of disobedience of a lawful command, was that he was confined to CFB Borden for 3 months from the date of arrest. Leaving aside the fact that his being arrested at all was likely unlawful and a violation of his s.9 *Charter* right not to be arbitrarily detained or imprisoned, his confinement to the base for such a lengthy period certainly was, and in the result his eventual sentence was mitigated down to a $50 fine.

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Guard Report

16. In addition to a Report of Custody, a Guard Report is also required when the person in custody is being held in a Guard Room, Detention Room or Detention Barracks, or is confined in a hospital under escort supplied by the base or other unit or element. In such cases, the member in charge of the Guard Room must prepare a report to be given to the CO on each person held or confined [*QR&O* 22.06(1)].

17. The Guard Report must contain the following information:

a. the Service Number, rank, name and unit of the person in custody;

b. the date on which the person was first received into custody;

c. the offence with which the person has been charged; and

d. the name of the authority by whose order the person was confined [*QR&O* 22.06(3)].

18. A Guard Report must be made to the CO on the first day any person is admitted to custody. If the person is an NCM, subsequent daily reports must be made for the duration of the custody. Further, when an NCM is confined to hospital under escort, the guard report is due the first day an escort is provided and subsequent daily reports must be made [*QR&O* 22.06(2)].

Civil Court Reports

19. In accordance with *QR&O* 19.56, where an officer or non-commissioned member has been arrested by a civil authority, the member shall cause the arrest to be reported to the member's commanding officer.

20. When a person subject to the *Code of Service Discipline* is in the charge of a civil authority, the CO of any base, unit or element must, on the request of the civil authority, immediately take that person into the charge of an authority of the CF [*QR&O* 105.40(1)]. The authority of the CF who takes charge of the person shall determine whether the person will be arrested in respect of a service offence [*QR&O* 105.40(2)].

Warrants for Arrest

21. Warrants for Arrest were covered in detail in EO 015.01. For the purposes of this EO, it is sufficient to understand that they should be in the form of the example at *QR&O* 105.06. *QR&O* 105.061 provides for Judicial Warrants for Arrest which can be issued by a Military Judge, but those are beyond the scope of this lecture.

Interim Summary: N/A.

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Note to Instructor: Nil.

Stage 2: Military Police Policies

Introduction

21. The focus in the second part of the lesson will be on Military Police policies pertaining to custody-related documentation. The focus will be put here on documentation used by MP. Templates will be shown, where available.

22. In addition to the Account in Writing and the Guard Report, MP will complete the following with respect to anyone placed in custody:

a. Receipt for Person in Custody (CF 376): given to the person delivering a person in custody, and whenever a person in custody is removed from a guardroom or transferred;

b. Custody – Person Intake Form: completed in the Security and Military Police Information System (SAMPIS) any time a person is held in custody by MP in military or civilian cells (where MP are providing the guard);

c. Personal Property Envelope (CF 1008): completed for each person in custody. Larger articles may be secured in a box or other container. A separate Personal Property Record must be maintained for each prisoner's money and valuables;

d. Record of Inmate's Mail: used to record mail sent by or to persons in custody, and reflecting the identity of the sender, addressee, and date dispatched;

e. Observation of Persons in MP Custody: an annotation must be entered in SAMPIS every time MP check on or otherwise observe a person in their custody; and

f. Other SAMPIS entries are also completed for each person in custody when they are released, when they receive visitors and when they attend sick parade [*Military Police Policies and Technical Procedures Manual* (A-SJ-100-004/AG-000)].

Interim Summary: N/A.

Note to Instructor: Nil.

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PART 4 – CONCLUSION

Summary: Review essential material from the whole lesson

- Stage 1: Types of Custody-Related Documents;
  - Account in Writing;
  - Report of Custody;
  - Direction on Release from Custody;
  - Request Custody-Related Documents from Unit;
  - Guard Report;
  - Civil Court Reports;
  - Warrants for Arrest; and

- Stage 2: Military Police Policies;
  - Receipt for Person in Custody (CF 376);
  - Custody – Person Intake Form;
  - Personal Property Envelope (CF 1008);
  - Record of Inmates Mail;
  - Observation of Persons in MP Custody; and
  - Other SAMPIS Entries.

Confirmation: Done in a discussion format.

Suggested confirmation questions:

Q1 – Who must complete the Account in Writing?

A1 - The person who commits an arrested person into service custody.

Q2 – Who may impose conditions on a person in service custody who is being released?

A2 – The Custody Review Officer.

Q3 – What publication contains MP policies regarding custody?

A3 – The *Military Police Policies and Technical Procedures Manual*, although this is progressively being superceded by new *MP Group Orders*.

Conclusion: This lesson and the material presented therein is important because early review of many of the above documents by a DJA can avoid issues later on.

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PO 015 ADVISE ON LEGAL ISSUES RELATED TO CUSTODY

PART 1 -- LESSON IDENTIFICATION

Title: EO 015.04 Advise with Regard to the Requirements of Custody

Performance: Advise with Regard to the Requirements of Custody

Conditions:

Given: Assistance as required; references; resources as required;
Denied: Direct supervision.

Standard: The legal officer shall advise with regard to the requirements of custody.

Main Teaching Points:

- Distinction Between Power and Duty to Retain in Custody
- Rights of Detained Person
- Reasons for Retention

Method: This EO will be accomplished by Developmental Lesson. Students will be required to read references of Modules 1-3. The concepts will then be reviewed and expanded during the developmental lesson. Students must be prepared to respond to Module questions by the instructors.

Duration: 1 period Interactive Lecture (IL).

References:

Canadian Charter of Rights and Freedoms ["*Charter*"]

Criminal Code of Canada, R.S.C. 1985, c. C-46 ["*Criminal Code*"]

National Defence Act, R.S.C. 1985, c. N-5 ["*NDA*"]

Queen's Regulations and Orders for the Canadian Forces ["*QR&O*"]

Military Justice at the Summary Trial Level, Version 2.2 [B-GG-005-027/AF-011]

Military Law Digest Article - *Pre-Trial Custody* (JAG #162888)

Solosky v. The Queen [1980] 1 S.C.R. 821

Training/ Learning Aids: Computer access; CD materials; Legal Officer Qualification Course (LOQC) Instructors Handbook – Module(s) EO 015.04 1-3

Note to the Instructor: A review of the main teaching points will take place at the end of the periods, by Enabling Checks (EC).

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PART 2 – INTRODUCTION

Objective: The Legal Officer (LO) shall describe and explain custody in the particular context the CF operate. After the completion of the IL, the LO shall be able to advise with regard to the requirements of custody.

Introduction: Introduce the lesson by emphasizing the importance of determining when there is an obligation, when there is a discretion to put someone in custody and when such a discretion such be exercised. Rights and status of a detained person will also be covered. Through application of this knowledge, LO will be able to provide more effective legal advice on custody generally.

Outline: The LOC instructor shall introduce the lesson outline:

- Stage 1: Distinction Between Duty to Release, Power to Retain and Duty to Retain in Custody:
    - Duty to Release as soon as Practicable;
    - Power to Retain in Custody;
    - Duty to Retain in Custody;

- Stage 2: Rights and Status of Persons in Custody:
    - Performance of Duties;
    - Visitors;
    - Correspondence;
    - Exercise;
    - Mess Privileges;
    - Hospitalization while in Custody; and
    - In Custody of Civil Authorities.

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PART 3 – BODY OF THE LESSON

Stage 1 – Distinction Between Duty to Release, Power to Retain and Duty to Retain in Custody

Introduction

1. The focus in the first part of the lesson will be on distinction between the duty to release as soon as practicable, the power to retain in custody and the duty to retain in custody. Where a person has been arrested with respect to the commission of an offence, the *NDA* addresses the circumstances in which that person can or must be retained in custody pending a hearing before a Military Judge.

Duty to Release as Soon as Practicable

2. In keeping with the requirements of ss.9 and 10 of the *Charter*, there is a general obligation on a person making an arrest to release a person as soon as is practicable, unless the person making the arrest (or in the case of the CF the Custody Review Officer) believes on reasonable and probable grounds that it is necessary that the person under arrest be retained in custody.

Power to Retain in Custody

3. When a Custody Review Officer considers whether it is necessary to retain a person in custody, the factors which must be considered include:

a. the gravity of the offence alleged to have been committed;

b. the need to establish the identity of the person under arrest;

c. the need to secure or preserve evidence of or relating to the offence alleged to have been committed;

d. the need to ensure that the person under arrest will appear before a service tribunal or civil court to be dealt with according to law;

e. the need to prevent the continuation or repetition of the offence alleged to have been committed or the commission of any other offence; and

f. the necessity to ensure the safety of the person under arrest or any other person [*NDA* s. 158(1)].

4. The Custody Review Officer must make a decision regarding the retention of a person in custody as soon as practicable, and in any case no later than 48 hours after the person's arrest [*NDA* s. 158.2]. If the Custody Review Officer does not direct release, the person in custody must be taken before a Military Judge to determine

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whether that person should be retained in custody [*NDA* s.159]. The decision of a military judge to release or retain a person in custody may be reviewed by the Courts Martial Appeal Court [*NDA* s. 159.9].

Duty to Retain in Custody

5. When the person in custody has been charged with a designated offence, the Custody Review Officer must direct that person be held in custody and brought before a Military Judge [*QR&O* 105.20]. Designated offences are defined in section 153 of the *NDA* as:

a. An offence punishable under *NDA* s. 130 that is
   i. Listed in *Criminal Code* s. 469;
   ii. Contrary to the *Controlled Drugs and Substances Act* ss. 5(3), 6(3) or 7(2) and is punishable by imprisonment for life; or
   iii. An offence of conspiring to commit an offence referred in subsection ii above;

b. An offence under the *NDA* that carries a minimum punishment of life imprisonment;

c. An offence under the *NDA* for which a punishment higher in the scale of punishments than imprisonment for less than two years may be imposed, which is alleged to have been committed while at large after being released with respect to another offence pursuant to Division 3 (Arrest and Pre-trial Custody) or Division 10 (Release Pending Appeal); or

d. An offence under the *NDA* that is a criminal organization offence.

Interim Summary: N/A.

Note to Instructor: Nil.

Stage 2 - Rights and Status of Persons in Custody

Introduction

6. The focus in the second part of the lesson will be on rights of detained persons. Emphasis is put here on the fact that persons in custody have certain rights which can jeopardize custody jurisdiction if not protected. Remember that detained persons are still presumed innocent.

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Performance of Duties

7. Members who are on active service when committed to custody may be ordered to perform any duties that the member could properly be ordered to perform if not in custody. However, the member cannot be ordered to perform more duties than others, merely for being an alleged offender [*QR&O* 105.31(2)].

8. Members who are not on active service shall not be required to perform any duty except that which is required to relieve the member of responsibility for any cash, accounts or material for which the member is responsible. In addition, if the member is an NCM, the member may also be required to perform such duty as is necessary to keep the member's cell in good order [*QR&O* 105.31(1)].

9. An order given to a member to perform a duty, or the performance of any duty required of a member in custody, does not relieve the member from liability for the alleged offence [*QR&O* 105.31(3)].

10. The member in custody can be deprived of all articles that may facilitate escape or cause harm to the member, except when carrying out duties in custody involving bearing arms [*QR&O* 105.31(4)].

Visitors

11. No one can visit a member in custody without the CO's permission, except for the following:

a. the member's CO or a member designated by the CO;

b. the Officer of the Watch or Officer of the Day;

c. the orderly officer;

d. a chaplain;

e. a medical officer;

f. a person immediately responsible for the member's custody;

g. the member's assisting officer, legal counsel or advisor; or

h. where the member does not have legal counsel, a witness for the member [*QR&O* 105.32].

Correspondence

12. Any member held in custody is permitted to send letters and read all correspondence addressed to that member. However, the CO can require that all correspondence originated by the member or addressed to the member be scrutinized by any officer designated by the CO for that purpose. The officer who scrutinizes the correspondence can withhold or return to sender any correspondence the officer

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considers detrimental to the morale of the person in custody, to good order, or to security [*QR&O* 105.33].

13. Correspondence to and from the member's legal counsel should not be opened as a matter of course where the CO or designate is notified that the member or counsel seek the protection from scrutiny of correspondence afforded by the solicitor-client privilege [*Solosky v. The Queen* [1980], 1 S.C.R. 821].

Exercise

14. Any member held in custody must be permitted to take, under supervision, the exercise necessary to maintain the member's health [*QR&O* 105.34].

Mess Privileges

15. Any member in custody is denied the privilege of any mess [*QR&O* 105.35].

Hospitalization while in Custody

16. While in custody, if the member is sent to a hospital, the member shall remain in custody while in hospital and while being transferred to and from the hospital, unless the member has been released from custody [*QR&O* 105.39].

In Custody of Civil Authorities

17. When a person subject to the *Code of Service Discipline* is in the charge of a civil authority, the CO of any base, unit or element must, on the request of the civil authority, immediately take that person into the charge of an authority of the CF [*QR&O* 105.40(1)]. The authority of the CF who takes charge of the person shall determine whether the person will be arrested in respect of a service offence [*QR&O* 105.40(2)].

Interim Summary: N/A.

Note to Instructor: Nil.

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PART 4 – CONCLUSION

Summary: Review essential material from the whole lesson.

- Stage 1: Distinction Between Duty to Release, Power to Retain and Duty to Retain in Custody:
    - Duty to Release as soon as Practicable;
    - Power to Retain in Custody;
    - Duty to Retain in Custody;

- Stage 2: Rights and Status of Persons in Custody:
    - Performance of Duties;
    - Visitors;
    - Correspondence;
    - Exercise;
    - Mess Privileges;
    - Hospitalization while in Custody; and
    - In Custody of Civil Authorities.

Confirmation: Done in a discussion format.

Suggested confirmation questions:

Q1 – What does the Custody Review Officer need to know in order to make a decision on a release?

A1 – The offence that the person is accused of, the circumstances surrounding the commission of the alleged offence. They must also be sufficiently familiar with the *NDA*, *Criminal Code* s.469 and *QR&O* Chapter 105 in order to competently carry out their duties.

Q2 – Can an officer assigned to open and review a person in custody's mail review correspondence between that person and their counsel?

A2 – No.

Conclusion: This lesson and the material presented are important because any deviation from law and regulation regarding custody, and any breach of the accused's *Charter* rights whilst they are in custody, would be considered mitigating factors in any eventual sentence imposed.

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PO 015 ADVISE ON LEGAL ISSUES RELATED TO CUSTODY

PART 1 -- LESSON IDENTIFICATION

TITLE: EO 015.05 Advise the Custody Review Officer with Regard to the Decision to be Made

Performance: Advise the Custody Review Officer (CRO) with regard to the decision to be made.

Conditions:

Given: Assistance as required; references; resources as required;
Denied: Direct supervision

Standard: The legal officer shall advise the CRO on the decision to be made.

Main Teaching Points:

- Powers of Custody Review Officer;
- Duties of Custody Review Officer; and
- Process of Review of Direction to Release.

Method: This EO will be accomplished by a combination of Self-Study and Developmental Lesson. Students will be required to read Modules 1 and 2 and be prepared to respond to Module questions by instructors. The concepts will then be reviewed and expanded during the interactive lecture on Module 3.

Duration: 2 periods (1 period of Distributed Learning (DL) and 1 period of Interactive Lecture (IL)).

References:

National Defence Act, R.S.C. 1985, c. N-5 ["*NDA*"]

Strengthening Military Justice in the Defence of Canada Act, S.C. 2013, c. 24

Queen's Regulations and Orders for the Canadian Forces ["*QR&O*"]

Military Justice at the Summary Trial Level, Version 2.2 [B-GG-005-027/AF-011]

Military Law Digest Article - *Pre-Trial Custody* (JAG #162888)

Training/ Learning Aids: Computer access; CD materials; Legal Officer Qualification Course (LOQC) Instructors Handbook – Module(s) EO 015.05 1-3.

Note to the Instructor: Nil.

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PART 2 – INTRODUCTION

Objective: The Legal Officer (LO) shall describe and explain custody in the particular context the CF operate. After the completion of the IL, the LO shall be able to advise the Custody Review Officer (CRO) on the decision to be made.

Introduction: Introduce the lesson by emphasizing the importance of providing advice to CRO who usually has not been previously involved in custody matters. Through application of this knowledge, LO will be able to prevent issues which lead to *Charter* breaches and provide more effective legal advice on custody generally.

Outline: The LOC instructor shall introduce the lesson outline:

- Stage 1: Powers of Custody Review Officer:
  - Release without Conditions;
  - Release with Conditions;
  - Reasonable Conditions;

- Stage 2: Duties of Custody Review Officer:
  - Review the Account in Writing and Accompanying Documents;
  - Determination Why a Charge has Not Been Laid;
  - Duty to Release when No Sufficient Grounds;
  - Duty to Retain if Charged with Designated Offence;
  - Time Considerations;

- Stage 3: Process for Review of Direction to Release:
  - By Commanding Officer or Next Superior Officer; and
  - By Military Judge.

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PART 3 – BODY OF THE LESSON

Stage 1 – Powers of Custody Review Officer

Introduction

1. The focus in the first part of the lesson will be on the powers of Custody Review Officers. Explain that Once someone has been arrested it is not necessary or appropriate in every case to retain the arrested person in custody. In general, anyone who is arrested must be released unless the circumstances justify holding the person in custody. The circumstances of each case must be examined to determine whether retention in custody is appropriate. Use the PowerPoint slide to view each aspect and discuss them briefly.

Release without Conditions

2. If the Custody Review Officer does not believe that it is necessary or to impose conditions in order to prevent the member from absconding or committing another offence, then conditions need not be imposed. For example, if a member who is known not to be a heavy drinker is taken into custody for Drunkenness after a Mess Dinner, imposing conditions upon their release is likely not required.

Release with Conditions

3. The Custody Review Officer can require that the person being released comply with any of the following conditions:

a. remain under military authority;

b. report at specified times to a specified military authority;

c. remain within the confines of a specified defence establishment or at a location within a geographical area;

d. abstain from communicating with any witness or specified person, or from going to any specified place; and

e. comply with such other reasonable conditions as are specified [*NDA* s. 158.6(1) and *QR&O* 105.22].

Any condition that applies to the release must be unambiguous and clearly expressed on the form. Further, when conditions do apply to the release, the person in custody must acknowledge and agree to comply with the conditions by signing the form.

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Reasonable Conditions

4. For conditions to be reasonable they should bear some rational connection to the offence allegedly committed, and not be punitive in nature (see *R v. Fondren*, 2011 CM 4006).

Interim Summary: N/A.

Note to Instructor: Nil.

Stage 2: Duties of Custody Review Officer

Introduction

5. The focus in the second part of the lesson will be on the duties of Custody Review Officers. The emphasis here is on the fact that as putting someone in custody is the exception to the rule, and to help ensure that persons are not committed to custody improperly, or retained in custody longer than necessary, *QR&O* require a review of custody at various times during the custody period. CROs must follow the correct process. Otherwise, they may lose jurisdiction to detain the person or make a decision that results in a *Charter* breach. Remember again that detained persons are still presumed innocent.

Review the Account in Writing and Accompanying Documents

6. The first review is conducted by the Custody Review Officer. This review must take place as soon as practicable after the officer receives the report of custody and accompanying documents, but not later than 48 hours after the arrest of the person in custody [*NDA* 158.2 and *QR&O* 105.18]. Care must be taken not to abuse the 48-hour period of review in cases where an arrest is made on a weekend or over a period of leave. Unless impractical, the review of custody by a custody review authority should takes place on weekends and during any periods of leave.

7. The Custody Review Officer must review the account in writing and accompanying documents. On completing the review, the officer must direct that the person in custody be released immediately unless that officer believes on reasonable grounds that it is necessary that the person be retained in custody having regard to all the circumstances, including those set out in subsection 158 (1) of the *NDA* [*NDA* 158.2(2) and *QR&O* 105.18].

Determination Why a Charge has Not Been Laid

8. In the event the person in custody has not been charged with an offence within 72 hours after being arrested, the custody review officer is further required to determine

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why a charge has not been laid and consider whether it remains necessary to retain the person in custody [*NDA* s.158.5 and *QR&O* 105.21].

Duty to Release when No Sufficient Grounds

9. The duty of the Custody Review Officer to release a person in custody when there are no longer sufficient grounds for keeping the person, continues after the initial review. If at any time after receiving the Report of Custody and before the person in custody is brought before a Military Judge, the CRO no longer believes that the necessary grounds to continue custody exist, that officer must direct that the person be released from custody [*NDA* 158.3 and *QR&O* 105.19].

Duty to Retain if Charged with Designated Offence

10. When the person in custody has been charged with a Designated Offence, the Custody Review Officer must direct that person be held in custody [*QR&O* 105.20]. The designated offences are defined in section 153 of the *NDA*.

Time Considerations

11. As discussed above, there are time limits which the Custody Review Officer must keep in mind. These are:

a. Account in Writing: Must be completed by the arrestor conducting the arrest immediately upon committing the person into custody, and must be provided to the CRO along with the Report of Custody [*NDA* ss.158(4) and *QR&O* 105.16];

b. Report of Custody: Must be completed by the gaoler and provided to the CRO within 24 hours of the initial arrest [*NDA* s.158.1 and *QR&O* 105.17];

c. Representations by Person in Custody: There is no specific time limit for this, but the person in custody must be given a copy of the Account in Writing and Report of Custody and be given an opportunity to make representations in writing or by other means prior to all three documents being provided to the CRO [*NDA* s.158.1 and *QR&O* 105.17];

d. Initial Review by CRO: Must be completed within 48 hours of initial arrest, [*NDA* s.158.2 and *QR&O* 105.18];

e. Additional Review by CRO: If no charge is laid within 72 hours of the initial arrest, the CRO must reconsider the necessity of continuing to keep the person in custody [*NDA* s.158.5 and *QR&O* 105.21]; and

f. Hearing Before a Military Judge: When the CRO does not direct the release of a person in custody, they shall cause the person to be taken before a military judge, *as soon as practicable*, for a hearing. To determine when it is practicable

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to have the hearing, the CRO may consider the constraints of military operations, including the location of the unit or element where the person is held in custody and the circumstances under which it is deployed [*NDA* s. 159(2) and *QR&O* 105.24].

Interim Summary: N/A.

Note to Instructor: Nil.

Stage 3: Process for Review of Direction to Release

Introduction

12. The focus in this part of the lesson will be on the process for review of direction to release. Sometimes changes in the circumstances prompt the need to modify the direction to release, either to cancel it or to change the conditions. It is a two-step process: first by the Commanding Officer or their next superior officer in matters of discipline, and then by a Military Judge if needed.

By Commanding Officer or Next Superior Officer

13. The person subject to a direction to release can apply to have the direction reviewed. The application can be made in letter or memorandum form and must be forwarded to the appropriate review authority without delay [*NDA* s. 158.6(2) and *QR&O* 105.23 Note].

14. If the Custody Review Officer is an officer designated by the CO, the review of the direction to release would be conducted by the CO. If the CO is the Custody Review Officer, it is the next superior officer to whom the CO is responsible in matters of discipline who conducts the review [*NDA* s. 158.6(2)(a)&(b) and *QR&O* 105.23].

15. The officer conducting the review will give both the released person and a representative of the CF an opportunity to speak on the review. After both sides have been heard, the review authority may make any direction respecting the conditions for release that the custody review officer could have made.

By Military Judge

16. Currently, the *NDA* does not permit Military Judges to review the conditions imposed in a Direction to Release. This will change when s.31 of the *Strengthening Military Justice in the Defence of Canada Act* [S.C. 2013, c. 24] comes into force. When that happens, Military Judges will be empowered to review such conditions on application from either the CF or the person released.

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17. In any event, when the Custody Review Officer does not direct the release of a person in custody, they shall cause the person to be taken before a Military Judge as soon as practicable for a hearing [*NDA* s. 159(2) and *QR&O* 105.24]. Such a proceeding is called a *show cause hearing*, purpose of which is to determine whether the person in custody is to be retained in custody.

Interim Summary: N/A.

Note to Instructor: Nil.

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PART 4 – CONCLUSION

Summary: Review essential material from the whole lesson:

- Stage 1: Powers of Custody Review Officer:
  - Release without Conditions;
  - Release with Conditions;
  - Reasonable Conditions;

- Stage 2: Duties of Custody Review Officer:
  - Review the Account in Writing and Accompanying Documents;
  - Determination Why a Charge has Not Been Laid;
  - Duty to Release when No Sufficient Grounds;
  - Duty to Retain if Charged with Designated Offence;
  - Time Considerations;

- Stage 3: Process for Review of Direction to Release:
  - By Commanding Officer or Next Superior Officer; and
  - By Military Judge.

Confirmation: Done in a discussion format.

Suggested confirmation questions:

Q1 – Must the CRO imposed conditions requested by the MP?

A1 – No. The CRO must determine for themselves what is reasonable and necessary under the circumstances, and impose conditions no more stringent than that.

Q2 – How much time does the CRO have to make their decision *after* they are presented with the Account in Writing and Report of Custody?

A2 – The answer depends upon when the documents are provided, but in any case the CRO must have made their decision within 48 hours of the initial arrest.

Q3 – What may the CO or Next Superior Officer direct that the CRO could not during the initial review?

A3 – Nothing – they have exactly the same powers.

Conclusion: The importance of this lesson is that the decisions being made by CRO directly impact the *Charter* rights of members who are in custody. DJAs must be able to provide competent and effective advice to CRO, many of whom may not have been involved in custody issues before. Consideration must also be given to educating CRO about their roles and responsibilities and those of the MP.

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PO 015 ADVISE ON LEGAL ISSUES RELATED TO CUSTODY

PART 1 -- LESSON IDENTIFICATION

TITLE: EO 015.06 Support the Hearing Before a Military Judge

Performance: Support the hearing before Military Judge.

Conditions:

Given: Assistance as required; references; resources as required; and

Denied: Direct supervision.

Standard: The legal officer shall be able to support a hearing before a Military Judge.

Main Teaching Points:

- Evidentiary Requirements; and
- Roles and Responsibilities

Method: This EO will be accomplished by self-study and interactive lecture. Students will be required to read Modules 1 and 2 and be prepared to respond to Module questions by instructors.

Duration: 1 period of Distributed Learning (DL) and Interactive Lecture (IL).

References:

National Defence Act, R.S.C. 1985, c. N-5 ["*NDA*"]

Strengthening Military Justice in the Defence of Canada Act, S.C. 2013, c. 24

Queen's Regulations and Orders for the Canadian Forces ["*QR&O*"]

Military Justice at the Summary Trial Level, Version 2.2 [B-GG-005-027/AF-011]

Guideline for Initiating Judicial Pre-Trial Custody Hearing, CMJ 5203-1 dated 26 Jan 2011

Military Law Digest Article - *Pre-Trial Custody* (JAG #162888)

Training/ Learning Aids: Computer access; CD materials; Legal Officer Qualification Course (LOQC) Instructors Handbook – Module(s) EO 015.06 1-2.

Note to the Instructor: Nil.

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PART 2 – INTRODUCTION

Objective: The Legal Officer (LO) shall describe and explain custody in the particular context in which the CF operates. Upon completion of this lesson, the LO shall be able to give support during a show cause hearing before a Military Judge.

Introduction: Introduce the lesson by emphasizing the importance of providing assistance and support to judicial actors (Court Martial Administrator and Military Judges) during a show cause hearing. Through application of this knowledge, the LO will be able to provide more effective legal advice on custody generally.

Outline: The LOC instructor shall introduce the lesson outline:

- Stage 1: Evidentiary Requirements:
  - When Not Charged with a Designated Offence;
  - When Charged with a Designated Offence;

- Stage 2: Procedures, Roles and Responsibilities:
  - Initial Procedures;
  - Military Prosecutor;
  - Defence Counsel;
  - Military Judge;
  - Unit Personnel; and
  - Unit DJA.

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PART 3 – BODY OF THE LESSON

Stage 1 – Evidentiary Requirements

Introduction

1. The focus in the first part of the lesson will be on the evidentiary requirements at a show cause hearing. These requirements indicate what would be needed in practice to make a determination with regard to custody. They differ depending on whether the individual is suspected of having committed a designated offence or not.

When Not Charged with a Designated Offence

2. When the person in custody is not charged with a Designated Offence, the onus for showing why they should be retained in custody is upon the CF. According to the *NDA*:

> **159.1** When the person retained in custody is taken before a Military Judge, the Military Judge shall direct that the person be released from custody unless counsel for the Canadian Forces, or in the absence of counsel a person appointed by the custody review officer, shows cause why the continued retention of the person in custody is justified or why any other direction under this Division should be made.

3. In order to justify the retention of the person in custody, the CF must meet the following standard, in accordance with the *NDA*:

> **159.2** For the purposes of sections 159.1 and 159.3, the retention of a person in custody is only justified when one or more of the following grounds have been established to the satisfaction of the Military Judge:
>
> (*a*) custody is necessary to ensure the person's attendance before a service tribunal or a civil court to be dealt with according to law;
>
> (*b*) custody is necessary for the protection or the safety of the public, having regard to all the circumstances including any substantial likelihood that the person will, if released from custody, commit an offence or interfere with the administration of justice; and
>
> (*c*) any other just cause has been shown, having regard to the circumstances including the apparent strength of the prosecution's case, the gravity of the nature of the offence, the

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circumstances surrounding its commission and the potential for a lengthy term of imprisonment.

When Charged with a Designated Offence

4. If the person in custody is charged with a Designated Offence, the onus is reversed, just as it would be in a civilian court on equivalent charges. The *NDA* specifies that:

> **159.3** (1) Notwithstanding section 159.1, if the person in custody is charged with having committed a designated offence, the Military Judge shall direct that the person be retained in custody until dealt with according to law, unless the person shows cause why the person's retention in custody is not justified.
>
> (2) If the person in custody shows cause why the person's retention in custody is not justified, the Military Judge shall direct that the person be released from custody on giving any undertaking to comply with any of the conditions referred to in section 158.6 that the Military Judge considers appropriate, unless the person in custody shows cause why the giving of an undertaking is not justified.

Interim Summary: N/A.

Note to Instructor: Nil.

Stage 2: Procedures, Roles and Responsibilities

Introduction

5. The focus in the second part of the lesson will be on roles and responsibilities of the different actors during show cause hearing. Emphasis is put here on the fact that show cause hearings are a rather exceptional procedure in military justice. Our system has few permanent facilities and yet has global jurisdiction, geographically speaking. For that reason legal officers (Prosecutors, Defence Counsel and AJAGs/DJAs) should, without jeopardizing their respective clients' interests, collaborate together and with units to assist the other judicial actors (Court Martial Administrator, Military Judges) to make a determination as it pertains to custody.

Initial Procedures

6. A judicial review of pre-trial custody is initiated by the Custody Review Officer who has decided not to release the person in custody by "as soon as practicable, causing the person to be brought before a Military Judge".

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7. Normally, this is accomplished by letter, signed by the Custody Review Officer, and sent to the Court Martial Administrator by facsimile to (819) 997-6321. Frequently, unit authorities find it useful to seek assistance from their assigned legal advisors to prepare this letter. This letter should contain at the minimum the following information:

a. S/N (if applicable) and name of person in custody;

b. location of person in custody;

c. name and telephone number of the person responsible for their custody. For example, the MP Duty NCO, the B SAMP O or the unit Adjt;

d. the date and time custody began;

e. the date and time any custody reviews were completed and the name and appointment of the individual conducting the review;

f. confirmation that the closest representative of DMP has been advised of this application and the name and telephone number of that individual; and

g. if the person in custody is represented by a lawyer, the name and telephone number of that lawyer.

8. In addition, the following information is also useful:

a. copies of any documentation relating to the continued detention;

b. the location of the nearest teleconference facility that the person in custody can be brought to and the name and telephone number of the person responsible for booking the facility; and

c. if the person in custody does not already have a lawyer, confirmation that the person has requested counsel be provided by DDCS, is retaining other counsel or wishes to represent himself or herself.

9. On receipt of the notification by the Custody Review Officer, the Court Martial Administrator will request the Chief Military Judge to assign a Military Judge to conduct the pre-trial custody review hearing. Once a Military Judge has been assigned, the Court Martial Administrator will normally arrange a conference call between the Military Judge, the representatives of the CF and the person in custody to deal with procedural matters.

10. If at any time there is a change and the pre-trial custody review hearing is no longer required (as the person in custody has already been released), both unit authorities and the representative of the CF should advise the Court Martial Administrator of this fact as soon as possible and follow up with a written confirmation

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that the person in custody has been released from custody. The Court Martial Administrator will then advise the Military Judge assigned to conduct the hearing, the Chief Military Judge and the Chief Court Reporter and cancel all administrative arrangements.

11. If the Military Judge assigned to conduct the hearing directs that a videoconference process be initiated, the Court Martial Administrator will take the necessary steps to establish a videoconference between the Military Judge, the representative of the CF, the representative of the person in custody and the person in custody.

12. Pre-trial custody review hearings conducted by Military Judges are an important element of the Canadian military justice system. As such, the Office of the Chief Military Judge deals with them as expeditiously as possible. Normally, a Military Judge will be available to conduct a pre-trial custody review hearing within 24 hours of the letter signed by the Custody Review Officer being received at the Office of the Chief Military Judge. If the pre-trial custody review hearing is conducted by videoconference in Canada and counsel are prepared to proceed, the actual hearing will normally commence within that same 24-hour period. If a Military Judge and court reporter must fly to another location, if the videoconference involves an outside of Canada location or if counsel are not ready to proceed within 24 hours, then the pre-trial custody review hearing will be conducted as soon thereafter as practicable.

13. The registry of the Office of the Chief Military Judge is staffed during normal working hours, between 0730 and 1600 hours (EST), Monday to Friday, excluding statutory holidays. If a letter from a Custody Review Officer is being facsimiled on these days, other than during these hours, the Court Martial Administrator should be contacted before 1300 hours (EST) and can arrange for the registry to remain open until 1800 hours (EST), provided it is confirmed a letter from the Custody Review Officer will be received before that time. If the letter is forwarded at any other time, then contact must be made with the Court Martial Administrator or Deputy Court Martial Administrator to advise them directly that a letter has been sent. The National Defence Command Centre (613) 945-5551 will respond 24/7 and can provide assistance using the NDHQ telephone aide-mémoire.

Military Prosecutor

14. When it is necessary to hold a show cause hearing, the CRO is required to immediately advise the nearest representative of the Director Military Prosecutions (DMP) [*QR&O* 105.25]. The CF will normally be represented at a show cause hearing by counsel appointed by DMP; however, in the absence of counsel, the CRO may appoint someone to represent the CF [*QR&O* 105.25 Note].

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Defence Counsel

15. The person retained in custody is entitled to be represented at the show cause hearing by legal counsel [*QR&O* 105.26(1)]. Before the Custody Review Officer advises the DMP that it is necessary a show cause hearing be held, the officer must also inquire whether the person in custody:

a. desires legal counsel to be appointed by the DDCS;

b. intends to retain legal counsel at the person's own expense; or

c. does not require legal counsel [*QR&O* 105.26(2)].

16. When the person in custody wants legal counsel appointed by DDCS, the CRO must inquire whether the person prefers that a specific legal advisor assisting the DDCS be appointed, or that the legal advisor selected by the DDCS is acceptable. The CRO shall advise the DDCS of the person's wishes and, where a specific legal advisor has been requested, the DDCS must try to have that legal advisor made available. If the requested legal advisor is not available, the DDCS shall ensure that another legal advisor is available [*QR&O* 105.26(3)-(5)].

Military Judge

17. The procedure to be followed during a show cause hearing is set out in the *NDA* and *QR&O* [*NDA* ss.159.1 to 159.7 and *QR&O* 105.27]. Further, and except as otherwise provided in *QR&O* [105.24 to 105.29], all provisions of the *NDA* and *QR&O* that apply to a court martial also apply to a show cause hearing where the context permits. Modifications can be made to these provisions in keeping with the circumstances of the show cause hearing [*QR&O* 105.29].

18. The Military Judge determines at the show cause hearing whether the person in custody has to remain in custody or should be released. In all cases, the hearing involves a person who has not yet been convicted of an offence and in some cases, the person in custody has not yet been charged with an offence. Therefore, it is essential that the rights of the person held in custody are protected.

19. A show cause hearing is generally open to the public. The person held in custody along with that person's legal counsel and the representative of the CF all attend before the Military Judge [*QR&O* 105.27(2)]. A record of the proceedings is to be kept and a copy of the record must be included in the minutes of the proceedings. Further, an interpreter will be available if required.

20. Both the representative of the CF and the person in custody or that person's legal counsel, may make any statements pertinent to the issue of custody. Once all statements have been made, first the representative of the CF and then the person in custody or that person's legal counsel may call witnesses. The Military Judge may call

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witnesses if the judge requires that further evidence be heard [*QR&O* 105.27(5)]. Once all the evidence is put forward, the representative of the CF and the person in custody or that person's legal counsel, can make addresses to the Military Judge.

21. After all evidence and addresses are heard, the Military Judge will decide on whether the person will be released from custody. The Military Judge can direct that the person be released without conditions, and in such case the person must be released forthwith.

22. The Military Judge can also order that the person be released subject to an undertaking. In such a case the judge must prepare a form of direction and undertaking, which should be in the form provided in *QR&O* 105.28, and deliver the undertaking to the member who has custody of the person [*QR&O* 105.27(9)].

23. The form used should contain two parts: the direction that the named person be released from custody which is signed by the Military Judge; and the undertaking which contains all the conditions which apply to the release and which is to be signed by the person being released [*QR&O* 105.28(1)]. A copy of the Form of Direction and Undertaking must be added to the minutes of the proceeding [*QR&O* 105.28(2)].

24. An application to review any direction made by the judge at the show cause hearing can be made to the CMAC at any time before the person is tried by Court Martial or Summary Trial for the offence charged [*NDA* s. 159.9(1) and *QR&O* 105.30]. An application for review can be submitted by either the CF or the person who was in custody [*QR&O* 105.27(6)].

Unit Personnel

25. Minimal administrative support is usually required to conduct these hearings. However, responsibility for providing support such as a suitable hearing room, offices and court staff for a pre-trial custody review hearing that occurs at a unit as with a court martial is the responsibility of the unit Commanding Officer. The Court Martial Administrator and the unit DJA can provide guidance and assistance with these matters.

26. The unit CO is also welcome to make representations to the Military Prosecutor or other representative of the CF regarding what he or she considers appropriate in terms of conditions of release, if they support release at all. It must be made clear to the CO, however, that the Military Prosecutor is in no way bound to present their wishes to the Military Judge, and that they will ultimately ask for what they themselves believe is most reasonable and appropriate under the circumstances.

Unit DJA

27. Unit DJAs have very important roles to play in assisting the unit with arranging a show cause hearing. On some bases (Halifax and Esquimalt), purpose-built courtrooms are co-located with the DJA offices and are equipped for video teleconferencing. On

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other bases and for deployed units, the DJA can provide assistance in locating a suitable venue in which the hearing can take place.

28. DJAs have a roll to play in liaising between DMP, DDCS and the unit concerned. They may also be called upon to provide required documents to one of those organizations, and most importantly to manage the expectations of the unit vis-à-vis the anticipated outcome of the hearing (which is almost always a release of the person in custody). Unit DJAs should, ultimately, be fully aware of what is going on and when, and assist as required.

Interim Summary: N/A.

Note to Instructor: Nil.

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PART 4 – CONCLUSION

Summary: Review essential material from the whole lesson

- Stage 1: Evidentiary Requirements:
  - When Not Charged with a Designated Offence;
  - When Charged with a Designated Offence;

- Stage 2: Procedures, Roles and Responsibilities:
  - Initial Procedures;
  - Military Prosecutor;
  - Defence Counsel;
  - Military Judge;
  - Unit Personnel; and
  - Unit DJA.

Confirmation: Done in a discussion format.

Suggested confirmation questions:

Q1 – Who has the onus of showing the Military Judge that the person in custody should be retained in custody?

A1 – Where the person in custody has not been charged with a Designated Offence, the onus lies upon the CF to show that they should remain in custody. If they are charged with a Designated Offence, the onus reverses and falls upon the person in custody.

Q2 – Who is the absolute most important person to speak to when attempting to arrange a show cause hearing?

A2 – The Court Martial Administrator (currently M.S. Morrissey).

Conclusion: This lesson is important because during the show cause hearing local DJAs are often the only legal officer who is physically present at the location where the person is in custody. As such, it is incumbent upon them to assist in making sure that all of the arrangements required to hold a smooth hearing are made by the unit before the VTC begins. It is also import that the DJA be able to give the CRO and the unit CO a "warm and fuzzy" that they are following the correct procedures.

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PO 016 ADVISE ON A DISCIPLINARY INVESTIGATION

PART 1 -- LESSON IDENTIFICATION

TITLE: EO 016.01 Advise on types of investigations

Performance. Advise on types of investigations

Conditions.

given: assistance as required; references (including legal opinions); resources as required;
denied: direct supervision

Standard. The legal officer shall advise on types of investigations

Main Teaching Points:

- Distinction between investigations that could lead to Code of Service Discipline action and those that do not.
- Types of criminal and disciplinary investigations
- Advise on rights to access.
  - Disclosure of information relating to investigations

Method. This EO will be accomplished by a combination of Self-Study and Developmental Lesson. Student will be introduced in class with module 1. Students will be then required to read Modules 2 and 3 and be prepared to respond to Module questions by instructors. The concepts in Module 3 will then be applied with a scenario in sub-part 3.1.

Duration. 1 period of Distributed Learning (DL) and Interactive Lecture (IL).

References. As per TP.

Training/ Learning Aids. Computer access; CD materials; Legal Officer Qualification Course (LOQC) Instructors Handbook – Module(s) EO 016.01 1-3

Note to the instructor. A review of the main teaching points will then take place at the end of the periods, by Enabling Checks (EC).

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PART 2 – INTRODUCTION

Objective: The Legal Officer (LO) shall describe and explain investigations in the particular context the CAF operate. After the completion of this lesson, the LO shall be able to advise on the different types of investigations.

Introduction: Introduce the lesson by emphasizing the importance of identifying and then initiating the proper investigative process early on. Through application of this knowledge, LO will be able to provide more effective legal advice on investigations generally.

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PART 2 – INTRODUCTION (cont'd)

Outline: The LOC instructor shall introduce the lesson outline

- Stage 1: Distinction between investigations that could lead to Code of Service Discipline action and those that do not
  - Disciplinary / criminal investigations
  - Administrative investigations
  - Inspections
- Stage 2: Types of criminal and disciplinary investigations
  - NIS Military police investigations
  - Civilian police investigations
  - Unit disciplinary investigations
- Stage 3: Advise on rights to access.
  - Disclosure of information relating to investigations
    - Access to information
    - *Privacy act*
  - Military Police Policies

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PART 3 – BODY OF THE LESSON

Stage 1 – Distinction between investigations that could lead to Code of Service Discipline action and those that do not

1. **Introduction**: The focus in the first part of the lesson will be on the distinction between investigations that could lead to Code of Service Discipline action and those that do not. These distinctions are important: 1) to make sure the right investigative process is initiated; 2) one type of investigation does not negatively impact the other. Use the PowerPoint slide to view each type of investigations and discuss them briefly.

A-Disciplinary / criminal investigations

2. Queen's Regulations and Orders for the Canadian Forces (QR&O) - Volume I - Administration () [ch. 21, in particular 21.01, 21.06, 21.07, 21.41; ch 19.76], Queen's Regulations and Orders for the Canadian Forces (QR&O) - Volume II - Disciplinary () [ch. 106.02 Note B, 107.01 Note A], B-GG-005-027/AF-011 Military Justice at the Summary Trial Level 2.2 (B-GG-005-027/AF-011) [ch. 5, paras. 1 to 12, 20 to 32, 61 to 64], JAG #162880 Military Law Digest Article - Powers of Investigation () [paras. 1-12, 20-33], Inspection and Search Defence Regulations (SOR/86-958) () [s. 3]

B-Administrative investigations

3. Queen's Regulations and Orders for the Canadian Forces (QR&O) - Volume I - Administration () [ch. 21, in particular 21.01, 21.06, 21.07, 21.41; ch 19.76], Queen's Regulations and Orders for the Canadian Forces (QR&O) - Volume II - Disciplinary () [ch. 106.02 Note B, 107.01 Note A], B-GG-005-027/AF-011 Military Justice at the Summary Trial Level 2.2 (B-GG-005-027/AF-011) [ch. 5, paras. 1 to 12, 20 to 32, 61 to 64], JAG #162880 Military Law Digest Article - Powers of Investigation () [paras. 1-12, 20-33], Inspection and Search Defence Regulations (SOR/86-958) () [s. 3]

C-Inspections

4. Queen's Regulations and Orders for the Canadian Forces (QR&O) - Volume I - Administration () [ch. 21, in particular 21.01, 21.06, 21.07, 21.41; ch 19.76], Queen's Regulations and Orders for the Canadian Forces (QR&O) - Volume II - Disciplinary () [ch. 106.02 Note B, 107.01 Note A], B-GG-005-027/AF-011 Military Justice at the Summary Trial Level 2.2 (B-GG-005-027/AF-011) [ch. 5, paras. 1 to 12, 20 to 32, 61 to 64], JAG #162880 Military Law Digest Article - Powers of Investigation () [paras. 1-12, 20-33], Inspection and Search Defence Regulations (SOR/86-958) () [s. 3]

Interim Summary: Use the prepared PPT presentation to do a quick review of the material.

Note to instructor: Use hyperlinks to show references.

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PART 3 – BODY OF THE LESSON (Continued)

Stage 2: Types of criminal and disciplinary investigations

5. **Introduction**: The focus in the second part of the lesson will be on the types of criminal and disciplinary investigations. Explain that the type of investigation depends on which investigative body will conduct it. Reaffirm however that whichever the investigative body, the format might change but the purpose and the essential elements are the same. Use the PowerPoint slide to view each type of investigation and discuss them briefly.

A-NIS Military police investigations

6. Military Police Policies and Technical Procedures Manual (A-SJ-100-004/AG-000) [Ch. 6, Annex A, and Appendicies 2 and 3], B-GG-005-027/AF-011 Military Justice at the Summary Trial Level 2.2 (B-GG-005-027/AF-011) [ch. 5 paras 6-12 and 33, Annex C], JAG #162880 Military Law Digest Article - Powers of Investigation () [paras. 6-12, 33]

B-Civilian police investigations

7. Military Police Policies and Technical Procedures Manual (A-SJ-100-004/AG-000) [Ch. 6, Annex A, and Appendicies 2 and 3], B-GG-005-027/AF-011 Military Justice at the Summary Trial Level 2.2 (B-GG-005-027/AF-011) [ch. 5 paras 6-12 and 33, Annex C], JAG #162880 Military Law Digest Article - Powers of Investigation () [paras. 6-12, 33]

C- Unit disciplinary investigations

8. Military Police Policies and Technical Procedures Manual (A-SJ-100-004/AG-000) [Ch. 6, Annex A, and Appendicies 2 and 3], B-GG-005-027/AF-011 Military Justice at the Summary Trial Level 2.2 (B-GG-005-027/AF-011) [ch. 5 paras 6-12 and 33, Annex C], JAG #162880 Military Law Digest Article - Powers of Investigation () [paras. 6-12, 33]

Interim Summary: Use the prepared PPT presentation to do a quick review of the material.

Note to instructor: Use hyperlinks to show references.

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PART 3 – BODY OF THE LESSON (Continued)

Stage 3: Advise on rights to access

9. **Introduction**: The focus in the third part of the lesson will be on rights to access the investigations. As a default, access to investigation reports is not permitted. Explain that focus will be put here on legal instruments WRT disclosure of information: 1) the *Access to Information Act*, and; 2) the *Privacy Act*. Accessorily, military police policies and DAODs would be also applicable. Use the PowerPoint slide to view each reference and discuss them briefly.

A-Disclosure of information relating to investigations

10. Military Police Policies and Technical Procedures Manual (A-SJ-100-004/AG-000), (), Access to Information Act (R.S.C., 1985, c. A-1) () [s. 16(1)], Access to Information Regulations (SOR/83-507) () [s. 9], Privacy Act (R.S.C., 1985, c. P-21 ()

1) Access to Information

11. *Access to Information Act* (R.S.C., 1985, c. A-1) s. 16(1),

12. *Access to Information Regulations* (SOR/83-507) () [s. 9]

13. DAOD 1001-0, Access to Information

14. DAOD 1001-1, Formal Requests for Access to Departmental Information

2) Privacy Act

15. *Privacy Act* (R.S.C., 1985, c. P-21)

B-Military Police Policies

16. A-SJ-100-004/AG-000 Military Police Policies and Technical Procedures Manual [precise reference needed]

Interim Summary: Use the prepared PPT presentation to do a quick review of the material.

Note to instructor: Use hyperlinks to show references.

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PART 4 – CONCLUSION

Summary: Review essential material from the whole lesson

- Stage 1: Distinction between investigations that could lead to Code of Service Discipline action and those that do not
  - Disciplinary / criminal investigations
  - Administrative investigations
  - Inspections

- Stage 2: Types of criminal and disciplinary investigations
  - NIS Military police investigations
  - Civilian police investigations
  - Unit disciplinary investigations

- Stage 3: Advise on rights to access.
  - Disclosure of information relating to investigations
    - Access to information
    - *Privacy act*
  - Military Police Policies

Confirmation: Done in a discussion format. Ask some confirmation question

Conclusion: recap while this lesson and material presented in important. Make a link from your introduction to the conclusion.

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CREST

Type	Definition	Example
Comparisons	Bridges the gap between present knowledge and what is to be learned.	Unfamiliar aircraft can be explained by comparing them to familiar versions.
Reasons	Satisfies students' natural desire to know "why". Makes teaching points easier to accept.	Teaching Point – Select 100% oxygen if smoke is detected in the cockpit. Reason: Otherwise the regulator will mix oxygen with ambient (contaminated) air resulting in toxins being inhaled into the body.
Examples	Verbal illustrations are used to back up a statement or to clarify an idea. Can be real or created, but must be believable.	In discussing the need to observe safety precautions with a piece of equipment, the instructor may relate an example of how failure to observe precautions resulted in an accident.
Statistics	Used as support for the emphasis that a figure provides.	On average, tutored students score better than 98% of their classroom taught counterparts.
Testimony	Quotes from subject matter experts are used to add credibility to teaching points; they should be short and relevant. Ideally, the expert is someone most students can identify with.	If the instructor is reviewing the procedures employed in a given tactic they may cite personal experience, emphasizing the importance of doing these procedures correctly.

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PO 016 ADVISE ON A DISCIPLINARY INVESTIGATION

PART 1 -- LESSON IDENTIFICATION

TITLE: EO 016.02 Advise on legal issues related to search & seizure

Performance. Advise on legal issues related to search & seizure

Conditions.

given: assistance as required; references (including legal opinions); resources as required;
denied: direct supervision

Standard. The legal officer shall advise on legal issues related to search & seizure

Main Teaching Points:

- Advise on search without warrant
  - Basis for search without warrant
  - Persons who may conduct or authorise searches without warrant
  - Limitations on searches without warrant
- Advise on preparation of search warrants
  - Types of search warrants
  - Evidentiary requirements
- Advise on issues related to integrity of evidence
  - Types of evidence
  - Chain of custody

Method. This EO will be accomplished by a combination of Self-Study and Developmental Lesson. Throughout the modules students will be either asked to read references, attends classes where principles will be expanded and participate in learning activities (scenarios).

Duration. 3 periods (2 periods of Distributed Learning (DL) and 1 period Interactive Lecture (IL)).

References. As per TP.

Training/ Learning Aids. Computer access; CD materials; Legal Officer Qualification Course (LOQC) Instructors Handbook – Module(s) EO 016.02 1-4

Note to the instructor. A review of the main teaching points will then take place at the end of the periods, by Enabling Checks (EC).

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PART 2 – INTRODUCTION

Objective: The Legal Officer (LO) shall describe and explain investigations in the particular context the CAF operate. After the completion of this lesson, the LO shall be able to advise on legal issues related to search and seizure.

Introduction: Introduce the lesson by emphasizing the importance of compliance with rules WRT search and seizure during investigations. Explain that deviation which might be perceived as 'minor' might have a serious impact of the investigation, even to the point that information so gathered could be excluded from the evidence by courts. Through application of this knowledge, LO will be able to provide more effective legal advice on investigations generally.

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PART 2 – INTRODUCTION (cont'd)

Outline: The LOC instructor shall introduce the lesson outline

- Stage 1: Search without warrant
  - A. Basis for search without warrant
    - 1) Search incidental to lawful arrest
    - 2) Consent searches
  - B. Persons who may conduct or authorise searches without warrant
    - 1) Military Police officers
    - 2) Unit investigators
    - 3) Civilian police officers
    - 4) Designated authorities
  - C. Limitations on searches without warrant
    - 1) Geographic
    - 2) Temporal
    - 3) Personal
    - 4) Reasonable fashion

- Stage 2: Preparation of search warrants
  - A. Types of search warrants
    - 1) Civilian search warrants
    - 2) Commanding officer search warrants
    - 3) Production orders (DNA)
  - B. Evidentiary requirements
    - 1) Specified premises or objects
    - 2) Reasonable grounds to believe
    - 3) Information to Obtain a Search Warrant

- Stage 3: Advise on issues related to integrity of evidence
  - A. Types of evidence
    - 1) Testimonial
    - 2) Documentary
    - 3) Real evidence
  - B. Chain of custody
    - 1) Handling of evidence
    - 2) Military police procedures
    - 3) Physical security of evidence

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PART 3 – BODY OF THE LESSON

Stage 1 – Search without warrant

1. **Introduction**: The focus in the first part of the lesson will be on searches without warrant in the context of a disciplinary investigation. The lesson will be divided in three Teaching Points (TPs); 1) Basis for search without warrant; 2) Persons who may conduct or authorise searches without warrant, and; 3) Limitations on searches without warrant. Each TP will be divided in sub-TPs. Use the PowerPoint slide to view each of those TPs and discuss them briefly.

A-Basis for search without warrant

1) Search incidental to lawful arrest

2. Military Police Policies and Technical Procedures Manual (A-SJ-100-004/AG-000), B-GG-005-027/AF-011 Military Justice at the Summary Trial Level 2.2 (B-GG-005-027/AF-011) [ch. 5 paras. 46-49; ch. 6 paras. 38-39], JAG #162879 Military Law Digest Article - Arrest () [paras. 38-39], JAG #162877 Military Law Digest Article - Search and Seizure () [paras. 46-49]

2) Consent searches

3. Military Police Policies and Technical Procedures Manual (A-SJ-100-004/AG-000), B-GG-005-027/AF-011 Military Justice at the Summary Trial Level 2.2 (B-GG-005-027/AF-011) [ch. 5 paras. 46-49; ch. 6 paras. 38-39], JAG #162879 Military Law Digest Article - Arrest () [paras. 38-39], JAG #162877 Military Law Digest Article - Search and Seizure () [paras. 46-49]

B-Persons who may conduct or authorise searches without warrant

1) Military Police officers

4. Military Police Policies and Technical Procedures Manual (A-SJ-100-004/AG-000), B-GG-005-027/AF-011 Military Justice at the Summary Trial Level 2.2 (B-GG-005-027/AF-011) [ch. 5, paras 46], JAG #162877 Military Law Digest Article - Search and Seizure () [para 46], Inspection and Search Defence Regulations (SOR/86-958) () [ss. 4 to 8]

2) Unit investigators

5. Military Police Policies and Technical Procedures Manual (A-SJ-100-004/AG-000), B-GG-005-027/AF-011 Military Justice at the Summary Trial Level 2.2 (B-GG-005-027/AF-011) [ch. 5, paras 46], JAG #162877 Military Law Digest Article - Search and Seizure () [para 46], Inspection and Search Defence Regulations (SOR/86-958) () [ss. 4 to 8]

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3) Civilian police officers

6. Military Police Policies and Technical Procedures Manual (A-SJ-100-004/AG-000), B-GG-005-027/AF-011 Military Justice at the Summary Trial Level 2.2 (B-GG-005-027/AF-011) [ch. 5, paras 46], JAG #162877 Military Law Digest Article - Search and Seizure () [para 46], Inspection and Search Defence Regulations (SOR/86-958) () [ss. 4 to 8]

4) Designated authorities

7. Military Police Policies and Technical Procedures Manual (A-SJ-100-004/AG-000), B-GG-005-027/AF-011 Military Justice at the Summary Trial Level 2.2 (B-GG-005-027/AF-011) [ch. 5, paras 46], JAG #162877 Military Law Digest Article - Search and Seizure () [para 46], Inspection and Search Defence Regulations (SOR/86-958) () [ss. 4 to 8]

C-Limitations on searches without warrant

1) Geographic

8. Canadian Charter of Rights and Freedoms () [ss. 8, 24(1)], Military Police Policies and Technical Procedures Manual (A-SJ-100-004/AG-000), B-GG-005-027/AF-011 Military Justice at the Summary Trial Level 2.2 (B-GG-005-027/AF-011) [ch. 5, para. 47; ch. 6, para. 39], JAG #162879 Military Law Digest Article - Arrest () [para. 39], JAG #162877 Military Law Digest Article - Search and Seizure () [paras. 47 and 49], Inspection and Search Defence Regulations (SOR/86-958) () [ss. 4-8].

2) Temporal

9. Canadian Charter of Rights and Freedoms () [ss. 8, 24(1)], Military Police Policies and Technical Procedures Manual (A-SJ-100-004/AG-000), B-GG-005-027/AF-011 Military Justice at the Summary Trial Level 2.2 (B-GG-005-027/AF-011) [ch. 5, para. 47; ch. 6, para. 39], JAG #162879 Military Law Digest Article - Arrest () [para. 39], JAG #162877 Military Law Digest Article - Search and Seizure () [paras. 47 and 49], Inspection and Search Defence Regulations (SOR/86-958) () [ss. 4-8].

3) Personal

10. Canadian Charter of Rights and Freedoms () [ss. 8, 24(1)], Military Police Policies and Technical Procedures Manual (A-SJ-100-004/AG-000), B-GG-005-027/AF-011 Military Justice at the Summary Trial Level 2.2 (B-GG-005-027/AF-011) [ch. 5, para. 47; ch. 6, para. 39], JAG #162879 Military Law Digest Article - Arrest () [para. 39], JAG #162877 Military Law Digest Article - Search and Seizure () [paras. 47 and 49], Inspection and Search Defence Regulations (SOR/86-958) () [ss. 4-8].

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4) Reasonable fashion

11. Canadian Charter of Rights and Freedoms () [ss. 8, 24(1)], Military Police Policies and Technical Procedures Manual (A-SJ-100-004/AG-000), B-GG-005-027/AF-011 Military Justice at the Summary Trial Level 2.2 (B-GG-005-027/AF-011) [ch. 5, para. 47; ch. 6, para. 39], JAG #162879 Military Law Digest Article - Arrest () [para. 39], JAG #162877 Military Law Digest Article - Search and Seizure () [paras. 47 and 49], Inspection and Search Defence Regulations (SOR/86-958) () [ss. 4-8].

Interim Summary: Use the prepared PPT presentation to do a quick review of the material.

Note to instructor: Use hyperlinks to show references.

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PART 3 – BODY OF THE LESSON (Continued)

Stage 2: Preparation of search warrants

12. **Introduction**: The focus in the second part of the lesson will be on the preparation of search warrants. Put the emphasis on the necessary and diligent preparation for a search warrant. Reaffirm the truism that more thorough the preparation for a search warrant is the less likely problems during the execution phase would arise. In addition, methodical preparation cause information searched and seized less likely to be later discarded by a judge if challenged.

13. Lesson is divided in two Teaching Points (TPs): 1) Types of search warrants, and; 2) Evidentiary requirements. TPs are divided in sub-TPs. Use the PowerPoint slide to view each type of investigation and discuss them briefly.

A-Types of search warrants

1) Civilian search warrants

14. National Defence Act, R.S.C. 1985, c. N-5 () [ss. 196.11 to 196.13; 273.2 to 273.5], Queen's Regulations and Orders for the Canadian Forces (QR&O) - Volume II - Disciplinary () [ch. 106.05 to 106.07; 106.10 to 106.12]

2) Commanding officer search warrants

15. National Defence Act, R.S.C. 1985, c. N-5 () [ss. 196.11 to 196.13; 273.2 to 273.5], Queen's Regulations and Orders for the Canadian Forces (QR&O) - Volume II - Disciplinary () [ch. 106.05 to 106.07; 106.10 to 106.12]

3) Production orders (DNA)

16. National Defence Act, R.S.C. 1985, c. N-5 () [ss. 196.11 to 196.13; 273.2 to 273.5], Queen's Regulations and Orders for the Canadian Forces (QR&O) - Volume II - Disciplinary () [ch. 106.05 to 106.07; 106.10 to 106.12]

B- Evidentiary requirements

1) Specific premises or objects

17. National Defence Act, R.S.C. 1985, c. N-5 () [s. 196.12; 273.3 to 273.5], Queen's Regulations and Orders for the Canadian Forces (QR&O) - Volume II - Disciplinary () [ch. 106.04(2); 106.05 (2) and (3); 106.06 (2), Note B], B-GG-005-027/AF-011 Military Justice at the Summary Trial Level 2.2 (B-GG-005-027/AF-011) [ch. 5, paras 41-43], JAG #162877 Military Law Digest Article - Search and Seizure () [paras. 37 to 45].

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2) Reasonable ground to believe

18. National Defence Act, R.S.C. 1985, c. N-5 () [s. 196.12; 273.3 to 273.5], Queen's Regulations and Orders for the Canadian Forces (QR&O) - Volume II - Disciplinary () [ch. 106.04(2); 106.05 (2) and (3); 106.06 (2), Note B], B-GG-005-027/AF-011 Military Justice at the Summary Trial Level 2.2 (B-GG-005-027/AF-011) [ch. 5, paras 41-43], JAG #162877 Military Law Digest Article - Search and Seizure () [paras. 37 to 45].

3) Information to Obtain a Search Warrant

19. National Defence Act, R.S.C. 1985, c. N-5 () [s. 196.12; 273.3 to 273.5], Queen's Regulations and Orders for the Canadian Forces (QR&O) - Volume II - Disciplinary () [ch. 106.04(2); 106.05 (2) and (3); 106.06 (2), Note B], B-GG-005-027/AF-011 Military Justice at the Summary Trial Level 2.2 (B-GG-005-027/AF-011) [ch. 5, paras 41-43], JAG #162877 Military Law Digest Article - Search and Seizure () [paras. 37 to 45].

Interim Summary: Use the prepared PPT presentation to do a quick review of the material.

Note to instructor: Use hyperlinks to show references.

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PART 3 – BODY OF THE LESSON (Continued)

Stage 3: Advise on issues related to integrity of evidence

20. **Introduction**: The focus in the third part of the lesson will be on issues related to integrity of evidence. Basically once evidence is seized it must be kept under certain conditions in order to maintain its potential probative value for a trial. A break in the link between the seizure and the trial might reveal a potential corruption of the seized object that would diminish, sometimes entirely its probative value.

21. The lesson is divided in two Teaching Points (TPs): 1) Types of evidence, and; 2) Chain of custody. Each TP is further divided in sub-TPs. Use the PowerPoint slide to view each TP and discuss them briefly.

A- Types of evidence

1) Testimonial

22. Military Rules of Evidence (C.R.C., c. 1049) () [Part IV, ss. 79-112]

2) Documentary

23. Military Rules of Evidence (C.R.C., c. 1049) () [Part IV, ss. 79-112]

3) Real evidence

24. Military Rules of Evidence (C.R.C., c. 1049) () [Part IV, ss. 79-112]

B-Chain of custody

1) Handling of evidence

25. A-SJ-100-004/AG-000 Military Police Policies and Technical Procedures Manual [precise reference needed]. Military Rules of Evidence (C.R.C., c. 1049) () [Part IV, ss. 102-111]

2) Military police procedures

26. A-SJ-100-004/AG-000 Military Police Policies and Technical Procedures Manual [precise reference needed]. Military Rules of Evidence (C.R.C., c. 1049) () [Part IV, ss. 102-111]

3) Physical security of evidence

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27. A-SJ-100-004/AG-000 Military Police Policies and Technical Procedures Manual [precise reference needed]. Military Rules of Evidence (C.R.C., c. 1049) () [Part IV, ss. 102-111]

Interim Summary: Use the prepared PPT presentation to do a quick review of the material.

Note to instructor: Use hyperlinks to show references.

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PART 4 – CONCLUSION

Summary: Review essential material from the whole lesson

- Stage 1: Search without warrant
  - A. Basis for search without warrant
    1) Search incidental to lawful arrest
    2) Consent searches
  - B. Persons who may conduct or authorise searches without warrant
    1) Military Police officers
    2) Unit investigators
    3) Civilian police officers
    4) Designated authorities
  - C. Limitations on searches without warrant
    1) Geographic
    2) Temporal
    3) Personal
    4) Reasonable fashion
- Stage 2: Preparation of search warrants
  - A. Types of search warrants
    1) Civilian search warrants
    2) Commanding officer search warrants
    3) Production orders (DNA)
  - B. Evidentiary requirements
    1) Specified premises or objects
    2) Reasonable grounds to believe
    3) Information to Obtain a Search Warrant
- Stage 3: Advise on issues related to integrity of evidence
  - A. Types of evidence
    1) Testimonial
    2) Documentary
    3) Real evidence
  - B. Chain of custody
    1) Handling of evidence
    2) Military police procedures
    3) Physical security of evidence

Confirmation: Done in a discussion format. Ask some confirmation question

Conclusion: recap while this lesson and material presented in important. Make a link from your introduction to the conclusion.

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CREST

Type	Definition	Example
Comparisons	Bridges the gap between present knowledge and what is to be learned.	Unfamiliar aircraft can be explained by comparing them to familiar versions.
Reasons	Satisfies students' natural desire to know "why". Makes teaching points easier to accept.	Teaching Point – Select 100% oxygen if smoke is detected in the cockpit. Reason: Otherwise the regulator will mix oxygen with ambient (contaminated) air resulting in toxins being inhaled into the body.
Examples	Verbal illustrations are used to back up a statement or to clarify an idea. Can be real or created, but must be believable.	In discussing the need to observe safety precautions with a piece of equipment, the instructor may relate an example of how failure to observe precautions resulted in an accident.
Statistics	Used as support for the emphasis that a figure provides.	On average, tutored students score better than 98% of their classroom taught counterparts.
Testimony	Quotes from subject matter experts are used to add credibility to teaching points; they should be short and relevant. Ideally, the expert is someone most students can identify with.	If the instructor is reviewing the procedures employed in a given tactic they may cite personal experience, emphasizing the importance of doing these procedures correctly.

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PO 016 ADVISE ON A DISCIPLINARY INVESTIGATION

PART 1 -- LESSON IDENTIFICATION

TITLE: EO 016.03 Advise on conduct of interviews

Performance. Advise on conduct of interviews

Conditions.

given: assistance as required; references (including legal opinions); resources as required;
denied: direct supervision

Standard. The legal officer shall advise on conduct of interviews

Main Teaching Points:

- Types of interviews
  - Interviews of witnesses
  - Interviews of persons of interest
  - Recording of interviews
  - Subject(s) of the investigation
  - Supplementary interviews
- Rights of interview subjects
  - Rights of persons of interest
  - Rights of witnesses
  - Rights of suspects or subjects of investigation
- Roles of interviewers
  - Powers
  - Duties
  - Authorities
  - Responsibilities
- Cautions
  - Types of cautions
  - Applicability of cautions
  - Timing and sequencing of cautions
  - Documentation pertaining to cautions

Method. This EO will be accomplished by Self-Study by Distributed Learning. Students will be required to read all modules and be prepared to respond to questions for each of them. The concepts will then be reviewed and expanded in class if needed.

Duration. 1.5 periods Distributed Learning (DL).

References. As per TP.

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Training/ Learning Aids. Computer access; CD materials; Legal Officer Qualification Course (LOQC) Instructors Handbook – Module(s) EO 016.03 1-4

Note to the instructor. A review of the main teaching points will then take place at the end of the periods, by Enabling Checks (EC).

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PART 2 – INTRODUCTION

Objective: The Legal Officer (LO) shall describe and explain investigations in the particular context the CAF operate. After the completion of this lesson, the LO shall be able to advise on legal issues related to interviews within a disciplinary investigation context.

Introduction: Introduce the lesson stressing to the students that interviews are important as it is sometimes the best available evidence. In the case of suspects, a properly conducted interview might result in having a legally-obtained and reliable confession. However, improper influence of the interviewer, even for normal witnesses and non bad-intended, might cause the statement to be excluded from the evidence by courts, or at least diminishes its probative value substantially. Through application of this knowledge, LO will be able to provide more effective legal advice on investigations generally.

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PART 2 – INTRODUCTION (cont'd)

Outline: The LOC instructor shall introduce the lesson outline

- Stage 1: Types of interviews
  - A. Interviews of witnesses
  - B. Interviews of persons of interest
  - C. Recording of interviews
  - D. Subject(s) of the investigation
  - E. Supplementary interviews

- Stage 2: Rights of interview subjects
  - A. Rights of persons of interest
  - B. Rights of witnesses
  - C. Rights of suspects or subjects of investigation

- Stage 3: Roles of interviewers
  - A. Powers
  - B. Duties
  - C. Authorities
  - D. Responsibilities

- Stage 4: Cautions
  - A. Types of cautions
  - B. Applicability of cautions
  - C. Timing and sequencing of cautions
  - D. Documentation pertaining to cautions

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PART 3 – BODY OF THE LESSON

Stage 1 – Types of interviews

1. **Introduction**: The focus in the first part of the lesson will be on types of interviews. Explain that depending on who is the interviewee and what is the subject of the investigation, the interviewer would adopt a different approach. The lesson will be divided in five Teaching Points (TPs); 1) Interviews of witnesses; 2) Interviews of persons of interest; 3) Recording of interviews; 4) Subject(s) of the investigation, and; 5) Supplementary interviews. Use the PowerPoint slide to view each of those TPs and discuss them briefly.

A- Interviews of witnesses

2. Queen's Regulations and Orders for the Canadian Forces (QR&O) - Volume II - Disciplinary () [ch. 106.1, 106.2, 106.3], Military Police Policies and Technical Procedures Manual (A-SJ-100-004/AG-000). [precise ref needed]

B-Persons who may conduct or authorise searches without warrant

3. Queen's Regulations and Orders for the Canadian Forces (QR&O) - Volume II - Disciplinary () [ch. 106.1, 106.2, 106.3]; Military Police Policies and Technical Procedures Manual (A-SJ-100-004/AG-000). [precise ref needed]

C-Limitations on searches without warrant

4. Queen's Regulations and Orders for the Canadian Forces (QR&O) - Volume II - Disciplinary () [ch. 106.1, 106.2, 106.3], Military Police Policies and Technical Procedures Manual (A-SJ-100-004/AG-000). [precise ref needed]

D- Subject(s) of the investigation

5. Queen's Regulations and Orders for the Canadian Forces (QR&O) - Volume II - Disciplinary () [ch. 106.1, 106.2, 106.3], Military Police Policies and Technical Procedures Manual (A-SJ-100-004/AG-000). [precise ref needed]

E- Supplementary interviews

6. Queen's Regulations and Orders for the Canadian Forces (QR&O) - Volume II - Disciplinary () [ch. 106.1, 106.2, 106.3], Military Police Policies and Technical Procedures Manual (A-SJ-100-004/AG-000). [precise ref needed]

Interim Summary: Use the prepared PPT presentation to do a quick review of the material.

Note to instructor: Use hyperlinks to show references.

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PART 3 – BODY OF THE LESSON (Continued)

Stage 2: Rights of interview subjects

7. **Introduction**: The focus in the second part of the lesson will be on rights of interview subjects. Reaffirm that at that stage, suspects are presumed innocent. In addition, methodical preparation cause information obtained during interviews less likely to be later discarded by a judge if challenged.

8. Lesson is divided in three Teaching Points (TPs): 1) Rights of persons of interest, 2) Rights of witnesses, and; 3) Rights of suspects or subjects of investigation

A- Rights of persons of interest

9. Canadian Charter of Rights and Freedoms () [ss. 7, 11(c)], Military Police Policies and Technical Procedures Manual (A-SJ-100-004/AG-000) [ch. 7]

B- Rights of witnesses

10. Canadian Charter of Rights and Freedoms () [ss. 7, 11(c)], Military Police Policies and Technical Procedures Manual (A-SJ-100-004/AG-000) [ch. 7]

C- Rights of suspects or subjects of investigation

11. Canadian Charter of Rights and Freedoms () [ss. 7, 11(c)], Military Police Policies and Technical Procedures Manual (A-SJ-100-004/AG-000) [ch. 7]

Interim Summary: Use the prepared PPT presentation to do a quick review of the material.

Note to instructor: Use hyperlinks to show references.

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PART 3 – BODY OF THE LESSON (Continued)

Stage 3: Roles of interviewers

12. **Introduction**: The focus in the third part of the lesson will be on the roles of the interviewers. Explain that interviewers, either from military police or units' investigators, must cautiously exercise their role within the parameters of the law. They must create the favourable conditions for interviewees to candidly reveal information, without acting in a way that might be perceived by a reasonable observer as putting undue influence to elicit such information.

13. The lesson is divided in four Teaching Points (TPs): 1) Powers; 2) Duties; 3) Authorities, and; 4) Responsibilities.

A- Powers

14. Canadian Charter of Rights and Freedoms () [ss. 7, 11(c)], Queen's Regulations and Orders for the Canadian Forces (QR&O) - Volume II - Disciplinary () [ch. 106.1, 106.2, 106.3], Military Police Policies and Technical Procedures Manual (A-SJ-100-004/AG-000) [ch. 7; ch. 7, Annex E, appendix 1], DPM Police Advisory 14\07 Preamble for Interviews () [paras. 1-4], DPM Police Advisory 15/04 Audio/Video Recording (AV) of an interview () [paras. 1-3; Annex A]

B-Duties

15. Canadian Charter of Rights and Freedoms () [ss. 7, 11(c)], Queen's Regulations and Orders for the Canadian Forces (QR&O) - Volume II - Disciplinary () [ch. 106.1, 106.2, 106.3], Military Police Policies and Technical Procedures Manual (A-SJ-100-004/AG-000) [ch. 7; ch. 7, Annex E, appendix 1], DPM Police Advisory 14\07 Preamble for Interviews () [paras. 1-4], DPM Police Advisory 15/04 Audio/Video Recording (AV) of an interview () [paras. 1-3; Annex A]

C- Authorities

16. Canadian Charter of Rights and Freedoms () [ss. 7, 11(c)], Queen's Regulations and Orders for the Canadian Forces (QR&O) - Volume II - Disciplinary () [ch. 106.1, 106.2, 106.3], Military Police Policies and Technical Procedures Manual (A-SJ-100-004/AG-000) [ch. 7; ch. 7, Annex E, appendix 1], DPM Police Advisory 14\07 Preamble for Interviews () [paras. 1-4], DPM Police Advisory 15/04 Audio/Video Recording (AV) of an interview () [paras. 1-3; Annex A]

D- Responsibilities

17. Canadian Charter of Rights and Freedoms () [ss. 7, 11(c)], Queen's Regulations and Orders for the Canadian Forces (QR&O) - Volume II - Disciplinary () [ch. 106.1, 106.2, 106.3], Military Police Policies and Technical Procedures Manual (A-SJ-100-

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004/AG-000) [ch. 7; ch. 7, Annex E, appendix 1], DPM Police Advisory 14\07 Preamble for Interviews () [paras. 1-4], DPM Police Advisory 15/04 Audio/Video Recording (AV) of an interview () [paras. 1-3; Annex A].

Interim Summary: Use the prepared PPT presentation to do a quick review of the material.

Note to instructor: Use hyperlinks to show references.

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PART 3 – BODY OF THE LESSON (Continued)

Stage 4: Cautions

18. **Introduction**: The focus in the fourth part of the lesson will be on cautions. When interviewers have reasons to believe the interviewee might be a suspect, they must provide him/her a caution about their rights. In absence of such a sufficient caution, statements made might be perceived as not being made 'free and voluntarily' and might be later excluded by courts if challenged.

19. The lesson is divided in four Teaching Points (TPs): 1) Types of cautions; 2) Applicability of cautions; 3) Timing and sequencing of cautions, and; 4) Documentation pertaining to cautions.

B- Types of cautions

20. Queen's Regulations and Orders for the Canadian Forces (QR&O) - Volume II - Disciplinary () [ch. 101.12], Military Police Policies and Technical Procedures Manual (A-SJ-100-004/AG-000) [ch. 7, Annex E, Appendix 2], DPM Police Advisory 14\07 Preamble for Interviews () [paras. 1-4], DPM Police Advisory 12/04 Amendment Caution Non-Specific Charge () [paras. 2-3].

B-Applicability of cautions

21. Queen's Regulations and Orders for the Canadian Forces (QR&O) - Volume II - Disciplinary () [ch. 101.12], Military Police Policies and Technical Procedures Manual (A-SJ-100-004/AG-000) [ch. 7, Annex E, Appendix 2], DPM Police Advisory 14\07 Preamble for Interviews () [paras. 1-4], DPM Police Advisory 12/04 Amendment Caution Non-Specific Charge () [paras. 2-3].

C-Timing and sequencing of cautions

22. Queen's Regulations and Orders for the Canadian Forces (QR&O) - Volume II - Disciplinary () [ch. 101.12], Military Police Policies and Technical Procedures Manual (A-SJ-100-004/AG-000) [ch. 7, Annex E, Appendix 2], DPM Police Advisory 14\07 Preamble for Interviews () [paras. 1-4], DPM Police Advisory 12/04 Amendment Caution Non-Specific Charge () [paras. 2-3].

D-Documentation pertaining to cautions

23. Queen's Regulations and Orders for the Canadian Forces (QR&O) - Volume II - Disciplinary () [ch. 101.12], Military Police Policies and Technical Procedures Manual (A-SJ-100-004/AG-000) [ch. 7, Annex E, Appendix 2], DPM Police Advisory 14\07 Preamble for Interviews () [paras. 1-4], DPM Police Advisory 12/04 Amendment Caution Non-Specific Charge () [paras. 2-3].

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Interim Summary: Use the prepared PPT presentation to do a quick review of the material.

Note to instructor: Use hyperlinks to show references.

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PART 4 – CONCLUSION

Summary: Review essential material from the whole lesson

- Types of interviews
  - Interviews of witnesses
  - Interviews of persons of interest
  - Recording of interviews
  - Subject(s) of the investigation
  - Supplementary interviews
- Rights of interview subjects
  - Rights of persons of interest
  - Rights of witnesses
  - Rights of suspects or subjects of investigation
- Roles of interviewers
  - Powers
  - Duties
  - Authorities
  - Responsibilities
- Cautions
  - Types of cautions
  - Applicability of cautions
  - Timing and sequencing of cautions
  - Documentation pertaining to cautions

Confirmation: Done in a discussion format. Ask some confirmation question

Conclusion: recap while this lesson and material presented in important. Make a link from your introduction to the conclusion.

A-2015-01212--1027

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CREST

Type	Definition	Example
Comparisons	Bridges the gap between present knowledge and what is to be learned.	Unfamiliar aircraft can be explained by comparing them to familiar versions.
Reasons	Satisfies students' natural desire to know "why". Makes teaching points easier to accept.	Teaching Point – Select 100% oxygen if smoke is detected in the cockpit. Reason: Otherwise the regulator will mix oxygen with ambient (contaminated) air resulting in toxins being inhaled into the body.
Examples	Verbal illustrations are used to back up a statement or to clarify an idea. Can be real or created, but must be believable.	In discussing the need to observe safety precautions with a piece of equipment, the instructor may relate an example of how failure to observe precautions resulted in an accident.
Statistics	Used as support for the emphasis that a figure provides.	On average, tutored students score better than 98% of their classroom taught counterparts.
Testimony	Quotes from subject matter experts are used to add credibility to teaching points; they should be short and relevant. Ideally, the expert is someone most students can identify with.	If the instructor is reviewing the procedures employed in a given tactic they may cite personal experience, emphasizing the importance of doing these procedures correctly.

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PO 017 PROVIDE PRE-CHARGE LEGAL ADVICE

PART 1 -- LESSON IDENTIFICATION

TITLE: EO 017.01 Advise on the appropriate charge or charges and alternatives charges

Performance. Advise on the appropriate charge or charges and alternatives charges

Conditions.

given: references (including legal opinions, templates); resources as required; assistance as required.
denied: direct supervision

Standard. The legal officer shall provide pre-charge advice

Main Teaching Points:

- Advise on the appropriate charge or charges and alternative charges
  - Elements of the pertinent offence(s)

Method. This EO will be accomplished by a combination of Self-Study and Developmental Lesson. Students will be asked to read references on their own at different points during the lesson. The concepts will be expanded, discussed and applied in class through learning activities under instructor's guidance.

Duration. 7 periods. 1 period of Distributed Learning (DL) and 6 periods Interactive Lecture (IL).

References. As per TP.

Training/ Learning Aids. Computer access; CD materials; Templates; Legal Officer Qualification Course (LOQC) Instructors Handbook – Module(s) EO 017.01 1-6

Note to the instructor. A review of the main teaching points will then take place at the end of the periods, by Enabling Checks (EC).

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PART 2 – INTRODUCTION

Objective: The Legal Officer (LO) shall provide pre-charge legal advice in the particular context the CAF operate. After the completion of this lesson, the LO shall be able to advise on the appropriate charge or charges and alternatives charges.

Introduction: Introduce the lesson by emphasizing that providing legal advice to units in disciplinary matters prior laying charges against an individual is part of the quintessence of the LO's role. Through application of this knowledge, LO will be able to provide more effective pre-charge legal advice to units.

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PART 2 – INTRODUCTION (cont'd)

Outline: The LOC instructor shall introduce the lesson outline

- Stage 1: Review investigation
  - A. Main parts of investigation report
  - B. SAMPIS format
  - C. Unit Disciplinary Investigation format
- Stage 2: Advise on further investigative requirements, if any
  - A. Identify potential deficiencies
  - B. Duty to obtain all available information/evidence
  - C. Rules of admissibility of evidence
- Stage 3: Review draft RDP
  - A. Relevant jurisdiction
    1) Time
    2) Person
    3) Matter
    4) Location
    5) Authority
  - B. Drafting particulars
    1) Selection of Appropriate Charge
    2) Alternative Charges
    3) Drafting Particulars
    4) Essential Elements
    5) Surplusage
    6) Record of Disciplinary Proceedings
- Stage 4: Evaluate sufficiency & admissibility of evidence
  - A. Elements of the relevant offence(s)
    1) Suggested/ Potential offences
  - B. Objective test: reasonable belief
  - C. Subjective test: actual belief
  - D. JAG Policy: Reasonable prospect of conviction
- Stage 5 : Advise on suitability of laying charges
  - A. Rights of the accused
    1) Disclosure
    2) Counsel
    3) Silence
    4) Assisting officer
    5) Fundamental justice
    6) Procedural fairness
    7) Official Languages
  - B. Exercise of discretion
    1) Public interest
    2) Applicable JAG policies
    3) Military vs civilian
    4) Corrective measures vs disciplinary proceedings

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C. Res judicata as it pertains to pre-charge legal advice
    1) Double Jeopardy
    2) Autrefois acquit
    3) Autrefois convict
D. Impact of jurisdictional limitations on types of charges laid
    1) Referral of charges
    2) Limitations on election
    3) Limitations on forum

- Stage 6: Advise on requirement for further legal advice
    A. Obligations of diligence and prudence
    B. Standard paragraph in legal opinions
    C. Legal opinion format (written/oral)

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PART 3 – BODY OF THE LESSON

Stage 1 – Review investigation

1. **Introduction**: The focus in the first part of the lesson will be on reviewing the investigation. CAF disciplinary investigation reports should cover the same aspects. However, formats substantially vary between CFNIS/MP reports and units' investigation reports. And between units, format could also substantially varies. Tips will be provided to assist students to identify content relevant for LOs' military justice duties.

2. This lesson is divided by three sub-Teaching Points: 1) Main parts of investigation report; 2) SAMPIS format; 3) Unit Disciplinary Investigation format. Use the PowerPoint slide to view each type of those and discuss them briefly.

A- Main parts of investigation report

3. Make reference to QR&O 106.01, 106.02 note B, 106.03.

4. *Military Police Policies and Technical Procedures Manual* (A-SJ-100-004/AG-000), (*MPPTP*) ch. 6, "Principles – General" reads as follows:

> The purpose and objectives of an investigation are to reconstruct events, gather evidence, identify the elements of the alleged offence, and identify those responsible for it. Each of these purposes must be fulfilled, and each of these objectives must be achieved with integrity and fairness

5. Irrespective of the format or the terminology used by the investigative body, reports would basically try to cover the fundamental questions about an alleged offence: Who, What, Where, When, Why and How.

B-MPIR/SAMPIS format

6. Military Police Investigation Reports (MPIR) are all reported electronically in the "Security and Military Police Information System" (SAMPIS).

7. Use template in the *MPPTP* Appendix 1 to Annex F to Chapter 10 – Military Police Investigation Report: Example. As *MPPTP* is not available online, ask local MP Det to provide you with the template.

8. Show template to students. Identify main parts. Assist them to pinpoint relevant information and details.

C-Unit Disciplinary Investigation format

9. Apart from the requirements QR&O, ch. 106, regulations, directives and policies are silent as to how units should report disciplinary investigations. The intent is to leave

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enough flexibility at units' level to react promptly to allegations that an offence might have been committed.

10. Having said that, some initiatives by local DJAs, AJAGs and their CWOs have proposed guidelines. A guide that has been developed gives a template of Unit Disciplinary Investigation report (*Guide for Disciplinary Investigations and Charge Laying at the Unit Level*, Annex F). However the *Guide* is not a CAF/DND official publication and could be used as a guideline only. The template can be found on CD Materials.

11. Use template titled "Unit Disciplinary Investigation Report" and show it to students. Identify main parts. Assist them to pinpoint relevant information and details. Ask them what could be either added or removed to improve it.

Interim Summary: Use the prepared PPT presentation to do a quick review of the material.

- Stage 1: Review investigation
  - A. Main parts of investigation report
  - B. SAMPIS format
  - C. Unit Disciplinary Investigation format

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PART 3 – BODY OF THE LESSON (Continued)

Stage 2: Advise on further investigative requirements, if any

12. **Introduction**: The focus in the second part of the lesson will be on further investigative requirements, if any. Reaffirm that the purpose of an investigation is to gather reasonably available information on the circumstances surrounding the alleged commission of an offence. Stress the importance of gathering not only the information that tends to prove the guilt of the suspect but also his or her innocence. Identifying gaps early in the process might cause some frustration and extra work. However, it would pay over the longer term as it diminishes the risk that valuable evidence might be lost or later found non-reliable because of staleness. It also reduces the likelihood that charges might be laid against someone who might have a valid, legitimate and apparent defence right from the beginning.

13. The lesson is divided in three sub-TPs: 1) Identify potential deficiencies; 2) Duty to obtain all available information/evidence, and; 3) Rules of admissibility of evidence.

A-Identify potential deficiencies

14. Remind students of the threshold of 'reasonable belief' stated at QR&O 107.02. Explain that by policy, JAG has increased the standard to 'reasonable prospect of conviction' JAG Policy Directive 010/00 - Charge Screening Policy (*JAG Charge Policy*), para. 12.

15. Tell students that when they review investigation reports they should also use the *NDA* and *Elements of the Offences – A Guide to Decision Making Under the Code of Service Discipline (Elements of the Offence*).

16. Read for yourself and summarize for students main points of *JAG Charge Policy*, para. 10, in particular the following passage:

> 10. [...] If it is deemed that the investigation report lacks information and/or essential evidence, or is deficient in any respect, the legal officer should provide a summary of the deficiencies noted to the individual to whom the report was referred along with a recommendation that the report be returned to the investigator with a request for further investigation. Where this has occurred, the legal officer should refrain from providing further advice until the investigating authority has had an opportunity to complete the investigation.

17. Read for yourself and summarize for students main points of DMP Policy 002/00 Pre-Charge Screening (*DMP Pre-Charge Policy*), para. 13 in particular the following passage:

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> 13. A prosecution is not legally sustainable unless there is evidence to support the accusation that a person subject to the CSD has committed a service offence. In the assessment of the evidence, an actual and reasonable belief that the offence has been committed is not enough. The evidence must be evaluated to determine how strong the case is likely to be when presented at any service tribunal and should be made on the assumption that the trier of fact will act impartially and according to law.

18. Keep in mind though that prosecutors shall not provide legal advice directly to unit authorities, except the CFNIS. Units' pre-charge screening advice shall be provided to the applicable unit legal advisor (*DMP Pre-Charge Policy*, para. 12).

B-Duty to obtain all available information/evidence

19. Remind students of QR&O 106.02 Note B and 106.03.

20. Stress to students that investigations are conducted to determine whether or not a service offence has been committed. In that sense it must, as a minimum, collect all reasonably available evidence bearing on the guilt or innocence of the person who is the subject of the investigation. By "reasonably"

21. Again, read for yourself and summarize for students main points of *JAG Charge Policy*, para. 10 in particular the following passage:

> 10. Legal officers must ensure that reasonable steps have been taken to obtain all current and available information/evidence relating to a matter before providing legal advice. While the legal officer may find it necessary to speak to the investigator to clarify certain issues, he/she should abstain from personally conducting any further investigation that may be warranted or from interviewing witnesses. [...] Legal officers should also monitor the status of such investigations to ensure that any resulting delay in proceeding does not become excessive. The service authority requesting further investigation should also discuss, with the investigating authority, a reasonable timeline for the completion of the investigation.

22. Again, read for yourself and summarize for students main points of *DMP Pre-Charge Policy*, para. 8 in particular the following passage:

> 8. [...] If the Prosecutor deems the available information is insufficient for this purpose, the file shall be returned to the CFNIS investigator for further investigation or a recommendation that charges do not proceed.

23. Explain to students that, although it might be difficult and sometimes frustrating for investigators to correct deficiencies, it is way more difficult, frustrating and embarrassing for the system to correct those deficiencies at later stages in the disciplinary proceedings.

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24. To illustrate, read for yourself and tell the story of *R. v. Master-Corporal G.C. Steeves and ex-Private K.M. Temple*, 2007 CM 3021 (CanLII), <http://canlii.ca/t/280vc> retrieved on 2014-07-09.

C-Rules of admissibility of evidence

25. Make reference to *Military Rules of Evidence* and QR&O 108.21(1).

26. Keep in mind that although *MRE* are not applicable at summary trial, it does not mean there are no rules. Both courts martial and summary trial would require that some conditions are met before accepting information as evidence.

27. For example, an accused who made a statement to the investigation may have not been properly cautioned. A DND computer used by the suspect as a tool at work, may have been taken away by the investigators without search warrant as MPs believed there was no need to as the suspect could not claim 'reasonable expectation of privacy'.

28. In that kind of situations, it is LOs' duty to remind investigators of evidentiary rules' requirements.

29. Read for yourself and summarize for students main points of *DMP Pre-Charge Policy*, para. 13 in particular the following passage:

> 13. [...]This will require a proper assessment on whether all of the elements of the alleged offence have been met, the relevancy and admissibility of evidence implicating the accused, as well as the competence and objective credibility of witnesses.

30. Stress the importance to students of consultation and coordination between investigators (CFNIS, MP Dets, Unit Investigators), chain-of-command and legal officers (DJAs and regional military prosecutors).

Interim Summary: Use the prepared PPT presentation to do a quick review of the material.

- Stage 2: Advise on further investigative requirements, if any

  A. Identify potential deficiencies

  B. Duty to obtain all available information/evidence

  C. Rules of admissibility of evidence

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PART 3 – BODY OF THE LESSON (Continued)

Stage 3: Review draft Record of Disciplinary Proceedings (RDP)

31. **Introduction**: The focus in the third part of the lesson will be on reviewing the draft Record of Disciplinary Proceedings. In the vast majority of cases, units would submit a draft RDP to LOs for their review. Very often units' disciplinary authorities (ex: Regimental Sergeant-Majors (RSM), Chief Warrant Officers (CWO) or Coxswain (Cox'n)) review the investigation report on their own and draft potential charge (s) in an RDP prior asking LOs' legal advice.

32. The lesson will be focused on two TPs: 1) Relevant jurisdiction and 2) Drafting particulars. Each TP will be then divided in sub-TPs. Use the PowerPoint slide to view each of those and discuss them briefly.

33. For this portion, develop a template RDP which contains errors. Make sure each student as a copy. For the following TPs and sub-TPs, goes step-by-step using the RDP template, assisting students in identifying relevant information and details. For each section, ask students to identify errors and how to correct them.

34. Make reference to QR&O 107.06, 107.07 and 107.075.

A- Relevant jurisdiction

1) Time

35. The moment of the alleged offence is relevant as it sets the events in time. This may have an impact on jurisdiction:

a) some limitation periods begin "at the time of the alleged commission of a service offence". Make reference to *NDA,* s. 69;

b) if a person no more subject to the Code of Service Discipline, jurisdiction can be exercised if at the time of the alleged commission of a service offence, the person was subject (QR&O 102.01(2));

36. For some offences, time has more specific importance. For example:

a) absence without leave (AWOL, *NDA* s. 90) requires that the accused had a duty to be in a given place at a specific time see *Elements of the Offence*, pp. 39-42; *Gauthier v R* [1998] CMAJ no 4 at 14(a);

b) depending on the context, disobedience of a lawful command (*NDA*, s. 83) requires a precise moment and time when the order was expected to be obeyed. See *Elements of the Offence*, p. 14; *R v MCpl McRae*, 2007 CM 4005;

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c) Offences of Striking or Offering Violence to a Superior Officer (*NDA*, s. 84) and Insubordinate Behaviour (*NDA*, s. 85) require knowledge by the accused that the person was a superior officer at the time of the offence (QR&O 103.17, Note(B); QR&O 103.18, Note (B)). See *Elements of the Offence*, at p. 21 and 26-27;

d) the offence of breaking out under *NDA* para. 87(d) consists of quitting barracks station, camp, quarters or ship at a time when the accused had no right to do so (QR&O 103.20, Note (D)). See *Elements of the Offence*, at p. 36; *R v Pte Tupper*, 2007 CM 1028 (CanLII), <http://canlii.ca/t/280tg> retrieved on 2014-07-09.

2) Person

37. The person must be subject to the Code of service discipline, at the time of the alleged offence. So there is no jurisdiction over former CF members committing offences after their service.

38. Make reference to *NDA*, s. 60.

39. For Reg F personnel (*NDA*, s. 60(1)(*a*)), the issue is relatively easy to deal with. However see *Canada v Moriarity* 2014 CMAC 1, CMAC-560 (application for leave before S.C.C. requested 35755 2014-03-06) at paras. 66 and 111 which seems to have revived the military nexus requirement.

40. For Res F personnel the person must be in one of the situations listed at *NDA*, s. 60(1)(*c*), sub-paragraphs (i) to (x). In *R v Balint*, 2012 CM 2010 (CanLII), <http://canlii.ca/t/ft7jr> retrieved on 2014-07-10, military judge determined that there was no evidence on any of the enumerated circumstances (paras. 12 and 13). See also *R v Brady*, 2004 CMAC 3, CMAC-475, at paras. 26-27 where the accused was considered not on duty as he was performing Class A unpaid work.

41. For other persons, they must fall under one of the category listed at *NDA*, s. 60 (*d*) to (*j*). For example, a DND civilian employee might fall under paragraph (*f*) or (*j*). However, see *Canada v. Wehmeier* 2014 CMAC 5, CMAC-553 (application for leave before S.C.C. requested 35933 2014-06-09) at para. 62 which states that "where a civilian makes a s. 7 argument based on the loss of procedural rights before the military courts, the onus shifts to the prosecution to justify proceeding before the military courts as opposed to the civilian criminal courts."

42. Members of Special Operational Forces are not to be publicly associated with the unit they belong to. However, their names have to be identified in the RDP.

43. Cadets are not subject to the Code of Service Discipline. COATS (formerly known as CIC) are to the extent that they are members of the Res F.

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3) Matter

44. The charge must make reference to a "service offence" as defined at *NDA*, s. 2. It could be:

a) One of the "military offences" enumerated from *NDA*, ss. 73 to 129;

b) A Canadian "civilian offence" through *NDA*, s. 130;

c) A foreign "civilian offence" through *NDA*, s. 132;

45. Remind students of *NDA*, s. 70.

4) Location

46. Make reference to QR&O 107.04 (4) which refers to "...should, when practical, include an allegation of the place...".

47. Location has an importance on some aspects:

a) where the offence allegedly took place, which impacts CAF's jurisdiction. For examples, a member of the Res F (*NDA*, s. 60(1)(*c*)) or someone who accompanies the CAF (*NDA*, s. 61(1);

b) where the suspect is at the time of the pre-charge legal advice which indicates which unit/authority would have power to lay charges against.

5) Authority

48. Make reference to QR&O 107.02

49. To lay charge, charge layers (excluding commanding officers or members of the CFNIS) must have been given the authority by the commanding officer to lay charge. (QR&O 107.(*c*)).

50. In addition as previously said, the accused must be under commanding officer's authority. For Reg F and Res F service members this is relatively easy to establish. For some non-service members, see *NDA*, subs. 62(1), 62(2), 62(3), 63 (3) and 65.

51. For people who cease to be subject to the Code of service discipline by the time of the pre-charge legal advice, "they have the same status and rank that he held immediately before so ceasing to be a person described in subsection" (*NDA*, subs. 60(3)). By extension, the authority to lay charge is the one under which they were just prior ceasing.

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B- Drafting particulars

1) Selection of Appropriate Charge

52. QR&O 107.04(1) and (2) read as follows:

> (1) All charges against an accused should be set out on only one Record of Disciplinary Proceedings.
>
> (2) A charge must allege one offence only and contain:
>
> > (a) a statement of the offence; and
> > (b) a statement of the particulars of the act, omission, conduct, disorder or neglect constituting the offence.

53. Read for yourself and summarize for students *MJSTL*, ch. 8 paras. 19 to 33 and Annexes B and O, in particular:

a) Each charge alleges only one offence (tip: spot *and* or *or*);

b) Statement of offence alleges one offence only;

54. Therefore, where there are many allegations pertaining to different incidents, they should be the subject of separate charges for each that might constitute the basis of a particular offence.

55. See also JAG #162881 Military Law Digest Article - Laying of Charges (*JAG Digest*) paras. 19 to 25.

56. Refer students to specimens at QR&O chap. 103 and *Elements of the Offence*.

2) Alternative Charges

57. Make reference to QR&O 107.05 and its Notes.

58. Read for yourself and summarize for students *MJSTL*, ch. 8, paras. 26 to 30 and *JAG Digest*, paras. 26 to 30.

3) Drafting Particulars

59. QR&O 107.04(3) and (4) read as follows:

> (3) Every statement of the particulars of an offence must include sufficient details to enable the accused to be reasonably informed of the offence alleged and thereby able to properly defend the matter (see section 2 – Service Offences of Chapter 103 – Service Offences).
>
> (4) A statement of the particulars of an offence should, when practical, include an allegation of the place, date and time of the alleged commission of the offence.

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60. This is known as the 'Golen Rule'. In other words:

a) Charges should be drafted so that

i. -the Accused will know what he/she is being charged with and what conduct led to the charge, and

ii. -the service tribunal will not be hamstrung by unnecessary details in the allegations made

b) Questions that should be asked by LOs when reviewing a draft charge

i. Will the Accused understand what alleged conduct is being referred to in the particulars?

ii. Is there anything in the charge that could cause confusion?

iii. Does the charge follow the specimen or formula provided in QR&O Chapter 103?

iv. Is there anything in the charge that goes beyond the specimen or formula and if so, could the Accused reasonably understand the charge without it?

61. Read for yourself and summarize for students *MJSTL*, ch. 8, paras. 31 to 33 and *JAG Digest*, paras. 31 to 33, in particular the following points :

a) Details must be specific enough so accused could defend his or herself;

b) Date, time and place should be indicated where practical (QR&O 107.04(4) If not sure, could say "around [date/time/place]", "near [date/time/place]", "between [date/time/place] and [date/time/place]" (see QR&O 107.04 Note (B));

c) COs and Superior Commanders can try some *Criminal Code* and *Controlled Drugs and Substances Act* offences (QR&O 108.07 (2) and (3)). For templates see *MJSTL*, Annex O.

62. See also *Elements of the Offence* for examples of particulars.

63. Other Basic Principles:

a) <u>Make sure particulars match statement of charge</u>

Example – NDA s. 104

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Charge – NEGLIGENTLY STRANDED A VESSEL OF THE CANADIAN FORCES

Particulars - In that he, on (date), at (place), purposely caused a Canadian Forces ORCA-Class training vessel to be stranded.

b) Particulars should allege fact – not recite evidence

"In that he, on (date), at (place), stole an Emerson 21 compact disk player (serial number), the property of the Base Canex.

vs.

"In that he... hid an Emerson 21 compact disk player (serial number) under his coat and removed it from the base Canex without paying for it"

c) Avoid superfluous language

Example:

NDA s. 111(1) - In that he, on (date), at (place), drove a vehicle of the Canadian Forces, being a Ford F-150, (serial number), recklessly, by engaging in stunt driving for the entertainment of several members of his unit.

d) Follow convention for drafting charges in the alternative

- Most serious charge first
- Annotations (see Specimen RDP in QR&O 107.075)

4) Essential Elements

64. Read for yourself and summarize for students *MJSTL*, ch. 8, paras. 34 to 36 and *JAG Digest*, paras. 34 to 36, in particular the following points :

a) Certain elements are common to all offences (date, place, identity, act or omission itself, see QR&O 107.04(4));

b) All offences have 2 parts: 1) an act, omission or other conduct (*actus reus*) and a mental element such as intention, knowledge, recklessness or wilfulness (*mens rea*)

65. Some of the conducts can be further characterized.

Negligence

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66. Read for yourself and summarize for students *MJSTL*, ch. 8, para. 37 and *JAG Digest*, paras. 37, in particular the following passage:

> If a reasonable person would have acted, or failed to act, in the same manner as the accused, the accused's actions will not be considered negligent.

67. See also *Criminal Code* ss. 219, 220, 221.

68. In a military context, make reference to *NDA* sections where the act is caused by neglect or negligence:

a) 76(a) offence related to prisoner of wars;

b) 100(b) allowing to escape;

c) 102(b) withholding assistance when called on;

d) 103 withholding delivery over or assistance to civil power

e) 104 losing, stranding or hazarding a vessel;

f) 107(a) (b) (c) wrongful acts in relation to aircraft or aircraft material;

g) 111(1)(*a*) improper driving of a vehicle;

h) 113 causing fires;

i) 116 damage, loss or improper disposal;

j) 124 negligence in the performance of military duty;

k) 125(a) false entry by negligence;

l) 127 injurious or destructive handling of dangerous substances;

m) 129 neglect to the prejudice of good order and discipline;

69. Show students that many decisions from both the CMAC and courts martial could be found pertaining on negligence. Most of them either:

a) on *NDA*, s. 124 like in *R. v. Brocklebank* CMAC-383 or *R v Foulds*, 2012 CM 3001 (CanLII), <http://canlii.ca/t/fsc8p> retrieved on 2014-07-10;

b) on *NDA*, s. 129 like in *R v Nauss*, 2013 CM 3008 (CanLII), <http://canlii.ca/t/fwq6c> retrieved on 2014-07-10;

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c) on both like in *R. v. Day*, 2011 CMAC 3, CMAC-543.

Intent

70. *MJSTL*, ch. 8, para 38 *JAG Digest*, paras. 38, read as follows:

> Different words are frequently used to express an intent requirement, such as: intentionally; wilfully; means to; with intent; or for a purpose. Sometimes offences require a knowledge requirement as with possession offences. However, having intent or knowledge will only satisfy the mental element of an offence if the intent or knowledge relates to the particular offence.

Recklessness

71. *MJSTL*, ch. 8, para 39 *JAG Digest*, paras. 39, read as follows:

> For certain offences proving *recklessness* may satisfy the *mens rea* requirement. Recklessness refers to the act of deliberately risking the likelihood of certain consequences, as opposed to the concept of civil negligence, which refers to the failure to take reasonable care. When determining recklessness, one must ask if the accused was aware that there was a danger that the conduct in question could bring about the result prohibited by the criminal law, yet nevertheless persisted, despite the risk.

Criminal Negligence

72. Slightly different from the common negligent (see above), the criminal negligence requires a 'marked departure from the standard of care of a reasonable person.

73. Read for yourself and summarize for students *MJSTL*, ch. 8, paras. 40 to 42 and *JAG Digest*, paras. 40 to 42.

74. Here again show students that decisions from both the CMAC and courts martial could be found pertaining on criminal negligence. Such as *R v Wilcox*, 2011 CM 3011 (CanLII), <http://canlii.ca/t/fsc7x> retrieved on 2014-07-10.

5) Surplusage

75. *MJSTL*, ch. 8, para 43 (*JAG Digest*, para. 43) reads as follows:

> If information contained in the particulars is not essential to constitute the offence, it will be treated as surplusage. This means that it is not a material element of the offence and need not be proved.

76. However warn students that each time superfluous language is added, the military tribunal would require that it had to be proven.

Example:

In that he, on or about 1st of July, did, against all expectations, [...]

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6) Record of Disciplinary Proceedings

77. Make reference to QR&O 107.06 and 107.07.

78. Wrap up this portion by summarizing for students *MJSTL*, ch. 8, paras. 44 and 45 (*JAG Digest,* paras. 44 and 45) and by going again over the main parts of the RDP.

Interim Summary: Use the prepared PPT presentation to do a quick review of the material.

- Stage 3: Review draft RDP

A. Relevant jurisdiction

1) Time

2) Person

3) Matter

4) Location

5) Authority

B. Drafting particulars

1) Selection of Appropriate Charge

2) Alternative Charges

3) Drafting Particulars

4) Essential Elements

5) Surplusage

6) Record of Disciplinary Proceedings

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"PART 3 – BODY OF THE LESSON (Continued)

Stage 4: Evaluate sufficiency & admissibility of evidence

79. **Introduction**: The focus in the fourth part of the lesson will be on evaluating sufficiency & admissibility of evidence for laying charge. Emphasize the importance for LOs to act diligently and independently in determining if all tests have been meant to lay charges. Those tests do not amount to absolute certainty or proof beyond any reasonable doubt. Yet they are sufficiently stringent to ensure that potential charges are at least reasonably substantiated, if charge-laying authorities choose to lay them.

80. The lesson will be focused on four TPs: 1) Elements of the relevant offence(s); 2) Objective test: reasonable belief; 3) Subjective test: actual belief; and 4) JAG Policy: Reasonable prospect of conviction. Use the PowerPoint slide to view each of those and discuss them briefly.

A- Elements of the relevant offence(s)

1) Suggested/ Potential offences

81. Make reference to QR&O 107.03 (2) *in fine* "...and where a charge should be laid, the appropriate charge". Of course, this implicitly includes multiples charges where appropriate.

82. Make also reference to *JAG Screening Policy*, para. 13, which reads as follows:

> 13. Legal advice provided must address the sufficiency of the evidence, whether or not in the circumstances a charge should be laid and, where a charge should be laid, the appropriate charge.3 In doing so, the legal officer is expected to consider:
>
> a. the substantive elements of the offence alleged;
>
> b. whether there is an evidentiary basis to support the laying of a charge or charges;
>
> c. whether, in the circumstances, the jurisdiction to lay a charge ought to be exercised; and
>
> d. the formal requirements of the appropriate charge or charges.

83. See also *DMP Pre-Charge Policy*, para. 5.

84. Read for yourself and summarize for students *MJSTL*, ch. 8, paras. 19 to 25. See also *JAG Digest*, paras. 19 to 25.

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85. Warn students that, although investigators sometimes suggest potential offences with drafted particulars, LOs are not bound by these suggestions. Actually, this is the essence of being a LO: to think independently.

B- Objective test : reasonable belief

86. Make reference to QR&O 107.02 Note.

87. Explain that according to regulations, the test for whether grounds to charge exist has two elements: one subjective and the other objective. Both elements must be present for there to be sufficient grounds to lay a charge. This test is similar that which is applied under Canadian criminal law prior to a charge being laid, where anyone who "on reasonable grounds, believes that a person has committed an indictable offence" may lay an information (*Criminal Code s. 504*).

88. On the first part of the test, read for yourself and summarize for students, *MJSTL*, ch. 8, paras. 9-10 (See also *JAG Digest*, paras. 9-10) in particular the following passage:

> [...]The belief that the accused has committed the offence alleged must be reasonable. In law, reasonable belief is a belief that would lead any ordinary, prudent and cautious person to the conclusion that the accused is probably guilty of the offence alleged.
>
> [...]The objective element is whether a reasonable person in the position of the member who proposes to lay the charge would come to the conclusion that the accused was probably guilty of the offence alleged.

C-Subjective test : actual belief

89. On the second part of the test, read for yourself and summarize for students, *MJSTL*, ch. 8, paras. 9-10 (See also *JAG Digest*, paras. 9-10) in particular the following passage:

> The member laying the charge must have an actual belief that the accused has committed the alleged offence.
>
> [...]The subjective element is whether the member who proposes to lay the charge has an actual belief in the accused's guilt.

D-JAG Policy: Reasonable prospect of conviction

90. Although according to regulations, the test to lay charges is "reasonable belief" JAG has decided by policy, that LOs providing pre-charge legal advice pursuant to QR&O 107.03 will apply the more stringent test of the "reasonable prospect of conviction". That test apply for post-charge (also known as 'pre-trial') legal advice.

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91. *JAG Charge Policy*, para. 3 reads as follows:

> [...] Under the previous policy, the legal analysis of a case made use of two different standards of review: "reasonable belief" at the pre-charge stage and "reasonable prospect of conviction" at the post-charge stage. The purpose of this policy is to streamline the process by directing that all legal reviews at the pre and post-charge stages be conducted using only the "reasonable prospect of conviction" standard. This policy is intended to ensure that, as a minimum, the advice provided addresses the range of factors that service authorities must take into account when discharging the particular roles and responsibilities referred to in paragraph 1. It is not intended to fetter or limit the ability of legal officers to provide appropriate and timely professional legal advice to such service authorities.

92. See also *DMP Pre-Charge Policy*, para. 5.

93. On considering the reasonable prospect of conviction, read for yourself and summarize for students *JAG Charge Policy*, paras. 15-16 which reads as follows:

> 15. If the pre-charge review of the evidence reveals that the potential offence or offences would be ones that could be tried by summary trial, with or without an election, the review shall be conducted with a view of establishing the reasonable prospect of conviction on the basis of the evidentiary standard applicable at summary trial only.
>
> 16. If the pre-charge review of the evidence reveals that the potential charge or charges can only be tried by Court Martial (CM)), the legal officer shall at the first instance refrain from giving legal advice and refer the case to a Regional Military Prosecutor (RMP) for that region. The RMP will be responsible to conduct the pre-charge review using the evidentiary standard applicable at court martial. Once completed, the RMP review will be forwarded to the legal officer for use in giving pre-charge advice to the charge laying authority.

94. In order words local DJAs would assess the 'reasonable prospect of conviction' on the applicable rules and procedures for summary trial, unless offences could only be tried by court martial. In that case, they must call their colleagues from DMP to eventually transfer the file.

95. Footnote no 5 attached to *DMP Pre-Charge Policy*, para. 13 reads as follows:

> Rules regarding the admissibility of evidence vary between Courts Martial and Summary Trials. This factor must be kept in mind when the Prosecutor is advising the CFNIS on reasonable prospect of conviction.

96. In order words prosecutors would assess the 'reasonable prospect of conviction' based on the applicable rules and procedures for either court martial or summary trial,

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depending where those offences could potentially be heard (*DMP Pre-Charge Policy*, para. 17).

Interim Summary: Use the prepared PPT presentation to do a quick review of the material.

- Stage 4: Evaluate sufficiency & admissibility of evidence

    A. Elements of the relevant offence(s)

        1) Suggested/ Potential offences

    B. Objective test: reasonable belief

    C. Subjective test: actual belief

    D. JAG Policy: Reasonable prospect of conviction

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PART 3 – BODY OF THE LESSON (Continued)

Stage 5: Advise on suitability of laying charges

97. **Introduction**: The focus in the fifth part of the lesson will be on evaluating suitability of laying charges. Differentiate from previous section: here the issue is not if there is enough to lay charge but if charges should be laid.

98. The lesson will be focused on four TPs: 1) Rights of the accused; 2) Exercise of the discretion; 3) Res judicata as it pertains to pre-charge legal advice, and; 4) Impact of jurisdictional limitations on types of charges laid. Each TPs will be then divided in sub-TPs. Use the PowerPoint slide to view each of those and discuss them briefly.

A- Rights of the accused

99. Laying charges against an individual is no mere procedure of a clerical or cosmetic nature: it is an official statement by the State that an individual might have contravene the public order to the point that, if confirmed, he or she deserves punishment and public stigma. Therefore, many rights are given to individuals so that they could properly defend themselves against those allegations, if they so choose. Those rights are to be taken into consideration in the determination if charges should be laid or not.

1) Disclosure

100. Make reference to *Charter*, s. 7.

101. Make reference to QR&O 108.15.

102. Read for yourself and summarize for students *MJSTL*, ch. 10, paras. 1 to 17 (JAG #162883 Military Law Digest Article - Disclosure to Accused paras. 1 to 15). In particular, stress to students the following points:

a) The provision of information to an accused about the charges faced by that accused is at the heart of procedural fairness and the rule of law. It is part of the right to make full answer and defence;

b) Officers having summary jurisdiction have responsibility to ensure that accused persons are provided with relevant information; access could be given by other persons. However for MPIRs, MP information is released;

c) The types of information is listed at QR&O 108.15, Note B; Copies should be provided unless unpractical: such as for physical evidence;

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d) The information should be provided in sufficient time to permit the accused to consider it in making an election and to properly prepare the accused's case prior to the summary trial (QR&O 108.15(2) and Note C).

2) Silence

103. *MSJTL*, ch. 10, para. 6 reads as follows:

> It is important to note that there is no corresponding duty on the part of the accused to provide information.

104. Actually, the accused cannot be compelled to be a witness against him or her (see *Charter,* 11(*c*)). However, he or she can choose to do so.

105. *MSJTL*, ch. 13, para. 62 reads as follows:

> One of the basic principles of fundamental justice is that accused persons have the right to remain silent and not be compelled to give evidence in proceedings taken against them. As well, it is improper for the presiding officer to consider or take a negative view of the fact that the accused has not testified.

3) Assisting Officer

106. An assisting officer (AO) shall be appointed by the CO as soon as possible after a charge has been laid (QR&O 108.14).

107. Read for yourself and summarize for students *MJSTL*, ch. 9, paras. 1 to 32 (JAG #162882 Military Law Digest Article - Assisting Officer, paras. 1 to 32). In particular, stress to students the following points:

a) The AO should be made aware of the guide *The Election to be Tried by Summary Trial or Courts Martial: A Guide for Accused and Assisting Officers*, A-LG-050-000/AF-001, (*Guide*) (*MJSTL*, Annex H);

b) Once appointed, AO's particulars must be recorded in RDP;

c) Normally an officer but in exceptional circumstances a WO and above;

d) AO's role: pre-election, pre-trial, trial and sentencing phases;

e) Replacement: if AO is unable or unwilling or on accused's request;

f) During pre-trial, AOs: provide information, assist in preparation of trial, assist in explaining differences between summary trial and court martial for election, assist accused in contacting counsel for the election;

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g) There is no solicitor-client privilege between AO and accused persons; AO must be careful not to overhear discussion between an accused and his/her lawyer;

h) In military context, communication between AO and an accused are treated in same manner as those between a lawyer and his client;

i) During trial, AOs:

i. questioning witnesses during the summary trial;
ii. calling evidence on behalf of the accused;
iii. making representations regarding the evidence and regarding the guilt or innocence of the accused; and
iv. making representations regarding sentence if the accused is found guilty.

j) After trial, AOs: No other obligation, for example for review. If member requests assistance for review, an officer or a WO or above would be appointed.

4) Fundamental justice

108. Make reference to *Charter*, s. 7.

109. Read for yourself and summarize for students *MJSTL*, ch. 4, paras 29 to 32.

110. For summary trials, read for yourself and for students *MJSTL*, ch. 4, paras 36 to 37 (on *Charter*, s. 1) and paras. 38-39 (on waiver of rights).

5) Procedural fairness

111. Make reference to *Charter*, s. 11(d).

112. Read for yourself and summarize for students *MJSTL*, ch. 4, paras 33 to 35.

113. For summary trials, read for yourself and for students *MJSTL*, ch. 4, paras 36 to 37 (on *Charter*, s. 1) and paras. 38-39 (on waiver of rights).

6) Official Language

114. Make reference to *Charter*, s. 19(1), *Official Languages Act*, s. 14 and QR&O 108.16, Note (A).

115. Proceedings have to be in the language selected by the accused, irrespective of his or her understanding of the other language. The condition is "If the accused has

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sufficient knowledge of an official language to instruct counsel, he or she will be able to assert that that language is his or her language, regardless of his or her ability to speak the other official language." (*R v Beaulac,* [1999] 1 SCR 768, 1999 CanLII 684 (SCC), <http://canlii.ca/t/1fqnv> retrieved on 2014-07-11).

116. By extension, RDP and charge sheet might have to be translated.

117. At summary trial, the presiding officer must be able to understand the trial in the official language chosen for the proceedings without the assistance of an interpreter. See *MJSTL*, ch. 13, para. 37.

118. Witnesses may testify in their preferred language, and if it is not the official language chosen by the accused for the proceedings, an interpreter must be provided. However the accused may consent to dispense to have an interpreter if he or she understands that language. See *MJSTL*, ch. 13, paras. 38 and 39.

119. See also LCdr Pascal Lévesque, "The Official Languages in Canadian Military Penal Law", *Sword and Scale*, CBA National Military Law Section Newsletter, Mai 2013, online: http://www.cba.org/CBA/sections_military/newsletters2013/languages.aspx

120. Stress to students that since reporting period 2012-2013, "JAG undertook to the Chief of Military Personnel to include in JAG Annual Reports the military justice system's regulatory framework which ensures that accused member be tried in their language of choice and to report on any service tribunal proceedings affected by non-compliance with the requirements of the *Official Languages Act* (OLA). See *JAG Annual Report 2012-2013*, ch. 3, "Compliance with the *Official Languages Act*", online: http://www.forces.gc.ca/en/about-reports-pubs-military-law-annual-2012-13/ch-3-military-justice-system.page.

B- Exercise of discretion

1) Public interest

121. Make reference to QR&O 107.03(2), in particular when it reads: "The officer or non-commissioned member shall obtain legal advice concerning [...], whether or not in the circumstances a charge should be laid [...]".

122. In that regard, the "reasonable prospect of conviction" is the first part of the test. Even though a case met that first test (ie. we have reasonable grounds to believe an offence have been committed and we have enough evidence to expect a reasonable prospect of conviction), we need to determine if it is in the public interest to pursue to proceed with the charge.

123. Question for student: Would it be advisable to press charges for disobedience of a lawful command (as it is contrary to Base Chief's orders) against a private who left the

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inter-mess with an apple in his pocket that he paid but wants to keep as an afternoon snack?

124. The factors to be considered as per *Guide for Referral Authorities*, Annex A, at pp. A-1 and A-2 (*MJSTL*, Annex N):

a. the seriousness or triviality of the alleged offence;

b. significant mitigating or aggravating circumstances;

c. the accused's background and any extraordinary personal circumstances of the accused;

d. the degree of staleness of the alleged offence;

e. the accused's alleged degree of responsibility for the offence;

f. the prosecution's likely effect on good order and discipline;

g. the prosecution's likely effect on public confidence in military discipline or the administration of military justice;

h. whether prosecuting would be perceived as counter-productive, for example, by bringing the administration of justice into disrepute;

i. the availability and appropriateness of alternatives to military prosecution, such as, for example, prosecution by civilian authorities or administrative action by service authorities, and administrative or quasi-criminal action initiated by a jurisdiction other than the Canadian Forces;

j. the prevalence of the alleged offence in the unit or military community at large and the need for general and specific deterrence;

k. whether the consequences of a prosecution or conviction would be disproportionately harsh or oppressive, especially considering how other persons implicated in the offence or previous similar cases have been or likely will be dealt with;

l. whether the alleged offence is of considerable public concern;

m. the attitude of the victim of the alleged offence to a prosecution, and any evident impact a decision to prosecute (or not prosecute) may have on him or her;

n. the resources required or available to conduct the proceedings;

o. whether the accused agrees to cooperate in the investigation or prosecution of others, or the extent to which the accused has already done so;

p. the likely sentence in the event of a conviction;

q. whether prosecuting would require or cause the disclosure of information that would be injurious to international relations, national defence, or national security; and

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r. the effect of prosecution, or failure to prosecute, on the maintenance of good order and discipline in the Canadian Forces, including the likely impact, if any, on military operations.

125. See also *DMP Pre-Charge Policy*, para. 19 and *DMP Policy – Post-Charge Review*, 003/00, (*DMP Post-Charge Policy*) paras. 15 to 20, in particular para. 17.

126. The factors **not** to be considered are also listed *Guide for Referral Authorities*, Annex B, p. B-1, (*MJSTL*, Annex N), *DMP Pre-Charge Policy*, para. 20 and *DMP Post-Charge Policy,* para. 21:

> 21. Factors that should not be taken in account when determining whether to lay a charge include:
>
> 1. the rank, status or position of the accused;
>
> 2. any personal characteristic of the accused, or any other person involved in the investigation, which constitutes a prohibited ground of discrimination under section 3 of the *prohibited ground of discrimination under section 3 of the Canadian Human Rights Act;*
>
> 3. the Prosecutor's personal feelings about the accused or the victim;
>
> 4. possible or perceived political advantage or disadvantage to the Canadian Forces, the Department of National Defence, the government or any political group or party;
>
> 5. the possible effect of the decision on the personal or professional circumstances of those responsible for the investigation or any other member of the Canadian Forces or the Department of National Defence.

127. See also *DMP Pre-Charge Policy*, para. 20.

2) Applicable JAG policies

128. So in short, for LOs acting as units' legal advisors, the applicable policies are *JAG Charge Screening Policy* with reference to *Guide to Rerral Authorities* (As for the factors for the public interest).

129. For LOs acting with the Canadian Military Prosecution Service and providing pre-charge legal advice to CFNIS, the applicable policy is *DMP Pre-Charge Policy*.

3) Military vs civilian

130. *JAG Screening Policy*, para. 14 reads as follows:

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> *Notwithstanding that there may be evidence on all essential elements of an offence, it may be appropriate to recommend against the laying of a charge where:*
>
> *a. it would be more appropriate for the matter to be dealt with by another authority having jurisdiction to so act; or*

131. Make reference to *NDA*, s. 71. Remind students that military and civilian jurisdictions are concurrent.

132. Currently, decision to exercise military jurisdiction or not is left at either units' (in consultation with their legal advisors) or DMP's discretion, depending on the seriousness of the offence.

133. In the case of "civilian" offences, over which the Canadian military justice system has jurisdiction trough *NDA*, s. 130, the issue is currently under legal debate before the Supreme Court of Canada. The recent cases of *R v Whemeier* (jurisdiction over a civilian while accompanying the CAF overseas) and *R v Hannah/Moriarity* and *R v Larouche* (jurisdiction over a *Criminal Code* offence allegedly committed by a service member) seem to have revived the theory of "military nexus" (or service connection).

134. Until these legal debates get resolved before the Supreme Court of Canada, LOs should be cautious and recommend units to refrain from initiating disciplinary proceedings where the exercise of military jurisdiction would be clearly at issue.

4) Remedial measures vs disciplinary proceedings

135. Remind students of *JAG Charge Screening Policy*, para. 14. Sometimes, the "other authority" is within the CAF.

136. As put by the *Guide to Referral Authorities*, Annex A, (*MJSTL*, Annex N), one of the factors that militate for not proceeding with charge might be:

> i. the availability and appropriateness of alternatives to military prosecution, such as, for example, prosecution by civilian authorities or administrative action by service authorities, and administrative or quasi-criminal action initiated by a jurisdiction other than the Canadian Forces;

137. Make reference to DAOD 5019-4, *Remedial Measures* that we have seen during the MAL Module. Remedial measures are relevant for example to address a CF member's conduct or performance deficiency of a sufficiently minor nature that the punitive aspect of the disciplinary actions would not be warranted.

138. However, remedial measures are not to be used in lieu of disciplinary proceedings for oblique motives. For example, remedial measures cannot be used avoid to the accused person the more serious consequences of the disciplinary

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proceedings where they would have been clearly in the public interest in the circumstances. Nor remedial measures can be used to avoid the necessary procedural steps associated with the disciplinary proceedings designed to protect the accused.

C- Res judicata as it pertains to pre-charge legal advice

1) Double Jeopardy

139. Make reference to *Charter*, s. 11(h).

140. Make reference to *NDA* s. 66 and QR&O 102.17.

141. *MJSTL*, ch. 8, para. 13 reads as follows:

> When determining if a charge should be laid, the member authorized to lay charges must consider whether or not the accused has already been found guilty or not guilty for the offence in question. At law an individual cannot be placed in criminal jeopardy for the same, or substantially similar, offence twice. This is referred to as the rule against double jeopardy

142. Read for yourself and summarize for students *MJSTL*, ch. 11, paras 26 to 30. Explain that the rule also applies to substantially similar charges arising out of the same circumstances but not to a subsequent charge arising from the same circumstances, which is not a substantially similar charge.

143. There are three exceptions to that rule *MJSTL*, ch. 11, para. 29:

a) When conviction is quashed or set aside by a review authority;
b) Where following a court martial a petition for new trial is granted;
c) For a court martial finding, a new trial is ordered by CMAC or SCC

144. In addition, explain that administrative measures, such as remedial measures (DAOD 5019-4) or even more informal disciplinary measures, do not prevent the laying of charges in relation to the same incident (*MJSTL*, ch. 8, para. 14).

145. Read and tell the story of *R v Hunter*, 2012 CM 4001 (CanLII), http://canlii.ca/t/fqcw8 retrieved on 2014-07-11.

2) Autrefois acquit

146. Make reference to *NDA*, s. 66(1).

147. The plea of *autrefois acquit* means that previously the accused has been acquitted of the offence which is now being charged.

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3) Autrefois convict

148. Make reference to *NDA*, s. 66(2).

149. The plea of *autrefois convict* refers to the fact that the accused was previously convicted of the offence which is now being charged.

D-Impact of jurisdictional limitations on types of charges laid

1) Referral of charges

150. Make reference to summary jurisdiction over offences by:

a) Commanding officers: *NDA* ss. 163(d) and 163.1;

b) Superior Commanders: *NDA* ss. 164(d) and 164.1;

c) Delegated Officers: *NDA*, s. 163(4) and QR&O 108.10;

151. Remind that Commanding Officers have jurisdiction over offences enumerated at QR&O 108.07 (2) (*NDA* Offences) and (3) (Some *Criminal Code* and *Controlled Drugs and Substances Act* offences). Superior Commanders has the same jurisdiction over those enumerated offences (QR&O 108.125) but for accused persons of higher rank. However, delegated officer could only try *NDA* offences and not those of the *Criminal Code/CDSA* (QR&O 108.10 (2)(*c*)).

152. Sometimes multiples and analog charges could arise from the same circumstances. Depending on the charge laid, it might make a difference as who could try the matter. For example, a fight between two soldiers could give basis to a quarrel and disturbance charge (*NDA*, s. 86) or a common assault charge (*Criminal Code*, s. 266). The first one could be tried by a delegated officer, while the second could only be tried by a commanding officer or a superior officer (depending on the rank of the accused).

153. If the charge does not fall within either of their jurisdiction, the charge has to be transferred to referral authority for court martial.

2) Limitations on election

154. Similarly the nature of the charge laid would impact the right to elect court martial. Here again analog charges could arise from the same circumstances. One charge could be considered a 'minor' offence, for which the right to elect does not have to be offered (QR&O 108.17(1)) while the other one would necessary entails the right to elect.

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155. For example, if a recruit breaks military equipment issued to him or her on purpose while undergoing training, it could be characterized as a *NDA* s. 116(*a*) offence (Destruction, damage, loss or improper) or even mischief (*Criminal Code*, s. 430) both requiring to offer the right to elect but it could also be characterized as an offence under *NDA*, s. 129 (*Conduct to the Prejudice of Good Order and Discipline*) while "undergoing military training" or "failure to maintain personal equipment" for which the right to elect might not be offered (QR&O 108.17(1)).

3) Limitations on forum

156. Similarly the nature of the charge laid would impact forum where the offence could be tried. Here again analog charges could arise from the same circumstances. One charge could be tried summarily (QR&O 108.07 (2) and (3)) while the other one would necessarily be directly sent to referral authority and DMP for court martial.

157. For example, someone who allegedly fails to ensure proper watch of military equipment could have committed the offence of negligence in the performance of a military duty (*NDA*, s. 124) that could only by tried by court martial (for example *R. c. LeBlanc*, 2010 CM 4005 (CanLII), <http://canlii.ca/t/28gmg> retrieved on 2014-07-11). But it also could be neglect to the prejudice of good order and discipline (*NDA*, s. 129) which gives the option to be tried summarily.

Interim Summary: Use the prepared PPT presentation to do a quick review of the material.

- Stage 5 : Advise on suitability of laying charges

A. Rights of the accused

1) Disclosure

2) Counsel

3) Silence

4) Assisting officer

5) Fundamental justice

6) Procedural fairness

7) Official Languages

B. Exercise of discretion

1) Public interest

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2) Applicable JAG policies

3) Military vs civilian

4) Corrective measures vs disciplinary proceedings

C. Res judicata as it pertains to pre-charge legal advice

1) Double Jeopardy

2) Autrefois acquit

3) Autrefois convict

D. Impact of jurisdictional limitations on types of charges laid

1) Referral of charges

2) Limitations on election

3) Limitations on forum

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PART 3 – BODY OF THE LESSON (Continued)

Stage 6: Advise on requirement for further legal advice

158. **Introduction**: The focus in the sixth part of the lesson will be on the requirement for further legal advice as it pertain to the decision to lay charge or not. Here again remind students that a legal advice is based on the circumstances that are reasonably known by LOs at the time when the legal advice is written. If there is a change in those circumstances, LOs must determine if it affect the validity of the legal advice and make change accordingly.

159. The lesson will be divided in sub-TPs: 1) Obligations of diligence and prudence; 2) Standard paragraph in legal opinions, and; 3) Legal opinion format (written/oral). Use the PowerPoint slide to view each of those and discuss them briefly.

A- Obligations of diligence and prudence

160. As you probably know, the JAG Policy Directive 006/00 - Professional Standards Review (*JAG Professional Standards*) which is applicable to all LOs pertain to the ethical and professional standards that legal officers must comply with in providing legal services, including pre-charge legal advice pursuant to QR&O 107.03.

161. Read for yourself and summarize for students *JAG Professional Standards,* in particular paras. 2 to 10. Stress to student para. 5 which is of particular importance in disciplinary matters and which reads as follows:

> 5. Legal officers must exercise judgment and discretion, and must pursue fairness and truth. Fairness, moderation and dignity characterize the conduct of the legal officer. Accordingly, the legal officer is bound by a duty:
>
> a. to act with integrity and dignity; and
>
> b. to respect and promote values protected by the *Canadian Charter of Rights and Freedoms*.

162. Remind students that *JAG Professional Standards* do not apply to LOs assigned to DMP or DDCS who have as well professional and ethical obligations but different due to their respective roles. (For students who want more info, refer them to DMP Policy Directive 010/00 – *Accountability, Independence and Consultation* and to *DDCS Manual*).

163. However, all lawyers in either way have an obligation of diligence and prudence towards their respective client as they each belong to a provincial bar. (see for example *Code of ethics of advocates*, CQLR c B-1, r 3, s. 3.00.01).

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164. In disciplinary matters, the *JAG Professional Standards* are further amplified by the *JAG Charge Screening Policy*, paras. 3 to 11, in particular paras. 5 and 6 which read as follows:

> 5. Legal officers fulfill an important advisory role to service authorities on the administration of the Code of Service Discipline, as prescribed by the relevant regulations. While posted to a position within the Office of the JAG, legal officers are not subject to the command of any officer outside the Office of the JAG in relation to the performance of their duties, which places the legal officer in the unique position to provide objective and independent advice to the chain of command. Nevertheless, the legal advice that is required to be sought at various stages in the disciplinary process, as the case progresses, should be viewed as complimentary to each other and not necessarily viewed as requiring a complete review or re-assessment of the entire case at each step.
>
> 6. The nature of the discretion being exercised by the service authorities at the pre and post-charge stages is a further indication of the importance of the legal officer's role. Deciding whether to proceed with disciplinary action is an important step in the disciplinary process. However, fairness and consistency are also important objectives in the process leading to the institution of disciplinary proceedings and, therefore, fairness does not preclude firmness, and consistency does not mean rigidity in decision-making.

B- Standard paragraph in legal opinions

165. Legal advice is as accurate as the circumstances provided to the LO are. Sometimes, LOs are provided with partial, incomplete even false set of circumstances which they base their legal advice on. Sometimes, although LOs have an accurate and complete set of facts while they provide their legal advice, facts might change by the time the receiver act on it.

166. To prevent such a situation, it is good practice to include a standard paragraph in the pre-charge legal advice indicating the source(s) which the legal advice is based on. For example, it could be a MPIR, a Unit Disciplinary Investigation Reports or a conversation with units' disciplinary authorities. LOs should be specific to avoid any confusion.

167. In addition, LOs should make mention in their legal advice that if circumstances surrounding the case have changed or new evidence has come to light since the dated the pre-charge advice was signed, the authority should contact the legal officer at his or her earliest convenience to inform the legal officer who can review and modify the legal advice, if needed.

C- Legal opinion format (written/oral)

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168. Finally, to avoid confusion as to what were the sets of facts provided to LOs, the *JAG Charge Screening Policy*, para. 11, reads as follows:

> As a general rule, the legal advice provided in the situations referred to in this policy should be reduced to writing, unless, having regard to all the circumstances. it is not practical to do so. However, where a legal officer provides advice that, if followed, would terminate or bring closure to a matter investigated by a service authority, that advice shall be reduced to writing in the manner specified in paragraph 7 of JAG Policy Directive 006/00, "Professional Standards Review".

169. Bring student's attention to *JAG Professional Standards*, para. 7 which reads as follows:

> 7. Where a legal officer provides oral legal opinions that he/she knows or intends for the client to rely upon in evaluating a potentially significant or contentious decision, he/she should maintain a written synopsis of the advice given including, where appropriate:
>
> a. the matter upon which advice was given;
>
> b. the person or persons to whom advice was given;
>
> c. the date upon which advice was given;
>
> d. the significant facts upon which advice was given;
>
> e. the nature of the advice provided; and
>
> f. an indication whether further advice on the same matter is anticipated or required.

170. Show to students an template of the *JAG Professional Standards* – Annex A "Written Synopsis of Oral Legal Advice" that can be found on JAG intranet site http://jag.mil.ca/publications/directives/directive006-00-a-eng.pdf.

Interim Summary: Use the prepared PPT presentation to do a quick review of the material.

- Stage 6: Advise on requirement for further legal advice

  A. Obligations of diligence and prudence

  B. Standard paragraph in legal opinions

  C. Legal opinion format (written/oral)

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PART 4 – CONCLUSION

Summary: Review essential material from the whole lesson

- Stage 1: Review investigation
  - A. Main parts of investigation report
  - B. SAMPIS format
  - C. Unit Disciplinary Investigation format
- Stage 2: Advise on further investigative requirements, if any
  - A. Identify potential deficiencies
  - B. Duty to obtain all available information/evidence
  - C. Rules of admissibility of evidence
- Stage 3: Review draft RDP
  - A. Relevant jurisdiction
    1) Time
    2) Person
    3) Matter
    4) Location
    5) Authority
  - B. Drafting particulars
    1) Selection of Appropriate Charge
    2) Alternative Charges
    3) Drafting Particulars
    4) Essential Elements
    5) Surplusage
    6) Record of Disciplinary Proceedings
- Stage 4: Evaluate sufficiency & admissibility of evidence
  - A. Elements of the relevant offence(s)
    1) Suggested/ Potential offences
  - B. Objective test: reasonable belief
  - C. Subjective test: actual belief
  - D. JAG Policy: Reasonable prospect of conviction
- Stage 5 : Advise on suitability of laying charges
  - A. Rights of the accused
    1) Disclosure
    2) Counsel
    3) Silence
    4) Assisting officer
    5) Fundamental justice
    6) Procedural fairness
    7) Official Languages
  - B. Exercise of discretion
    1) Public interest
    2) Applicable JAG policies
    3) Military vs civilian

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4) Corrective measures vs disciplinary proceedings

C. Res judicata as it pertains to pre-charge legal advice
   1) Double Jeopardy
   2) Autrefois acquit
   3) Autrefois convict

D. Impact of jurisdictional limitations on types of charges laid
   1) Referral of charges
   2) Limitations on election
   3) Limitations on forum

- Stage 6: Advise on requirement for further legal advice
  A. Obligations of diligence and prudence
  B. Standard paragraph in legal opinions
  C. Legal opinion format (written/oral)

Confirmation: Done in a discussion format. Ask some confirmation question

Conclusion: recap while this lesson and material presented in important. Make a link from your introduction to the conclusion.

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Type	Definition	Example
Comparisons	Bridges the gap between present knowledge and what is to be learned.	Unfamiliar aircraft can be explained by comparing them to familiar versions.
Reasons	Satisfies students' natural desire to know "why". Makes teaching points easier to accept.	Teaching Point – Select 100% oxygen if smoke is detected in the cockpit. Reason: Otherwise the regulator will mix oxygen with ambient (contaminated) air resulting in toxins being inhaled into the body.
Examples	Verbal illustrations are used to back up a statement or to clarify an idea. Can be real or created, but must be believable.	In discussing the need to observe safety precautions with a piece of equipment, the instructor may relate an example of how failure to observe precautions resulted in an accident.
Statistics	Used as support for the emphasis that a figure provides.	On average, tutored students score better than 98% of their classroom taught counterparts.
Testimony	Quotes from subject matter experts are used to add credibility to teaching points; they should be short and relevant. Ideally, the expert is someone most students can identify with.	If the instructor is reviewing the procedures employed in a given tactic they may cite personal experience, emphasizing the importance of doing these procedures correctly.

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PO 018 ADVISE ON CONDUCT OF CSD PROCEEDINGS

PART 1 -- LESSON IDENTIFICATION

TITLE: EO 018.01 Provide advice on the conduct of summary trial

Performance. Provide advice on the conduct of summary trial

Conditions.

given: references; resources as required; assistance as required.
denied: direct supervision

Standard. The legal officer shall provide advice on the conduct of summary trial

Main Teaching Points:

- Provide advice on the conduct of summary trial
  - Provide pre-trial advice
  - Requirements to receive advice under QR&O 107.11
  - The summary trial process QR&O chapter 108
- Provide legal advice during conduct of ST
  - Ongoing obligations and considerations arising during summary trial
  - Advice regarding the accused's right to elect court martial

Method. This EO will be accomplished by a combination of Self-Study and Developmental Lesson. Students will be asked to read references on their own at different points during the lesson. The concepts will be expanded, discussed and applied in class through learning activities under instructor's guidance.

Duration. 2 periods. 1 period of Distributed Learning (DL) and 1 period Interactive Lecture (IL).

References. As per TP.

Training/ Learning Aids. Computer access; CD materials; Legal Officer Qualification Course (LOQC) Instructors Handbook – Module(s) EO 018.01 1-2

Note to the instructor. A review of the main teaching points will then take place at the end of the periods, by Enabling Checks (EC).

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PART 2 – INTRODUCTION

Objective: The Legal Officer (LO) shall advise on conduct of Code of Service Discipline (CSD) proceedings in the particular context the CAF operate. After the completion of this lesson, the LO shall be able to provide advice on the conduct of summary trial.

Introduction: Introduce the lesson by emphasizing that providing legal advice to units on the conduct of summary trial is also part of the quintessence of the LO's role. Through application of this knowledge, LO will be able to provide more effective legal advice on conduct of CSD proceedings.

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PART 2 – INTRODUCTION (cont'd)

Outline: The LOC instructor shall introduce the lesson outline

- Stage 1: Provide advice on the conduct of summary trial
  - A. Provide pre-trial advice
    1) Jurisdiction to try
    2) Right to elect
    3) Punishment powers
    4) Public interest
  - B. Requirements to receive advice under QR&O 107.11
    1) When charges are referred by units
    2) When charges are referred by CFNIS
  - C. The summary trial process: QR&O chapter 108
    1) Pre trial issues and procedures
    2) Trial procedures
    3) Evidentiary issues
    4) Determinations
- Stage 2: Provide legal advice during conduct of ST
  - A. Ongoing obligations and considerations arising during summary trial
    1) Request for counsel
    2) Adjournment
    3) Unforeseen complexity affecting jurisdiction
    4) Video conferencing
    5) Irregularities
    6) Official languages requirements
  - B. Advise regarding the accused's right to elect court martial
    1) Circumstances where right to elect might arise
    2) Process to be followed by presiding officer

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PART 3 – BODY OF THE LESSON

Stage 1 – Provide advice on the conduct of summary trial

1. **Introduction**: The focus in the first part of the lesson will be on providing advice on the conduct of summary trial (ST). Once charges laid are referred to presiding officers, they seek advice as to how to proceed next. This is where the LOs role is of the outmost importance: as presiding officers are not law professionals, they need guidance.

2. This lesson is divided by three Teaching Points (TPs): 1) Provide pre-trial advice; 2) Requirements to receive advice under QR&O 107.11, and; 3) The summary trial process: QR&O chapter 108. Each TP is then divided in sub-TPs. Use the PowerPoint slide to view each type of those and discuss them briefly.

A- Provide pre-trial advice

1) Jurisdiction to try

3. Queen's Regulations and Orders for the Canadian Forces (QR&O) - Volume II - Disciplinary () [ch. 107.09 and 107.11; 108.16 to 108.195], B-GG-005-027/AF-011 Military Justice at the Summary Trial Level 2.2 (B-GG-005-027/AF-011) [Ch. 11 and 12], JAG Policy Directive 010/00 - Charge Screening Policy () [paras. 12 to 15,17 to 19].

2) Right to Elect

4. Queen's Regulations and Orders for the Canadian Forces (QR&O) - Volume II - Disciplinary () [ch. 107.09 and 107.11; 108.16 to 108.195], B-GG-005-027/AF-011 Military Justice at the Summary Trial Level 2.2 (B-GG-005-027/AF-011) [Ch. 11 and 12], JAG Policy Directive 010/00 - Charge Screening Policy () [paras. 12 to 15,17 to 19].

3) Punishment Powers

5. Queen's Regulations and Orders for the Canadian Forces (QR&O) - Volume II - Disciplinary () [ch. 107.09 and 107.11; 108.16 to 108.195], B-GG-005-027/AF-011 Military Justice at the Summary Trial Level 2.2 (B-GG-005-027/AF-011) [Ch. 11 and 12], JAG Policy Directive 010/00 - Charge Screening Policy () [paras. 12 to 15,17 to 19].

4) Public Interest

6. Queen's Regulations and Orders for the Canadian Forces (QR&O) - Volume II - Disciplinary () [ch. 107.09 and 107.11; 108.16 to 108.195], B-GG-005-027/AF-011 Military Justice at the Summary Trial Level 2.2 (B-GG-005-027/AF-011) [Ch. 11 and 12], JAG Policy Directive 010/00 - Charge Screening Policy () [paras. 12 to 15,17 to 19].

B- Requirements to receive advice under QR&O 107.11

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1) When charges are referred by units

7. Queen's Regulations and Orders for the Canadian Forces (QR&O) - Volume II - Disciplinary () [ch. 107.11 and 107.12], B-GG-005-027/AF-011 Military Justice at the Summary Trial Level 2.2 (B-GG-005-027/AF-011) [ch. 11 paras 31 to 48]

2) When charges are referred by CFNIS

8. Queen's Regulations and Orders for the Canadian Forces (QR&O) - Volume II - Disciplinary () [ch. 107.11 and 107.12], B-GG-005-027/AF-011 Military Justice at the Summary Trial Level 2.2 (B-GG-005-027/AF-011) [ch. 11 paras 31 to 48]

C- The summary trial process: QR&O chapter 108

1) Pre trial issues and procedures

9. Queen's Regulations and Orders for the Canadian Forces (QR&O) - Volume II - Disciplinary () [ch. 107.08 to 107.12; 108.07, 108.08, 108.10 to 108.13, 108.16, 108.20], B-GG-005-027/AF-011 Military Justice at the Summary Trial Level 2.2 (B-GG-005-027/AF-011) [ch. 11 paras 49 to 66, 72 to 81; ch. 13], JAG #162885 Military Law Digest Article - Summary Trials () [paras. 1 to 168]

2) Trial procedures

10. Queen's Regulations and Orders for the Canadian Forces (QR&O) - Volume II - Disciplinary () [ch. 107.08 to 107.12; 108.07, 108.08, 108.10 to 108.13, 108.16, 108.20], B-GG-005-027/AF-011 Military Justice at the Summary Trial Level 2.2 (B-GG-005-027/AF-011) [ch. 11 paras 49 to 66, 72 to 81; ch. 13], JAG #162885 Military Law Digest Article - Summary Trials () [paras. 1 to 168]

3) Evidentiary issues

11. Queen's Regulations and Orders for the Canadian Forces (QR&O) - Volume II - Disciplinary () [ch. 107.08 to 107.12; 108.07, 108.08, 108.10 to 108.13, 108.16, 108.20], B-GG-005-027/AF-011 Military Justice at the Summary Trial Level 2.2 (B-GG-005-027/AF-011) [ch. 11 paras 49 to 66, 72 to 81; ch. 13], JAG #162885 Military Law Digest Article - Summary Trials () [paras. 1 to 168]

4) Determinations

12. Queen's Regulations and Orders for the Canadian Forces (QR&O) - Volume II - Disciplinary () [ch. 107.08 to 107.12; 108.07, 108.08, 108.10 to 108.13, 108.16, 108.20], B-GG-005-027/AF-011 Military Justice at the Summary Trial Level 2.2 (B-GG-005-027/AF-011) [ch. 11 paras 49 to 66, 72 to 81; ch. 13], JAG #162885 Military Law Digest Article - Summary Trials () [paras. 1 to 168]

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Interim Summary: Use the prepared PPT presentation to do a quick review of the material.

Note to instructor: Use hyperlinks to show references.

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PART 3 – BODY OF THE LESSON (Continued)

Stage 2: Provide legal advice during conduct of ST

13. **Introduction**: The focus in the second part of the lesson will be on providing legal advice during conduct of ST. Explain to students that once legal advice is provided to the presiding officer, LO's duties do not stop there. LOs must provide ongoing assistance to presiding officers throughout the summary proceedings. For example, circumstances may change which can impact presiding officer's jurisdiction. Or the accused might request something requiring a legal determination. Remind students that presiding officers have different background and various comfort level WRT law.

14. The lesson is divided in two TPs: 1) Ongoing obligations and considerations arising during summary trial, and; 2) Advise regarding the accused's right to elect court martial. Each TP is further divided in sub-TPs. Use the PowerPoint slide to view each type of those and discuss them briefly.

A- Ongoing obligations and considerations arising during summary trial

1) Request for counsel

15. Queen's Regulations and Orders for the Canadian Forces (QR&O) - Volume II - Disciplinary () [ch. 101.06, 101.07, 108.04,108.14 Note (B), 108.16 (1)(a)(iii), 108.16 Note (A), 108.17, 108.20, 108.20 Note (C), 108.21 Note (B), 108.33], B-GG-005-027/AF-011 Military Justice at the Summary Trial Level 2.2 (B-GG-005-027/AF-011) [ch. 13 paras 17 to 21; 33; 37 and 38; 46 to 48, 54, 57, 67, 75 to 79; 33; 81 to 83.], JAG #162885 Military Law Digest Article - Summary Trials () [paras. 17 to 21; 22; 37 to 38; 46 to 48, 54, 57, 67, 70, 75 to 79; 81 to 83].

2) Adjournment

16. Queen's Regulations and Orders for the Canadian Forces (QR&O) - Volume II - Disciplinary () [ch. 101.06, 101.07, 108.04,108.14 Note (B), 108.16 (1)(a)(iii), 108.16 Note (A), 108.17, 108.20, 108.20 Note (C), 108.21 Note (B), 108.33], B-GG-005-027/AF-011 Military Justice at the Summary Trial Level 2.2 (B-GG-005-027/AF-011) [ch. 13 paras 17 to 21; 33; 37 and 38; 46 to 48, 54, 57, 67, 75 to 79; 33; 81 to 83.], JAG #162885 Military Law Digest Article - Summary Trials () [paras. 17 to 21; 22; 37 to 38; 46 to 48, 54, 57, 67, 70, 75 to 79; 81 to 83].

3) Unforeseen complexity affecting jurisdiction

17. Queen's Regulations and Orders for the Canadian Forces (QR&O) - Volume II - Disciplinary () [ch. 101.06, 101.07, 108.04,108.14 Note (B), 108.16 (1)(a)(iii), 108.16 Note (A), 108.17, 108.20, 108.20 Note (C), 108.21 Note (B), 108.33], B-GG-005-

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027/AF-011 Military Justice at the Summary Trial Level 2.2 (B-GG-005-027/AF-011) [ch. 13 paras 17 to 21; 33; 37 and 38; 46 to 48, 54, 57, 67, 75 to 79; 33; 81 to 83.], JAG #162885 Military Law Digest Article - Summary Trials () [paras. 17 to 21; 22; 37 to 38; 46 to 48, 54, 57, 67, 70, 75 to 79; 81 to 83].

4) Video conferencing

18. Queen's Regulations and Orders for the Canadian Forces (QR&O) - Volume II - Disciplinary () [ch. 101.06, 101.07, 108.04,108.14 Note (B), 108.16 (1)(a)(iii), 108.16 Note (A), 108.17, 108.20, 108.20 Note (C), 108.21 Note (B), 108.33], B-GG-005-027/AF-011 Military Justice at the Summary Trial Level 2.2 (B-GG-005-027/AF-011) [ch. 13 paras 17 to 21; 33; 37 and 38; 46 to 48, 54, 57, 67, 75 to 79; 33; 81 to 83.], JAG #162885 Military Law Digest Article - Summary Trials () [paras. 17 to 21; 22; 37 to 38; 46 to 48, 54, 57, 67, 70, 75 to 79; 81 to 83].

5) Irregularities

19. Queen's Regulations and Orders for the Canadian Forces (QR&O) - Volume II - Disciplinary () [ch. 101.06, 101.07, 108.04,108.14 Note (B), 108.16 (1)(a)(iii), 108.16 Note (A), 108.17, 108.20, 108.20 Note (C), 108.21 Note (B), 108.33], B-GG-005-027/AF-011 Military Justice at the Summary Trial Level 2.2 (B-GG-005-027/AF-011) [ch. 13 paras 17 to 21; 33; 37 and 38; 46 to 48, 54, 57, 67, 75 to 79; 33; 81 to 83.], JAG #162885 Military Law Digest Article - Summary Trials () [paras. 17 to 21; 22; 37 to 38; 46 to 48, 54, 57, 67, 70, 75 to 79; 81 to 83].

6) Official languages requirements

20. Queen's Regulations and Orders for the Canadian Forces (QR&O) - Volume II - Disciplinary () [ch. 101.06, 101.07, 108.04,108.14 Note (B), 108.16 (1)(a)(iii), 108.16 Note (A), 108.17, 108.20, 108.20 Note (C), 108.21 Note (B), 108.33], B-GG-005-027/AF-011 Military Justice at the Summary Trial Level 2.2 (B-GG-005-027/AF-011) [ch. 13 paras 17 to 21; 33; 37 and 38; 46 to 48, 54, 57, 67, 75 to 79; 33; 81 to 83.], JAG #162885 Military Law Digest Article - Summary Trials () [paras. 17 to 21; 22; 37 to 38; 46 to 48, 54, 57, 67, 70, 75 to 79; 81 to 83].

B-Advise regarding the accused's right to elect court martial

1) Circumstances where right to elect might arise

21. Queen's Regulations and Orders for the Canadian Forces (QR&O) - Volume II - Disciplinary () [ch. 108.17(6), 108.18, 108.34 (1) b)], B-GG-005-027/AF-011 Military Justice at the Summary Trial Level 2.2 (B-GG-005-027/AF-011) [ch. 12, paras. 10 to 11, 25 to 29; paras. ch. 13, paras 71 to 74.], JAG #162885 Military Law Digest Article - Summary Trials () [paras. 70 to 74].

2) Process to be followed by presiding officer

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22. Queen's Regulations and Orders for the Canadian Forces (QR&O) - Volume II - Disciplinary () [ch. 108.17(6), 108.18, 108.34 (1) b)], B-GG-005-027/AF-011 Military Justice at the Summary Trial Level 2.2 (B-GG-005-027/AF-011) [ch. 12, paras. 10 to 11, 25 to 29; paras. ch. 13, paras 71 to 74.], JAG #162885 Military Law Digest Article - Summary Trials () [paras. 70 to 74].

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Note to instructor: Use hyperlinks to show references.

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PART 4 – CONCLUSION

Summary: Review essential material from the whole lesson

- Stage 1: Provide advice on the conduct of summary trial
  - A. Provide pre-trial advice
    1) Jurisdiction to try
    2) Right to elect
    3) Punishment powers
    4) Public interest
  - B. Requirements to receive advice under QR&O 107.11
    1) When charges are referred by units
    2) When charges are referred by CFNIS
  - C. The summary trial process: QR&O chapter 108
    1) Pre-trial issues and procedures
    2) Trial procedures
    3) Evidentiary issues
    4) Determinations
- Stage 2: Provide legal advice during conduct of ST
  - A. Ongoing obligations and considerations arising during summary trial
    1) Request for counsel
    2) Adjournment
    3) Unforeseen complexity affecting jurisdiction
    4) Video conferencing
    5) Irregularities
    6) Official languages requirements
  - B. Advise regarding the accused's right to elect court martial
    1) Circumstances where right to elect might arise
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Confirmation: Done in a discussion format. Ask some confirmation question

Conclusion: recap while this lesson and material presented in important. Make a link from your introduction to the conclusion.

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Examples	Verbal illustrations are used to back up a statement or to clarify an idea. Can be real or created, but must be believable.	In discussing the need to observe safety precautions with a piece of equipment, the instructor may relate an example of how failure to observe precautions resulted in an accident.
Statistics	Used as support for the emphasis that a figure provides.	On average, tutored students score better than 98% of their classroom taught counterparts.
Testimony	Quotes from subject matter experts are used to add credibility to teaching points; they should be short and relevant. Ideally, the expert is someone most students can identify with.	If the instructor is reviewing the procedures employed in a given tactic they may cite personal experience, emphasizing the importance of doing these procedures correctly.

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PO 018 ADVISE ON CONDUCT OF CSD PROCEEDINGS

PART 1 -- LESSON IDENTIFICATION

TITLE: EO 018.02 Advise on sentencing and powers of punishment

Performance. Advise on sentencing and powers of punishment

Conditions.

given: references; resources as required; assistance as required.
denied: direct supervision

Standard. The legal officer shall provide advice on the sentencing and powers of punishment

Main Teaching Points:

- Purpose and principles of sentencing
- Punishments
- Issues arising from detention

Method. This EO will be accomplished by a combination of Self-Study and Developmental Lesson. Students will be asked to read Module 2 on their own as it pertains to general concepts. Those concepts will be particularized to CF context and expanded and discussed under instructor's guidance.

Duration. 1 periods of mixed Distributed Learning (DL) and Interactive Lecture (IL).

References. As per TP.

Training/ Learning Aids. Computer access; CD materials; Legal Officer Qualification Course (LOQC) Instructors Handbook – Module(s) EO 018.02 1-3

Note to the instructor. A review of the main teaching points will then take place at the end of the periods, by Enabling Checks (EC).

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PART 2 – INTRODUCTION

Objective: The Legal Officer (LO) shall advise on conduct of Code of Service Discipline (CSD) proceedings in the particular context the CF operate. After the completion of this lesson, the LO shall be able to provide advice on the sentencing and powers of punishment.

Introduction: Introduce the lesson by emphasizing that providing legal advice to units on the sentencing and powers of punishment is essential as 1) some punishments are unique to CF; 2) the way a sentence is carried must follow stringent conditions. Through application of this knowledge, LO will be able to provide more effective legal advice on conduct of CSD proceedings.

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PART 2 – INTRODUCTION (cont'd)

Outline: The LOC instructor shall introduce the lesson outline

- Stage 1: Purpose and principles of sentencing
  - A. Purpose of sentencing
  - B. General principles of sentencing
  - C. Unique aspects of sentencing in the military environment
  - D. Factors for sentencing
  - E. Process at summary trial
  - F. Process at court martial
- Stage 2: Punishments
  - A. Punishments generally
  - B. Powers of different presiding officers
  - C. Powers of various courts
  - D. Types of punishments
- Stage 3: Issues arising from detention
  - A. Execution of sentence
  - B. Suspension of sentence
  - C. Temporal considerations
  - D. Physical limitations

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PART 3 – BODY OF THE LESSON

Stage 1: Purpose and principles of sentencing

1. **Introduction**: The focus in the first part of the lesson will be on purpose and principles of sentencing in Canadian military justice. Explain to students that Canadian military justice has a dual role. First, similarly with its civilian counterpart it protects public order and contributes to a safe and peaceful society. But it also promotes CF operational effectiveness and readiness by maintaining discipline, efficiency and morale amongst the troops.

2. The lesson is divided in six TPs:

   a. Purpose of sentencing;
   b. General principles of sentencing;
   c. Unique aspects of sentencing in the military environment;
   d. Factors for sentencing;
   e. Process at summary trial;
   f. Process at court martial.

3. Use the PowerPoint slide to view each type of those and discuss them briefly.

A- Purpose of sentencing

4. Canadian military justice has two fundamental purposes. It shares a common one with the ordinary criminal justice. It has also a unique purpose due to the particular nature of the CF (See *St-Onge v R*, 2010 CMAC 7, CMAC-517, para. 53).

5. Similarly to its civilian counterpart, the fundamental purpose of sentencing in the Canadian military justice is the protection of society and the promotion of respect for the law through just sanctions (*Criminal Code* s. 718; *NDA*, new section 203.1(1)(a) [not yet in force]). Common to civilian justice, there are four generally accepted objectives of sentencing. They are:

   a. General deterrence
   b. Specific deterrence
   c. Rehabilitation and reform; and
   d. Retribution

6. Explain each of these terms to students by referring to *MJSTL*, ch. 14, p. 14-2, paras. 4 to 6.

7. The Canadian military justice system has also the fundamental purpose of promoting the operational effectiveness of the Canadian Forces by contributing to the maintenance of discipline, efficiency and morale (*NDA*, new section 203.1(1)(b) [not yet in force]). To the above four objectives other specific to CF are added. All together, the

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sentencing objectives of Canadian military justice are listed at *NDA*, subs. 203.1(2) [not in force yet]. Read for yourself and describe for students those objectives.

B- General principles of sentencing

8. Here again, Canadian military justice has a dual aspect. Some of the principles are shared with its civilian counterpart. Some are unique to the CF.

9. A fundamental principle common to both is that the sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender (*Criminal Code*, s. 718.1; *NDA*, section 203.2 [not in force yet]).

10. In Canadian military justice, more specific principles must be added (*NDA*, section 203.1(2) [not in force yet]). All together, the principles are listing at *NDA*, s. 203.3 [not in force yet]. Read for yourself and describe for student those principles.

C- Unique aspects of sentencing in the military environment

11. Read for yourself and summarize for students *MJSTL*, ch. 14, pp. 14-2 and 14-3, paras. 7 to 12 and pp. 14-14 and 14-15, paras. 66 to 72. See also JAG #162886 Military Law Digest Article - Powers of punishment at summary trial [paras. XX]

12. In particular, explain that generally, the most appropriate punishment is the least required to maintain discipline. The various sentencing options available at the summary trial level either alone or in combination may be utilized to achieve flexibility in sentencing similar to that available to civilian courts while enforcing the high level of discipline that is so essential to good order and high morale.

D- Factors for sentencing

13. Make reference and describe *NDA*, s. 203.3 and 203.4 [not in force yet].

14. Read for yourself and describe for students QR&O 108.20 Note (F).

15. Read for yourself and summarize for students *MJSTL*, ch. 14, pp. 14-4 and 14-5, paras. 13 to 16. See also JAG #162886 Military Law Digest Article - Powers of punishment at summary trial [paras. XX]

E- Process at summary trial

16. Explain the process at set out in QR&O 108.20(10),(11), (12) and Notes (E) to (I).

17. Read for yourself and summarize for students *MJSTL*, ch. 14, p 14-5, paras. 16 to 20. See also JAG #162886 Military Law Digest Article - Powers of punishment at summary trial [paras. XX].

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F- Process at court martial

18. Explain the process at set out in *NDA*, s. 203.5 [not in force yet] and QR&O 112.47 to 112.55.

19. When there is a victim, *NDA*, s. 203.6 [not in force yet] provides for the introduction of a victim impact statement for the purpose of determining the sentence.

Interim Summary: Use the prepared PPT presentation to do a quick review of the material.

- Stage 1: Purpose and principles of sentencing

A. Purpose of sentencing

- Both general and specific to the military

B. General principles of sentencing

- Both general and specific to the military

C. Unique aspects of sentencing in the military environment

- Minimum to maintain discipline; Flexibility to POs

D. Factors for sentencing

- Both general and specific to the military

E. Process at summary trial

- Once found guilty, evidence (generally mitigating), representation by accused/assisting officer, sentence

F. Process at court martial

- Once found guilty, either SCM or GCM, sentence is set by military judge
- Evidence for sentence on balance of probabilities (disputed) / beyond reasonable doubt if aggravating factor by prosecution
- If victim, victim impact statement [new section]

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PART 3 – BODY OF THE LESSON (Continued)

Stage 2: Punishments

20. **Introduction**: The focus in the second part of the lesson will be on punishment in Canadian military justice. Explain to students that Canadian military justice share common concepts with civilian justice, in particular some kind of punishment (fine, imprisonment) while some punishments are unique to the military context (reduction in rank, dismissal, minor punishment). Punishments vary according to the type of military tribunals (different types of summary trial , different types of courts martial).

21. The lesson is divided in four TPs: 1) Punishments generally; 2) Powers of different presiding officers; 3) Powers of various courts, and; 4) Types of punishments.. Use the PowerPoint slide to view each type of those and discuss them briefly.

A- Punishment generally

22. Make reference to the scale of punishment, *NDA*, s. 139(1).

23. Make reference to the purpose of summary proceedings, QR&O 108.02.

24. Read for yourself and summarize for students *MJSTL*, ch. 14, pp. 14-5 and 14-6, paras. 21 to 23. See also JAG #162886 Military Law Digest Article - Powers of punishment at summary trial [paras. XX].

B- Powers of different presiding officers

25. For commanding officers, see QR&O 108.24. Show the table to students (*MJSTL*, Annex T).

26. For superior commanders, see QR&O 108.26. Show the table to students (*MJSTL*, Annex S).

27. For delegated officers, see QR&O 108.25. Show the table to students (*MJSTL*, Annex U). Remind students that this list can be further limited by the commanding officer in the terms of the delegation (QR&O 108.10).

28. Read for yourself and summarize for students *MJSTL*, ch. 14, p.14-6, paras. 24 to 28. See also JAG #162886 Military Law Digest Article - Powers of punishment at summary trial [paras. XX].

C- Powers of various courts

29. At court martial, the only limit to the power of punishment determined by the type of court is if the offender is not a CF member, a Standing Court Martial can only pass a sentence that includes a punishment of imprisonment or a fine.

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30. For the Court Martial Appeal Court, make reference and summarize *NDA* sections 238(3), 239(2), 239.1(3), 240, 240.1 where sentence is substituted. Pursuant to *NDA*, s. 242 the new punishment is subject to mitigation, commutation, remission or suspension in the same manner and to the same extent as if it had been imposed by the court martial that tried the appellant.

31. For Supreme Court of Canada, appeals are limited to question of law (*NDA*, s. 245(1)(2)). Nevertheless, if Court's decision has an impact on sentence, it has the same powers, duties and functions as the CMAC and sections 238 to 242 of the *NDA* apply with such adaptations and modifications as the circumstances require (*NDA*, s. 245(3)).

D- Types of punishment

1) Detention

32. Because of its importance as the most serious punishment that can be imposed at summary trial, it would be discussed in the third part of the lesson.

2) Reduction in rank

33. Make reference and describe to students table to QR&O 108.24, Punishment number 2.

34. Make reference and describe to students *NDA*, s. 143 and QR&O 104.10.

35. Read for yourself and summarize for students *MJSTL*, ch. 14, pp.14-7 to 14-9, paras. 29 to 61. See also JAG #162886 Military Law Digest Article - Powers of punishment at summary trial [paras. XX].

36. In particular explain that traditionally, reduction in rank has been viewed as a career related disciplinary action designed to maintain professional standards and integrity. It may be most appropriate where an offender has abused their rank, or has acted in a manner which demonstrates the offender cannot meet the standards of leadership expected at that rank level.

37. It has substantial professional and financial impact on the offender. Nevertheless, in *Reid v R*; *Sinclair v R* 2010 CMAC 4 at para. 39, the court stated:

> "The financial consequences of their reduction in rank are significant, but while the financial hardship is not to be discounted, it must be remembered that it is a necessary consequence of a reduction in rank. A reduction in rank is an important tool in the sentencing kit of the military judge. It signifies more effectively than any fine or reprimand that can be imposed the military's loss of trust in the offending member. That loss of trust is expressed in this case through demotion to a position in which the offenders have lost their supervisory capacity."

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3) Severe Reprimand and Reprimand

38. Punishments disciplinary in nature intended to stand out as a blemish on the career record of the offender.

39. Although more severe than fine, severe reprimand is higher on the scale of punishment than reprimand.

40. At summary trial, severe reprimand can only be imposed to officers and Senior NCOs by a superior commander (See table to QR&O 108.26, Annex S).

41. Read for yourself and summarize for students MJSTL, ch. 14, p.14-9 paras. 39 to 40. See also JAG #162886 Military Law Digest Article - Powers of punishment at summary trial [paras. XX].

4) Fine

42. Fine is the most common punishment imposed by service tribunals. At summary trial, COs (Table to QR&O 108.24, Punishment number 4) and Superior commanders (Table to QR&O 108.26, Punishment number 4) may impose a fin up to 60% of the offender's monthly basic pay. Delegated officers may impose a fine up to 25% of monthly basic pay (Table to QR&O 108.26, Punishment number 2).

43. Courts martial and appellate courts are only limited by the provisions creating the offence.

44. In imposing a fine, service tribunals would set the terms of payment (*NDA*, s. 145(2), QR&O 104.12). In determining those terms, service tribunals would consider the offender's revenues, and to the extent practical, his/her financial obligations. A service tribunal would also consider the indirect consequences on a third party (ex: spouse; children). Those terms can be varied by (*NDA*, s. 145(3)):

a. In the case of a summary trial, by the presiding officer who imposed the fine;

b. In the case of a court martial, by the military judge who imposed the fine or a military judge designated by the Chief Military Judge.

45. Read for yourself and summarize for students MJSTL, ch. 14, pp.14-9 to 14-10, paras. 41 to 43. See also JAG #162886 Military Law Digest Article - Powers of punishment at summary trial [paras. XX].

46. In particular explain that fine is a common means of dealing with crime in both civilian and military justice. Its main advantages in military justice: easy to manage, involves no expense to the public, no burden on the prison/detention system, no social dislocation and less stigma than other punishments.

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5) Minor Punishments

47. Make reference to *NDA*, s 146 and QR&O 104.13 including its Notes.

48. In the quasi totality of cases, minor punishments are imposed at summary trial. Courts martial impose minor punishments very rarely.

49. Read for yourself and summarize for students *MJSTL*, ch. 14, p.14-10, para. 44 and pp. 14-12 to 14-13, paras 59 to 61.

50. In particular, explain the rehabilitative nature of minor punishments. Stress the importance for commanding officers to issue rules to govern persons undergoing minor punishments. Further explain that those rules are vital as they are the vehicle through which commanding officers may

1. tailor, to meet unit requirements, a programme of extra work and drill to improve the military efficiency and discipline of unit members convicted of minor service offences, and

2. define the geographic limits within which a member undergoing the punishment of stoppage of leave or confinement to ship or barracks must remain and the routine applicable to members serving those punishments.

51. Explain also that commanding officers must exercise care to ensure that the rules that they issue governing the administration of minor punishments are not inconsistent with the provisions respecting minor punishments.

52. The minor punishment are:

a. Confinement to Ship or Barracks (QR&O 108.37)

53. Read for yourself and summarize for students MJSTL, ch. 14, pp.14-10 to 14-11, paras. 45 to 47. See also JAG #162886 Military Law Digest Article - Powers of punishment at summary trial [paras. XX].

b. Extra work and Drill (QR&O 108.35)

54. Read for yourself and summarize for students MJSTL, ch. 14, p. 14-11, paras. 48 to 52. See also JAG #162886 Military Law Digest Article - Powers of punishment at summary trial [paras. XX].

c. Stoppage of Leave (QR&O 108.36)

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55. Read for yourself and summarize for students MJSTL, ch. 14, pp.14-11 to 14-12, paras. 53 to 56. See also JAG #162886 Military Law Digest Article - Powers of punishment at summary trial [paras. XX].

d. Caution (QR&O 108.38)

56. Read for yourself and summarize for students MJSTL, ch. 14, p 14-12, paras. 57 to 58. See also JAG #162886 Military Law Digest Article - Powers of punishment at summary trial [paras. XX].

6) Punishments that could be imposed by a court martial only

57. The primary focus has been put so far on punishments that can be imposed by summary trials. They can also be imposed by courts martial.

58. However some more serious punishments can only be imposed by courts martial. Those punishments are (*NDA*, 139(1)):

a. imprisonment for life;

b. imprisonment for two years or more;

c. dismissal with disgrace from Her Majesty's service;

d. imprisonment for less than two years;

e. dismissal from Her Majesty's service;

59. Imprisonment is similar to imprisonment imposed by any criminal court. Make reference to *NDA*, ss. 140 to 140.4. For imprisonment, read for yourself and summarize for students QR&O 104.04 to 104.07 and their Notes.

60. Dismissal is the end of military service. Make reference to *NDA*, s. 141 and QR&O 104.08. The punishment of dismissal from Her Majesty's service does not carry with it the incapacities accompanying the punishment of dismissal with disgrace from Her Majesty's service (QR&O 104.08 Note).

61. Dismissal with disgrace has more impact on a future career. A person on whom a punishment of dismissal with disgrace from Her Majesty's service has been carried out is not, except in an emergency or unless that punishment is subsequently set aside or altered, eligible to serve Her Majesty again in any military or civil capacity (*NDA*. 141(2)). It may have financial consequences on the individual upon release, such as the loss of severance pay. It may also have an impact on the employability in the entire public sector, either federal or provincial.

Interim Summary: Use the prepared PPT presentation to do a quick review of the material.

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- Stage 2: Punishments
  - A. Punishments generally
  - B. Powers of different presiding officers
  - C. Powers of various courts
  - D. Types of punishments

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PART 3 – BODY OF THE LESSON

Stage 3 – Issues arising from detention

62. **Introduction**: The focus in the third part of the lesson will be on issues arising from detention. Although rehabilitative in nature, detention is a strict deprivation of liberty and the most serious punishment that can be imposed at summary trial. LOs must therefore be cautious and vigilant in providing legal guidance to units in that regard.

63. This lesson is divided by four Teaching Points (TPs):

1) Execution of sentence;
2) Suspension of sentence;
3) Temporal considerations; and
4) Physical limitations

64. Use the PowerPoint slide to view each type of those and discuss them briefly.

A- Execution of sentence

65. Detention is one of the punishments in the scale of punishments *NDA*, s. 139(1)(f). For its purpose, see QR&O 104.09 Note A.

66. Pursuant to *NDA*, s. 142(1)(b) no officer may be sentenced to detention.

67. Pursuant to *NDA*, s. 220(4)/QR&O 114.07 once offenders are sentenced, they are committed to a detention barrack as soon as practicable.

68. Pursuant to *NDA*, subs. 219(1), the Minister have designated the following committing authorities (see QR&O 114.03(2)):

a) the Minister;
b) the Chief of the Defence Staff;
c) an officer commanding a command;
d) an officer commanding a formation;
e) a commanding officer; and
f) a military judge

69. The committing authority issues a committal order (*NDA*, subs. 219(2); QR&O 114.04(1)). The form of committal order is at QR&O 114.04(2). In addition the offender must be assessed by a medical officer to determine if he is medically fit (with or without conditions) or unfit to undergo detention.

70. If the offender is already under a sentence involving incarceration, see particular rules at QR&O 104.16 and 114.04 Note (C).

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71. Pursuant to *NDA*, s. 142(2) for NCMs above the rank of private, they are considered at rank of private during detention.

72. Terms and conditions of detention are provided for in the *Regulations for Service Prisons and Detention Barracks* (P.C. 1967-1703, 6 September, 1967), QR&O vol. IV Appendix 1.4 adopted under *NDA*, subs. 205(2) and (3).

73. Read for yourself and summarize *MJSTL*, ch. 14, pp. 14-6 to 14-7, paras. 29 to 33. See also relevant portion of JAG #162886 Military Law Digest Article - Powers of punishment at summary trial [paras. 21 to 33].

B- Suspension of sentence

74. Make reference to *NDA* ss. 215 to 218. Detention can be suspended:

a. First by the service tribunal that imposed the punishment (*NDA*, s.215; QR&O 104.14)

b. Second by a suspending authority whether or not the offender undergo the punishment (*NDA*, subs. 216(2); QR&O 114.02). This type of suspension will be further discussed in **EO 019.03 *Advise on the legal issues related to detention.***

75. Read for yourself and summarize for students *MJSTL*, ch. 14, p. 14-13, paras. 62 to 65. See also relevant portion of JAG #162886 Military Law Digest Article - Powers of punishment at summary trial [paras. 21 to 33].

76. Please note that s. 215 has been replaced by Bill C-15. New sections would be 215 to 215.3. Although not in force yet (will come through order in council once regulatory scheme is ready), students must be acquainted with them. Read for yourself and summarize for students the new process. Explain in particular that in suspending detention, a service tribunal will have to impose conditions to which it could add 'any reasonable conditions'. LOs would have to suggest restraint and caution in advising their clients on what a 'reasonable condition' is in a particular factual context. Explain also the process if case an offender is alleged to have breached such a condition.

C- Temporal considerations

77. Detention commence on the date the tribunal pronounces the sentence (*NDA*, subs. 204(1)).

78. Pursuant to *NDA*, s. 142(1)(b) detention cannot exceed 90 days.

79. At summary trial, detention cannot exceed 30 days pursuant to *NDA*, subs. 163(3)(a). It has to be imposed by the commanding officer. Although subs. *NDA* 163(4)(a) provides that a commanding officer could delegate to an officer the power to

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impose up to 14 days of detention, QR&O 108.25 (powers of punishment of Delegated officer) does not provide for that punishment.

80. See also relevant portion of JAG #162886 Military Law Digest Article - Powers of punishment at summary trial [paras. 21 to 33].

D- Physical limitations

81. Make reference to *NDA* subs. 205(1). Explain that places to serve detention are those designated by the Minister for that purpose:

a. Detention barracks;
b. Any hospital of other place for the reception of sick person, where the offender has been admitted

82. Up to 14 days of detention, it can be served in a unit detention room (QR&O 114.11 (3). Then the *Regulations for Service Prisons and Detention Barracks* apply (QR&O 114.11 Note (A)). For detention more than 14 days, it has to be served in CFSPDB in CFB Edmonton (QR&O 114.11 Note (B)).

83. In the particular context where detention cannot be carried out because the ship is at sea or in a port where there is no suitable place, the offender shall as soon as practicable, having regard to the exigencies of the service, be sent to a place where the punishment can lawfully be carried out. The period before the date of arrival to that place is not considered 'served time'. (*NDA*, subs. 204(3)).The committal order should specify the date of arrival (QR&O 114.04 Note (B)).

84. Make also reference to relevant part of JAG #162886 Military Law Digest Article - Powers of punishment at summary trial, paras. 21 to 33.

Interim Summary: Use the prepared PPT presentation to do a quick review of the material.

- Stage 3: Issues arising from detention

A. Execution of sentence

-As soon as practicable by committal order issued by a committal authority;
-See Appendix 1.4 for terms and conditions

B. Suspension of sentence

-At trial, by service tribunal imposing the punishment and later by suspending authorities;

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-Bill C-15: conditions will/may be imposed when detention is suspended

C. Temporal considerations

-At court martial, no more than 90 days;
-At summary trial, no more than 30 days by a CO only.

D. Physical limitations

-Unit detention room for up to 14 days. For more, CFSPDB Edmonton;
-If at sea, detention begins only when it can be served

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PART 4 – CONCLUSION

Summary: Review essential material from the whole lesson

- Stage 1: Purpose and principles of sentencing
  - A. Purpose of sentencing
  - B. General principles of sentencing
  - C. Unique aspects of sentencing in the military environment
  - D. Factors for sentencing
  - E. Process at summary trial
  - F. Process at court martial

- Stage 2: Punishments
  - A. Punishments generally
  - B. Powers of different presiding officers
  - C. Powers of various courts
  - D. Types of punishments

- Stage 3: Issues arising from detention
  - A. Execution of sentence
  - B. Suspension of sentence
  - C. Temporal considerations
  - D. Physical limitations

Confirmation: Done in a discussion format. Ask some confirmation question

Conclusion: recap while this lesson and material presented in important. Make a link from your introduction to the conclusion.

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CREST

Type	Definition	Example
Comparisons	Bridges the gap between present knowledge and what is to be learned.	Unfamiliar aircraft can be explained by comparing them to familiar versions.
Reasons	Satisfies students' natural desire to know "why". Makes teaching points easier to accept.	Teaching Point – Select 100% oxygen if smoke is detected in the cockpit. Reason: Otherwise the regulator will mix oxygen with ambient (contaminated) air resulting in toxins being inhaled into the body.
Examples	Verbal illustrations are used to back up a statement or to clarify an idea. Can be real or created, but must be believable.	In discussing the need to observe safety precautions with a piece of equipment, the instructor may relate an example of how failure to observe precautions resulted in an accident.
Statistics	Used as support for the emphasis that a figure provides.	On average, tutored students score better than 98% of their classroom taught counterparts.
Testimony	Quotes from subject matter experts are used to add credibility to teaching points; they should be short and relevant. Ideally, the expert is someone most students can identify with.	If the instructor is reviewing the procedures employed in a given tactic they may cite personal experience, emphasizing the importance of doing these procedures correctly.

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PO 018 ADVISE ON CONDUCT OF CSD PROCEEDINGS

PART 1 -- LESSON IDENTIFICATION

TITLE: EO 018.03 Advise on referral of charges to DMP

Performance. Advise on referral of charges to DMP

Conditions.

given: references; resources as required; assistance as required.
denied: direct supervision

Standard. The legal officer shall provide advice on referral of charges to DMP

Main Teaching Points:

- Referral of charges for disposal under QR&O 108
- Process of referral of charges to DMP under QR&O 109

Method. This EO will be accomplished by a combination of Self-Study and Developmental Lesson. Students will be asked to read Module 1 on their own as it pertains to more straightforward content, for which some aspects have been already covered in EO 014.03 (Jurisdiction issues on referral). Module 2 will be given through instruction in class as it pertains to procedural steps for which most of the students have not been exposed yet.

Duration. 1 periods of mixed Distributed Learning (DL) and Interactive Lecture (IL).

References. As per TP.

Training/ Learning Aids. Computer access; CD materials; Legal Officer Qualification Course (LOQC) Instructors Handbook – Module(s) EO 018.03 1-2

Note to the instructor. A review of the main teaching points will then take place at the end of the periods, by Enabling Checks (EC).

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PART 2 – INTRODUCTION

Objective: The Legal Officer (LO) shall advise on conduct of Code of Service Discipline (CSD) proceedings in the particular context the CF operate. After the completion of this lesson, the LO shall be able to provide advice on referral of charges to DMP.

Introduction: Introduce the lesson by emphasizing that referral processes involve many steps for which LOs are expected to facilitate chain-of-command's role. However, most of the students have not been exposed to these particular processes which are very different from civilian ones. Yet these processes, as their civilian counterpart, serve as important checks-and-balances. In the particular case of a referral of charges to DMP, although not frequent, a good understanding of the procedural requirements is essential to ensure the proper administration of military justice. Through application of this knowledge, LO will be able to provide more effective legal advice on conduct of CSD proceedings.

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PART 2 – INTRODUCTION (cont'd)

Outline: The LOC instructor shall introduce the lesson outline

- Stage 1: Referral of charges for disposal under QR&O 108
  - A. Referral by delegated officer to commanding officer
  - B. Referral by commanding officer to superior commander
  - C. Referral by commanding officer to delegated officer
  - D. Referral by one presiding officer to another presiding officer
  - E. Referral of charges originating from NIS
- Stage 2: Process of referral of charges to DMP under QR&O 109
  - A. Process
  - B. Documentary requirements
  - C. Jurisdiction
  - D. Potential outcomes
  - E. Extent of discretion

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PART 3 – BODY OF THE LESSON

Stage 1 – Referral of charges for disposal under QR&O 108

1. **Introduction**: The focus in the first part of the lesson will be on referral of charges for disposal under QR&O 108. This type of referral occurs at the summary proceedings level. In EO 014.03 we saw why referral occurs for jurisdictional issues. Here we will see in more details the processes.

2. This lesson is divided by five Teaching Points (TPs): 1) Referral by delegated officer to commanding officer; 2) Referral by commanding officer to superior commander; 3) Referral by commanding officer to delegated officer; 4) Referral by one presiding officer to another presiding officer, and; 5) Referral of charges originating from NIS. Use the PowerPoint slide to view each type of those and discuss them briefly.

A- Referral by delegated officer to commanding officer

3. First remind students of *NDA*, subsection 163(4), on what a 'delegated officer' is.

4. Remind also students of QR&O 108.10 which provides more details on limitations to delegated officer's powers.

5. Therefore, where a matter has been referred to delegated officer but:

1) Is beyond delegated officer's jurisdiction in terms of:

   i. nature of the offence: QR&O 108.07(3)

   ii. power of punishment: *NDA*. 163(4), QR&O 108.10(1)

   iii. rank of the accused: QR&O 108.10(*b*)

   iv. election of the accused: QR&O 107.09(3)(b) and 108.19(1)

2) The delegated officer is of the view that it should not be proceeded with pursuant to QR&O 107.09 (2)(*b*).

3) The delegated is otherwise precluded from trying the case for one of the reasons why a presiding officer would transfer the case to another officer (see below section D)

Then the delegated officer would refer it up to commanding officer

6. Read for yourself and summarize for students *MJSTL*, ch. 8, pp. 8-9 to 8-10, paras. 46 to 49 and ch. 11, pp. 11-19- and 11-20, paras. 78 to 80.

B- Referral by commanding officer to superior commander

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7. Remind students of *NDA* s. 164, QR&O 108.12 and QR&O 108.125 on what a superior commander is and the extent of his/her jurisdiction.

8. Therefore, where a matter has been referred to a commanding officer he or she would likely refer it to superior commander when he or she would determine that he or she is precluded from trying the accused because of the accused's rank (QR&O 108.16(1)(*a*)(*i*)). See *MJSTL*, ch. 8, p. 8-10, para. 50.

9. The superior commander may then have many options. Make reference to QR&O 108.195. Read for yourself and summarize for students *MJSTL*, ch. 11 p. 11-20, para. 81.

C- Referral by commanding officer to delegated officer

10. Commanding officers can refer a case to a delegated officer, should they believe the circumstances are sufficiently of a minor nature to be within delegated officer's jurisdiction. Subsection *NDA*, 163(4) and QR&O 108.10 set the limitations and conditions for valid delegation.

11. As we saw earlier, delegated officer could refer a case to commanding officer when he or she is of the view that the circumstances were too serious for his/her punishment powers. When the commanding officer on the contrary believes the case is within the delegated officer's punishment powers, he or she could refer the case back to the delegated officer.

12. *Question to the class*: If CO has conducted the investigation could he/she refer the matter to the DO, who is a subordinate? Is DO unbiased or reasonably perceived as such?

D- Referral by one presiding officer to another presiding officer

13. There are three main reasons why a presiding officer would refer a case to another presiding officer.

14. First reason is if the presiding officer has been previously involved in the case (conducted the investigation, issued search warrants and laid charges). Make reference to *NDA* subsection 163(2) and QR&O 108.09. Read for yourself and summarize for students *MJSTL*, ch. 11, pp. 11-13 to 11-14, paras. 51 to 53.

15. Second reason is where, in compliance with the right of an accused to have proceedings conducted in either official language pursuant to the *Official Languages Act*, the presiding officer determined he or she is not able to understand the trial in the official language chosen for the proceedings without the assistance of an interpreter. Make reference to QR&O 108.16 Note A. Read for yourself and summarize for students *MJSTL*, ch. 13, p. 13-8, para. 37.

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And third reason is where it would be inappropriate for that presiding officer to try the case having regard to the interests of justice and discipline. Make reference to QR&O 108.16(1)(v). Read for yourself and summarize for students, *MJSTL*, ch. 11, pp. 11-15 to 11-16, paras. 58 to 63. Read for yourself and tell the story of *R. v. Jenner*, 2010 CM 1008 where the offender pleaded guilty to an offence under *NDA*, s. 129 for having presided over a summary trial of a subordinate with whom he was engaged in a sexual relationship at the time of the offence.

16. For referrals of charges during summary trial, read for yourself and summarize for students as it pertains to referral from a presiding officer to another one *MJSTL*, ch. 11, p. 11-21, paras. 82 to 86.

E- Referral of charges originating from NIS

17. Make reference to QR&O 107.12 (1), (2), (3) and the Note. Read for yourself and summarize to students *MJSTL*, ch. 8, pp. 8-10, paras. 55-57. In particular explain that the NIS charge-layer may, if a CO or a Sup Commander do not want to proceed with the charge, refer the charge directly to a referral authority in accordance with QR&O 109.03, if the NIS member considers that the charge should be proceeded with.

18. **Interim Summary**: Use the prepared PPT presentation to do a quick review of the material.

- Stage 1: Referral of charges for disposal under QR&O 108

  A. Referral by delegated officer to commanding officer

     - Accused has elected court martial
     - Beyond delegated officer's jurisdiction
     - DO believes the charge should not proceed
     - DO is otherwise precluded from trying

  B. Referral by commanding officer to superior commander

     - Beyond CO's jurisdiction (rank of the accused)

  C. Referral by commanding officer to delegated officer

     - Sufficiently minor; within jurisdiction (QR&O and terms of delegation)

  D. Referral by one presiding officer to another presiding officer

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- Previous involvement in the case
- Compliance with *Official Languages Act*
- Interest of justice and discipline

E. Referral of charges originating from NIS

- If CO or Sup Comd do not want to proceed

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PART 3 – BODY OF THE LESSON (Continued)

Stage 2: Process of referral of charges to DMP under QR&O 109

19. **Introduction**: The focus in the second part of the lesson will be on process of referral of charges to DMP under QR&O 109. Explain to students that even though the process does not occur very often, it involves several steps which completion is important for the potential upcoming court martial.

20. The lesson is divided in five sub-TPs: 1) Process; 2) Documentary requirements; 3) Jurisdiction; 4) Potential outcomes, and; 5) Extent of discretion. Use the PowerPoint slide to view each type of those and discuss them briefly.

A- Process

21. Make reference to QR&O 109.03.

22. Read for yourself *MJSTL*, ch. 11, pp. 11-22 and 11-23, paras. 87 to 94.

23. Describe the process in general terms to students as a letter from CO/Sup to appropriate referral authority requesting the matter to be proceeded with by way of a court martial.

24. Explain that this general description has some particularities in 2 cases:
    1) If referral authority not immediate superior, send copy to him/her
    2) Referral from CFNIS, copies to:
        a) CO/Sup Comd who decided not to proceed with;
        b) his/her superiors in matter of discipline;
        c) to accused's CO (if not the first one)

25. Need to update Unit Registry – We will see that in PO 019

B- Documentary requirements

26. Make reference to the list at QR&O 109.03(2) and to additional documents at QR&O 109.03(3) and 109.06(3).

27. Summarize for students *MJSTL* ch. 11, paras. 88-90

28. The referral
    1) Must include
        a) Reasons;
        b) Summary of circumstances; and
        c) Recommendation;

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2) Should be accompanied with
   a) RDP;
   b) Copy of investigation report (or SAMPIS number);
   c) Conduct sheet, if any;
   d) Record of service

C- Right to counsel [*replaces 'Jurisdiction'*]

29. Make reference to QR&O 109.04.

30. Summarize for students *MJSTL* ch. 11, p. 11-22 to 11-23 paras. 91-92.

31. Explain in particular that before sending the matter up to referral authority, the CO/Sup Comd must inquire if the accused wants;

1) A Defence Counsel Services' counsel, and if so, who in particular;
2) A private practitioner at his/her own expense;
3) No counsel, for now;

D- Potential outcomes

32. Make reference to QR&O 109.05(1).

33. Summarize for students *MJSTL* ch. 11, p. 11-23 para. 93.

34. Explain to student that the referral authority has two options:

1) forward the application to the DMP, with any recommendations regarding the disposal of the charge that the referral authority considers appropriate;

2) direct that a CO or superior commander try the accused by summary trial in respect of the charges referred.

E-Extent of discretion

35. Make reference to QR&O 109.05(1).

36. Summarize for students *MJSTL* ch. 11, p. 11-23 para. 94.

37. Explain to student that referral authority has discretion to choose the second option only when the two following conditions are met:

a. the charge was referred because the CO or superior commander did not consider their powers of punishment to be adequate to try the accused by summary trial; and

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b. the referral authority believes the CO or superior commander has adequate powers of punishment to try the accused by summary trial.

38. In other terms, if referred because accused elected court martial, the referral authority has only the option to refer it to DMP with his or her recommendation.

39. In any case, the referral authority cannot decide to not proceed with the charge.

Interim Summary: Use the prepared PPT presentation to do a quick review of the material.

- Stage 2: Process of referral of charges to DMP under QR&O 109

  A. Process

  - A letter to referral authority requesting a court martial

  B. Documentary requirements

  - Documents pertaining to investigation, charge, proceedings and accused; sometimes copies to other authorities

  C. **Right to counsel**

  - **DDCS' counsel; civilian counsel; no counsel**

  D. Potential outcomes

  - To DMP with recommendation or back to CO/Sup Comd

  E. Extent of discretion

  - If election to court martial, one option only: to DMP

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PART 4 – CONCLUSION

Summary: Review essential material from the whole lesson

- Stage 1: Referral of charges for disposal under QR&O 108
  - A. Referral by delegated officer to commanding officer
  - B. Referral by commanding officer to superior commander
  - C. Referral by commanding officer to delegated officer
  - D. Referral by one presiding officer to another presiding officer
  - E. Referral of charges originating from NIS

- Stage 2: Process of referral of charges to DMP under QR&O 109
  - A. Process
  - B. Documentary requirements
  - C. Jurisdiction
  - D. Potential outcomes
  - E. Extent of discretion

Confirmation: Done in a discussion format. Ask some confirmation question

Conclusion: recap while this lesson and material presented in important. Make a link from your introduction to the conclusion.

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CREST

Type	Definition	Example
Comparisons	Bridges the gap between present knowledge and what is to be learned.	Unfamiliar aircraft can be explained by comparing them to familiar versions.
Reasons	Satisfies students' natural desire to know "why". Makes teaching points easier to accept.	Teaching Point – Select 100% oxygen if smoke is detected in the cockpit. Reason: Otherwise the regulator will mix oxygen with ambient (contaminated) air resulting in toxins being inhaled into the body.
Examples	Verbal illustrations are used to back up a statement or to clarify an idea. Can be real or created, but must be believable.	In discussing the need to observe safety precautions with a piece of equipment, the instructor may relate an example of how failure to observe precautions resulted in an accident.
Statistics	Used as support for the emphasis that a figure provides.	On average, tutored students score better than 98% of their classroom taught counterparts.
Testimony	Quotes from subject matter experts are used to add credibility to teaching points; they should be short and relevant. Ideally, the expert is someone most students can identify with.	If the instructor is reviewing the procedures employed in a given tactic they may cite personal experience, emphasizing the importance of doing these procedures correctly.

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PO 019 ADVISE WRT POST TRIAL ACTIVITIES

PART 1 -- LESSON IDENTIFICATION

TITLE: EO 019.01 Advise on summary trial reviews by review authority

Performance. Advise on summary trial reviews by review authority

Conditions.

given: Relevant factual context, legislation, policy, case law, reference materials (including prior legal advice)
denied: direct supervision

Standard. The legal officer shall capable of providing timely, solution-oriented advice to a summary trial review authority

Main Teaching Points:

- Review under QR&O 116.02
- Reviews under QR&O 108.45

Method. This EO will be accomplished by a combination of Self-Study and Developmental Lesson. Students will be asked to read Module 1 on their own as it pertains to more straightforward content. Module 2 will be given through instruction in class as it pertains to a process involving many steps and delays for which most of the students have not been exposed yet.

Duration. 1 periods of mixed Distributed Learning (DL) and Interactive Lecture (IL).

References. As per TP.

Training/ Learning Aids. Computer access; CD materials; Legal Officer Qualification Course (LOQC) Instructors Handbook – Module(s) EO 019.01 1-2

Note to the instructor. A review of the main teaching points will then take place at the end of the periods, by Enabling Checks (EC).

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PART 2 – INTRODUCTION

Objective: The Legal Officer (LO) shall advise with regard to post-trial activities in the particular context the CF operate. After the completion of this lesson, the LO shall be able to provide advice on summary trial reviews by review authority.

Introduction: Introduce the lesson by emphasizing that, although occurring rarely, the two review processes involve steps and sometimes time limitations for which LOs are expected to facilitate chain-of-command's role and provide legal advice. However, most of the students have not been exposed to these particular processes which are very different from civilian ones. Yet these processes, as their civilian counterpart, serve as important checks-and-balances. Through application of this knowledge, LO will be able to provide more effective legal advice on post-trial activities.

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PART 2 – INTRODUCTION (cont'd)

Outline: The LOC instructor shall introduce the lesson outline

- Stage 1: Review under QR&O 116.02
  - A. Grounds for review
  - B. Absence of temporal limitations
  - C. Possible outcomes
  - D. Roles, responsibilities and powers of the review authority
  - E. Roles and responsibilities of the legal advisor
- Stage 2: Reviews under QR&O 108.45
  - A. Grounds for request
  - B. Temporal limitations
  - C. Roles responsibilities & authorities of the review authority
  - D. Roles and responsibilities of the legal advisor
  - E. Possible outcomes
  - F. Roles and responsibilities of assisting officer
  - G. Roles and responsibilities of presiding officer

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PART 3 – BODY OF THE LESSON

Stage 1 – Review under QR&O 116.02

1. **Introduction**: The focus in the first part of the lesson will be on review under QR&O 116.02. This type of review is initiated by the chain-of-command; it falls under its duty to exercise oversight of the maintenance of discipline at the summary proceedings level to ensure it was fair. In comparison with the other summary trial review process under QR&O 108.45, that process is less procedural in nature. Nevertheless, chain-of-command's powers to alter the outcomes of the summary proceedings are the same.

2. This lesson is divided by five sub-Teaching Points (sub-TPs): 1) Grounds for review; 2) Absence of temporal limitations; 3) Possible outcomes; 4) Roles, responsibilities and powers of the review authority, and; 5) Roles and responsibilities of the legal advisor. Use the PowerPoint slide to view each type of those and discuss them briefly.

A- Grounds for review

3. Although not specified for this process, the grounds for review initiated by review authorities are similar to those that would justify a request for review by an individual CF member, namely:

a) the finding of guilty is unjust
b) the sentence is unjust or too severe

4. Neither the *NDA* nor the regulations specify what must be established to show that a finding or punishment is unjust or that any punishment is too severe. However, *MJSTL* explains further (ch. 15, p. 15-5, para. 23):

A finding of guilty would be unjust if it is contrary to the law or is fundamentally unfair. A finding might be considered unjust if any of the following circumstances exist:

a. the principles of fairness were not observed during the summary trial process. This involves more than just the conduct of the trial. It also includes pre-trial activities such as the release of information, the election procedures and any applications made for legal representation, etc. A departure from the procedural safeguards contained in *QR&O* may indicate a failure to uphold the principles of fairness;
b. the required procedures set out in *QR&O* were not followed; or
c. the evidence presented at the summary trial did not establish all the elements of the offence for which the offender was found guilty.

5. Read for yourself and summarize for students the examples given at *MJSTL* ch. 15, pp. 15-5 to 15-6, paras. 24 to 27.

B- Absence of temporal limitations

6. *MSJTL*, ch. 15, p. 15-7, para 33, reads as follows:

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Inasmuch as the regulations do not provide the offender with a right to a review under *QR&O* 116.02, such reviews are not subject to the same procedural requirements and limitations as in *QR&O* 108.45. For example, there are no time limits placed on the review authority when determining a *QR&O* 116.02 review.

7. However, this is not a reason to for review authority to unreasonably delay action should such a ground becomes apparent.

8. Explain to students that usually, potential grounds to initiate review through that process would be identified through the monthly review pursuant to QR&O 107.15.

C- Possible outcomes

9. Make reference to and summarize for students *NDA*, sections 249.11 to 249.15 (listed at QR&O 116.02 Notes (A)),:

a. 249.11 (Quashing Findings);
b. 249.12 (Substitution of Findings);
c. 249.13 (Substitution of Punishments);
d. 249.14 (Mitigation, Commutation and Remission of Punishments); and
e. 249.15 (Conditions Applicable to New Punishments).

10. For some outcome, make also reference to:

a) Mitigation: QR&O 116.02 Note (C)
b) Commutation: QR&O 116.02 Note (D)
c) Remission: QR&O 116.02 Note (E)

11. And explain that, pursuant to s. 245.15 where there is a new punishment by way of substitution or commutation, it may not be: (*a*) an illegal punishment; (*b*) cannot be higher in the scale of punishment; (*c*) if detention replaces imprisonment, no more than imprisonment period and at maximum 90 days and (*d*) if new sentence is mandatory (few *NDA* offences and many *Criminal Code* offences) then punishment may be altered to lower on the scale.

12. Read for yourself and summarize for students *MJSTL*, ch. 15, pp. 15-8 to 15-10, paras. 36-46.

D- Roles, responsibilities and powers of the review authority

13. Make reference to and summarize for students *NDA,* section 249:

a) Subs (1) and (2): court martials could be reviewed by Governor in Council by request from offender or CDS

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b) Subs (3) and (4): summary trials could be reviewed by CDS and other military authorities

14. For review of courts martial: make further reference to 116.04 and its Note.

15. For review of summary trials: make further reference to QR&O 116.02 (2) (3).

E- Roles and responsibilities of the legal advisor

16. QR&O 116.02 Note B (ii) reads as follow:

(B) There are two processes established for the review of the findings made and punishments imposed at summary trials:

[...]

ii. pursuant to article 107.15 (*Forwarding and Review of Summary Trial Documentation*), Records of Disciplinary Proceedings are reviewed on a monthly basis by legal officers on behalf of command authorities for errors on the face of the record and non-compliance with procedural requirements.

Interim Summary: Use the prepared PPT presentation to do a quick review of the material.

- Stage 1: Review under QR&O 116.02

A. Grounds for review

- Unjust finding; Unjust sentence and/or too severe

B. Absence of temporal limitations

- Although must not cause unreasonable delay

C. Possible outcomes

- Quashing finding, Substitution (finding or sentence), Mitigation, Commutation, Remission, New conditions

D. Roles, responsibilities and powers of the review authority

- May act on her/his own initiative

E. Roles and responsibilities of the legal advisor

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- Review RDPs each month; provide advice if errors.

Note to instructor: Use hyperlinks to show references.

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PART 3 – BODY OF THE LESSON (Continued)

Stage 2: Reviews under QR&O 108.45

17. **Introduction**: The focus in the second part of the lesson will be on reviews under QR&O 108.45. This type of review is initiated by the offender; it is the way to seek remedy to higher authority, should he or she believe that initial decision was inappropriate. In comparison with the other review process under QR&O 116.02, that process is more procedural in nature: several steps have to be followed and there are delays to comply with. It necessarily involves a legal opinion to the review authority. Again, chain-of-command's powers to alter the outcomes of the summary proceedings are the same. But this process is for review of summary trials only.

18. The lesson is divided in seven sub-TPs: 1) Grounds for request; 2) Temporal limitations; 3) Roles responsibilities & authorities of the review authority; 4) Roles and responsibilities of the legal advisor; 5) Possible outcomes; 6) Roles and responsibilities of assisting officer, and; 7) Roles and responsibilities of presiding officer. Use the PowerPoint slide to view each type of those and discuss them briefly.

A- Grounds for request

19. Make reference to QR&O 108.45(1)(*a*) and (*b*) and 108.45(4).

20. *MJSTL*, ch. 15, p. 15-2, para. 6 reads as follows:

> Any member who has been found guilty of a service offence at a summary trial may request a *review authority* to set aside the finding of guilty on the ground that it is *unjust*. Similarly, the offender may also request a review authority to alter any punishment imposed onthe ground that it is *unjust or too severe*

21. *MJSTL*, ch. 15, p. 15-3, para. 11 reads as follows:

> The request for review must be made in writing and may be in the form of either a memorandum or letter. The request must set out the relevant facts and reasons why the finding is unjust or why the punishment is unjust or too severe.

B- Temporal limitations

22. Make reference to and summarize to students the timings of QR&O 108.45(5), (6), (7), (10), (12), and (16):

a) Request for review must be delivered to the review authority, and a copy delivered to the officer who presided at the summary trial, within 14 days

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of the termination of the summary trial. A review authority may, in the interests of justice, extend the period for making a request for review to such period as that authority considers reasonable in the circumstances;

b) Within seven days of receiving a copy of a request for review, the officer who presided at the summary trial shall deliver his or her comments concerning the request to the review authority and a copy to the member who requested the review;

c) An officer or non-commissioned member requesting a review may deliver further representations to the review authority within seven days of receiving a copy of the comments of the officer who presided at the summary trial;

d) Within 21 days after receiving a request for review, the review authority shall review the summary trial and determine whether to set aside any finding made or alter any punishment imposed unless needs more information to decide;

e) An officer or non-commissioned member requesting a review may deliver further representations to the review authority within seven days of receiving a copy of the additional information;

f) If additional information is sought, the review authority shall, within 35 days after receiving the request for review, review the summary trial and determine whether to set aside any finding made or alter any punishment imposed.

23. Read for yourself and summarize for students *MJSTL*, ch. 15, p. 15-4, paras. 14-17.

24. Use a concrete example to illustrate.

C- Roles responsibilities & powers of the review authority

25. Make reference to QR&O 108.45 (2), (3), (8), (11), (14), (17).

26. On who is the review authority *MSJTL*, ch. 15, p. 15-2, paras 7 and 8 read as follows:

7. The term *review authority* is defined in *QR&O*. In the context of a review conducted under *QR&O* 108.45, the term review authority only refers to the officers mentioned in *QR&O* 108.45(2). When determining who can act as a *QR&O* 108.45 review authority, you must consider the status of the presiding officer who tried the case, as follows:

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a. when a delegated officer presided at the summary trial, the review authority is the CO of the unit.
b. when a CO presided at the summary trial, the review authority is the next superior officer to whom the CO of the unit is responsible in matters of discipline; and
c. when the presiding officer is a superior commander, the review authority is the next superior officer to whom the superior commander is responsible in matters of discipline.

8. A checklist detailing the role of the review authority in the review process under *QR&O* 108.45 is attached at Annex V.

27. Once identified, the review authority has the following responsibilities:

a) If he or she is of the opinion that it would be inappropriate for him or her to act as a review authority in a particular case, having regard to the interests of justice and discipline, the officer must refer the request to the next superior officer to whom he is responsible in matter of discipline (QR&O 108.45(3));

b) Before making a determination in respect of the request for review, a review authority shall obtain legal advice (QR&O 108.45(8));

c) If unable to make a determination because further information is required, the review authority he or she must (QR&O 108.45(11)):

i. seek the necessary information

ii. notify the member requesting the review that further information has been sought; and

iii. provide the member requesting the review with a copy of any information subsequently obtained.

d) As soon as practicable after the review authority has made a decision, the review authority shall (QR&O 108.45(14)):

i. cause the officer or non-commissioned member making the request, the presiding officer and, where the review authority is not the member's commanding officer, the member's commanding officer to be notified in writing of the decision;

ii. comply with paragraph (6) of article 107.14 (*Maintenance of Unit Registry of Disciplinary Proceedings*); and

iii. cause the appropriate entries to be made to Part 7 of the original Record of Disciplinary Proceedings.

e) In the case of a non-commissioned member sentenced to detention, a review authority shall suspend the carrying into effect of the punishment of detention pending the completion of the review (QR&O 108.45(17)).

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28. Read for yourself and summarize for students *MJSTL*, ch. 15, pp. 15-5 to 15-6, paras. 19-28.

29. Use a concrete example to illustrate.

D- Roles and responsibilities of the legal advisor

30. As previously said, the review authority must seek a legal advice prior making a decision (QR&O 108.45(8)).

31. Pursuant to QR&O 108.45 (9), the legal advisor providing a legal advice to the review authority cannot be the legal officer who provided either the pre-charge advice to the charge-layer (QR&O 107.03) or the legal advice to the presiding officer (QR&O 107.11).

32. See also *MJSTL*, ch. 15, p. 15-4, para. 19.

33. As to the content of the legal advice, it should pertain to the issues raised in the request for review (was the finding unjust and/or the sentence unjust/too severe). Read for yourself and summarize to students *MJSTL*, ch. 15, pp. 15-5 to 15-6, paras. 23 to 28.

34. Develop (or find one on JAG*Net*) a template of legal advice pursuant to QR&O 108.45(8) and provide it to students.

E- Possible outcomes

35. Similar to a review under QR&O 116.02, the review authority under QR&O 108.45 has the authority to quash findings and alter findings made and punishments imposed but at summary trial only.

36. As students have already read *MJSTL*, ch. 15, pp. 15-7 to 15-10, paras. 34-46, develop some quick scenarios and ask them questions as to what they would recommend.

F- Roles and responsibilities of assisting officer

37. Make reference to QR&O 108.45(18).

38. *MJSTL*, ch. 15, p. 15-3, para. 13 reads as follow:

> When an offender requests assistance in preparing the request for review, the CO must appoint an officer or NCM above the rank of sergeant to provide that assistance. If the offender requests a particular member to provide assistance, the CO should appoint that member where practical. For example, it would not be practical for the requested member

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to be appointed if that member is on temporary duty away from the unit or if the member is unavailable because of other duties.

G- Roles and responsibilities of presiding officer

39. Make reference to QR&O 108.45(6).

40. *MJSTL*, ch. 15, p. 15-4, para. 16 reads as follows:

> Upon receiving a copy of the request, the presiding officer has 7 days to deliver the presiding officer's comments to the review authority and provide a copy of these comments to the offender. It is important that the presiding officer comment on the request in as much detail as possible to ensure the review authority has sufficient information to make a decision.

41. Normally, the presiding officer has prepared a list to identify the witnesses heard and all documentary or physical evidence accepted at the summary trial, including witnesses or evidence called or presented by or on behalf of the accused, and attach this list to the RDP. This information should be easily available in the Unit Registry of Disciplinary Proceedings (QR&O 108.21 Note E; *MJSTL*, ch. 13, p. 13-3, para. 10).

42. If pursuant to QR&O 108.45(11) the review authority requests to the presiding officer more information in order to make a determination, the presiding officer must provide that additional information.

Interim Summary: Use the prepared PPT presentation to do a quick review of the material.

- Stage 2: Reviews under QR&O 108.45

  A. Grounds for request

     - Unjust finding; Unjust sentence and/or too severe

  B. Temporal limitations

     - Timings to follow for all actors involved

  C. Roles responsibilities & authorities of the review authority

     - Follow QR&O 108.45

  D. Roles and responsibilities of the legal advisor

     - Provide legal advice; not the previous legal advisor

  E. Possible outcomes

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- Quashing finding, Substitution (finding or sentence), Mitigation, Commutation, Remission, New conditions

F. Roles and responsibilities of assisting officer

- Prepare request for review

G. Roles and responsibilities of presiding officer

- Provide his/her comments with as much detail as possible

Note to instructor: Use hyperlinks to show references.

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PART 4 – CONCLUSION

Summary: Review essential material from the whole lesson

- Stage 1: Review under QR&O 116.02
  A. Grounds for review
  B. Absence of temporal limitations
  C. Possible outcomes
  D. Roles, responsibilities and powers of the review authority
  E. Roles and responsibilities of the legal advisor

- Stage 2: Reviews under QR&O 108.45
  A. Grounds for request
  B. Temporal limitations
  C. Roles responsibilities & authorities of the review authority
  D. Roles and responsibilities of the legal advisor
  E. Possible outcomes
  F. Roles and responsibilities of assisting officer
  G. Roles and responsibilities of presiding officer

Confirmation: Done in a discussion format. Ask some confirmation question

Conclusion: recap while this lesson and material presented in important. Make a link from your introduction to the conclusion.

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CREST

Type	Definition	Example
Comparisons	Bridges the gap between present knowledge and what is to be learned.	Unfamiliar aircraft can be explained by comparing them to familiar versions.
Reasons	Satisfies students' natural desire to know "why". Makes teaching points easier to accept.	Teaching Point – Select 100% oxygen if smoke is detected in the cockpit. Reason: Otherwise the regulator will mix oxygen with ambient (contaminated) air resulting in toxins being inhaled into the body.
Examples	Verbal illustrations are used to back up a statement or to clarify an idea. Can be real or created, but must be believable.	In discussing the need to observe safety precautions with a piece of equipment, the instructor may relate an example of how failure to observe precautions resulted in an accident.
Statistics	Used as support for the emphasis that a figure provides.	On average, tutored students score better than 98% of their classroom taught counterparts.
Testimony	Quotes from subject matter experts are used to add credibility to teaching points; they should be short and relevant. Ideally, the expert is someone most students can identify with.	If the instructor is reviewing the procedures employed in a given tactic they may cite personal experience, emphasizing the importance of doing these procedures correctly.

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PO 019 ADVISE WRT POST TRIAL ACTIVITIES

PART 1 -- LESSON IDENTIFICATION

TITLE: EO 019.02 Advise on post-trial administration

Performance. Advise on post-trial administration

Conditions.

given: Relevant factual context, legislation, policy, case law, reference materials (including prior legal advice)
denied: direct supervision

Standard. The legal officer shall provide timely, solution-oriented advice to the chain of command regarding its obligations following the completion of a summary trial or court martial.

Main Teaching Points:

- Unit post trial activities

Method. This EO will be accomplished by Self-Study. Students will be asked to read the lesson on their own as it pertains to more straightforward content. Reading could be done either prior the course as distributed learning or during course outside class hours using computers with DWAN access allocated for the course.

Duration. 1 period of Distributed Learning (DL).

References. As per TP.

Training/ Learning Aids. Computer access; CD materials; Legal Officer Qualification Course (LOQC) Instructors Handbook – Module(s) EO 019.02 1

Note to the instructor. A review of the main teaching points will then take place at the end of the period, by Enabling Checks (EC).

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PART 2 – INTRODUCTION

Objective: The Legal Officer (LO) shall advise with regard to post-trial activities in the particular context the CF operate. After the completion of this lesson, the LO shall be able to provide advice on post-trial administration.

Introduction: Introduce the lesson by emphasizing that trials involve consequences not only for the offenders but for the CF. For example, although appearing as tedious and non-prestigious, updating registries of disciplinary proceedings is of the outmost importance for the vitality of the military justice system as a whole; it assists the JAG in his/her superintendence role of the military justice system. Through application of this knowledge, LO will be able to provide more effective legal advice on on post-trial activities.

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PART 2 – INTRODUCTION (cont'd)

Outline: The LOC instructor shall introduce the lesson outline

- Stage 1: Unit post trial activities
  - A. Unit registry of disciplinary proceedings
  - B. Conduct sheet(s)
  - C. Execution of sentence
  - D. Court martial (when completed)
  - E. Updating RDP
  - F. Removing CRO- imposed conditions
  - G. Service record
  - H. Bill C-10 amendments
  - I. Bill C-15 amendments

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PART 3 – BODY OF THE LESSON

Stage 1 – Unit post trial activities

1. **Introduction**: The focus of the lesson will be on unit post-trial activities. Explain to students that *QR&O* prescribe the administrative action that must be taken where:

a) a charge is referred to a delegated officer or CO by the charge layer;
b) a CO or superior commander makes an application to a referral authority for disposal of a charge;
c) a final disposition of all charges has been made by a presiding officer;
d) an officer has exercised the power and jurisdiction of a review authority pursuant to *QR&O* 108.45; and
e) an officer has exercised the jurisdiction of a review authority other than pursuant to *QR&O* 108.45, i.e. pursuant to *QR&O* 116.02, and quashed a finding or altered the sentence.

2. Make reference to QR&O 107.13 which defines a *final disposition* as a decision not to proceed, a direction that the proceedings be stayed on an alternative charge, a finding of not guilty and, in the case of a finding of guilty, the passing of a sentence.

3. Explain also that the purpose of post-trial administration is to 1) standardize procedures governing the retention, release and legal review of documents pertaining to summary trial proceedings; and 2) ensure that the sentence is enforced and that the member's service records accurately reflect the final disposition.

4. This lesson is divided by nine sub-Teaching Points (sub-TPs): 1) Unit registry of disciplinary proceedings; 2) Conduct sheet(s); 3) Execution of sentence; 4) Court martial (When completed); 5) Updating RDP; 6) Removing CRO - imposed conditions; 7) Service record; 8) Bill C-10 amendments, and; 9) Bill C-15 amendments. Use the PowerPoint slide to view each type of those and discuss them briefly.

A- Unit registry of disciplinary proceedings

5. Read for yourself and summarize for students, *MJSTL*, ch. 16, pp. 16-1 to 16-4, paras 1 to 14. In particular put the emphasis on the following paragraphs.

6. Each unit must maintain a Unit Registry of Disciplinary Proceedings (Unit Registry) (*MJSTL*, ch. 16, p. 16-1, para 4). It is the responsibility of each unit's CO to ensure this is done (QR&O 107.14(1)).

7. The maintenance of a Unit Registry ensures that standardized procedures govern the retention of RDPs and other documents pertaining to summary proceedings conducted within the unit (QR&O 107.14 Note A). The placement of documents on the Unit Registry ensures that the relevant information is readily available when a review authority conducts a review of a finding of guilty or the sentence imposed at a summary trial. The filing of specific documents in the Unit Registry also aids in the review conducted by the unit legal advisor in furtherance of the JAG's role in superintending

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the military justice system. RDPs held on the Unit Registry may also be provided to the public in accordance with QR&O 107.16 (*MJSTL*, ch. 16, p. 16-2, para 5).

8. The Unit Registry should contain only those documents specified in QR&O 107.14. It is neither the purpose nor intention of the Unit Registry to be a repository for all documents related to a specific accused. The documents to be included on the Unit Registry are (*MJSTL*, ch. 16, p. 16-2, para 6):

a. a copy of any RDP referred to a CO or delegated officer by the charge layer (QR&O 107.14(2), 107.09 Note A; see also *MJSTL*, ch. 8, p. 8-9, para. 47);

b. a copy of the application, the RDP, and any report of investigation conducted pursuant to *QR&O* 106, when an application is made to a referral authority for disposal of a charge (QR&O 107.14 (3); see also *MJSTL*, ch. 11, p. 11-22, para. 90);

c. the original RDP, together with a copy of any report of investigation conducted pursuant to Chapter 106, when a final disposition of all charges has been made (QR&O 107.14(4) and (5); *MJSTL*, ch. 13, p. 13-3, para. 10) which includes a decision not to proceed with a charge (QR&O 107.09 (3), *MJSTL*, ch. 8, p. 8-10, para. 51); and

d. a copy of any decision made by a review authority pursuant to *QR&O* 108.45, as well as a copy of any decision made by a review authority under *QR&O* 116.02, that results in the quashing of a finding or the alteration of the sentence (see also *MJSTL*, ch. 15, p. 15-10 to 15-11, paras. 47-48).

9. For the purposes of QR&O 107.14, the term RDP includes any attachment referred to in Parts 1-7 of the RDP form.

10. Keep in mind that although copies of investigation reports (and sometimes originals) are to be in the Unit Registry, Military Police Investigation Reports (MPIR) are subject to special handling (*MJSTL*, ch. 16, p. 16-3, para. 9). For example, a MPIR cannot be copied unless authorized by MP authorities. In practice, reference is made to MPIR in the Unit Registry with a sheet containing the MPIR reference number in the Security and Military Police Information System (SAMPIS). So in practice, only units' disciplinary investigations reports would be physically in the Unit Registry.

11. Documents that are not listed in the QR&O 107.14 are <u>not</u> to be included in the Unit Registry. For example:

a. the minutes or report of any investigation such as a Board of Inquiry, or Summary Investigations, or other military investigation not conducted pursuant to *QR&O* 106; or

b. the minutes or report of any investigation that does not pertain to the accused person named in Part 1 (Charge Report) of the RDP.

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B- Conduct sheet(s)

12. Pursuant to DAOD 7006-0 *Conduct Sheets*, "a conduct sheet containing entries of convictions and meritorious conduct shall be maintained on a member's unit personnel record". Although the meritorious conduct of a service member is important, the focus of the this part of the lesson will be on the conduct sheets for the purpose of the *CSD* proceedings.

13. Read for yourself and summarize for students QR&O 108.42(2)(b), 108.45(15)(a), 112.81(b), 116.03(1)(*b*), 116.03(2)(*a*); DAOD 7006-1 *Preparation and Maintenance of Conduct Sheets*, and *MJSTL*, ch. 16, p. 16-5, paras 17 to 19.

14. In particular, explain that in the context of proceedings under the *CSD*, commanding officers are authorized or even required to make additions, alterations or deletions to a conduct sheet, in the following circumstances

a) Entries

i. conviction under the *Code of Service Discipline*, either by a court martial or at a summary trial (unless absolute discharge);

ii. conviction by a civil court in Canada, for any Federal law (Like the *Criminal Code* or the *Controlled Drugs and Substances Act*) and provincial statute or local ordinance, but only if the sentence is imprisonment (See QR&O 11.11 and 19.62) (unless absolute discharge);

iii. conviction by a foreign court or tribunal in specific circumstances

b) Changes

i. changes to a recorded punishment; when action is taken which:

1. affects the nature or serving of a punishment already recorded, by way of suspension, remission, commutation, mitigation, or substitution. For example, in any case where the finding or sentence has been altered on review *QR&O* 108.45(15)(a); or

2. puts into execution a sentence that has been previously suspended

ii. an entry has been made in error or contains an error

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c) Removals (DAOD 7006-1, "Removal of an Entry")

An entry shall be removed from a member's conduct sheet when:

- a pardon of the offence to which the entry relates is granted under the *Criminal Records Act* (see DAOD 7016-0);
- a review or appeal quashes a finding of guilty; or
- the CDS determines that the entry resulting from a conviction by a foreign court or tribunal is no longer required. A member's application for such a determination must be supported by the member's CO. Normally, this will not be considered before completion of a period of 72 months during which the member has:
    - been of good conduct; and
    - not been convicted of an offence other than one for which a pardon has been granted.

An entry relating to a conviction which has resulted in a fine of $200 or less, or a minor punishment, for example, seven days confinement to barracks, shall be removed from a member's conduct sheet:

- upon completion of the later of:
    - six months service from the date of enrolment or re-enrolment; or
    - the member's initial military occupation training;
- upon completion of any period of 12 months during which no conviction has been entered;
- upon promotion to sergeant or when an officer cadet or a non-commissioned member attains commissioned rank; or
- prior to release from the CF of a member, who is to be released without having completed initial military occupation training.

15. When an entry is removed, any remaining entries shall be entered on a new conduct sheet. The old conduct sheet shall be destroyed. The charge reports, charge sheets and certificates of conviction pertaining to the removed entry shall be taken from the member's service records and destroyed with the member's consent.

C- Execution of sentence

16. By regulations, it is the offender's commanding officer responsibility to take the necessary action to ensure that the sentence is carried out, irrespective of the service tribunal that has imposed the sentence upon the offender:

a) A court martial (QR&O 112.81(a));
b) A summary trial (QR&O 108.42(2)(a));
c) A review authority's decision (QR&O 108.45(15)(*b*); QR&O 116.03(2)(*b*);

17. For example in case of a fine, within the conditions of payment set by the service tribunal, the CO may cause the offender to pay the fine through pay deductions.

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D- Court martial (when completed)

18. In addition to his/her duties with regard to sentence and offender's service record (including the conduct sheet) following conviction, a CO may also consider ordering to take offender's fingerprints and photographs or any other measurement process or operation having the object of identifying persons (*NDA*. 196.27(1)).

19. However, emphasize to students that such power is only for offences that are "designated offences" pursuant to *NDA*, s. 196.26. In addition, in practice the military police authorities give such an order.

20. If the person had been fingerprinted or photographed already after being charged but prior trial and is later found guilty by a court martial of having committed a non-designated offence (for example, because there was a plea bargain on a less and included offence), it could be argued that the initial charge on the designated offence has not been proceeded with. Then, the CO must destroy those fingerprints, photographs and other measurements without delay on application by the person, if the charge has not been proceeded with in the three years after the charge is laid (*NDA*, s. 196.29 (*b*)).

E-Updating RDP

21. Where a summary trial has been held, the presiding officer is required to complete Part 6 of the RDP by recording the findings made and the sentence imposed at the summary trial (QR&O 108.42(1)(*a*)).

22. Once the summary trial is completed, the RDP will reflect the findings and sentence, if any, as well as pre-trial decisions. While a formal transcript of the proceedings is not made, the presiding officer should prepare a list to identify the witnesses heard and all documentary or physical evidence accepted at the summary trial, including witnesses or evidence called or presented by or on behalf of the accused, and attach this list to the RDP (QR&O 108.21 Note E, *MJSTL*, ch. 13, p. 13-3, para. 10).

23. An officer conducting a review pursuant to QR&O 116.02 (similarly to a review under QR&O 108.45) who decides on his/her own motion to quash guilty finding or to alter the sentence has to:

a) cause a copy of the review decision to be placed on the Unit Registry on which the original RDP was placed; and
b) cause the appropriate entries to be made to Part 7 of the original RDP is quashed or a sentence altered.

F- Removing CRO- imposed conditions

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24. As you recall, an accused put in custody can be released by a custody review officer can require that the person being released comply with conditions (see *NDA* s. 158.6(1), *QR&O* 105.22, *MJSTL*, ch. 7, p. 7-7, para. 34.

25. By the decision of the service tribunal on the findings and sentence (as the case may be), these conditions become obsolete as CRO's jurisdiction does not extend beyond service tribunal's decision. Therefore, the Commanding Officer must ensure those conditions are removed to give effect to the decisions of the service tribunal.

26. A service tribunal does not have the power to impose reasonable conditions, for example when ordering the suspension of a period of detention or imprisonment. However, as we can see below, that will be permitted when relevant sections of Bill C-15 officially come into force.

G-Service records

27. After a decision, commanding officers must not only cause the conduct sheet to be amended but the member's service records, generally speaking (see QR&O 108.42(2)(b), 108.45(15)(a), 112.81(b), 116.03(2)(a)). Where appropriate, it could involve amending other CF documents part of the member's record such as the Member's Personal Record Resume (MPRR).

28. For example, if the offender was AWOL, days of absence may be removed from what is considered as 'pensionable time'. Military pay for those days may be retrieved. Sometimes if the conduct occurred during work and had a significant impact on it, the conviction might also affect the Personal Evaluation Report (PER) covering the period during which the offence was committed.

H-Bill C-10 amendments

29. Bill C-10 (S.C. 2012, c.1) modified the regime for which an individual convicted of an offence under the *CSD* could request a 'record suspension' (and no more seek a 'pardon'). Basically, it has extended the period during which a person is ineligible to apply for record suspension.

30. Therefore read and summarize for students new section 4 of the *Criminal Records Act*. In particular, describe the new waiting periods (subs. 4(1):

a) 10 years [...] for a service offence for which the offender was punished by a fine of more than five thousand dollars, detention for more than six months, dismissal from Her Majesty's service, imprisonment for more than six months or a punishment that is greater than imprisonment for less than two years in the scale of punishments set out in subsection 139(1) of the *National Defence Act*;

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b) five years, in the case of an offence that is punishable on summary conviction or is a service offence other than a service offence referred to in paragraph (*a*).

31. Also bring students' attention subs. 4(2) and (3) where more stringent rules have been adopted for specific offences (Schedule 1 of the *Criminal Records Act*).

I-Bill C-15 amendments

32. When all provisions will be completely in force, Bill C-15 (S.C. 2013 c. 24) will affect post-trial administration in 2 ways.

33. First, in suspending the execution of a punishment, the service tribunal (summary trial or court martial) or the Court Martial Appeal Court, as the case may be, will impose conditions on the offender (new *NDA*, s. 215 (2)) in addition to any reasonable conditions that it may impose (new *NDA*, s. 215 (3)). Here again, COs will have to take measures ensure that those conditions are comply with.

34. Second, Bill C-15 adds *NDA* s. 249.27 which provides that

> **249.27** (1) A person who is convicted of any of the following offences, or who has been convicted of any of them before the coming into force of this section, has not been convicted of a criminal offence:
>
> (*a*) an offence described in section 85, 86, 87, 89, 90, 91, 95, 96, 97, 99, 101, 101.1, 102, 103, 108, 109, 112, 116, 117, 118, 118.1, 120, 121, 122, 123, 126 or 129 for which the offender is sentenced to
>
> (i) a severe reprimand,
>
> (ii) a reprimand,
>
> (iii) a fine not exceeding basic pay for one month, or
>
> (iv) a minor punishment;
>
> (*b*) an offence under section 130 that constitutes a contravention within the meaning of the *Contraventions Act.*
>
> (2) An offence referred to in paragraph (1)(*a*) or (*b*) does not constitute an offence for the purposes of the *Criminal Records Act.*

34. Practically speaking, according to most recent statistics from JAG Annual reports, that means that the vast majority of offences dealt with at summary trial level would not create a criminal record.

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PART 4 – CONCLUSION

Summary: Review essential material from the whole lesson

- Stage 1: Unit post trial activities
  A. Unit registry of disciplinary proceedings
  B. Conduct sheet(s)
  C. Execution of sentence
  D. Court martial (when completed)
  E. Updating RDP
  F. Removing CRO- imposed conditions
  G. Service record
  H. Bill C-10 amendments
  I. Bill C-15 amendments

Confirmation: Done in a discussion format. Ask some confirmation question

Conclusion: recap while this lesson and material presented in important. Make a link from your introduction to the conclusion.

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CREST

Type	Definition	Example
Comparisons	Bridges the gap between present knowledge and what is to be learned.	Unfamiliar aircraft can be explained by comparing them to familiar versions.
Reasons	Satisfies students' natural desire to know "why". Makes teaching points easier to accept.	Teaching Point – Select 100% oxygen if smoke is detected in the cockpit. Reason: Otherwise the regulator will mix oxygen with ambient (contaminated) air resulting in toxins being inhaled into the body.
Examples	Verbal illustrations are used to back up a statement or to clarify an idea. Can be real or created, but must be believable.	In discussing the need to observe safety precautions with a piece of equipment, the instructor may relate an example of how failure to observe precautions resulted in an accident.
Statistics	Used as support for the emphasis that a figure provides.	On average, tutored students score better than 98% of their classroom taught counterparts.
Testimony	Quotes from subject matter experts are used to add credibility to teaching points; they should be short and relevant. Ideally, the expert is someone most students can identify with.	If the instructor is reviewing the procedures employed in a given tactic they may cite personal experience, emphasizing the importance of doing these procedures correctly.

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PO 019 ADVISE WRT POST TRIAL ACTIVITIES

PART 1 -- LESSON IDENTIFICATION

TITLE: EO 019.03 Advise on the legal issues related to detention

Performance. Advise on the legal issues related to detention

Conditions.

given: Relevant factual context, legislation, policy, case law, reference materials (including prior legal advice)
denied: direct supervision

Standard. The legal officer shall provide timely and solution-oriented legal advice to the commanding officer and any other statutory decision-maker regarding the application and execution of the sentence of detention

Main Teaching Points:

- Grounds for suspension of detention

Method. This EO will be accomplished by Face-to-Face instruction. Students will be asked to read material prior the course. Instructors will expand and contextualise the concepts using a scenario.

Duration. 1 period of Interactive Lecture (IL).

References. As per TP.

Training/ Learning Aids. Computer access; CD materials; Legal Officer Qualification Course (LOQC) Instructors Handbook – Module(s) EO 019.03 1

Note to the instructor. A review of the main teaching points will then take place at the end of the period, by Enabling Checks (EC).

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PART 2 – INTRODUCTION

Objective: The Legal Officer (LO) shall advise with regard to post-trial activities in the particular context the CF operate. After the completion of this lesson, the LO shall be able to provide advice on the legal issues related to detention.

Introduction: Introduce the lesson by emphasizing that at summary trial level, the most severe punishment is detention. Explain however that on appropriate grounds, detention could be suspended by the chain-of-command, even when such a punishment is awarded by courts martial. We will discuss here who, when and why suspension could be recommended. Through this knowledge, LO will be able to provide broader legal advice on the consequences of CSD proceedings.

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PART 2 – INTRODUCTION (cont'd)

Outline: The LOC instructor shall introduce the lesson outline

- Stage 1: Grounds for suspension of detention
  - A. Roles and authorities of commander of a command
  - B. Circumstances relating to suspension of detention

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PART 3 – BODY OF THE LESSON

Stage 1 – Grounds for suspension of detention

1. **Introduction**: The focus of the lesson will be on grounds for suspension of detention. Explain to students that the topic here will not pertain to the suspension awarded by the presiding officer during summary trial. The emphasis is put here on the power by the chain of command to suspend detention, in very specific circumstances, after trial (either court martial or summary trial) is over.

2. This lesson is divided by two sub-Teaching Points (sub-TPs): 1) Roles and authorities of commander of a command, and; 2) Circumstances relating to suspension of detention. Use the PowerPoint slide to view each type of those and discuss them briefly.

A- Roles and authorities of commander of a command

3. Once the punishment of detention has been awarded by a service tribunal (summary trial or court martial), various higher authorities in the chain-of-command may suspend the punishment, whether or not the offender has already been committed to undergo that punishment. (*NDA*, subs. 216(2)).

4. We will focus here on the power to suspend a detention as it would likely be the most probable scenario LOs would be exposed to. First, the punishment of imprisonment is awarded less often than detention. In addition, because it is awarded by courts martial, only the Chief of Defence Staff (CDS) or an officer commanding a command may suspend it. However, remind students that the punishment of imprisonment may also be suspended by the chain of command.

5. For the purpose of suspending the punishment of detention, here are the followings authorities who may act as 'suspending authorities':

a) When detention is awarded by court martial (QR&O 114.02(2));:
   i. the CDS
   ii. an officer commanding a command
b) When detention is awarded by summary trial, the following authorities (QR&O 114.02(3)):
   i. the CDS;
   ii. an officer commanding a command;
   iii. an officer commanding a formation;
   iv. a commanding officer but only when the offender is under the commanding officer's command (QR&O 114.02(4));
   v. an officer acting as a review authority under article 108.45 (*Review of Finding or Punishment of Summary Trial*).

6. The 'suspending authorities' are not to be confused with 'committal authorities' who are authorities to can order individuals to be put in detention (or imprisonment)

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(*NDA*, s. 219(1)(2); QR&O 114.03(1)). The list of those who may act as 'committing authorities' is partially similar to the list of 'suspending authorities' (QR&O 114.03(2)).

7. When suspension of detention is recommended, the committing authority may postpone the committal until directions from the suspending authority is obtained (*NDA*, subs. 215(3)).

8. If suspension occurs before committal to undergo the punishment the offender, if in custody, would be released. (*NDA*, subs. 216.1(1)). If suspension occurs after committal, the offender is released from incarceration (*NDA*, subs. 216.1(2)).

9. A suspending authority may, at any time while a punishment is suspended, direct the authority empowered to do so to commit the offender and, after the date of the committal order, that punishment ceases to be suspended (*NDA*, subs. 218(1)).

B- Circumstances relating to suspension of detention

10. Neither the *NDA* nor the *QR&O* precisely explains the circumstances for which the punishment of detention can be suspended. There is one exception; during the review process of a summary trial, the review authority must suspend the carrying into effect of the punishment of detention pending the completion of the review (QR&O 108.45(17)).

11. However those circumstances should be sufficiently exceptional that a reasonably informed observer would conclude that they justify suspension. (See *R. v. Corporal K.R. McGinnis-Armstrong,* 2009 CM 3011, para. 21).

12. For example, suspension could be justified:

a) for humanitarian reasons, where

   i. suspension would be justified for compassionate reasons (ex: the sudden loss or serious illness of a close relative), or;

   ii. continuing detention would cause undue hardship to a third party (ex: upcoming moving where the pregnant wife is alone with two kids);

b) to protect the offender's, where there are clear reasons to believe that continuing detention would endanger offender's health and safety (ex: offender's health is such that CF health services cannot ensure proper care if offender remains incarcerated);

c) for stringent operation exigencies, where continuing detention would seriously impede the conduct of military operations (ex: a guard house in a

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deployed location which is under attack and where all CF members are needed to defend the location to repel the attack).

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PART 4 – CONCLUSION

Summary: Review essential material from the whole lesson

- Stage 1: Grounds for suspension of detention

  A. Roles and authorities of commander of a command

     - If by CM: CDS and Commander of a command
     - If by summary trial: more authorities
     - Not to be confused with committal authorities

  B. Circumstances relating to suspension of detention

     - Mandatory if review of summary trial requested
     - Optional if exceptional circumstances

Confirmation: Done in a discussion format. Ask some confirmation question

Conclusion: recap while this lesson and material presented in important. Make a link from your introduction to the conclusion.

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CREST

Type	Definition	Example
Comparisons	Bridges the gap between present knowledge and what is to be learned.	Unfamiliar aircraft can be explained by comparing them to familiar versions.
Reasons	Satisfies students' natural desire to know "why". Makes teaching points easier to accept.	Teaching Point – Select 100% oxygen if smoke is detected in the cockpit. Reason: Otherwise the regulator will mix oxygen with ambient (contaminated) air resulting in toxins being inhaled into the body.
Examples	Verbal illustrations are used to back up a statement or to clarify an idea. Can be real or created, but must be believable.	In discussing the need to observe safety precautions with a piece of equipment, the instructor may relate an example of how failure to observe precautions resulted in an accident.
Statistics	Used as support for the emphasis that a figure provides.	On average, tutored students score better than 98% of their classroom taught counterparts.
Testimony	Quotes from subject matter experts are used to add credibility to teaching points; they should be short and relevant. Ideally, the expert is someone most students can identify with.	If the instructor is reviewing the procedures employed in a given tactic they may cite personal experience, emphasizing the importance of doing these procedures correctly.

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PO 020 EXPLAIN THE ROLE AND RESPONSIBILITIES OF COUNSEL BEFORE MILITARY AND APPELLATE COURTS

PART 1 -- LESSON IDENTIFICATION

TITLE: EO 020.01 Explain the roles and responsibilities of counsel at court martial

Performance. Explain the roles and responsibilities of counsel at court martial

Conditions.

given: Relevant factual context, legislation, policy, case law, reference materials (including prior legal advice)
denied: direct supervision

Standard. The legal officer shall explain, in general terms, the roles and responsibilities of prosecution and defence counsel before military tribunals

Main Teaching Points:

- Convening courts martial under QR&O 111
- Court martial process under QR&O 112
- Military rules of evidence

Method. This EO will be accomplished by a combination of Self-Study and Developmental Lesson. Students will be asked to read reference material of all three modules on their own, either prior the course through distributed learning or during the course outside class hours on computers with DWAN access allocated to the course. Under instructor's guidance, concepts will be expanded and contextualised through a scenario.

Duration. 1 1/2 periods of mixed Distributed Learning (DL) and Interactive Lecture (IL).

References. As per TP.

Training/ Learning Aids. Computers access (DWAN); CD materials; Legal Officer Qualification Course (LOQC) Instructors Handbook – Module(s) EO 020.01 1-3

Note to the instructor. A review of the main teaching points will then take place at the end of the periods, by Enabling Checks (EC).

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PART 2 – INTRODUCTION

Objective: The Legal Officer (LO) shall explain the role and responsibilities of counsel before military and appellate courts. After the completion of this lesson, the LO shall be able to explain the roles and responsibilities of counsel at court martial.

Introduction: Begin the lesson by explaining first that the content is an introduction to the role of LOs as a litigator before courts martial. For some, as former or actual litigators in criminal/penal matters, the content would seem familiar. For those who have never been exposed to litigation, this might seem complex. Keep in mind though that the intent here is not to bring students to a level of skills and expertise for them to be ready to act in a trial: this training mandate belongs to both Defence Counsel Services and Canadian Military Prosecution Service. Through application of this knowledge, LO will become sufficiently aware of the process to provide effective support to judicial actors, litigation colleagues and units in operating courts martial system in an effective and fair fashion.

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PART 2 – INTRODUCTION (cont'd)

Outline: The LOC instructor shall introduce the lesson outline

- Stage 1: Convening courts martial under QR&O 111
  - A. Role of DMP
  - B. Role of CMA
  - C. Assistance by units
- Stage 2: Court martial process under QR&O 112
- Stage 3: Military rules of evidence

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PART 3 – BODY OF THE LESSON

Stage 1: Convening courts martial under QR&O 111

1. **Introduction**: The focus in the first part of the lesson will be on convening courts martial under QR&O 111. Explain to students that main procedural steps and roles would be described sufficiently for them to assist units in their role to support the courts martial proceedings.

2. This lesson is divided in three sub-Teaching Points (sub-TPs) representing main role in the convening process: 1) Role of DMP; 2) Role of CMA, and; 3) Assistance by units. Use the PowerPoint slide to view each of those and discuss them briefly.

A-Role of DMP

3. Once DPM has decided to prefer the charges, he or she shall cause the charge sheet to be forwarded to the Court Martial Administrator (CMA) (QR&O 110.07).

4. It should also cause the CMA to be informed as to the language of trial chosen by the accuse (QR&O 110.08). Pursuant to *Official Languages Act* (R.S.C. 1985, ch. 31, 4th supp.) the accused can choose either French or English. Be careful as Note of QR&O 110.08 states that "*The accused's decision is made prior to the commencement of proceedings and is recorded on the Record of Disciplinary Proceedings*". However, that choice is made prior election and having the chance of reviewing the evidence with a legal counsel. It may turn out that, facing the potential more serious consequences of a court martial that the accused person would like to change his/her choice. Remind students that choice of language should be confirmed between accused person and DMP through units and their legal advisors. See generally Pascal Levesque, "The Official Languages in Canadian Military Penal Law", *Sword and Scales* (2013), on line CBA: http://www.cba.org/CBA/sections_military/newsletters2013/languages.aspx.

5. Charges against two or more accused persons may be preferred jointly by DMP and tried together by court martial where an offence has been alleged to have been committed collectively (QR&O 110.09(1)) unless a military judge decides otherwise (QR&O 110.09 (2),(3),(4)).

6. Once charges are preferred and forwarded to CMA, DMP does not exercise the primary role in the process as the type of court martial is mainly determined by operation of the *NDA* or by choice of the accused person. However, there is some discretion left to DMP, in the following circumstances:

a) should an offence could only be tried by General Court Martial and the accused person would like to be tried by Standing Court Martial (*NDA*, subs. 165.191(1) and (2); QR&O 111.021 "Mandatory General Court Martial");

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b) should the accused person wants to make a new choice as to his or her mode of court martial within less that 30 days before the date set for the commencement of the trial or a second choice at any given time, written consent of DMP is required; (*NDA*, subs. 165.193(4) and (5));

c) should the accused person wants to withdraw an election to be tried by court martial prior the commencement of the trial (QR&O 108.17(5)(*b*) – assuming limitation periods do not preclude holding the summary trial).

7. Before the court martial commences, the prosecutor must notify the accused of any witness whom it is proposed to call and the purpose for which a witness would be called and of the nature of the proposed evidence of that witness (QR&O 111.11). Such document is known as the 'will-say'. However the objective of such provisions might well be met already through other means in accordance with accused person's right to disclosure (see *R. v Stinchcombe*, [1991] 3 S.C.R. 326).

B-Role of CMA

8. Convening courts martial is CMA's primary role (*NDA*. s. 165.19(1)). Details of his or her functions are provided at *NDA* sections 165.191 to 165.193 and QR&O Chap. 111. CMA's duties and functions can be delegated to anyone by CMA (*NDA*, s. 165.2).

9. Where any charge on the charge sheet is an offence punishable by imprisonment for life, CMA must convene a General Court Martial (GCM) (*NDA*, subs. 165.191(1)) unless both DMP and the accused person agree otherwise (*NDA*, subs. 165.191(2) and (3)). GCMs involve the selection of a panel composed of 5 CF members: 5 officers where the accused is an officer; 3 officers and 2 senior NCOs where the accused is an NCM.

10. Where every charge on the charge sheet are 1) punishable by imprisonment for less than two years or less; 2) when under s. 130, punishable on summary conviction, the CMA must convene a Standing Court Martial (SCM) (*NDA*, s. 165.192). SCMs are before a military judge alone.

11. In any other cases, the option is left to the accused person (*NDA*, subs. 165.193 (1) and (2)). Failure to make a choice is considered a choice for GCM (subs. 165.193 (3)). The accused can make a new choice once as of right not later than 30 days before the trial date (subs. 165.193 (4); QR&O 111.024). Otherwise, he or she needs DMP's written consent. If charges are preferred jointly, accused persons who do not choose the same type of court, are tried by GCMs.

12. For GCMs, CMA selects panel members (QR&O 111.03) and alternate members QR&O 111.04) using a random methodology. CMA cannot select CF members who are not eligible (QR&O 111.03(3)) and may excuse some others (QR&O 111.03 (4)). For example, CMA may excuse someone who is "*unfit to perform court martial duties as a result of illness or injury*" (QR&O 111.03(4)(*d*)).

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13. Make reference to *R. v. Master Seaman R.J. Middlemiss*, 2009 CM 1001, para. 3, online JMC-CMJ: http://www.jmc-cmj.forces.gc.ca/assets/CMJ_Internet/docs/en/2009cm1001.pdf which provides an example of CMA's role in the convening process.

14. Once CMA convenes a court martial, convening order and charge sheet are sent to the military judge, with copies to DMP, unit CO where accused is present and members of the court martial panel (as the case may be) (QR&O 111.05). The CO then ensures the accused and his or her defence counsel receives copies too (QR&O 111.06). Format of receipt for documents are provided for at QR&O 111.07.

15. Last point, CMA has the power to summon witnesses (*NDA* s 249.22; QR&O 111.09). For service witnesses however, it is usually not necessary to proceed by summons as the CO of the accused person shall take all necessary actions to procure the attendance of the witnesses whom the prosecutor and the accused person request to be called (*NDA*, s. 183; QR&O 111.08). Nevertheless, summons might be necessary for service witnesses, in particular when they are located outside CO's jurisdiction or when they are required to bring documents with them.

C-Assistance by Units

16. Read for yourself and summarize for students "Section 5 – Pre-Trial Administrative Support" of QR&O chap. 111 (QR&O 111.12 to 111.17). Explain to students that, as there are no permanent facilities for courts martial which are convened as the need arises (*ad hoc*), although some bases/locations are physically better equipped than others. Therefore, units must assist CMA in the preparation and conduct of courts martial (QR&O 111.12). In particular, a unit's CO must appoint an officer of the court (QR&O 111.14) and ensures that certain documents are provided to the prosecutor (QR&O 111.17).

17. Once administrative requirements have been determined in consultation with unit authorities, CMA issues the 'administrative instructions' for the proper administration of the court martial (QR&O 111.13).

Interim Summary: Use the prepared PPT presentation to do a quick review of the material.

- DMP's main role is to send charge sheet of preferred charges to CMA – After less involvement
- CMA's main role is to convene court martial, and select panel members for GCMs
- Units (and their legal advisors) must assist judicial actors to meet administrative requirements

Note to instructor: Use hyperlinks to show references.

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PART 3 – BODY OF THE LESSON (Continued)

Stage 2: Court martial process under QR&O 112

18. **Introduction**: The focus in the second part of the lesson will be on Court martial process under QR&O 112. Explain to students that procedural steps would be explained in broad terms, sufficiently for them to understand the process so that they can 1) provide timely and accurate information to chain of command with regard to court martial proceedings; 2) assist judicial actors and litigators as officers of the court to facilitate the proceedings.

19. This lesson is divided by main sections of QR&O Chapter 112 "Procedure at Court Martial". Some of the most relevant steps from a unit's legal advisor would be discussed. Use the PowerPoint slide to view each of those and discuss them briefly.

a) Section 1 – General

20. Read for yourself and summarize for students QR&O 112.01 to 112.04. Explain that those articles are of a general nature. Of note, QR&O 112.03 (Preliminary proceedings) which restates *NDA*, sections 187 and 191.1. The former is the power of a military judge to intervene once a charge is preferred. On rare occasions, litigators may apply to military judge to produce evidence or to force a date of trial. The latter provision is used generally by counsel when there is an agreement on a guilty plea once a GCM is convened. It avoids having the panel assembles, reducing travel costs and administrative requirements. Those preliminary proceedings are different from those once the court martial has begun.

21. QR&O 112.04 is procedural as it pertains to notice for both preliminary proceedings prior trial and those once trial has begun. The article provides that the notice must be reasonable, without specifying any time period. Having said that, CMJ's office have developed (with other MJ actors) the *Court Martial Rules of Practice* (online CMJ: http://www.jmc-cmj.forces.gc.ca/en/rules-practice.page?) in which it is stated that "notice should be given at least three working days before the date requested for the hearing of the application" (Rule 15). It is common practice however that the party seeking a hearing date will consult the other party to find a mutually satisfactory date prior contacting the CMA.

b) Section 2 – Order of Procedure

22. Read for yourself and summarize for students QR&O 112.05 to 112.07. Explain that those provisions are of a procedural nature. In particular, QR&O 112.05 describes the court martial process step-by-step, from the admission of members of public (subs (2)) to the termination of the proceedings (subs. 23). For those students who are acquainted with the criminal process in civilian jurisdiction, this process might appear cumbersome. Explain that there are historic reasons: the process was designed at a time when law professionals where rare in comparison with today, even more so in the

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particular domain of military law. In addition, many service members could not read or write at that time. The process was designed to better ensure that they would understand what is going on. But there is also a prospective reason; the process is designed to face a large scale war where literally millions of individuals not acquainted with military justice could be enrolled on a very short notice. Legal professionals, court reporters even military judges newly appointed might not have sufficient level of comfort to run courts martial without formal regulatory guidance.

23. QR&O 112.06 pertains to procedural steps following the imposition of a punishment of detention or imprisonment.

c) Section 3 – Admission to Courts Martial

24. Read for yourself and summarize for students QR&O 112.10 and 112.11. Those provisions pertain to who could attend courts martial. Explain that the default rule is that the public shall be admitted to the proceedings (QR&O 112.10 restating *NDA*, subs. 180(1)). There are some exceptions. First, witnesses cannot be admitted prior their examination (unless leave of the court martial) (QR&O 112.10; *NDA*, subs. 180(3)). Second, court martial may order partial or total exclusion of the public, if it considers that it is necessary 1) in the in the interest of public safety, defence or public morals (QR&O 112.10; *NDA*, subs. 180(2)(*a*)); or 2) for the maintenance of order or the proper administration of military justice (QR&O 112.10; *NDA*, subs. 180(2)(*b*)). When the court martial orders members of the public to be excluded, we say that the court is sitting "in camera".

25. Not to be confused with a 'closed court' (QR&O 112.11) which means the exclusion of everybody except the court in its deliberation on any matter. It could be either the military judge alone in his or her chambers or the five panel members deliberating in theirs.

d) Section 4 - Objections

26. Read for yourself and summarize for students QR&O 112.14 and 112.15. Those provisions pertain to objections to courts martial participants: 1) any member of the panel (QR&O 112.14), or; 2) the interpreter (QR&O 112.15). Not to be confused with objections challenging a question from a litigator.

e) Section 5 - Oaths

27. Read for yourself and summarize for students QR&O 112.16 to 112.21. Those provisions pertain to various oaths for each type of participants to SCMs and GCMs: 1) presiding judge (of a GCM) (QR&O 112.16); 2) members of court martial panel (QR&O 112.17); 3) court reporter (QR&O 112.18); 4) interpreter (QR&O 112.19), and; 5) witnesses (QR&O 112.20). Keep in mind that affirmation can be made in lieu of oath (QR&O 112.21). Although not formally required by regulations, unit legal advisors should be also ready to make sacred book of other denominations available. Should

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any of the above actors so choose to take oath according to their religious beliefs, the spirit of this section should be maintained to reasonably accommodate them, without putting the administration of military justice into disrepute.

f) Section 6 - Pleas

28. Read for yourself and summarize for students QR&O 112.24 to 112.26. Those provisions pertain to various pleas: 1) pleas in bar of trial where defence challenges court's authority (no jurisdiction, *autrefois acquit*, *autrefois convict*, unfit to stand trial, no service offence) (QR&O 112.24); 2) guilty pleas by the accused (QR&O 112.25), and; 3) change of plea during trial (QR&O 112.26).

g) Section 7 - Opening Addresses and Evidence of Witnesses

29. Read for yourself and summarize for students QR&O 112.28 to 112.33. Those are procedural in nature and pertain to openings addresses (QR&O 112.28 and 112.29) and witnesses (QR&O 112.30 to 112.33). Those articles have to be read in conjunction with the *Military Rules of Evidence* (*MRE*, next part of the lesson). Of note, the military judge can order the testimony of a witness or of the complainant outside the courtroom or behind a screen (not to see the accused) if it is necessary to obtain a full and candid account (QR&O 112.33). The article applies mainly in sexual offence cases involving underage complainants/witnesses.

h) Section 8 - Findings

30. Read for yourself and summarize for students QR&O 112.40 to 112.43. Those pertain to potential findings at the outcome of courts martial. Explain that the default rule is that the court must find not guilty unless it is proven beyond reasonable doubt that the accused committed the offence, attempted to commit it or committed a related or less serious offence (QR&O 112.40). Alternative findings are explained. Bring students' attention to the Notes of QR&O 112.40 giving various examples of findings.

31. QR&O 112.41 pertains to findings by GCMs which have to be unanimous. Military judge will review the legality of the proposed finding by the court martial panel (QR&O 112.43).

32. Special findings are those where the facts are proven but differ from the particulars of the charges and the accused is not prejudiced in his or her defence (QR&O 112.42). For example, an accused charged with a theft of $5000 but only $1000 was proven.

i) Section 9 - Sentence

33. Read for yourself and summarize for students QR&O 112.47 to 112.55. Those pertain to sentences and are both of a substantive and of a procedural nature. Explain to students that for both types of courts martial, sentence is determined only by the

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military judge (QR&O 112.47 which restates *NDA*, s. 193). However in a murder case, the court martial panel could make a recommendation as to the parole eligibility (QR&O 112.50). During sentencing, the documents provided by the commanding officer to the military prosecutor (see above on QR&O 111.17) will be presented to the court (QR&O 112.51).

34. Usually, legal and court debate is less tense during sentencing phase. Both parties cooperate to adduce evidence before the court, in particular pertaining to the character of the offender. Unit legal advisors could assist in facilitating access to relevant documentation.

35. Having said that, there might be a dispute over facts relevant to the determination of a sentence. The court must request that evidence be adduced as to the existence of the fact (QR&O 112.52). The default rule is that the fact has to be established on a balance of probabilities unless it is an aggravating fact that the prosecution which to introduce by proof beyond a reasonable doubt (QR&O 112.53).

36. After the arguments of counsel, the court may on its own motion require further evidence (QR&O 112.55). It occurs mainly when the court is of the view that a joint submission by counsel is so insufficiently supported by the evidence adduced before court that it would be unreasonable or put the administration of military justice into disrepute.

j) Section 9.1 – DNA Orders

37. Read for yourself and summarize for students QR&O 112.56 and 112.57. Those provide various forms for the purpose of *NDA* s. 196.14 and subs. 196.24(1) pertaining to *DNA* orders once accused persons have been found guilty by courts martial. In particular explain to students that:

a) for some primary designated offences (*NDA*, s. 196.11 "primary designated offence" (*a*)), the court martial must make such an order (*NDA*, subs. 196.14(1));

b) for some other primary designated offences (*NDA*, s. 196.11"primary designated offence" (*a*.1)(*b*)), the court martial must make such an order unless "person has established that the impact of such an order on their privacy and security of the person would be grossly disproportionate to the public interest in the protection of society and the proper administration of military justice" (*NDA*, subs. 196.14(2));

c) for persons found:

   i. not criminally responsible of having committed a designated offence (*NDA* 196.14(3)(*a*));

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ii. guilty of having committed a secondary designated offence (*NDA*, s. 196.11 "secondary designated offence" (*a*), 196.14(3)(*b*)),

the prosecution may request the court to issue a DNA order.

38. "Primary designated offences" are *Criminal Code* offences. "Secondary designated offences" are mainly from the *Criminal Code* but also include offences from the *NDA*, such as striking a superior officer (*NDA*, s. 84) or striking a subordinate (*NDA*, s. 95) (See *NDA*, s. 196.11 "secondary designated offence" (*b*)).

39. The purpose is for those offenders to be put into the national DNA data bank to facilitate investigation on future crimes. The practical impact for service members who have their DNA in the data bank is that it may impede their capacity to travel, be posted and/or be deployed outside Canada, in particular to United States.

k) Section 9.2 - Order to Comply with the Sex Offender Information Registration Act (SOIRA)

40. QR&O 112.58 pertains to forms of *SOIRA* orders pursuant to *NDA*, subs. 227.01(1), (2) or (3). In short, a *SOIRA* order compels sex offenders to report themselves on a regular basis to a 'registration centre', including when moving. There are some particularities for CF members each MP station is a 'registration centre', even outside Canada (QR&O 112.58 Note).

41. In practice however, very few individuals that are under a *SOIRA* order remain in the CF as the offence committed generally precipitates their administrative release.

l) Section 10 – Procedure Generally

42. Read for yourself and summarize for students QR&O 112.59 to 112.675. Those are procedural in nature and pertain to various aspects of the court martial proceedings. In particular, bring students' attention to the power of the court to conduct a view (QR&O 112.63 referring to *NDA*, s. 189). Give an example using the GCM of *R. v. Captain R.A. Semrau* (2010) where the court martial conducted a view in Afghanistan to avoid having Afghan witnesses coming to Canada to testify. Deployed unit legal advisors where heavily solicited to provide assistance to all judicial actors (CMA, Military Judge, Counsel of both parties, Members of the panel) in facilitating court martial proceedings.

43. Mention also the possibility for the court to use video link to conduct preliminary proceedings (QR&O 112.64) or take testimonial evidence (QR&O 112.65).

m) Section 11 - Evidence

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44. Read for yourself and summarize for students QR&O 112.68 to 112.72. Those are procedural in nature and pertain to admissibility of evidence. They must be read in conjunction with *NDA* ss. 181, 182, 184, 185 and the *MRE*.

n) Section 12 – Stay of Proceedings

45. Pursuant to QR&O 112.80 (1), a stay of proceedings has "the effect of a finding of not guilty to the charge on which it has been directed". It commonly occurs when the accused is found guilty of a charge for which there is an alternative one.

o) Section 13 – Post-Trial Unit Administrative Action

46. As we saw in the PO 019, when a sentence has been imposed upon an offender, the commanding officer has to take measures to ensure that the sentence is carried out and entries are made in the offender's service records (QR&O 112.81).

Interim Summary: Use the prepared PPT presentation to do a quick review of the material.

- Chap 112 is mainly procedural but also substantive
- Court martial step by step: QR&O 112.05
- Must be read in conjunction with *MRE*s and provisions of *NDA* pertaining on court martial proceedings
- Units and their legal advisors must provide administrative support to proceedings

Note to instructor: Use hyperlinks to show references.

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PART 3 – BODY OF THE LESSON (Continued)

Stage 3 – Military rules of evidence

47. **Introduction**: The focus in the third part of the lesson will be on the *Military Rules of Evidence* (*MRE*). As per their title, they set the rules to the admissibility of evidence in a court martial. They would be seen here in broad terms. Remind students that they do not apply at a summary trial (which is not to say however that there is no rule applicable to evidence admissibility at summary trial).

48. Emphasize also the fact that *MRE* have not been updated since the reform of military justice in 1998. To illustrate, it uses former terminology such as 'Judge Advocate' (for military judge) or 'Convening Authority' (which does not exist anymore). In that sense, their value is relative as they are influenced by *Canada Evidence Act* (R.S.C., 1985, c. C-5) and superior court rulings on evidence admissibility.

49. This lesson is divided by main parts and divisions of the *MRE*. (Military Rules of Evidence (C.R.C., c. 1049)) Some of the most relevant rules from a unit legal advisor's perspective would be explained. Use the PowerPoint slide to view each of those and discuss them briefly.

a) PART I - EVIDENCE AND PROOF GENERALLY

50. Read for yourself and summarize for students "Division I - Admission of Evidence Generally" (Rules 7 and 8) In particular, explain that to be considered as evidence information, including one gathered in an investigation report, must be relevant (rule 7) and introduced properly (rule 8).

51. Read for yourself and summarize for students "Division II - Burden of Persuasion and Rebuttable Presumptions of Law" (rules 9 to 13). In particular, explain that the general rule is the proof beyond reasonable doubt of every essential element (rule 9). Usually, prosecutor has the burden of persuading the court (rule 10). However, accused as the burden of proving that he or she is not criminally responsible due to mental disorder ('insanity') (rule 11).

b) PART II - JUDICIAL NOTICE

52. Read for yourself and summarize for students "Division III - Judicial Notice" (Rules 15 to 19). In short, judicial notice is what does not need to be proven before the court as the court already or must knows it. In particular, explain to students the differences between what military judges must take judicial notice of (rule 15; for example the *National Defence Act*) and what they may take judicial notice of (rule 16; for example CMAC decisions). Emphasize that once a fact is part of the judicial notice, "it is conclusively taken to be true" and cannot be challenged (rule 19 (2)).

c) PART III - METHODS OF PROOF AND FORBIDDEN TYPES OF EVIDENCE

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53. Read for yourself and summarize for students "Division IV - Character and Similar Facts" (Rules 20 to 25). In particular, explain to students that the default rule is that the prosecution must not introduce evidence that shows bad character of the accused or that he committed similar acts in the past (Rule 20). Having said that, there are exception to that rule (Rules 21 and 22) There are also rules applicable to specific offenses (Rule 23 to *NDA*, s. 105 offence; Rule 24, *Security of Information Act*, s. 6).

54. Read for yourself and summarize for students "Division V - Hearsay Evidence" (Rules 26 to 35). In particular, explain to students that the default rule is that hearsay is generally excluded (Rule 26). Having said that, there are exceptions to that rule (Rules 27 and 35).

55. Read for yourself and summarize for students "Division VI - Confessions of Accused Persons" (Rules 36 to 49). Weight of confessions depends in which circumstances they were made. Usually, the more formalized the circumstances are, the more difficult confession could be challenged. In particular, see rules 37 (Judicial Confession Explained), 39 (Official Confession Defined) and 41 (Unofficial Confession Defined).

56. Read for yourself and summarize for students "Division VII - Other Kinds of Hearsay Evidence" (Rules 50 to 60). Explain that there are exception rules to hearsay exclusion that are applicable in specific situations. In particular see rule 50 (Statements by Persons Other than Accused made in Judicial or Other Official Proceedings), rule 51 (Public Documents), rule 53 (Documents of Canadian Forces), rule 54 (Regular Entries), rule 55 (Limitations on Admission of Certain Documents), rule 58 (Statutory Declarations), and 60 (Kind of Hearsay not Specifically Covered).

57. Read for yourself and summarize for students "Division VIII – Opinion" (Rules 61 to 66). In particular, explain to students that the default rule is that opinion is generally excluded (Rule 61). Having said that, there are exceptions to that rule (Rules 62 to 66). In particular, through an expert when the expertise is relevant to the matter before the court (Rule 63).

58. Read for yourself and summarize for students "Division IX - Effect of Public Policy and Privilege" (Rules 67 to 78). In particular, explain to students that the default rule is that when disclosure of any facts relative to the charge would be prejudicial to national defence, good international relations or other national interests, evidence may be given at a trial when the public has been excluded (rule 67). Having said that, there are circumstances where disclosure of such facts would not be permitted, even in a trial in *camera*. For example see sections 37, 38 and 39 of the *Canada Evidence Act*.

d) PART IV - PERMITTED METHODS OF PROOF

59. Read for yourself and summarize for students " Division X - Oral Testimony" (Rules 79 to 86).

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60. Read for yourself and summarize for students "Division XI - Examination of Witnesses" (Rules 87 to 101).

61. Read for yourself and summarize for students "Division XII – Documents" (Rules 102 to 109). In particular, explain to students that the default rule is that documents are proven by primary evidence by producing the originals (Rule 103). Having said that, there are exceptions to that rule (Rules 104 to 109). In particular, rule 105 (Proof of Public Documents).

62. Read for yourself and summarize for students "Division XIII - Real Evidence" (Rules 110 and 111). Explain that the quality or condition of the real evidence is relevant (Rule 110 (1)). It is then important to maintain an appropriate chain of custody of real evidence from investigation to trial.

63. Read for yourself and summarize for students "Division XIV - Foreign Law" (Rule 112). In short, an expert is needed to prove foreign law. This is particularly relevant as *NDA*, subs. 132 (1) provides that an offence to foreign law constitute a service offence.

Interim Summary: Use the prepared PPT presentation to do a quick review of the material.

- *MRE* pertains mainly of the admissibility of evidence and how to adduce it before the court;
- Comprehensive but old rules; created before major reform in MJ in 1998 Must be read in conjunction with *NDA*, *Canada Evidence Act* and Canadian appeal courts decisions on admissibility of evidence;
- Sometime evidence does not need to be adduced; it is part of the judicial notice

Note to instructor: Use hyperlinks to show references.

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PART 4 – CONCLUSION

Summary: Review essential material from the whole lesson

- Stage 1: Convening courts martial under QR&O 111
  - A. Role of DMP
    - Transfer to CMA then lower role
  - B. Role of CMA
    - Primary role convening CMs; selects GCM panels
  - C. Assistance by units
    - Provide admin support to judicial actors
- Stage 2: Court martial process under QR&O 112
    - Substantive and procedural; Step-by-step; Read with *MRE*
- Stage 3: Military rules of evidence
    - Comprehensive but old; Read with *Canada Evidence Act* and judicial decisions

Confirmation: Done in a discussion format. Ask some confirmation question

Conclusion: recap while this lesson and material presented in important. Make a link from your introduction to the conclusion.

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CREST

Type	Definition	Example
Comparisons	Bridges the gap between present knowledge and what is to be learned.	Unfamiliar aircraft can be explained by comparing them to familiar versions.
Reasons	Satisfies students' natural desire to know "why". Makes teaching points easier to accept.	Teaching Point – Select 100% oxygen if smoke is detected in the cockpit. Reason: Otherwise the regulator will mix oxygen with ambient (contaminated) air resulting in toxins being inhaled into the body.
Examples	Verbal illustrations are used to back up a statement or to clarify an idea. Can be real or created, but must be believable.	In discussing the need to observe safety precautions with a piece of equipment, the instructor may relate an example of how failure to observe precautions resulted in an accident.
Statistics	Used as support for the emphasis that a figure provides.	On average, tutored students score better than 98% of their classroom taught counterparts.
Testimony	Quotes from subject matter experts are used to add credibility to teaching points; they should be short and relevant. Ideally, the expert is someone most students can identify with.	If the instructor is reviewing the procedures employed in a given tactic they may cite personal experience, emphasizing the importance of doing these procedures correctly.

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PO 020 EXPLAIN THE ROLE AND RESPONSIBILITIES OF COUNSEL BEFORE MILITARY AND APPELLATE COURTS

PART 1 -- LESSON IDENTIFICATION

TITLE: EO 020.02 Explain the roles and responsibilities of counsel at a show cause hearing

Performance. Explain the roles and responsibilities of counsel at a show cause hearing

Conditions.

given: Relevant factual context, legislation, policy, case law, reference materials (including prior legal advice)
denied: direct supervision

Standard. The legal officer shall describe, generally, the roles and responsibilities of prosecution and defence counsel at a show cause hearing before a military judge

Main Teaching Points:

- Show cause hearing under section 159 NDA QR&O 105

Method. This EO will be accomplished by a combination of Self-Study and Developmental Lesson. Students will be asked to read reference material on their own, either prior the course through distributed learning or during the course outside class hours on computers with DWAN access allocated to the course. Under instructor's guidance, concepts will be expanded and contextualised through a scenario.

Duration. 1 period of mixed Distributed Learning (DL) and Interactive Lecture (IL).

References. As per TP.

Training/ Learning Aids. Computers access (DWAN); CD materials; Legal Officer Qualification Course (LOQC) Instructors Handbook – Module(s) EO 020.02 1

Note to the instructor. A review of the main teaching points will then take place at the end of the periods, by Enabling Checks (EC).

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PART 2 – INTRODUCTION

Objective: The Legal Officer (LO) shall explain the role and responsibilities of counsel before military and appellate courts. After the completion of this lesson, the LO shall be able to explain the roles and responsibilities of prosecution and defence counsel at a show cause hearing before a military judge.

Introduction: Begin the lesson by explaining first that the content is an introduction to the role of LOs as a litigator at show cause hearing. Again for some, as former or actual litigators in criminal/penal matters, the content would seem familiar. For those who have never been exposed to litigation, this might seem complex. Keep in mind though that the intent here is not to bring students to a level of skills and expertise for them to be ready to act in a trial: this training mandate belongs to both Defence Counsel Services and Canadian Military Prosecution Service. However, as pre-trial custody involves deprivation of liberty for an individual who is still presumed innocent, care and diligence must be exercised by all LOs – including those at units level – to ensure procedural steps are followed and show cause hearing is facilitate. Through application of this knowledge, LO will become sufficiently aware of the process to provide effective support to judicial actors, litigation colleagues and units in operating courts martial system in an effective and fair fashion.

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PART 2 – INTRODUCTION (cont'd)

Outline: The LOC instructor shall introduce the lesson outline

- Stage 1: Show cause hearing under section 159 NDA QR&O 105
  - A. Role by DMP
  - B. Role by defence counsel
  - C. Role by judiciary/CMA
  - D. Assistance by DJA/Units

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PART 3 – BODY OF THE LESSON

Stage 1 – Show cause hearing under section 159 NDA QR&O 105

1. **Introduction**: The focus in the lesson will be on the show cause hearing under section 159 *NDA* QR&O 105. Its procedural steps would be explained in broad terms. Remind students that the default rule is the release of the individual subject of the show cause hearing. Very often challenges lie in the fact that as it is an *ad hoc* proceeding conducted on a short notice, practical considerations might impede process. Essentially, their role consists of assisting 1) judicial actors in holding the show cause, and; 2) litigators in providing administrative support as officers of the court.

2. This lesson is divided by the main actors in the show cause hearing: 1) Role by DMP; 2) Role by defence counsel; 3) Role by judiciary/CMA, and; 4) Assistance by DJA/Units. Use the PowerPoint slide to view each of those and discuss them briefly.

A-Role by DMP

3. *MJSTL*, ch. 7, p. 7-8, para. 40 reads as follows:

> When it is necessary to hold a show cause hearing, the custody review officer is required to immediately advise the nearest representative of the DMP. The CF will normally be represented at a show cause hearing by counsel appointed by DMP; however, in the absence of counsel, the custody review officer may appoint someone to represent the CF.

4. Read and summarize for students *NDA* ss. 159 to 159.9. In particular, explain that the "counsel for the Canadian Forces" at *NDA* s. 159.1 means usually a military prosecutor appointed by DMP (QR&O 105.25 Note).

5. At show cause hearings, military prosecutors play an analogous role as their civilian counterpart during bail hearing. Read and summarize for students QR&O 105 Section 4 – Review by Military Judge (QR&O 105.24 to 105.29). Explain in particular that contact between CROs and 'nearest DMP's rep' has to occur 'immediately' (QR&O 105.25). Explain also the procedure at QR&O 105.27 (5) and (6) as it pertains to military prosecutor's role during show cause hearing. *MJSTL*, ch. 7, p. 7-9, para. 46 reads as follows:

> Both the representative of the CF and the person in custody or that person's legal counsel, may make any statements pertinent to the issue of custody. Once all statements have been made, first the representative of the CF and then the person in custody or that person's legal counsel may call witnesses. The military judge may call witnesses if the judge requires that further evidence be heard. Once all the evidence is put forward, the representative of the CF and the person in custody or that person's legal counsel, can make addresses to the military judge.

6. If the person is released on the giving of an undertaking, it could be varied first by a judge but also by the written consent of DMP (*NDA*, s. 159.4(2)(*b*)).

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B- Role by defence counsel

7. *MJSTL*, ch. 7, p. 7-8, paras. 41-42 read as follows:

> The person retained in custody is entitled to be represented at the show cause hearing by legal counsel. When the custody review officer advises the DMP that it is necessary a show cause hearing be held, the officer must also inquire whether the person in custody:
>
> a. desires legal counsel to be appointed by the DDCS;
>
> b. intends to retain legal counsel at the person's own expense; or
>
> c. does not require legal counsel.
>
> When the person in custody wants legal counsel appointed by DDCS, the custody review officer must inquire whether the person prefers that a specific legal advisor assisting the DDCS be appointed, or that the legal advisor selected by the DDCS is acceptable. The custody review officer shall advise the DDCS of the person's wishes, and where a specific legal advisor has been requested, the DDCS must try to have that legal advisor made available. If the requested legal advisor is not available, the DDCS shall ensure that another legal advisor is available.

8. *MJSTL* summarizes QR&O 105.26.

9. Here again, read and summarize for students *NDA* ss. 159 to 159.9 but from a defence counsel perspective. Defence counsel plays an analogous role as his/her civilian counterpart during bail hearings. In particular, explain that defence counsel's role is more difficult where individuals are charged of having committed a designated offence; they have the onus to prove that retention in custody is not justified (*NDA*, subs. 159.3(1)).

10. The procedure to be followed is found at QR&O 105.26, in particular subs. (5) to (9). Like military prosecutor, defence counsel may make any statement that it is pertinent to the hearing, call witnesses, make an address and reply to other party's address. The order depends if the person is charged with a designated offence or not. If the person is charged with a designated offence, defence counsel has the last reply before the judge (QR&O 105.26(8)). If not, military prosecutor will have the last reply (QR&O 105.26(7)).

C- Role by judiciary/CMA

11. Here again, read and summarize for students *NDA* ss. 159 to 159.8 but focus on military judge's role. Like for prosecutors and defence counsels, military judges' role is similar to a provincial civilian judge in criminal matters conducting bail hearing.

12. Also read and summarize for the students 105 of the QR&O which restates *NDA* sections but also provide more details on the judge's role. In particular QR&O 105.27 to 105.29.

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13. Finally read and summarize *MJSTL*, ch. 7, pp. 7-8 and 7-10, paras. 39, 43 to 45, 47 to 49.

14. In essence, the default rule is that the military judge would release the person from custody unless retention is justified (*NDA*, s. 159.1). For example, custody could be necessary 1) to ensure the person's attendance before court (*NDA*, s. 159.2(*a*)); 2) for the protection of the public (*NDA*, s. 159.2(*b*)), or; 3) for any other just cause having regard to the circumstances of the case (such as apparent strength of prosecution's case, gravity of the offence, circumstances surrounding its commission, potential for lengthy imprisonment) (*NDA*, s. 159.2(*c*)).

15. However when individual is charged with a designated offence, the default rule is the individual would remain in custody unless the person shows cause that the person's retention in custody is not justified (*NDA*, s. 159.3(1)).

16. Specify that military judges decisions to maintain or released are reviewable before CMAC (*NDA*, s. 159.9; QR&O 105.30; *MJSTL*, ch. 7, p. 7-10, para. 50. Military judges could also vary conditions of the undertaking, if the accused has been so released under conditions (*NDA*, 159.4(2)).

17. Pursuant to 5203-1 (CMA) *Guideline for Initiating Judicial Pre-Trial Custody Hearing* (26 January 2011) (*Guideline for Custody Hearing*) (online: http://www.jmc-cmj.forces.gc.ca/en/pre-trial-custody-hearing.page?)Court Martial Administrator (CMA) has also to be involved in the preparation of the show cause hearing. Usually this is accomplished by letter, signed by the CRO, and sent to the CMA. The letter should contain at the minimum the following information:

a. S/N (if applicable) and name of person in custody;

b. location of person in custody;

c. name and telephone number of the person responsible for their custody. For example, the MP Duty NCO, the B SAMP O or the unit Adjt;

d. the date and time custody began;

e. the date and time any custody reviews were completed and the name and appointment of the individual conducting the review;

f. confirmation that the closest representative of DMP has been advised of this application and the name and telephone number of that individual; and

g. if the person in custody is represented by a lawyer, the name and telephone number of that lawyer.

18. On the expeditiousness of the process, the *Guideline for Custody Hearing* reads as follows (para. 8):

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8. Pre-trial custody review hearings conducted by military judges are an important element of the Canadian military justice system. As such, the Office of the Chief Military Judge deals with them as expeditiously as possible. Normally, a military judge will be available to conduct a pre-trial custody review hearing within 24 hours of the letter signed by the Custody Review Officer being received at the Office of the Chief Military Judge.

19. Military judge may direct that the hearing be conducted wholly or in part by the means of a telecommunications device, including by telephone, if the military judge is satisfied that the benefit of a hearing by that device outweighs the potential prejudice to the person in custody of conducting a hearing by that device(*NDA*, s 159.6). For more details on procedures involving CMA, see the *Guideline for Custody Hearing*.

D- Assistance by DJA/Units

20. In general, unit LOs' role is to assist litigators and judicial actors to conduct show cause hearing in a fair, efficient and prompt fashion. Remind students that a show cause hearing is a process set up as the need arises, for which there is no permanent facility and where the actors – except the person in custody – are in the vast majority of cases located outside the location where the show hearing will be held.

21. For example, where CROs have decided to maintain in custody the individual, unit LOs' first role is to facilitate liaison between CROs and DMP representatives by:

a) remind the former to contact the latter without delay;

b) contact their colleagues at DMP to make them aware of the potential show cause hearing

22. The *Guideline for Custody Hearing* explains that frequently, unit authorities find it useful to seek assistance from their assigned legal advisors to prepare the letter from CRO to CMA (see above) and send it to the latter by facsimile to (819) 997-6321 (para. 3). In addition to the minimum information the letter must contain (see above para. 17), it is also useful to provide CMA the following information:

a. copies of any documentation relating to the continued detention;

b. the location of the nearest teleconference facility that the person in custody can be brought to and the name and telephone number of the person responsible for booking the facility; and

c. if the person in custody does not already have a lawyer, confirmation that the person has requested counsel be provided by DDCS, is retaining other counsel or wishes to represent himself or herself.

23. Prior to session, develop a template letter and provide it to students during the session.

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24. Emphasize to students that a show cause hearing is an extraordinary process. CMA would allocate time and human resources to act as expeditiously as possible, which is administratively demanding considering CMA's other responsibilities in military justice. In that sense, if at any time there is a change and the pre-trial custody review hearing is no longer required as the person in custody has already been released, both unit authorities and the representative of the CF should advise the Court Martial Administrator of this fact as soon as possible (*Guideline for Custody Hearing*, para. 6).

25. Litigators – who are most of the time located outside the area where the show cause hearing is to be held – would likely need unit legal advisors assistance, in particular gathering relevant documents for the purpose of the hearing. Explain to students that most of the time, persons are released from custody on the giving of an undertaking to comply with conditions that are negotiated and prepared between counsel prior appearing before the military judge. For example, some conditions might require very precise information which neither the prosecutor nor the defence counsel, such as a geographical perimeter where the accused would be precluded to go in.

26. In providing assistance to counsel in that context, unit legal advisors act as 'officer of the court', promoting the effective operation of the military justice system. However, unit legal advisors must be careful not to divulge any information protected by the solicitor-client privilege in providing such assistance.

Interim Summary: Use the prepared PPT presentation to do a quick review of the material.

Note to instructor: Use hyperlinks to show references.

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PART 4 – CONCLUSION

Summary: Review essential material from the whole lesson

- Stage 1: Show cause hearing under section 159 NDA QR&O 105

  A. Role by DMP

  B. Role by defence counsel

  C. Role by judiciary/CMA

  D. Assistance by DJA/Units

Confirmation: Done in a discussion format. Ask some confirmation question

Conclusion: recap while this lesson and material presented in important. Make a link from your introduction to the conclusion.

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CREST

Type	Definition	Example
Comparisons	Bridges the gap between present knowledge and what is to be learned.	Unfamiliar aircraft can be explained by comparing them to familiar versions.
Reasons	Satisfies students' natural desire to know "why". Makes teaching points easier to accept.	Teaching Point – Select 100% oxygen if smoke is detected in the cockpit. Reason: Otherwise the regulator will mix oxygen with ambient (contaminated) air resulting in toxins being inhaled into the body.
Examples	Verbal illustrations are used to back up a statement or to clarify an idea. Can be real or created, but must be believable.	In discussing the need to observe safety precautions with a piece of equipment, the instructor may relate an example of how failure to observe precautions resulted in an accident.
Statistics	Used as support for the emphasis that a figure provides.	On average, tutored students score better than 98% of their classroom taught counterparts.
Testimony	Quotes from subject matter experts are used to add credibility to teaching points; they should be short and relevant. Ideally, the expert is someone most students can identify with.	If the instructor is reviewing the procedures employed in a given tactic they may cite personal experience, emphasizing the importance of doing these procedures correctly.

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PO 020 EXPLAIN THE ROLE AND RESPONSIBILITIES OF COUNSEL BEFORE MILITARY AND APPELLATE COURTS

PART 1 -- LESSON IDENTIFICATION

TITLE: EO 020.03 Explain the process of appealing a court martial judgment

Performance. Explain the process of appealing a court martial judgment

Conditions.

given: Relevant factual context, legislation, policy, case law, reference materials (including prior legal advice)
denied: direct supervision

Standard. The legal officer shall accurately describe the steps necessary to appeal a decision or finding at court martial

Main Teaching Points:

- Appeal process

Method. This EO will be accomplished by a combination of Self-Study and Developmental Lesson. Students will be asked to read reference material on their own, either prior the course through distributed learning or during the course outside class hours on computers with DWAN access allocated to the course. Under instructor's guidance, concepts will be expanded and contextualised through a scenario.

Duration. 1 period of mixed Distributed Learning (DL) and Interactive Lecture (IL).

References. As per TP.

Training/ Learning Aids. Computers access (DWAN); CD materials; Legal Officer Qualification Course (LOQC) Instructors Handbook – Module(s) EO 020.03 1

Note to the instructor. A review of the main teaching points will then take place at the end of the periods, by Enabling Checks (EC).

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PART 2 – INTRODUCTION

Objective: The Legal Officer (LO) shall explain the role and responsibilities of counsel before military and appellate courts. After the completion of this lesson, the LO shall accurately describe the steps necessary to appeal a decision or finding at court martial.

Introduction: Begin the lesson by explaining first that the content is an introduction to the role of LOs as litigators in the appeal process. Again for some, as former or actual litigators in criminal/penal matters, the content would seem familiar. For those who have never been exposed to litigation, this might seem complex. Keep in mind though that the intent here is not to bring students to a level of skills and expertise for them to be ready to act in a trial: this training mandate belongs to both Defence Counsel Services and Canadian Military Prosecution Service. However, appellate courts exercise an important function in the Canadian military justice system. Not only they provide a process should a party believe a decision court martial is erroneous but they ensure military justice remains within Canadian legal norms. In addition, appellate courts' rulings bind courts martial according to the *stare decisis*. Through application of this knowledge, LO will become sufficiently aware of the process to provide accurate and relevant information to units on a particular appeal.

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PART 2 – INTRODUCTION (cont'd)

Outline: The LOC instructor shall introduce the lesson outline

- Stage 1: Appeal process
  - A. NDA & QR&O 116
  - B. CMAC rules of court
  - C. SCC rules of court

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PART 3 – BODY OF THE LESSON

Stage 1 – Appeal process

1. **Introduction**: The focus in the lesson will be on the appeal process. In Canadian military justice, there are two levels of appeal: 1) first to Court Martial Appeal Court, and; 2) then to Supreme Court of Canada. Both processes would be explained in broad terms. LOs who are posted either to Defence Counsel Services or Canadian Military Prosecution Services would learn them more in detail.

2. This lesson is divided in three sub-Teaching Points (sub-TPs): 1) NDA & QR&O 116; 2) CMAC rules of court, and; 3) SCC rules of court. Use the PowerPoint slide to view each of those and discuss them briefly.

A- NDA & QR&O 115

3. Summarize sections 228 to 243 of the *National Defence Act*, R.S.C. 1985, c. N-5 [*NDA*].

4. In particular, describe the reasons why either the person tried (s. 230) or the Minister (s. 230.1) has a right to appeal, with the following precisions:

a) As to the severity of the sentence – unless the sentence is one fixed by law (ie mandatory with no judicial discretion) – leave of the Court or a judge thereof is required (ss. 230(*a*) and 230.1(*a*));

b) Dispositions made under section 201, 202 or 202.16 (ss. 230 (*e*) and 230.1 (*f*)) pertain to an individual who have been declared unfit to stand trial;

c) Decisions made under any of subsection 196.14(1) to (3) pertain to DNA sample orders;

d) Decision made under subsection 227.01 pertains to *Sex Offender Information Registration Act* (SOIRA) orders;

5. Explain that there is a 30 day delay to request an appeal (s. 232 (3)) which can be extended by the CMAC or one of its judge (s. 232(4)) for valid reasons.

6. CMAC may hear evidence (including new one) and may sit in camera (s. 236 (2)).

7. CMAC may set aside findings (in whole or partly), substitute findings (in whole or partly), affirm or substitute (mitigate, commute, remit, and suspend) sentence, order new trial, confirms or set aside decisions/dispositions on fitness to stand trial, DNA sample orders or SOIRA orders (ss. 238-243).

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8. In particular, CMAC may disallow an appeal if "there has been no substantial miscarriage of justice" (s. 241).

9. Summarize Queen's Regulations and Orders for the Canadian Forces (QR&O) - Volume II - Disciplinary Chapter 115 – Appeals from Courts Martial. Explain that chap. 115 essentially restates sections 228 to 243 of the *NDA*. However, it provides further details on some procedural aspects which might be relevant from units' LOs perspective:

a) If there is an appeal from the prosecution, the respondent (individual affected) would be provided a military defence counsel (QR&O 115.03 Note A; QR&O 115.031 Note A);

b) When a person is convicted by a court martial, it is the responsibility of the officer of the court to provide with Notice of Appeal form in no delay (QR&O 115.06 Note);

c) If circumstances make it impracticable to deliver notice to the Registry of the CMAC, a person could deliver the filled-in Notice of Appeal to a captain and above (QR&O 115.07 (2)) Upon reception, the officer must complete the Certificate of Receipt and send it, along with the Notice, to the registry of the CMAC (QR&O 115.07(3));

d) Forms of Notice of Appeal to be followed are at QR&O 115.08;

e) Where a new trial is ordered by CMAC, DMP has the power to prefer the charges or not (QR&O 115.22 Note);

B- CMAC rules of court

10. Section 244 of *NDA* gives CMAC power to make rules respecting various aspects of its proceedings. QR&O 115.11 restates word by word s. 244 *NDA*.

11. Those rules are the *Court Martial Appeal Court Rules* SOR/86-959, commonly known as 'CMAC Rules". The most current version can be found in the electronic version of QR&O vol. IV Appendix 1.2, which then refers to Justice Canada website.

12. CMAC Rules "are intended to render effective the substantive law and to ensure that it is carried out; they shall be liberally construed to secure the just, expeditious and economical resolution of each proceeding" (Rule 3). Here are some of them more relevant from units' standpoint.

a) Chief Justice designates the judge or judges and fix the time and place of hearing (rule 4.1);

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b) Appeal file is opened once documents are received by CMAC Registry (rule 5);

c) Court Martial Administrator and both parties have to followed procedural steps within certain deadlines (rules 6 to 11);

d) Appeal from decisions on pre-trial custody or release pending appeal have to follow additional procedural steps (rules 12 and 13);

e) It may happen that units are asked to assist parties in providing documentation relevant to the appeal (or application) that need to be forwarded to the CMAC Registry (Rule 14);

f) Appeal can be carried on in person or by counsel; either military or civilian (rule 19). Appointment of military defence counsel to a person on an appeal or an application for leave to appeal under section 230, 230.2 or 245 of the *NDA* with the approval of the Appeal Committee established under QR&O 101.21;

g) A party in custody, not represented by counsel, may file and serve a document by delivering a copy of it to a superior officer or any other person by whom the party is held in custody (rule 23 (5));

h) An unrepresented person under custody could apply to CMAC Chief Justice to be present at the hearing. Chief Justice can order either to CFPDB or unit having custody of the individual to bring him/her before CMAC (rule 27 (5));

i) At the end of the rules, there are 9 schedules providing various forms associated with rules.

C- SCC rules of court

13. Section 245 of the *NDA* provides that a person subject to the *CSD* may appeal to SCC against a CMAC decision as of right on any question of law where a CMAC judge dissents (para. 245(1)(*a*)) or on any question of law (i.e. when CMAC is unanimous), if leave is granted by SCC (para.245(1)(*b*)).

14. Likewise, prosecution may appeal to SCC against a CMAC decision as of right on any question of law where a CMAC judge dissents (para. 245(2)(*a*)) or on any question of law (i.e. when CMAC is unanimous), if leave is granted by SCC (para.245(2)(*b*)).

15. QR&O 115.27 restates word by word *NDA* s. 245.

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16. In respect of the hearing and determination of an appeal, SCC has same powers, duties and functions of the CMAC under *NDA*. Sections 238 to 242 apply with such adaptations and modifications as the circumstances require (s. 245(3)).

17. Appeals before SCC is first governed by *Supreme Court Act* (*SCA*) (R.S.C., 1985, c. S-26) (see online Justice Canada: http://laws-lois.justice.gc.ca/eng/acts/s-26/index.html). In particular, it sets time periods to proceedings in appeals: 1) 60 days when a leave is required (*SCA*, para. 58(1)(*a*)) and 2) 30 days when a leave to appeal is not required (*SCA*, para. 58(1)(*b*)). These time periods can be extended under special circumstances (*SCA*, subs. 59(1)).

18. Proceedings are also governed by the *Rules of the Supreme Court of Canada* SOR/2002-156 (see online: http://laws-lois.justice.gc.ca/eng/regulations/SOR-2002-156/index.html) known as the 'Supreme Court rules'. At SCC level, there are no specific set of rules pertaining specifically to military matters.

Interim Summary: Use the prepared PPT presentation to do a quick review of the material.

Note to instructor: Use hyperlinks to show references.

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PART 4 – CONCLUSION

Summary: Review essential material from the whole lesson

- Stage 1: Appeal process

A. NDA & QR&O 115

-Appeal is governed by the Act; QR&O reiterates with few more details

B. CMAC rules of court

-Gives delay to appeal 30 day – Provides procedural steps

C. SCC rules of court

-Appeal is 'of right' if dissent on law

-Appeal is on leave on other law question

-Powers: similar to CMAC with adapt.

-First governed by *Supreme Court Act* and then by *Rules of the Supreme Court of Canada*

-No specific rules for military cases

Confirmation: Done in a discussion format. Ask some confirmation question

Conclusion: recap while this lesson and material presented in important. Make a link from your introduction to the conclusion.

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Type	Definition	Example
Comparisons	Bridges the gap between present knowledge and what is to be learned.	Unfamiliar aircraft can be explained by comparing them to familiar versions.
Reasons	Satisfies students' natural desire to know "why". Makes teaching points easier to accept.	Teaching Point – Select 100% oxygen if smoke is detected in the cockpit. Reason: Otherwise the regulator will mix oxygen with ambient (contaminated) air resulting in toxins being inhaled into the body.
Examples	Verbal illustrations are used to back up a statement or to clarify an idea. Can be real or created, but must be believable.	In discussing the need to observe safety precautions with a piece of equipment, the instructor may relate an example of how failure to observe precautions resulted in an accident.
Statistics	Used as support for the emphasis that a figure provides.	On average, tutored students score better than 98% of their classroom taught counterparts.
Testimony	Quotes from subject matter experts are used to add credibility to teaching points; they should be short and relevant. Ideally, the expert is someone most students can identify with.	If the instructor is reviewing the procedures employed in a given tactic they may cite personal experience, emphasizing the importance of doing these procedures correctly.

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PO 021 ADVISE ON THE LEGAL BASES AND AUTHORITIES FOR CAF OPERATIONS

PART 1 -- LESSON IDENTIFICATION

TITLE: EO 021.01 Advise on legal bases and authorities pertaining to international CAF operations

Performance. Advise on legal bases and authorities pertaining to international CAF operations.

Conditions.

Given: Orders-in-Council, directives and authorizations, functioning telecommunications and network hardware.

Denied: Direct supervision

Standard. The legal officer shall advise on the legal bases and authorities for CAF international operations.

Main Teaching Points:

- Application of public international law
- Roles and responsibilities of stakeholders in international operations
- The Crown prerogative and its use to deploy the CAF internationally

Method. This EO will be accomplished by a combination of self-study and class lectures. Students will be required to read assigned materials and be prepared to respond to questions.

Duration. Two 45-minute period.

References. *Statute of the International Court of Justice*
Optional Protocol to the International Covenant on Civil and Political Rights
Rome Statute of the International Criminal Court
National Defence Act
Geneva Conventions Act
Crimes Against Humanity and War Crimes Act
Criminal Code of Canada.
A-LG-007-SLA/AF-002 *The Crown prerogative in Canada and its use in the context of international military deployments* (Office of the Judge Advocate General Strategic Legal Paper Series – Issue 2)
B-GJ-005-104/FP-024 The Operational Law Manual (Draft)

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B-GJ-005-104/FP-021 Law of Armed Conflict at the Operational and Tactical Level
CDS Directive of CF Command and Control and Delegation of Authority for Force Employment, 28 April 2013

Training/ Learning Aids. Standard classroom with whiteboard and projection system/handouts; CD materials; Legal Officer Qualification Course (LOQC) Instructors Handbook – Module(s) [XXX]

Note to the instructor. The developmental lesson shall be conducted in structured manner, using a list of questions to the class. Instructors are to complement each segment of the developmental lesson by follow-up and direct questions taking into account the flow and direction of the discussion. Interim summaries shall be conducted at the end of each segment to confirm the material was learned and provide a basis from which the discussion can progress to the next segment. A review of the main teaching points will then take place at the end of the period.

PART 2 – INTRODUCTION

Objective: The instructor shall describe the legal bases and authorities pertaining to international CAF operations as outlined in Module [XXX] of the LOQC Instructors Handbook.

Introduction: Formal legal regulation of international military operations and armed conflict has a lengthy historical pedigree dating back to the mid-nineteenth century. International law relating to military operations expanded dramatically in both scope and complexity throughout the twentieth-century. To understand the nature of these international law obligations, and to apply them effectively in the context of military operations, requires a prior understanding of important background concepts. This EO provides this information, addressing the sources, subjects and application of international law.

Outline:

Stage 1 – Application of public international law

Stage 2 – Roles and responsibilities of stakeholders in international operations

Stage 3 – The Crown prerogative and its use to deploy the CAF internationally

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PART 3 – BODY OF THE LESSON

Stage 1 – Application of public international law

Introduction

1. International law developed to regulate the conduct of states in their relations with one another, establishing binding obligations that may give rise to a legal claim against the offending states if breached. International legal obligations apply to all state organs, including the national armed forces. As a result, the CAF are bound to comply with all of Canada's international legal obligations. Failure of the CAF or its individual members to comply with these obligations may give rise to the legal responsibility of Canada for the resulting breach. Increasingly, international law also applies directly to other international actors, non-governmental organisations and even individuals. In some circumstances, members of the CAF may even bear individual responsibility for breaches of international law, particularly in the context of international criminal acts.

2. The following discusses the process for determining the content of international legal obligations. There are three generally recognized primary sources of international law expressly delineated in the *Statute of the International Court of* Justice: treaties, international custom, and, general principles of law.

3. **Treaties.** The term 'treaty' refers to any agreement between two or more states that is intended to establish obligations as a matter of international law. It does not matter what the document itself is called, so long as this intent exists, and the treaty is adopted by persons with the authority to bind their respective states. Thus, as a matter of international law, the UN Charter, the Geneva Conventions, their Additional Protocols, and the Rome Statute of the International Criminal Court all establish treaty obligations. Canada is a party to these and numerous other multilateral treaties regulating or relating to the conduct of military operations.

4. The express consent of a state is required before it is bound to comply with any treaty obligations. As a result, treaties generally create rights and obligations for some states and not others. States that are bound by a treaty are considered to be 'states parties' to the treaty regime in question, and must comply, in good faith, with all of the provisions to which they have agreed. In contrast, states that are not parties to a particular treaty regime are not required to comply with its provisions. Thus, in determining Canada's international legal obligations it is necessary to identify the treaties to which it is a party. In the case of many LOAC treaties, which operate on the basis of reciprocity, it is important to determine whether other states are parties as well. In some LOAC treaties, such as Additional Protocol I, a state party would only be compelled to abide by the treaty if it was involved in an international armed conflict against another API party.

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5. Furthermore, it is also important to consider Canadian state practice, as well as the practice of other states "in the application of the treaty which establishes the agreement of the parties regarding its interpretation" as well as any special meaning given to a term if the parties so intended.

6. **Customary international law.** Unlike treaty provisions, which only bind states parties, customary international law binds all states, without requiring their prior express consent. Customary legal principles result from the evolution of state practice and attitudes rather than from the formal negotiation of binding agreements. The 'crystallisation' of a norm into a binding principle of customary international law requires that two threshold criteria be met: established state practice supporting the principle and a belief by states that this practice is legally required (*opinio juris sive necessitatis*). For more information, you may consult the *North Sea Continental Shelf Cases (Federal Republic of Germany v. Denmark; Federal Republic of Germany v. The Netherlands)*, [1969] I.C.J. Rep. 3, 44.

7. A number of factors must be assessed to determine the sufficiency of state practice supporting the existence of a particular norm. These will include its duration, uniformity and consistency. Duration refers to the length of time the practice in question has occurred, and the longer that period is the stronger its support. Uniformity addresses the qualitative aspect of state practice, asking how many states conduct themselves in any specific manner; while universality is not required, the more states the better, particularly if those states are directly affected by the norm in question. Consistency assesses the conduct of particular states, to determine the degree of their adherence to the purported norm. Each factor provides evidence either supporting or undermining the existence of a customary norm, but none is necessarily determinative on its own. Rather, together, these factors must illustrate the existence of established state practice supporting the norm in question.

8. State practice alone is not, however, sufficient to establish a binding principle of customary international law. *Opinio juris* in support of the principle is also required; that is, the acceptance (express or implied) of States that the practice in question is required by law, or, in the case of a permissive rule, the assertion (again, express or implied) by the State that the practice is permitted by law. Indicators of *opinio juris* are often more difficult to assess than evidence of state practice. Here, for example, one must look to specific legal justifications offered by state representatives for their actions (which are infrequent) and other factors, including state adoption of similar principles in treaty negotiations or condemnation of contrary practice by others as illegal. While a state may not have ratified a particular treaty, it may still be bound by its substantive content by virtue of the fact that this content reflects customary international law. For example, a number of states have not ratified Additional Protocol I but acknowledge that many articles reflect customary international law.

9. A new customary legal principle can evolve from state practice violating an existing norm, provided the new practice is justified on the basis of legal arguments and supported by other members of the international community on this basis. This is an

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important element of the international legal order, providing a mechanism for the evolution of legal norms to reflect changing state practice and values, without requiring lengthy and cumbersome treaty negotiations or a global legislature. However, the resulting ambiguity means that while the general process for determining customary international obligations is fairly simple, its application in any given situation often involves complex legal analysis. For example, customary legal obligations may arise from multilateral treaty regimes, particularly where non-state parties also recognize the legal status of the underlying principles. The resulting customary principle, even if identical to the treaty provision, will have separate existence as a matter of international law. This is important as jurisdictional limitations may prevent a particular judicial forum from applying particular legal obligations, as when the ICJ in *Nicaragua* was precluded from assessing American obligations under the UN Charter, but it nonetheless found American activities to have violated that state's customary international legal obligations. (*Case Concerning Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, [1986] I.C.J. Rep. 14) In some circumstances, state acquiescence in the conduct of other states may even be sufficient to establish the existence of a principle of customary international law, if it signals acceptance of the legality of the practice in question.

10. Numerous customary international legal principles regulate or otherwise relate to the conduct of military operations. For example, the general legal prohibition on the threat or use of force in international relations exists as a matter of customary international law in addition to its treaty status pursuant to the UN Charter. Article 2(4) of the UN Charter prohibits the threat or use of force, subject to the express exceptions of self-defence (art. 51) and UN Security Council enforcement measures (authorized pursuant under Chapter VII of the UN Charter). In *Nicaragua*, the ICJ recognized that this prohibition had attained customary international legal status as well. The minimum humane treatment obligations established in Common Article 3 of the Geneva Conventions are also considered to have customary legal status applicable to all subjects of international law. Article 3 common to each of the four 1949 Geneva Conventions establishes a minimum standard of treatment for persons in non-international armed conflicts. As a matter of treaty law, this principle binds only states parties (and persons operating on their territory). However, the ICJ recognized the customary legal status of this principle in *Nicaragua*, concluding that it established a "minimum yardstick" for the conduct of any hostilities.

11. **General principles of law.** All legal systems rest upon basic principles that allow them to regulate conduct and settle disputes effectively and efficiently. The third primary source of international law, general principles of law, recognizes the importance of this foundation, permitting the incorporation of these general principles to ensure the effective functioning of the international legal order. General principles of law typically establish broad principles, rather than specific obligations in discrete areas of international law, and as such have less relevance to determining specific operational law issues than treaties or customary law. Some of the most important general principles of law recognized in the international context are the requirements that any

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breach of a legal obligation gives rise to a corresponding remedy for the aggrieved party, and the obligation of all states to comply with their legal obligations in good faith.

12. **Subsidiary sources.** Numerous subsidiary sources are available for assistance in establishing the specific content of each of the three primary sources of international law (treaties, custom and general principles). For example, the ICJ Statute refers at art. 38(1)(d) to "*judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law*", while recognizing that Court decisions have no express binding authority on third-party states. These may include judicial decisions and academic writing on international legal topics. Subsidiary sources do not establish legal obligations themselves, but rather provide helpful and often authoritative tools to discern their content.

13. **Subjects of international law.** International law developed to regulate the conduct of states in their relations with one another. It is not surprising, therefore, that states continue to be the primary subjects of international law. Indeed, until the twentieth century it was generally believed that international law only applied to states. However, the past few decades have seen limited international legal rights and obligations arise directly for other entities, including interstate and non-governmental organisations, as well as individuals in some circumstances. The direct application of international law results from possession of (limited) 'international legal personality'. This status permits claims directly by and against the entity in question, as well as its undertaking of specific legal obligations. Full international legal personality vests only in states. To the extent that other entities possess such status, it results from state extension of personality to them for a specific, limited purpose. For example, the UN possesses the personality necessary to permit it to fulfill the functions assigned to it by its member states. For more information, you may refer to the *Reparation for Injuries Suffered in the Service of the United Nations*, Advisory Opinion, [1949] I.C.J. Rep. 174

14. **States.** States remain the pre-eminent international legal entities. Indeed, most international legal obligations are owed by states to other states. Similarly, it is only the practice of states – and not other subjects of international law – which can directly create customary international law. Historically, international law has required four criteria for statehood: permanent population, defined territory, government and possession of the capacity to enter international relations.

15. The international legal order is premised on the sovereign independence of states. Although sovereignty is not and has never been absolute, states still maintain significant legal control over activities occurring within their territory. The peace treaties of Westphalia in 1648 themselves recognized limitations on state sovereignty with respect to treatment of religious minorities. This is protected by international legal obligations for states to refrain from interference in the domestic affairs of other states and a general legal prohibition on the threat or use of force in international relations. This general prohibition exists as a matter of both customary and treaty law. It is subject to express exceptions for self-defence and UN Security Council enforcement measures. States are free to limit the exercise of their sovereignty through international legal

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agreements. International legal obligations are compatible with state sovereignty so long as they do not place an entity under the legal control of another state. (*Customs Regime Between Germany and Austria* (1931), Advisory Opinion, P.C.I.J. (Ser. A/B) No. 41.)

16. **Non-state actors.** Specific non-state actors have also acquired limited rights and obligations as a matter of international law. Some organisations, such as the UN, exist separately from their member states on the international legal plane. The UN possesses some rights, and the capacity to enforce them, at international law. This limited international legal personality is necessary for the organisation to function in the manner intended by its member states. Some other organisations (for example, the European Union and the North Atlantic Treaty Organisation) also possess limited personality while others do not. Separate legal status will depend on the intention of states when creating the organisation in question. Individuals have also attained some rights and responsibilities at international law, particularly since the mid-twentieth century. This has been most notable in the field of international human rights as well as criminal law. Under international criminal law, individuals including military commanders, face potential direct criminal sanction for violations of international law. Under the 1998 Rome Statute of the International Criminal Court, the Court will have jurisdiction to try individuals for the crime of genocide, crimes against humanity, and war crimes.

17. **Enforcement of international legal obligations.** A number of domestic and international legal mechanisms exist to facilitate and ensure compliance with international legal obligations and for international dispute resolution. The International Court of Justice (ICJ) is the principal legal organ of the UN system, although its jurisdiction is limited to cases where states expressly consent to its role. The ICJ can also provide advisory opinions when requested to do so by the General Assembly or the UN Security Council. Numerous other fora exist for the voluntary submission of international disputes for settlement, ranging from *ad hoc* bilateral mediation to institutionalized binding judicial mechanisms. Some human rights treaty arrangements, such as the *Optional Protocol to the International Covenant on Civil and Political Rights*, even permit individuals to bring claims directly against their own states in an international forum.

18. Criminal prosecution of individuals before international courts is also possible, albeit unusual. In the early 1990s, the UN Security Council established two *ad hoc* criminal tribunals to address major international crimes committed in the former Yugoslavia and Rwanda. In 2002, states parties to the Rome Statute established a permanent International Criminal Court with jurisdiction over individuals accused of genocide, crimes against humanity and war crimes. Enforcement of international legal obligations may also take place pursuant to domestic legislation. In Canada, for example, legislation authorizing such enforcement includes the *Code of Service Discipline* enacted pursuant to the *National Defence Act*, the *Geneva Conventions Act,* the *Crimes Against Humanity and War Crimes Act* and the *Criminal Code of Canada.*

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Suggested Questions

Q. What are the three primary sources of international law expressly delineated in the *Statute of the International Court of* Justice?

Q. What the term 'treaty' refers to?

Q. What is customary international law?

Q. What do general principles of law establish?

Q. What would be subsidiary sources of international law?

Q. What are the four criteria in international law required for statehood?

Q. Which organizations would be considered non-state actors?

Q. What are the criminal courts established under international law?

Note to the Instructor: Encourage students to actively participate in the lesson and to reason through problems.

Interim Summary

19. International law developed to regulate the conduct of states in their relations with one another, establishing binding obligations that may give rise to a legal claim against the offending states if breached. International legal obligations apply to all state organs, including the national armed forces. As a result, the CAF are bound to comply with all of Canada's international legal obligations.

20. The term 'treaty' refers to any agreement between two or more states that is intended to establish obligations as a matter of international law. It does not matter what the document itself is called, so long as this intent exists, and the treaty is adopted by persons with the authority to bind their respective states. The express consent of a state is required before it is bound to comply with any treaty obligations. As a result, treaties generally create rights and obligations for some states and not others. States that are bound by a treaty are considered to be 'states parties' to the treaty regime in question, and must comply, in good faith, with all of the provisions to which they have agreed.

21. Unlike treaty provisions, which only bind states parties, customary international law binds all states, without requiring their prior express consent. Customary legal principles result from the evolution of state practice and attitudes rather than from the formal negotiation of binding agreements. A number of factors must be assessed to determine the sufficiency of state practice supporting the existence of a particular norm.

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These will include its duration, uniformity and consistency. Duration refers to the length of time the practice in question has occurred, and the longer that period is the stronger its support. Uniformity addresses the qualitative aspect of state practice, asking how many states conduct themselves in any specific manner; while universality is not required, the more states the better, particularly if those states are directly affected by the norm in question. While a state may not have ratified a particular treaty, it may still be bound by its substantive content by virtue of the fact that this content reflects customary international law. For example, a number of states have not ratified Additional Protocol I but acknowledge that many articles reflect customary international law.

22. A new customary legal principle can evolve from state practice violating an existing norm, provided the new practice is justified on the basis of legal arguments and supported by other members of the international community on this basis. This is an important element of the international legal order, providing a mechanism for the evolution of legal norms to reflect changing state practice and values, without requiring lengthy and cumbersome treaty negotiations or a global legislature. Numerous customary international legal principles regulate or otherwise relate to the conduct of military operations. As a matter of treaty law, this principle binds only states parties (and persons operating on their territory). However, the ICJ recognized the customary legal status of this principle in *Nicaragua*, concluding that it established a "minimum yardstick" for the conduct of any hostilities.

23. All legal systems rest upon basic principles that allow them to regulate conduct and settle disputes effectively and efficiently. The third primary source of international law, general principles of law, recognizes the importance of this foundation, permitting the incorporation of these general principles to ensure the effective functioning of the international legal order. Numerous subsidiary sources are available for assistance in establishing the specific content of each of the three primary sources of international law (treaties, custom and general principles). International law developed to regulate the conduct of states in their relations with one another. It is not surprising, therefore, that states continue to be the primary subjects of international law. Indeed, until the twentieth century it was generally believed that international law only applied to states. However, the past few decades have seen limited international legal rights and obligations arise directly for other entities, including interstate and non-governmental organisations, as well as individuals in some circumstances. The direct application of international law results from possession of (limited) 'international legal personality'. This status permits claims directly by and against the entity in question, as well as its undertaking of specific legal obligations.

24. States remain the pre-eminent international legal entities. Indeed, most international legal obligations are owed by states to other states. Similarly, it is only the practice of states – and not other subjects of international law – which can directly create customary international law. Historically, international law has required four criteria for statehood: permanent population, defined territory, government and possession of the capacity to enter international relations. The international legal order

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is premised on the sovereign independence of states. Although sovereignty is not and has never been absolute, states still maintain significant legal control over activities occurring within their territory. Specific non-state actors have also acquired limited rights and obligations as a matter of international law. Some organisations, such as the UN, exist separately from their member states on the international legal plane. The UN possesses some rights, and the capacity to enforce them, at international law. This limited international legal personality is necessary for the organisation to function in the manner intended by its member states.

25. A number of domestic and international legal mechanisms exist to facilitate and ensure compliance with international legal obligations and for international dispute resolution. The International Court of Justice (ICJ) is the principal legal organ of the UN system, although its jurisdiction is limited to cases where states expressly consent to its role. Criminal prosecution of individuals before international courts is also possible, albeit unusual. In the early 1990s, the UN Security Council established two *ad hoc* criminal tribunals to address major international crimes committed in the former Yugoslavia and Rwanda. In 2002, states parties to the Rome Statute established a permanent International Criminal Court with jurisdiction over individuals accused of genocide, crimes against humanity and war crimes.

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Stage 2 – Roles and responsibilities of stakeholders in international operations

Introduction

1. Commanders must have a clear understanding of their assigned roles, authorities, responsibilities and accountabilities, as well as the command and control (C2) framework within which they operate. As the execution of military operations in accordance with Government of Canada (GoC) direction is the *raison d'être* of the CAF this clarity is particularly important. The following are the roles and responsibilities of key organizations of the CAF during operations.

2. **Canadian Joint Operations Command (CJOC).** On Friday 5 October 2012, CJOC amalgamated units and headquarters of Canada Command, Canadian Expeditionary Force Command and Canadian Operational Support Command in to a single command. CJOC anticipates and conducts CAF operations (less operations conducted solely by North American Aerospace Defence Command or CAF Special Operations Forces Command); and develops, generates and integrates joint force capabilities for operations at home and abroad. CJOC comprises task forces and elements employed on operations; standing domestic Regional Joint Task Force Headquarters in Yellowknife, Victoria, Edmonton, Toronto, Montreal and Halifax; the Joint Operational Support Group, headquartered in Kingston with units across Canada; a worldwide network of liaison officers and command and control, intelligence, and support nodes; and a headquarters in Ottawa. CJOC exercises operational control of the Joint Forces Air Component Command, Maritime Component Command, 1st Canadian Division Headquarters, and Special Operations Coordination Element.

3. **CJOC Expeditionary.** Deputy Comd CJOC Expeditionary is assigned mission command of all CAF operations outside the responsibility of CJOC Contnental, with the exception of those conducted by CANSOFCOM, and is responsible for:

a. providing advice on CAF options and determining operational requirements for missions spanning the continuum of operations outside Canada;

b. planning, coordinating, and commanding assigned CAF contingency, rapid-response, and routine operations outside Canada;

c. generating the CAF deployable joint HQ;

d. providing SA and a common operating picture (COP) for all CAF operations and activities within assigned AORs; and

e. providing force protection for CJOC Expeditionary forces operating within a specified AOR.

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4. **Deputy Comd CJOC Expeditionary Authority.** The Deputy Comd CJOC Expeditionary exercises command and control of other assigned and allocated forces in accordance with MOOs, CFOOs and CDS direction.

5. **Canadian Special Operations Forces Command (CANSOFCOM).** Comd CANSOFCOM is accountable to the CDS for the force development, force generation, and force employment of SOF in CAF routine, contingency, and rapid-response operations. As such, the Commander has specific delegated authorities to plan, prepare for, and execute operations. Normally, SOF deployed on operations is employed under OPCOM Deputy Comd CJOC Continental or Deputy Comd CJOC Expeditionary depending on whether the mission/task is domestic or expeditionary. Regardless, CANSOFCOM generates, trains, validates, and deploys the requisite force packages (i.e., SOTF) that are employed by the appropriate command. In these instances, Comd CANSOFCOM, or his designated representative, becomes Deputy Comd SOF (SOF Advisor) to the supported command. In special circumstances, CANSOFCOM may also employ a SOTF to conduct missions on behalf of the GoC where it will be required to plan, prepare, and execute on its own and report directly to the CDS. CANSOFCOM is responsible for:

a. providing the GoC with high readiness SOF capable of conducting:

   (1) **Counterterrorism operations.** Offensive and defensive measures taken to prevent, deter, pre-empt, and respond to terrorism.

   (2) **Maritime counterterrorism operations**. Counterterrorism (CT) operations within the extremely complex maritime environment.

   (3) **High-value task.** Other missions, at home or abroad, assigned by the GoC such as: special reconnaissance; direct action; counter-proliferation; NEO; and defence, diplomacy, and military assistance.

b. generating forces and deploying SOF capable of global reach and response to emerging threats to Canada's national interest;

c. developing SOF and organizations that remain on the leading edge of technology and operational capability to meet the requirements of the current and future security environments;

d. providing expert advice on special operations and CT to government officials, OGDA, senior military decision makers, and other CAF entities for routine planning, exercise, or crisis events; and

e. providing the GoC and the CAF with a conduit to allied special operations and CT expertise, technology, research, and development.

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6. CANSOFCOM fully participates in the primary CAF mission of providing for the defence of Canada. It does so by seeking to defeat terrorist threats to Canada by providing CT forces capable of operating in all environments. These forces are organized, equipped, and trained not only to be responsive but also to serve as a deterrent. Through interagency liaison, discussion, and training CANSOFCOM seeks to enable and assist OGDA, where appropriate, in CT planning and execution. CANSOFCOM also contributes to the overall defence of Canadian national interests by conducting operations abroad in support of CAF conventional forces, as well as on discrete and separate missions that support GoC objectives. CANSOFCOM provides strategic flexibility to tailored responses in a complex strategic environment.

7. The high-readiness posture, skill level, and deployability of SOTFs allow for a rapid and determined response, but also serve as a building block for follow-on forces. CANSOFCOM provides forces that can deter and disrupt violent organization either in support of conventional operations or on discrete missions. CANSOFCOM forces may also assist partners in upgrading their CT capabilities. In general terms, CANSOFCOM operations abroad strive to:

a. destroy, disorganize, and disrupt the networks of violent organizations;

b. degrade and deny access of violent organizations to the nation's population;

c. construct social networks to promote legitimacy of efforts; and

d. organize, enable, and improve partner's tactical and operational skills in CT.

8. The effects that CANSOFCOM can deliver are keyed to its unique capabilities. First, selected components of the Command are constantly on high-readiness alert in order to provide an agile and timely response. Second, CANSOFCOM can provide highly skilled special operations task forces to conduct high-risk missions that have major strategic ramifications such as hostage rescue or special reconnaissance for operational planning and decision making. Third, CANSOFCOM contains a baseline capacity to mitigate the results and deter the use of weapons of mass effect. Fourth, CANSOFCOM facilitates the engagement with allied organizations in the fight against terrorism, as well as providing assistance to nations seeking to build SOF capacity to provide for their own internal defence. Finally, CANSOFCOM missions can set the parameters for theatre activation or shape the AO for conventional operations.

9. **Maritime Command (MARCOM).** MARCOM is the CAF centre of excellence in maritime operations and the principal source of expertise on the integrated development and generation of maritime forces. Comd MARCOM is responsible for:

a. providing advice on the development, generation, and employment of maritime forces for missions spanning the continuum of operations;

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b. guiding the integrated development and generation of CAF elements for maritime operations and for establishing and maintaining operationally ready maritime forces; and

c. developing operational concepts, doctrine, and capability requirements for maritime operations.

10. **Comd MARCOM authority.** The Comd MARCOM exercises command and control of MARCOM, as well as other assigned and allocated forces in accordance with MOOs, CAFOOs and CDS direction. Commanders Maritime Forces Atlantic (MARLANT), Maritime Forces Pacific (MARPAC), and Naval Reserves (NAVRES) are accountable to Comd MARCOM for force-generation activities, to include operational readiness and technical and maintenance matters. Within the parameters established by Comd MARCOM, Comds MARLANT and MARPAC may transfer assigned forces to a JTF commander for employment. Should the operational commander determine a requirement for a maritime component command (MCC) and Comd MARCOM be tasked by the CDS to transfer command or control of maritime forces in the AOR, Comd MARCOM will designate the most appropriate Comd MCC on a case-by-case basis depending upon the mission, location, and available support. Comds MARLANT and MARPAC have the authority to delegate the Comd MCC role to the most appropriate level of command, in consultation with the JTF commander, when deploying a MCC.

11. **Land Force Command (LFC).** LFC is the CAF centre of excellence in land operations and the principal source of expertise on the integrated development and generation of land forces. Comd LFC is responsible for:

a. providing advice on the development, generation, and employment of land forces for missions spanning the continuum of operations;

b. guiding the integrated development and generation of CAF elements for land operations and for establishing and maintaining operationally ready land forces; and

c. developing operational concepts, doctrine, and capability requirements for land operations.

12. **Comd LFC authority.** The Comd LFC exercises command and control of LFC, as well as assigned and allocated forces in accordance with MOOs, CAFOOs, and CDS direction. Comds of 1st, 2nd, 3rd, 4th and 5th Canadian Divisions are accountable to Comd LFC for force-generation activities to include operational readiness and technical and maintenance matters. Within the parameters established by Comd LFC, Comds of Canadian Divisions may transfer assigned forces to a JTF commander for employment. Should the operational commander determine a requirement for a land component command (LCC) and Comd LFC be tasked by the CDS to transfer command or control of land forces in an AOR, Comd LFC will designate the most appropriate Comd LCC on a case-by-case basis depending upon the mission, location, and available support.

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Comds of Canadian Divisions have the authority to delegate the Comd LCC role to the most appropriate level of command, in consultation with a JTF commander, when deploying a LCC.

13. **Air Command (AIRCOM).** AIRCOM is the CAF centre of excellence in air operations and the principal source of expertise on the integrated development and generation of aerospace forces. Comd AIRCOM is responsible for:

a. providing advice on the development, generation, and employment of aerospace forces for missions spanning the continuum of operations;

b. guiding the integrated development and generation of CAF elements for air operations and for establishing and maintaining operationally ready aerospace forces;

c. developing operational concepts, doctrine, and capability requirements for air operations; and

d. maintaining the Airworthiness Program.

14. **Comd AIRCOM authority.** The Comd AIRCOM exercises command and control of AIRCOM, as well as assigned and allocated forces in accordance with MOOs, CAFOOs, and CDS direction. Comd 1 Canadian Air Division (1 Cdn Air Div) is accountable to Comd AIRCOM for all force-generation activities, other residual AIRCOM command responsibilities, and acting as the Operational Airworthiness Authority for all CAF air assets. Comd 1 Cdn Air Div is also the Combined Force Air Component Command (CFACC) for the CAF. CFACC is accountable to the designated supported commander for force employment of air assets and provides each RJTF with a Regional Air Coordination Element (RACE) air staff. Within the parameters established by Comd AIRCOM, the CFACC may transfer allocated forces to a JTF commander for force employment. In the event that a separate air component command (ACC) and commander are necessary due to the scale, location, or complexity of the air operation in the AOR, then the CFACC may generate an ACC, as required, and delegate the most appropriate level of command. In addition, Comd 1 Cdn Air Div is also Comd Canadian NORAD Region, and is accountable to Comd NORAD to exercise operational control over all forces assigned or made available for air defence in the region.

CAF COMMAND AND CONTROL FRAMEWORK FOR INTERNATIONAL OPERATIONS

15. **Context.** The CAF conducts its activities within a framework of authorities, responsibilities and accountabilities. In this regard, the CAF C2 framework is supportive of, and responsive to, GoC policy, as well as aligned with the Departmental authorities. The CDS has, under the direction of the Minister of National Defence (MND), responsibility for the control and administration of the CAF. In accordance with Section

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18 (2) of the *National Defence Act*, " ... unless the Governor-in-Council otherwise directs, all orders and instructions to the CAF that are required to give effect to the decisions and to carry out the directions of the GoC or the MND shall be issued by or through the CDS." The CDS serves as the principal military advisor to the GoC and commands at the strategic level. These are fundamental responsibilities, unique to the CDS. This establishes the fundamental principle of the chain of command within the CAF, flowing from the CDS to subordinate commanders. However, the CDS will delegate certain authorities to his subordinate commanders, in order to ensure that leaders have the necessary capacity to successfully accomplish their assigned responsibilities.

16. To be effective in operations, CAF commanders must plan, coordinate and act in a timely manner to achieve success. An empowered mission command approach to operations is fundamental to this success. In the first instance, commanders at all levels must have a comprehensive understanding of their superior commander's explicit and implicit intent and an overriding operational focus dedicated to the realization of that intent. Empowerment consists of two fundamental conditions: first, having the authority and responsibility to act; and, second, having the necessary resources, whether allocated by organizational construct or through augmentation. Commanders are the foundation of the CAF C2 framework. The authorities and responsibilities are hereby delegated to Commanders of Commands to plan and prepare for and to execute operations and other Force Generation (FG)/FE activities on behalf of the CDS. Commanders of Commands are responsible for, and directly accountable to the CDS to generate, employ, and/or support forces to ensure mission success.

17. **Organization.** The Commander CJOC is normally the supported commander for designated international operations and exercises C2 of all assigned forces which are deployed as part of those named operations. In specific circumstances, the Commander Canadian Special Operations Forces Command (CANSOFCOM) may be assigned as the supported commander for a particular operation. In such circumstances, the Commander CANSOFCOM exercises C2 of all forces allocated to that operation.

18. CAF deployments on international operations take many forms, with the employment of forces fully under national command, as part of a coalition or alliance engagement, or in support of the mandate of an established international organization. These can also vary significantly in scale from individual augmentation to particular multi-national missions to the large-scale deployment of TFs. The C2 construct used in international operations, either direct command or component command, will be dependent upon the circumstances. Although the direct command approach is the simplest and is ideal for small or single-environment operations, the complexities associated with the joint and combined operations within which the CAF is often deployed internationally may demand a component command structure to cater to the wide span of control, dispersion of forces and the multinational command structures which generally characterize such operations. The construct to be used for each operation for which the CAF is deployed will be determined during the planning phase.

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19. **Task Forces (TF).** As a general rule, TFs will be established in circumstances where formed units, formations, elements or entities are deployed and operate under the direct command of a Canadian commander, either as part of a national operation or in a multi-national context. As individuals deployed to augment multi-national missions are generally deployed in small numbers and are employed in various sub-organizations in staff, liaison and observation assignments, the collective assigned to such missions will not normally be constituted as a TF. In such instances where the numbers deployed or the ability to exercise the associated financial, disciplinary, or other such authorities of a TF Commander warrants the establishment of a TF, the supported commander will recommend such to the CDS.

20. **Command and Control (C2).** For all designated operations, the supported commander, either the Commander CJOC or the Commander CANSOFCOM as applicable, acts as the CAF Joint Force Commander (JFC). In a national context, the CAF JFC is responsible for issuing broad direction aimed at ensuring the alignment of the operational activities of deployed forces with GoC aims and objectives. The CAF JFC exercises Operational Command (OPCOM) of all assigned forces for the duration of the operation. In multinational operations, OPCOM, subject to any national restrictions that may be imposed, or Operational Control (OPCON) is further assigned to a Combined Joint Force Commander (CJFC). In those situations for which a TF is established, command and control of the deployed forces in a theatre of operations is exercised by a TF Commander who is appointed by the CDS. The TF Commander is responsible to the JFC for the translation of the Commander's intent into a concept of operations and shall develop a campaign or operations plan, as appropriate, to achieve mission success. In cases where the direct method of command is used, the TF Commander is accountable to the CAF JFC for this. In multi-national operations, where the component command structure is generally used, Canadian Component Commanders are responsible, through applicable Combined Joint Force Component Commanders, to the designated CJFC of the multi-national force for the operational effects. In such circumstances, the Canadian TF Commander shall ensure that the Combined Joint Force's plans for the employment of CAF are aligned with the GoC's aims and objectives and make best use of assigned CAF resources. Canadian Component Commanders are responsible to the designated Canadian TF Commander for national matters. They are to ensure that they appropriately balance their operational responsibilities to the CJFC with their national responsibilities for the sound employment of CAF assets.

21. **National Command.** Regardless of the C2 construct in place, national command of CAF personnel will always be retained through a national command structure. In the case of the direct-command construct, a separate national commander is not required, as all elements of the force remain under national and operational command of the deployed TF Commander. In the case of the component command construct in multi-national operations, the CDS may designate the TF Commander or another senior Canadian Officer in the coalition as the Canadian National Commander (CNC) or, depending upon the breadth of responsibilities of those individuals, appoint a separate individual as CNC. In either case, where required, the CNC will be supported by a

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specific staff, structured as a National Command Element (NCE), in order to provide the capacity to exercise national command functions. In those circumstances for which a TF is not constituted for deployed forces, the supported commander, either the Commander CJOC or the Commander CANSOFCOM, as applicable, may appoint a CNC, who will be responsible to the supported commander for exercising national authorities over deployed Canadian personnel and liaising with the designated multi-national Force Commander regarding national issues and representing to him or her national matters.

22. **Administrative Control.** Although a multi-national Force Commander may be assigned an operational command and control relationship over assigned CAF, Administrative Control (ADCON) of deployed Canadian personnel generally remains a national responsibility. In many cases, in a multinational force, the extent of administrative support provided from within the force will be negotiated between the parties involved. For most support activities, less those residual command responsibilities for which force generators remain responsible, ADCON of deployed CAF personnel is vested in the designated supported commander.

23. **Liaison and Coordination.** The conduct of contemporary complex operations as part of a comprehensive approach necessitates continual liaison and coordination with campaign partners, coalition and allied headquarters, partner-nation military commands and both national and international governmental and non-governmental agencies and organizations. Where CAF internationally-deployed operations are executed by a unified force under national command and control , supporting commanders must be prepared to provide environmental or functional liaison elements (e.g. Maritime Coordination Element (MCE), Air Component Coordination Element (ACCE) and Special Operations Liaison Element (SOLE) to the deployed TF. In multi-national operations, supporting commanders must be prepared to contribute to like multi-national liaison and coordination elements.

24. **National Constraints.** When it is in the national interest to do so, constraints and/or restraints on the employment of deployed CAF assets may be imposed upon a multi-national force. Such limitations will be directed by the CDS and declared to the multi-national force, normally through the designated supported commander. The CNC is responsible to the CDS through the designated supported commander for ensuring the employment of CAF resources in a manner that is consistent with any imposed constraints or restraints.

25. **National Assets.** Notwithstanding the assignment of CAF assets to multinational operations, supplementary forces may be deployed to meet national interests. Although these are normally service support capabilities aimed at addressing national sustainment requirements, other forces, including national intelligence and special operations capabilities, may be deployed for national use. Such forces will operate under the direct command of the supported commander, usually through the appointed CNC.

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26. **Maritime Forces.** Except where reserved by the CDS, the Commander CJOC or the Commander CANSOFCOM, as appropriate, exercises OPCOM of all international maritime Force Employment (FE) operations. Where CAF international operations are executed by a unified force under national command and control with a separate Maritime Component constituted, the Commander Royal Canadian Navy (RCN), or his delegated authority, will appoint a Maritime Component Commander (MCC) who will be responsible to the TF Commander for achieving the desired maritime effects in accordance with that commander's plans. Similarly, in multi-national operations, when a separate Maritime Component and MCC are necessary, due to the scale, location, or complexity of the operation, the Commander RCN, or his delegated authority, will appoint a MCC.

27. **Land Forces.** Except where reserved by the CDS, the Commander CJOC or the Commander CANSOFCOM, as appropriate, exercises OPCOM of all international land FE operations. Where CAF international operations are executed by a unified force under national command and control with a separate Land Component constituted, the Commander Canadian Army (CA), or his delegated authority, will appoint a Land Component Commander (LCC) who will be responsible to the TF Commander for achieving the desired land effects in accordance with that commander's plans. Similarly, in muiti-national operations, when a separate Land Component and LCC are necessary, due to the scale, location, or complexity of the operation, then the Commander CA, or his delegated authority, will appoint a LCC.

28. **Air Forces.** Except where reserved by the CDS, the Commander CJOC or the Commander CANSOFCOM, as appropriate, exercises OPCOM over all international air FE operations. Where CAF international operations are executed by a unified force under national command and control with a separate Air Component constituted, the Commander Royal Canadian Air Force (RCAF), or his delegated authority, will appoint an Air Component Commander (ACC) who will be responsible to the TF Commander for achieving the desired air effects in accordance with that commander's plans. Similarly, in multi-national operations, when a separate Air Component and ACC are necessary, due to the scale, location, or complexity of the operation, then the Commander RCAF, or his delegated authority, will appoint an ACC.

29. **Special Operations Forces.** Except where reserved by the CDS, the Commander CJOC or the Commander CANSOFCOM, as appropriate, exercises operational command of all international special operations. In circumstances where the Commander CJOC is designated as the supported commander, the Commander CANSOFCOM is the Special Operations Forces (SOF) advisor. Where CAF international operations are executed by a unified force under national command and control with a separate Special Operations Component constituted, the Commander CANSOFCOM will appoint a Special Operations Component Commander (SOCC) who will be responsible to the TF Commander for achieving the desired special operations effects in accordance with that commander's plans. Similarly, in multi-national operations, when a separate Special Operations Component and SOCC are necessary,

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due to the scale, location, or complexity of the operation, then the Commander CANSOFCOM will appoint a SOCC.

30. **Operational Support.** If required, a Joint Task Force Support Component (JTFSC) will be generated from across the CAF and allocated under the OPCOM of the Commander CJOC or the Commander CANSOFCOM, as applicable. The Commander CJOC is responsible for opening and operating Lines of Communication (LOC) to support operations globally. For multi-national operations, a JTFSC established to satisfy national sustainment requirements will remain under the national command of the appointed CNC.

31. **Military Personnel Command Forces.** Except where reserved by the CDS, the Commander CJOC or the Commander CANSOFCOM, as appropriate, exercises OPCOM of all Military Personnel Command (MILPERSCOM) forces assigned to international FE,operations. Planning must consider that MILPERSCOM forces (principally Health Service Support (HSS) personnel) assigned to a ship or submarine have been allocated OPCOM through MARLANT/MARPAC to that ship or submarine and MILPERSCOM forces assigned to a special operations unit have been allocated OPCOM through the Comd CANSOFCOM to that special operations units.

32. **Military Police Forces.** Under the general supervision of the Vice Chief of the Defence Staff, the CAF Provost Marshal, appointed the Commander CAF Military Police (MP) Group, provides trained MP personnel to the Commander CJOC or the Commander CANSOFCOM, as applicable; for employment in non-policing operational support roles, including, but not limited to, custody and detention, capacity-building training, mentoring and liaison, close protection, security, and traffic control. Military Police personnel, elements and units allocated for employment on CAF international operations operate under the OPCOM of the Commander CJOC or Commander CANSOFCOM as applicable.

UNITED NATIONS OPERATIONS

33. **Operational Framework.** As a member state of the United Nations (UN), the GoC has agreed to provide forces, as available and where appropriate, in support of UN peacekeeping operations and UN Special Political Missions. The provision of CAF resources takes two forms; formed contingents and individual Experts on Mission, comprising headquarters staff personnel and United Nations Military Observers. In the case of military contingents and Experts on Mission provided by Member States, these personnel are placed under UN OPCON of the UN Force Commander or head of military component, but not under UN command. In exercising national command functions, the supported commander must ensure that national direction does not adversely affect implementation of the mission mandate or run contrary to UN policies applicable to the mission. In circumstances where the operational direction of the UN Force Commander or head of military component compromises national policy or interests, the designated supported commander shall consult with the UN Force Commander. If unable to address the problem, the matter shall be referred to the CDS

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for resolution with the UN Military Adviser through the Assistant Deputy Minister (Policy). Where warranted, based upon the evolving security situation or a clear conflict with national interests, the supported commander shall make a recommendation for the withdrawal of contributed personnel from a mission to the CDS. A decision to withdraw from a mission shall be made following consultation with the Department of Foreign Affairs and International Trade and will be executed through advice to United Nations Headquarters.

34. **Administrative Considerations**. The support of deployed contingents is, in the first instance, largely a national responsibility. As missions mature, the UN may take on some responsibilities for administrative support. Levels of support provided, either nationally or by the UN, are based upon Memoranda of Understanding between the GoC and the UN. The development of these arrangements, managed by the UN's Department of Field Support, shall be done in coordination with the Military Adviser to the Permanent Mission of Canada to the UN. For Experts on Mission, although ADCON of deployed personnel rests with the Member State, the UN provides administrative support for many sustainment functions (e .g. accommodations, feeding). UN arrangements for routine support may be supplemented by national capabilities to cater to unique or specific Canadian requirements. In such cases, although operating under the umbrella of a specific UN Mission, personnel deployed to provide national support capabilities remain under national command and operate under the Tactical Control (TACON) of the UN Force Commander or head of military component. The deployment of such National Support Elements (NSEs) must be coordinated with and approved by the UN. Once such a requirement is identified, it shall be coordinated with the UN Headquarters through the Assistant Deputy Minister (Policy).

FORCE EMPLOYMENT

35. Beyond the sustainment of ongoing commitments to International Organizations and bi-lateral or multi-lateral agreements, international operations, by their nature, stem from the identification of emerging or sudden threats to Canada or Canadians and to Canadian interests abroad. Consequently, the employment of military forces internationally is governed by specific GoC direction for each deployment of CAF assets. As threats vary in both scale and scope, and the response to each may be executed under either national command or as part of a multi-national effort, each deployed force will be unique in its composition, priorities, tasks and missions.

36. **Planning and Preparation.** Planning for the use of military force in international operations, as part of a Whole-of-Government response to threats, may be initiated by specific orders from the CDS based upon GoC direction, by an inquiry from partner Departments or by operational commanders through horizon scanning activities. The CDS will normally issue an Initiating Directive (ID) to formalise his guidance to the Commander CJOC or the Commander CANSOFCOM in order to influence the development of courses of action by these operational commanders. The ID will identify policy and strategic objectives, constraints and restraints on actions, including reconnaissance and liaison, and identify the forces apportioned for planning purposes.

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The exception to the issuing of an ID is in those cases for which standing direction or orders are in place for which contingency plans have been developed. Increased responsiveness is to be achieved through the preparation of contingency plans by operational commanders which will enable the abbreviation of planning, preparation and build-up times.

37. **Initiation.** The execution of international operations will occur with the promulgation of a CDS Directive which will confirm objectives, define the operational boundaries within which commanders will operate and allocate the forces necessary to achieve mission success. In the case of contingency operations, the initiation of the execution of plans will be through the promulgation of an Implementation Directive by the CDS.

38. **Legal and policy considerations.** In all cases, the roles, authorities, responsibilities and accountabilities outlined herein are subject to, and must be interpreted within, all applicable legal and policy statutes, guidelines and jurisdictions. The Assistant Deputy Minister (Policy) is the principal source of defence policy advice to the Deputy Minister and the CDS and is responsible for ensuring overall policy coherence in support of domestic, continental and international operations, including the management of the Department's bilateral and multilateral defence and international security relations, and the coordination of departmental relations with the Department of Foreign Affairs and International Trade, the Privy Council Office, the Cabinet and Parliament.

Suggested Questions

Q. What are the role and responsibilities of CJOC Expeditionary?

Q. What are the role and responsibilities of CANSOFCOM?

Q. What are the role and responsibilities of MARCOM?

Q. What are the role and responsibilities ofLFC?

Q. What are the role and responsibilities of AIRCOM?

Q. Who is the principal military advisor to the GoC and commands at the strategic level? (CDS)

Q. Who exercises OPCOM of all international maritime Force Employment (FE) operations? (CDS, Comd CJOC or Comd CANSOFCOM)

Q. During UN Operations, which types of resources are provided by the CAF? (formed contingents and individual Experts on Mission, comprising headquarters staff personnel and United Nations Military Observers)

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Q. Which organization would make the decision to withdraw from a UN Operation? (A decision to withdraw from a mission shall be made following consultation with the Department of Foreign Affairs and International Trade and will be executed through advice to United Nations Headquarters)

Q. Who initiates the planning for the use of military force in international operations, as part of a Whole-of-Government response to threats? (specific orders from the CDS based upon GoC direction, by an inquiry from partner Departments or by operational commanders through horizon scanning activities)

Note to the Instructor: Encourage students to actively participate in the lesson and to reason through problems.

Interim Summary

39. Commanders must have a clear understanding of their assigned roles, authorities, responsibilities and accountabilities, as well as the command and control (C2) framework within which they operate. As the execution of military operations in accordance with Government of Canada (GoC) direction is the *raison d'être* of the CAF this clarity is particularly important. The following are the roles and responsibilities of key organizations of the CAF during operations. CJOC anticipates and conducts CAF operations (less operations conducted solely by North American Aerospace Defence Command or CAF Special Operations Forces Command); and develops, generates and integrates joint force capabilities for operations at home and abroad. CJOC comprises task forces and elements employed on operations.

40. Deputy Comd CJOC Expeditionary is assigned mission command of all CAF operations outside the responsibility of CJOC Continental, with the exception of those conducted by CANSOFCOM. Deputy Comd CJOC Expeditionary exercises command and control of other assigned and allocated forces in accordance with MOOs, CFOOs and CDS direction.

41. Comd CANSOFCOM is accountable to the CDS for the force development, force generation, and force employment of SOF in CAF routine, contingency, and rapid-response operations. As such, the Commander has specific delegated authorities to plan, prepare for, and execute operations. Normally, SOF deployed on operations is employed under OPCOM Deputy Comd CJOC Continental or Deputy Comd CJOC Expeditionary depending on whether the mission/task is domestic or expeditionary. CANSOFCOM is responsible for Counterterrorism operations and fully participates in the primary CAF mission of providing for the defence of Canada. It does so by seeking to defeat terrorist threats to Canada by providing CT forces capable of operating in all environments.

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42. MARCOM is the CAF centre of excellence in maritime operations and the principal source of expertise on the integrated development and generation of maritime forces. Comd MARCOM exercises command and control of MARCOM, as well as other assigned and allocated forces in accordance with MOOs, CAFOOs and CDS direction. LFC is the CAF centre of excellence in land operations and the principal source of expertise on the integrated development and generation of land forces. The Comd LFC exercises command and control of LFC, as well as assigned and allocated forces in accordance with MOOs, CAFOOs, and CDS direction. AIRCOM is the CAF centre of excellence in air operations and the principal source of expertise on the integrated development and generation of aerospace forces. The Comd AIRCOM exercises command and control of AIRCOM, as well as assigned and allocated forces in accordance with MOOs, CAFOOs, and CDS direction.

43. As for the CAF Command and Control framework for international operations, the CAF conducts its activities within a framework of authorities, responsibilities and accountabilities. In this regard, the CAF C2 framework is supportive of, and responsive to, GoC policy, as well as aligned with the Departmental authorities. To be effective in operations, CAF commanders must plan, coordinate and act in a timely manner to achieve success. An empowered mission command approach to operations is fundamental to this success. The Commander CJOC is normally the supported commander for designated international operations and exercises C2 of all assigned forces which are deployed as part of those named operations. CAF deployments on international operations take many forms, with the employment of forces fully under national command, as part of a coalition or alliance engagement, or in support of the mandate of an established international organization. These can also vary significantly in scale from individual augmentation to particular multi-national missions to the large-scale deployment of TFs.

44. As a general rule, TFs will be established in circumstances where formed units, formations, elements or entities are deployed and operate under the direct command of a Canadian commander, either as part of a national operation or in a multi-national context. As individuals deployed to augment multi-national missions are generally deployed in small numbers and are employed in various sub-organizations in staff, liaison and observation assignments, the collective assigned to such missions will not normally be constituted as a TF.

45. For all designated operations, the supported commander, either the Commander CJOC or the Commander CANSOFCOM as applicable, acts as the CAF Joint Force Commander (JFC). In multinational operations, OPCOM, subject to any national restrictions that may be imposed, or Operational Control (OPCON) is further assigned to a Combined Joint Force Commander (CJFC). Regardless of the C2 construct in place, national command of CAF personnel will always be retained through a national command structure. In the case of the direct-command construct, a separate national commander is not required, as all elements of the force remain under national and operational command of the deployed TF Commander. Although a multi-national Force Commander may be assigned an operational command and control relationship over

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assigned CAF, Administrative Control (ADCON) of deployed Canadian personnel generally remains a national responsibility.

46. The conduct of contemporary complex operations as part of a comprehensive approach necessitates continual liaison and coordination with campaign partners, coalition and allied headquarters, partner-nation military commands and both national and international governmental and non-governmental agencies and organizations. When it is in the national interest to do so, constraints and/or restraints on the employment of deployed CAF assets may be imposed upon a multi-national force. Notwithstanding the assignment of CAF assets to multinational operations, supplementary forces may be deployed to meet national interests. Although these are normally service support capabilities aimed at addressing national sustainment requirements, other forces, including national intelligence and special operations capabilities, may be deployed for national use.

47. Except where reserved by the CDS, the Commander CJOC or the Commander CANSOFCOM, as appropriate, exercises OPCOM of all international maritime Force, land and air FE Employment (FE) operations all international special operations and all Military Personnel Command (MILPERSCOM) . If required, a Joint Task Force Support Component (JTFSC) will be generated from across the CAF and allocated under the OPCOM of the Commander CJOC or the Commander CANSOFCOM, as applicable. Under the general supervision of the Vice Chief of the Defence Staff, the CAF Provost Marshal, appointed the Commander CAF Military Police (MP) Group, provides trained MP personnel to the Commander CJOC or the Commander CANSOFCOM, as applicable.

48. As a member state of the United Nations (UN), the GoC has agreed to provide forces, as available and where appropriate, in support of UN peacekeeping operations and UN Special Political Missions. The provision of CAF resources takes two forms; formed contingents and individual Experts on Mission, comprising headquarters staff personnel and United Nations Military Observers. The support of deployed contingents is, in the first instance, largely a national responsibility. As missions mature, the UN may take on some responsibilities for administrative support. Levels of support provided, either nationally or by the UN, are based upon Memoranda of Understanding between the GoC and the UN.

49. Planning for the use of military force in international operations, as part of a Whole-of-Government response to threats, may be initiated by specific orders from the CDS based upon GoC direction, by an inquiry from partner Departments or by operational commanders through horizon scanning activities. The CDS will normally issue an Initiating Directive (ID) to formalise his guidance to the Commander CJOC or the Commander CANSOFCOM in order to influence the development of courses of action by these operational commanders.

50. In all cases, the roles, authorities, responsibilities and accountabilities outlined herein are subject to, and must be interpreted within, all applicable legal and policy

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statutes, guidelines and jurisdictions. The Assistant Deputy Minister (Policy) is the principal source of defence policy advice to the Deputy Minister and the CDS and is responsible for ensuring overall policy coherence in support of domestic, continental and international operations, including the management of the Department's bilateral and multilateral defence and international security relations, and the coordination of departmental relations with the Department of Foreign Affairs and International Trade, the Privy Council Office, the Cabinet and Parliament.

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Stage 3 – The Crown prerogative and its use to deploy the CAF internationally

Introduction

1. International law developed in order to regulate the relations between and among its subjects (sovereign states, international organizations, and in some few instances, individuals). International law therefore includes rules agreed upon, agreements entered into between and among different countries, and it has regulated, in whole, or in part, issues concerning the use of force, armed conflict, means and methods of warfare, maritime and aerial navigation, human rights, etc.

2. Institutions such as the United Nations are indicative of the efforts of states to increase the rule of law in the international context. Other examples include the growth of international agreements concerning the law of armed conflict and the recent development of the International Criminal Court. Nevertheless, one cannot say that all countries comply with the rule of law. It is a continuing process, evolving with the events that shape our world. Yet, as much of this manual demonstrates, international law provides rules with which CAF personnel are expected to comply.

3. During international operations, the use of force by the CAF will be governed by a combination of international law, including alliance and coalition agreements, UN resolutions and mandates, Canadian domestic law, and the law of the host nation (if applicable). However, the use of force by CAF elements deployed on international operations will always be as provided by Canadian rules of engagement authorized by the CDS.

4. **What is the Crown prerogative?** The Crown prerogative is the residue of powers once exercised personally by the monarch, as curtailed over the centuries by Parliamentary statutes. Because its exact scope is often uncertain, it falls to the common law courts to determine whether a given prerogative exists or not and its extent. For this reason, the "Crown prerogative" refers to "the powers and privileges accorded by the common law to the Crown".

5. As is clear from the definition, it is the common law, or judge-made law, that determines the extent of the Crown prerogative. A non-exhaustive catalogue of general subject matters for which the courts have found that prerogatives exist includes foreign affairs, war and peace, treaty-making, other acts of state in matters of foreign affairs and defence. Other contents include powers and privileges respecting passports, power of mercy, diplomatic appointments, administration and disposal of public lands, armorial bearings, and honours and titles. Ultimately, and importantly, the content of the Crown prerogative is not static, nor absolutely defined. As noted, a power or privilege that historically belonged to the Crown may be extinguished by the passage of legislation.

6. **Who exercises the Crown prerogative?** At the time of confederation in 1867 the Crown prerogative power was exercised from England. As a result of Canada's

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evolution to statehood, the exercise of the Crown prerogative now rests with the Canadian executive, at either the federal or provincial levels depending on whether the prerogative concerns a matter falling within the purview of the federal or provincial division of powers. By the terms of the Canadian Constitution and by convention, executive authority, including authority grounded in the Crown prerogative, is exercised by the political government, with the Monarch having a ceremonial role.

7. As a federal country, Canada has two "orders" of government: federal and provincial. The system of apportionment of Crown prerogative powers between the federal and provincial governments has been held to mirror the division of legislative powers contained at sections 91 and 92 of the *Constitution Act, 1867*. For example, under section 91(7) of the *Constitution Act, 1867* the Parliament of Canada has legislative authority over matters coming within the subject of "Militia, Military and Naval Service, and Defence". Accordingly, those prerogative powers and privileges concerning matters coming within the subject of "Militia, Military and Naval Service, and Defence" are exercised by the federal government.

8. The federal Crown prerogative is exercised by the Governor General, the Prime Minister, Cabinet, and, in some cases, individual Cabinet ministers. Which authority is appropriate to exercise a specific Crown prerogative is a matter of convention. The matter is discussed here only in reference to the use of the Crown prerogative power to deploy the CAF. It is important to remember that the Crown prerogative is vested in the executive government, not the legislature. Accordingly, Parliament does not play any role in the exercise of the federal Crown prerogative. Parliament's part is to oversee the government generally, through the system of responsible government.

9. **The Crown prerogative and its use to deploy the CAF.** The federal government derives its power from the Constitution, statutes and the common law. The Crown prerogative arises from common law. It entitles the government to exercise its power to act even in the absence of specific statutes. For example, the authority to defend Canada, or even to deploy the CAF internationally, is found in the Crown prerogative, as statues do not govern these activities. Exercise of the Crown prerogative is done by the executive branch. Parliament may legislate and extinguish an existing Crown prerogative, but it does not have a role in exercising an existing prerogative power. Historically speaking the exercise of the Crown prerogative has been a very important legal basis for the conduct of CAF domestic and international operations. In this regard it is significant to note that the legal basis to deploy the CAF internationally is not found in federal legislation, including the *NDA*, but rather is found in the exercise of the Crown prerogative.

10. The courts and academics have consistently held that the deployment of the CAF on international military missions is within the Crown prerogative, and therefore, that it has not been extinguished by the passage of legislation. Therefore, it is important to stress that the legal basis to deploy the CAF internationally is not found in the NDA or any other legislation. The Crown prerogative power at issue in the case of an executive

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decision to deploy the CAF outside of Canada in support of a military operation is a prerogative exercised by the federal, as opposed to a provincial executive.

11. With respect to the question of who in the federal executive may take the decision to deploy the CAF, there are three authorities who, in theory, could make the relevant Crown prerogative decision, listed here in order of pre-eminence: Cabinet, the Prime Minister, the Minister of National Defence with the concurrence of the Minister of Foreign Affairs. This said, the federal executive has developed several mechanisms to record a decision to deploy the CAF:

a. If Cabinet sitting as a whole body is exercising the power then the decision may take the form of a decision taken in response to a Memorandum to Cabinet. The decision may be recorded or articulated in an Order-in-Council or record of decision.

b. Any of Cabinet, the Prime Minister, or the MND and MFA with concurrent Prime Ministerial notification or concurrence, may exercise the power and express the nature of what has been decided through the issuance of what has generally been referred to as a "strategic objective letter". The strategic objective letter clearly and unequivocally defines the policy, operational, legal, geographic, and temporal scope of the CAF deployment. It has been the instrument used to record the exercise of Crown prerogative for most CAF deployments since 11 September 2001.

12. Current practice has the Canadian Parliament formally informed of a decision to deploy the CAF internationally, if at all, through the holding of a "take-note debate". A "take-note debate" is a special form of debate held in the House of Commons when a Minister moves a non-votable motion to solicit the views of Members on some aspects of government policy.

13. It is notable that there have been instances where, for political reasons, the government of the day has debated deployment in Parliament and sought approval for Canadian military involvement in a conflict. In 1990, for instance, Canada's foreign minister moved a motion in the Commons calling for the "dispatch of members of the Canadian Forces to take part in the multinational military effort in and around the Arabian Peninsula". This motion was amended to support "sending of members, vessels and aircraft of the Canadian Forces to participate in the multinational military effort in and around the Arabian Peninsula" and was passed on October 23, 1990. Several other motions reaffirming Canadian support for the use of military force in the region were passed as the situation escalated in the Gulf. A defeat of these motions would have been politically difficult for the government, but the failure to carry a simple parliamentary motion would not have impaired the government's prerogative power to deploy the CAF.

14. The House of Commons may play a role in ongoing CAF operations by exercising its control over the purse strings of government. The Commons has an

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essential role in the "Business of Supply" (the appropriations process), *e.g.* by assessing funding for the CAF generally, and for specific missions. Once the decision to deploy the CAF has been taken by the federal executive, and once general executive strategic guidance has been set out, the exact methods by which the associated mission is prosecuted are developed and implemented by the CDS and the chain of command.

Suggested Questions

Q. During international operations, the use of force by the CAF will be governed by which principles?

Q. Under the *Constitution Act, 1867*, statutes dealing with national, international and inter-provincial matters fall within which level?

Q. What is the Crown prerogative?

Q. What matters are covered by the Crown prerogative?

Q. What is the legal basis to deploy the CAF internationally?

Q. What are the authorities who, in theory, could make the relevant Crown prerogative decision to deploy the CAF internationally?

Q. Does the government need to ask Parliament to defend against an attack on Canadian territory?

Note to the Instructor: Encourage students to actively participate in the lesson and to reason through problems.

Interim Summary

15. International law developed in order to regulate the relations between and among its subjects (sovereign states, international organizations, and in some few instances, individuals). Institutions such as the United Nations are indicative of the efforts of states to increase the rule of law in the international context. Other examples include the growth of international agreements concerning the law of armed conflict and the recent development of the International Criminal Court. During international operations, the use of force by the CAF will be governed by a combination of international law, including alliance and coalition agreements, UN resolutions and mandates, Canadian domestic law, and the law of the host nation (if applicable).

16. The federal government derives its power from the Constitution, statutes and the common law. The Crown prerogative arises from common law. It entitles the

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government to exercise its power to act even in the absence of specific statutes. For example, the authority to defend Canada, or even to deploy the CAF internationally, is found in the Crown prerogative, as statues do not govern these activities. Historically speaking the exercise of the Crown prerogative has been a very important legal basis for the conduct of CAF domestic and international operations. The Crown prerogative is the residue of powers once exercised personally by the monarch, as curtailed over the centuries by Parliamentary statutes. Because its exact scope is often uncertain, it falls to the common law courts to determine whether a given prerogative exists or not and its extent. The extent of the Crown prerogative includes matters such as foreign affairs, war and peace, treaty-making, other acts of state in matters of foreign affairs and defence. Other contents include powers and privileges respecting passports, power of mercy, diplomatic appointments, administration and disposal of public lands, armorial bearings, and honours and titles.

17. At the time of confederation in 1867 the Crown prerogative power was exercised from England. As a result of Canada's evolution to statehood, the exercise of the Crown prerogative now rests with the Canadian executive, at either the federal or provincial levels depending on whether the prerogative concerns a matter falling within the purview of the federal or provincial division of powers. As a federal country, Canada has two "orders" of government: federal and provincial. The system of apportionment of Crown prerogative powers between the federal and provincial governments has been held to mirror the division of legislative powers contained at sections 91 and 92 of the *Constitution Act, 1867*. The federal Crown prerogative is exercised by the Governor General, the Prime Minister, Cabinet, and, in some cases, individual Cabinet ministers. Which authority is appropriate to exercise a specific Crown prerogative is a matter of convention.

18. The Crown prerogative in Canada is, through our system of Parliamentary democracy, exercised by the political executive rather than the head of state. Political executive authority in Canada is concentrated in the hands of the Cabinet, the Prime Minister, and individual Ministers, all of which, in theory, have powers of prerogatives. While there is no formal methodology for capturing a Crown prerogative decision, practices have developed in this matter. A Cabinet or Cabinet committee decision is normally captured in a Record of Decision, normally in the form of an Order in Council or a response to a Memorandum to Cabinet. The Prime Minister and ministers will issue decisions by letter, either in reply to requesting correspondence, or on their own. In all events, by its very nature, a Crown prerogative decision is not subject to formal legislative approval. It is important to note, however, that the Executive may consult the legislature in sensitive matters in accordance with practices that have developed in this regard. A common way to present a Crown prerogative decision to the legislature is through a *take note* debate.

19. The Crown prerogative decision to deploy the CAF internationally rests with the federal Executive and therefore, in theory, may be taken by Cabinet (or Cabinet committee); the Prime Minister; the MND and MFA jointly (as the members of Cabinet with relevant portfolios); and, occasionally, by the MND alone. Regardless by whom, and by what means, a Crown prerogative is exercised, experience has shown it

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imperative to have only one decision made in any given case to avoid the risk of conflicting strategic direction. In practice, Cabinet, or one of its committees, will capture such a decision with the appropriate Record of Decision: normally an Order in Council or a response to a Memorandum to Cabinet. A Prime Ministerial or ministerial decision is captured in a *strategic objective letter*. When a decision is taken by the MFA and MND, or by the MND alone, it is customary to inform the Prime Minister of the decision taken. When the Minister or Ministers seek Prime Ministerial concurrence following the exercise of a Crown prerogative, the decision is properly considered to be the Prime Minister's.

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PART 4 – CONCLUSION

Summary

1. International law developed to regulate the conduct of states in their relations with one another, establishing binding obligations that may give rise to a legal claim against the offending states if breached. International legal obligations apply to all state organs, including the national armed forces. As a result, the CAF are bound to comply with all of Canada's international legal obligations. Unlike treaty provisions, which only bind states parties, customary international law binds all states, without requiring their prior express consent. Customary legal principles result from the evolution of state practice and attitudes rather than from the formal negotiation of binding agreements. A number of factors must be assessed to determine the sufficiency of state practice supporting the existence of a particular norm..

2. All legal systems rest upon basic principles that allow them to regulate conduct and settle disputes effectively and efficiently. The third primary source of international law, general principles of law, recognizes the importance of this foundation, permitting the incorporation of these general principles to ensure the effective functioning of the international legal order. States remain the pre-eminent international legal entities. Indeed, most international legal obligations are owed by states to other states. Similarly, it is only the practice of states – and not other subjects of international law – which can directly create customary international law. A number of domestic and international legal mechanisms exist to facilitate and ensure compliance with international legal obligations and for international dispute resolution. The International Court of Justice (ICJ) is the principal legal organ of the UN system, although its jurisdiction is limited to cases where states expressly consent to its role.

3. Commanders must have a clear understanding of their assigned roles, authorities, responsibilities and accountabilities, as well as the command and control (C2) framework within which they operate. As the execution of military operations in accordance with Government of Canada (GoC) direction is the *raison d'être* of the CAF this clarity is particularly important. Deputy Comd CJOC Continental is assigned mission command of all CAF operations in Canada, with the exception of those conducted under the NORAD Agreement. Comd CANSOFCOM is accountable to the CDS for the force development, force generation, and force employment of SOF in CAF routine, contingency, and rapid-response operations. As such, the Commander has specific delegated authorities to plan, prepare for, and execute operations. Comd NORAD is responsible to the GoC and to the Government of the US for the execution of missions assigned to NORAD.

4. MARCOM is the CAF centre of excellence in maritime operations and the principal source of expertise on the integrated development and generation of maritime forces. Comd MARCOM exercises command and control of MARCOM, as well as other assigned and allocated forces in accordance with MOOs, CAFOOs and CDS direction.

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LFC is the CAF centre of excellence in land operations and the principal source of expertise on the integrated development and generation of land forces. The Comd LFC exercises command and control of LFC, as well as assigned and allocated forces in accordance with MOOs, CFOOs, and CDS direction. AIRCOM is the CAF centre of excellence in air operations and the principal source of expertise on the integrated development and generation of aerospace forces. The Comd AIRCOM exercises command and control of AIRCOM, as well as assigned and allocated forces in accordance with MOOs, CAFOOs, and CDS direction.

5. For all designated operations, the supported commander, either the Commander CJOC or the Commander CANSOFCOM as applicable, acts as the CAF Joint Force Commander (JFC). In multinational operations, OPCOM, subject to any national restrictions that may be imposed, or Operational Control (OPCON) is further assigned to a Combined Joint Force Commander (CJFC). The conduct of contemporary complex operations as part of a comprehensive approach necessitates continual liaison and coordination with campaign partners, coalition and allied headquarters, partner-nation military commands and both national and international governmental and non-governmental agencies and organizations. Except where reserved by the CDS, the Commander CJOC or the Commander CANSOFCOM, as appropriate, exercises OPCOM of all international maritime Force, land and air FE Employment (FE) operations all international special operations and all Military Personnel Command (MILPERSCOM).

6. As a member state of the United Nations (UN), the GoC has agreed to provide forces, as available and where appropriate, in support of UN peacekeeping operations and UN Special Political Missions. The provision of CAF resources takes two forms; formed contingents and individual Experts on Mission, comprising headquarters staff personnel and United Nations Military Observers. The support of deployed contingents is, in the first instance, largely a national responsibility. As missions mature, the UN may take on some responsibilities for administrative support. Levels of support provided, either nationally or by the UN, are based upon Memoranda of Understanding between the GoC and the UN.

7. Planning for the use of military force in international operations, as part of a Whole-of-Government response to threats, may be initiated by specific orders from the CDS based upon GoC direction, by an inquiry from partner Departments or by operational commanders through horizon scanning activities. In all cases, the roles, authorities, responsibilities and accountabilities outlined herein are subject to, and must be interpreted within, all applicable legal and policy statutes, guidelines and jurisdictions.

8. The key statute governing the CAF is the *National Defence Act*. But even this statute must be assessed against a rule of law standard. It must be authorized by, and be consistent with, the Constitution, including the division of powers between the federal and provincial levels and the *Charter* as interpreted by the Canadian courts. The federal government derives its power from the Constitution, statutes and the common law. The Crown prerogative arises from common law. It entitles the government to exercise its

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power to act even in the absence of specific statutes. The Crown prerogative is the residue of powers once exercised personally by the monarch, as curtailed over the centuries by Parliamentary statutes. At the time of confederation in 1867 the Crown prerogative power was exercised from England. As a result of Canada's evolution to statehood, the exercise of the Crown prerogative now rests with the Canadian executive, at either the federal or provincial levels depending on whether the prerogative concerns a matter falling within the purview of the federal or provincial division of powers. The courts and academics have consistently held that the deployment of the CAF on international military missions is within the Crown prerogative, and therefore, that it has not been extinguished by the passage of legislation.

9. The content of the Crown prerogative is determined by the common law, through judicial consideration of statute. Matters for which prerogative powers and privileges exist include acts of state in matters of foreign affairs, as well as defence and the CAF. Crown prerogative decisions are theoretically subject to consideration by the courts by way of judicial review application or *Charter* challenge. Judicial review of Crown prerogative decisions is subject to the *subject matter test* and the doctrine that decisions of *high policy* are not justiciable. The Crown prerogative decision to deploy the CAF internationally rests with the federal Executive and therefore, in theory, may be taken by Cabinet (or Cabinet committee); the Prime Minister; the MND and MFA jointly (as the members of Cabinet with relevant portfolios); and, occasionally, by the MND alone. When the Minister or Ministers seek Prime Ministerial concurrence following the exercise of a Crown prerogative, the decision is properly considered to be the Prime Minister's.

Confirmation

The instructor may ask other confirmation questions.

Conclusion

10. Extensive international legal principles apply to the conduct of military operations by the CAF. These obligations result from Canada's international treaty commitments, the 'crystallisation' of customary international legal norms, and the application of general principles of law. As noted, while numerous mechanisms exist to address breaches of international law, most compliance with international legal obligations results from their voluntary acceptance by states, organisations and individuals.

11. The importance of the rule of law to Canada as a democracy and the commitment of the CAF to ensure the existence of public order cannot be understated. It is a commitment that permeates all levels of the chain of command. The law impacts on the activities of the CAF across the entire operational spectrum. CAF commanders must therefore have a sound grasp of its general content when conducting domestic or international operations. Broadly speaking, the law can be considered to affect the conduct of CAF operations in two ways. First, there must be a legal basis or mandate for the deployment of the CAF on any operation, either domestic or international or both.

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Second, all operations must be executed in accordance with the law. In particular, the use of force by deployed CAF members must be in accordance with direction from the CAF chain of command, and must be no more than is legally permissible for the circumstances.

12. The establishment of a comprehensive Command and Control framework is essential in ensuring that commanders are appropriately empowered to take the necessary action with required resources in order to achieve timely effects in executing CAF operations.

13. The federal government derives its power from both statutes and the Crown prerogative. Crown prerogative is an essential tool that empowers the federal government to defend Canada, enter into treaties with other nations, and conduct foreign affairs. The Crown prerogative arises from common law. It entitles the government to exercise its power to act even in the absence of specific statutes. For example, the authority to defend Canada, or even to deploy the CAF internationally, is found in the Crown prerogative. Statues do not provide this power. In some circumstances, the government may exercise the Crown prerogative to enter into treaties specifically for the defence of Canada and its allies. Exercise of the Crown prerogative is done by the executive of government; Parliament does not have a role.

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PO 021 ADVISE ON THE LEGAL BASES AND AUTHORITIES FOR CAF OPERATIONS

PART 1 -- LESSON IDENTIFICATION

TITLE: EO 021.02 Advise on legal bases and authorities pertaining to domestic CAF operations

Performance. Advise on legal bases and authorities pertaining to domestic CAF operations.

Conditions.

Given: Orders-in-Council, directives and authorizations, functioning telecommunications and network hardware.

Denied: Direct supervision

Standard. The legal officer shall advise on the legal bases and authorities for CAF domestic operations.

Main Teaching Points:

- Roles and responsibilities of stakeholders in CAF domestic operations
- The domestic legal regime

Method. This EO will be accomplished by a combination of self-study and class lectures. Students will be required to read assigned materials and be prepared to respond to questions.

Duration. One 45-minute period.

References. *National Defence Act*
B-GJ-005-300/FP-001 Operations, Chap 6
B-GJ-005-104/FP-024 The Operational Law Manual (Draft), Chap 6, 7
CDS Directive of CF Command and Control and Delegation of Authority for Force Employment, 28 April 2013 (Annex C)

Training/ Learning Aids. Standard classroom with whiteboard and projection system/handouts; CD materials; Legal Officer Qualification Course (LOQC) Instructors Handbook – Module(s) [XXX]

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Note to the instructor. The developmental lesson shall be conducted in structured manner, using a list of questions to the class. Instructors are to complement each segment of the developmental lesson by follow-up and direct questions taking into account the flow and direction of the discussion. Interim summaries shall be conducted at the end of each segment to confirm the material was learned and provide a basis from which the discussion can progress to the next segment. A review of the main teaching points will then take place at the end of the period.

PART 2 – INTRODUCTION

Objective: The instructor shall describe the legal bases and authorities pertaining to domestic CAF operations as outlined in Module [XXX] of the LOQC Instructors Handbook.

Introduction: To be effective in operations, CAF commanders must plan, coordinate and act in a timely manner to achieve success. An empowered mission command approach to operations is fundamental to this success. Commanders of Commands are responsible for, and directly accountable to the CDS to generate, employ, and/or support forces to ensure mission success during domestic operations, either on provision of services or during CAF assistance to law enforcement agencies and aid to civil power. This EO provides information on the roles and responsibilities of stakeholders and overview the legal regime applicable to CAF domestic operations.

Outline:

Stage 1 – Roles and responsibilities of stakeholders in CAF domestic operations

Stage 2 – The domestic legal regime

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PART 3 – BODY OF THE LESSON

Stage 1 – Roles and responsibilities of stakeholders in CAF domestic operations

Introduction

1. To be effective in operations, CAF commanders must plan, coordinate and act in a timely manner to achieve success. An empowered mission command approach to operations is fundamental to this success. In the first instance, commanders at all levels must have a comprehensive understanding of their superior commander's explicit and implicit intent and an overriding operational focus dedicated to the realization of that intent. Empowerment consists of two fundamental conditions: first, having the authority and responsibility to act; and, second, having the necessary resources, whether allocated by organizational construct or through augmentation. Commanders are the foundation of the CAF command and control (C2) framework. The authorities and responsibilities are hereby delegated to Commanders of Commands to plan and prepare for and to execute operations and other Force Generation (FG)/FE activities on behalf of the CDS. Commanders of Commands are responsible for, and directly accountable to the CDS to generate, employ, and/or support forces to ensure mission success.

2. The force employment concept for CAF capabilities in support of domestic operations will be defined through operations plans developed by Commander CJOC or the Commander Canadian Special Operations Forces Command (CANSOFCOM), as applicable, and approved by the Chief of the Defence Staff (CDS). The plans will establish the context, framework and scope of tasks to be supported by the CAF for routine, contingency or rapid-response operations that support the security and defence of Canada. The plans will be operationalized annually through the CAF Force Posture and Readiness Directive, in which specific tasks and performance requirements will be issued, linking required force employment demands to force generation tasks and resource allocations.

ROLES AND RESPONSIBILITIES

3. **Chief of the Defence Staff (CDS).** The CDS serves as the principal military advisor to the Government of Canada (GoC). In addition, the CDS fulfils his Responsibilities for the control and administration of the CAF by exercising command at the strategic level. The CDS is supported in fulfilling his advisory and command roles by a Strategic Joint Staff (SJS), led by a Director of Staff, who reports directly to the CDS and who may be delegated the Authority and responsibility to issue guidance on behalf of the CDS in specific areas. The role of the SJS is as follows:

a. The SJS provides timely and effective military analysis and decision support to the CDS in his advisory role to the GoC; and

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b. The SJS supports the CDS in his critical role of translating Government direction into effective and responsive CAF operations, enabling the CDS to effect strategic command, by allowing him to plan for, initiate, direct, synchronize and control operations at the strategic level. In doing so, the SJS supports the CDS by establishing both access and military information exchanges with select government departments that directly lead or support security and Defence missions and ensuring the effective liaison with the strategic military staffs of key allies.

4. **Commander Canadian Joint Operations Command (CJOC).** The Commander CCJOC exercises C2 of all Regional Joint Task Forces (RJTFs), comprising: Joint Task Force North (JTFN), Joint Task Force Pacific (JTFP), Joint Task Force West (JTFW), Joint Task Force Central (JTFC), Joint Task Force East (JTFE) and Joint Task Force Atlantic (JTFA). The Commander CJOC is also responsible for the employment of the CAF on all operations, except those uniquely tasked to the Canadian Special Operations Forces Command (CANSOFCOM) and the North American Air Defense Command (NORAD), or where otherwise directed by the CDS. The Comd CJOC will exercise those powers, jurisdictions and other authorities that enable the effective planning for and conduct of operations as directed by the CDS in order to meet GoC requirements. More specifically, with a main effort applied to the effective command and conduct of operations, the Commander CJOC will be responsible for:

a. Exercising command and control of allocated forces in accordance with Ministerial (MOO) and Canadian Forces Organization Orders (CFOO) and CDS direction;

b. Planning for, commanding and supporting assigned operations, including establishing and operating Lines of Communication;

c. Providing advice on options and determining requirements for CAF missions spanning the continuum of operations;

d. Developing and promulgating domain awareness, enabling a comprehensive understanding of the operational context of the security environment for the CAF;

e. Monitoring and evaluating potential areas of CAF involvement in his assigned Area of Responsibility, with the main effort on monitoring events that impact upon designated Theatres of Operation in order to support early warning, accelerated decision making and the rapid response to emerging threats;

f. Coordinating military planning with allied operational-level partners;

g. Conducting operational-level engagement that generates and supports unity of thought, purpose and action with operational partners;

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h. Generating, maintaining and protecting operationally-ready joint forces allocated to the Command for operational support;

i. Supporting and, as directed, managing CAF joint readiness and training activities aimed at integrating maritime, land and air warfare joint force packages;

j. Determining and ordering required Force Protection Levels and Measures for Defence establishments and CAF personnel located within continental North America (Canada, the Continental United States and Mexico) and the maritime and air approaches to North America, including the Arctic and for CAF personnel deployed in international Theatre of Operations for which the Commander CJOC is designated the supported commander; and

k. Exercising functional authority for operational joint support capability requirements, doctrine, operational safety, collective training and lessons learned.

5. **Commander Canadian Special Operations Forces Command (CANSOFCOM).** The Commander CANSOFCOM is the principal source of expertise on the development, generation and employment of special operations forces. The Comd CANSOFCOM will exercise those powers, jurisdictions and other authorities that enable the effective planning for and conduct of operations as directed by the CDS in order to meet GoC requirements. More specifically, as applied to the effective command and conduct of special operations, the Comd CANSOFCOM is responsible for:

a. Exercising command and control of allocated forces in accordance with MOO, CFOO and CDS direction;

b. Planning for and commanding operations uniquely assigned to CANSOFCOM;

c. Monitoring and evaluating potential areas of CAF involvement in his assigned Area of Responsibility, with the main effort on monitoring events that impact upon designated Theatres of Operation in order to support early warning, accelerated decision making and the rapid response to emerging threats;

d. Providing advice on options and on the requirements for the employment of CAF special operations forces for CAF missions spanning the continuum of operations;

e. Generating, maintaining and protecting operationally-ready special operations forces and special-operations-led joint forces for operational employment;

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f. Determining and ordering required Force Protection Levels and Measures for CAF personnel deployed in international Theatre of Operations for which the Commander CANSOFCOM is designated the support commander;

g. Being the Primary Force Generator (PFG) for special forces operations and special-operations-led joint operations; and

h. Exercising functional authority for special operations capability requirements, Doctrine, operational safety, collective training and lessons learned.

6. **Commander Royal Canadian Navy (RCN).** The Commander RCN is the principal source of expertise on the development, generation and employment of maritime forces and is responsible for:

a. Exercising command and control of allocated forces, in accordance with MOO, CFOO and CDS direction.

b. Providing advice on the employment of CAF maritime forces for CAF missions spanning the continuum of operations;

c. Generating Maritime Domain Awareness in support of CAF and NORAD operational requirements;

d. Providing Joint Force Maritime Command and Control in support of CAF operations;

e. Supporting operational planning for maritime forces assigned for force employment;

f. Generating, maintaining and protecting operationally-ready maritime forces and predominantly maritime joint forces for operational employment;

g. Being the PFG for maritime operations and predominantly maritime based joint operations; and

h. Exercising functional authority for maritime capability requirements, doctrine, operational safety, collective training and lessons learned.

7. **Commander Canadian Army (CA).** The Commander CA is the principal source of expertise on the development, generation and employment of land forces and is responsible for:

a. Exercising command and control of allocated forces, in accordance with MOO, CFOO and CDS direction;

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b. Providing advice on the employment of CAF land forces for CAF missions spanning the continuum of operations;

c. Generating, maintaining and protecting operationally-ready land forces and predominantly land joint forces for operational employment;

d. Being the PFG for land operations and predominantly land-based joint operations; and

e. Exercising functional authority for land force capability requirements, doctrine, operational safety, collective training and lessons learned.

8. **Commander Royal Canadian Air Force (RCAF).** The Commander RCAF is the principal source of expertise on the development, generation and employment of aerospace forces and is responsible for:

a. Exercising command and control of allocated forces, in accordance with MOO, CFOO and CDS direction;

b. Providing advice on the employment of air forces for CAF missions spanning the continuum of operations;

c. Providing Joint Force Air Command and Control in support of CAF operations;

d. Supporting operational planning for aerospace forces assigned for force employment;

e. Generating, maintaining and protecting operationally-ready air forces and predominantly air joint forces for operational employment;

f. Being the PFG for air operations, Search and Rescue, and predominantly air-based joint operations; and

g. Exercising functional authority for the airworthiness program and aerospace capability requirements, doctrine, operational safety, collective training and lessons learned.

9. **Commander Military Personnel Command.** The Chief of Military Personnel, appointed the Commander Military Personnel Command, is responsible for:

a. Exercising command and control of allocated forces, in accordance with MOO, CFOO and CDS direction;

b. providing military personnel advice for CAF missions spanning the continuum of operations;

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c. Generating, maintaining and protecting operationally-ready health service support (HSS) and other military personnel and equipment for operational employment;

d. Generating, maintaining and protecting personnel support capabilities for employment in support of operational activities; and

e. e. Exercising functional authority for military personnel management for the CAF.

10. **Chief of Defence Intelligence.** The Chief of Defence Intelligence, as the functional authority for intelligence within the CAF, is responsible for:

a. Providing intelligence advice and support for CAF missions spanning the continuum of operations;

b. Provide unified, military strategic intelligence support to the CDS in order to enable the early identification of emerging threats and the planning for, and initiation and command of CAF operations at the strategic level;

c. Supporting the Commander CJOC and the Commander CANSOFCOM in horizon scanning in their assigned Areas of Responsibility, with an emphasis on monitoring events that impact upon designated Theatres of Operation in order to support early warning, accelerated decision making and the rapid response to emerging threats;

d. Generating, maintaining and protecting operationally-ready intelligence capabilities, personnel, equipment and connectivity for operational employment.

e. Requesting and coordinating national surveillance assets in support of CAF operations;

f. Providing strategic intelligence services in support of the defence and security of Canada, including leading on the annual intelligence priority-setting process; and

g. Conducting intelligence and intelligence-related liaison with allies.

11. **Vice Chief of the Defence Staff / Commander Canadian Forces Military Police Group.** Under the general supervision of the Vice Chief of the Defence Staff, the Canadian Forces Provost Marshal, appointed the Commander CAF Military Police (MP) Group, exercises full command of all Military Police personnel who conduct policing duties and functions. In support of CAF operations, the Commander CAF MP Group is responsible for:

a. Providing military police advice and support for CAF missions spanning the continuum of operations; and

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b. Generating, maintaining and protecting operationally-ready Military Police personnel and equipment for operational employment.

CAF COMMAND AND CONTROL FRAMEWORK FOR DOMESTIC OPERATIONS

12. **Maritime Forces.** Except where reserved by the CDS, the Commander CJOC exercises operational command (OPCOM) of all maritime Force Employment (FE) operations conducted within Canadian territory, including its maritime and air approaches and the Arctic Ocean. The Commanders Maritime Forces Atlantic (MARLANT) and Maritime Forces Pacific (MARPAC) are appointed RJTF Commanders and are accountable to the Commander CJOC for FE activities within their respective RJTF Areas of Operation (AOs). When tasked by the CDS to transfer command or control of maritime forces for employment on CAF domestic operations, the Commander RCN will transfer those forces allocated to the OPCOM of the Commander CJOC. The Commander CJOC exercises OPCOM of the allocated maritime assets through a designated Joint Force Maritime Component Commander (JFMCC). The JFMCC is accountable to the Commander CJOC for the FE of the maritime assets and, when required, provides a Maritime Coordination Element (MCE) to an RJTF to provide on-site maritime expertise. In the event that a separate Maritime Component and Maritime Component Commander (MCC) are determined to be required due to the scale, location, or complexity of a specific joint operation, then the Commander RCN, or his delegated authority, will appoint a MCC for the receiving RJTF.

13. **Land Forces.** Except where reserved by the CDS, the Commander CJOC exercises OPCOM of all land FE operations conducted within Canadian territory, including its maritime and air approaches and the Arctic Ocean. The Commanders of 2nd Canadian Division (Montreal), 3rd Canadian Division (Edmonton) and 4th Canadian Division (Toronto) are appointed RJTF Commanders and are accountable to the Commander CJOC for FE activities within their respective RJTF AOs. When tasked by the CDS to transfer command or control of land forces for employment on CAF domestic operations, the Commander Canadian Army (CA) will transfer those forces allocated to the OPCOM of the Commander CJOC. Should the Commander CJOC determine an operational requirement for a Land Component Commander (LCC), the Commander CA, or his delegated authority, may appoint a LCC for the receiving RJTF.

14. **Air Forces.** Except for North American Aerospace Defense Command (NORAD) missions and where reserved by the Chief of the Defence Staff (CDS), the Commander CJOC exercises OPCOM over all air FE operations conducted within Canadian territory, including its maritime and air approaches and the Arctic Ocean. When tasked by the CDS to transfer command or control of air forces for employment on CAF domestic operations, the Commander RCAF will transfer those forces allocated to the OPCOM of the Commander CJOC. The Commander CJOC exercises OPCOM of the allocated air assets through a designated Joint Force Air Component Commander (JFACC). The

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JFACC is accountable to the Commander CJOC for the FE of the air assets and provides each RJTF with an Air Component Coordination Element (ACCE). In the event that a separate Air Component and Air Component Commander (ACC) is determined to be required, due to the scale, location, or complexity of a specific joint operation, then the Commander RCAF, or his delegated authority, may appoint an ACC for the receiving RJTF.

15. **Special Operations Forces.** Except where reserved by the CDS and in such specific cases for which the Commander CANSOFCOM is designated the Supported Commander, the Commander CJOC exercises OPCOM of all special operations conducted within Canadian territory, including its maritime and air approaches and the Arctic Ocean. The Commander CANSOFCOM is the Special Operations Forces (SOF) advisor to the Commander CJOC. When tasked by the CDS to transfer command or control of SOF for employment on CAF domestic operations, the Commander CANSOFCOM will transfer those forces allocated to the OPCOM of the Commander CJOC. When SOF are required to operate under the Commander CJOC, the Commander CANSOFCOM or a designated representative will be the SOF Component Commander. The SOF Component Commander will establish and maintain liaison with the RJTF commander in whose region operations are being conducted.

16. **Military Personnel Command Forces.** Except where reserved by the CDS, the Commander CJOC exercises OPCOM of all Military Personnel Command (MILPERSCOM) forces assigned to a land, maritime, air or special operations FE operation conducted within Canadian territory, including its maritime and air approaches and the Arctic Ocean. Planning must consider that MILPERSCOM forces (principally Health Service Support (HSS) personnel) assigned to a ship or submarine have been allocated OPCOM through MARLANT/MARPAC to that ship or submarine and MILPERSCOM forces assigned to a special operations unit have been allocated OPCOM through the Comd CANSOFCOM to that special operations unit. For domestic operations, HSS is provided by composite units generated from the CAF Health Services Group and then allocated OPCOM to Comd CJOC for FE.

17. **Military Police Forces.** Under the general supervision of the Vice Chief of the Defence Staff, the Canadian Forces Provost Marshal, appointed the Commander CAF Military Police (MP) Group, provides trained MP personnel to the Commander CJOC or the Commander CANSOFCOM, as applicable, for employment in non-policing operational support roles, including but not limited to custody and detention, capacity-building training, mentoring and liaison, close protection, security, and traffic control. Military Police personnel, elements and units allocated for employment on CAF domestic operations operate under the OPCOM of the Commander CJOC or Commander CANSOFCOM as applicable.

18. **Operational Support.** If required, a Joint Task Force Support Component (JTFSC) will be generated from across the CAF and allocated under the OPCOM of the Commander CJOC or the Commander CANSOFCOM, as applicable.

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19. **Search and Rescue.** The Commander CJOC exercises OPCOM of all Search and Rescue (SAR) operations in the Canadian SAR Region. The Commanders JTFA, JTFP and the JFACC are designated as Search and Rescue Region (SRR) Commanders for the Halifax, Victoria and Trenton SRRs respectively. These commanders are accountable to the Commander CJOC for the coordination, control and conduct of SAR operations within their respective SRR. On behalf of the Commander CJOC, the JFACC coordinates SAR air operations and resources. The allocation of aircraft for SAR operations is determined through the yearly Total Air Resource Management process.

20. **Explosive Ordinance Disposal.** The Commander CJOC is responsible, through its RJTFs, to provide a CAF Explosive Ordinance Disposal (EOD) response to all incidents involving military, or suspected military, weapons, ammunition, explosives or ordinance in Canada. Within the parameters established by their parent commanders/group principals, the Commander CJOC is authorized to task the nearest or most appropriate EOD team, EOD capability or EOD subject matter expert to provide the initial CAF EOD response to a request for assistance. The Commander CJOC will coordinate any requirement for a sustained or protracted CAF response with the force generating commands.

FORCE EMPLOYMENT

21. In a domestic context, commanders delegated the authority to execute FE activities to conduct three types of operations:

a. **Routine Operations.** Standing authority to initiate CAF routine operations is delegated to the Commander CJOC. Subject to legal restrictions, the Commander CJOC may further delegate this authority to RJTF commanders for small-scale operations where force generation activities will not be significantly affected;

b. **Contingency Operations.** The delegation of authority to the Commander CJOC and to the Commander CANSOFCOM, and subsequently by the Commander CJOC to a RJTF commander, to initiate CAF contingency operations will depend upon the nature and scope of the operation, legal authorities and direction received from the CDS; and

c. **Rapid-Response Operations.** Standing authority to initiate RROs is delegated to the Commander CJOC and to the Commander CANSOFCOM, subject to legal authorities and such constraints or limitations that may be prescribed by the CDS from time to time. The Commander CJOC may further delegate his authority to RJTF Commanders.

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Suggested Questions

Q. What is the role and responsibilities of the CDS?

Q. What is the role and responsibilities of the Comd RCN?

Q. What is the role and responsibilities of the Comd RCAF?

Q. What is the role and responsibilities of the Comd CA?

Q. What is the role and responsibilities of the Commander Military Personnel Command?

Q. What is the role and responsibilities of the Chief of Defence Intelligence?

Q. What is the role and responsibilities of the Vice Chief of the Defence Staff / Commander Canadian Forces Military Police Group?

Q. What are the three types of operations in a domestic context that commanders delegated the authority to execute FE activities?

Note to the Instructor: Encourage students to actively participate in the lesson and to reason through problems.

Interim Summary

22. To be effective in operations, CAF commanders must plan, coordinate and act in a timely manner to achieve success. An empowered mission command approach to operations is fundamental to this success. In the first instance, commanders at all levels must have a comprehensive understanding of their superior commander's explicit and implicit intent and an overriding operational focus dedicated to the realization of that intent. The force employment concept for CAF capabilities in support of domestic operations will be defined through operations plans developed by Commander CJOC or the Commander Canadian Special Operations Forces Command (CANSOFCOM), as applicable, and approved by the Chief of the Defence Staff (CDS). As for the CAF C2 framework for domestic operations,

23. The CDS serves as the principal military advisor to the Government of Canada (GoC). In addition, the CDS fulfils his Responsibilities for the control and administration of the CAF by exercising command at the strategic level. The CDS is supported in fulfilling his advisory and command roles by a Strategic Joint Staff (SJS), led by a Director of Staff, who reports directly to the CDS and who may be delegated the Authority and responsibility to issue guidance on behalf of the CDS in specific areas. The Commander CANSOFCOM is the principal source of expertise on the

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development, generation and employment of special operations forces. The Comd CANSOFCOM will exercise those powers, jurisdictions and other authorities that enable the effective planning for and conduct of operations as directed by the CDS in order to meet GoC requirements. The Commanders of the RCN, CA and RCAF are the principal sources of expertise on the development, generation and employment in their respective areas. The Chief of Defence Intelligence, as the functional authority for intelligence within the CAF. Under the general supervision of the Vice Chief of the Defence Staff, the Canadian Forces Provost Marshal, appointed the Commander CAF Military Police (MP) Group, exercises full command of all Military Police personnel who conduct policing duties and functions.

24. The Commander CJOC exercises C2 of all Regional Joint Task Forces (RJTFs), comprising: Joint Task Force North (JTFN), Joint Task Force Pacific (JTFP), Joint Task Force West (JTFW), Joint Task Force Central (JTFC), Joint Task Force East (JTFE) and Joint Task Force Atlantic (JTFA). Except where reserved by the CDS, the Commander CJOC exercises operational command (OPCOM) of all maritime Force Employment (FE) operations conducted within Canadian territory, including its maritime and air approaches and the Arctic Ocean. The Commanders Maritime Forces Atlantic (MARLANT) and Maritime Forces Pacific (MARPAC) are appointed RJTF Commanders and are accountable to the Commander CJOC for FE activities within their respective RJTF Areas of Operation (AOs).

25. Except where reserved by the CDS, the Commander CJOC exercises OPCOM of all land FE operations conducted within Canadian territory, including its maritime and air approaches and the Arctic Ocean. The Commanders of 2nd Canadian Division (Montreal), 3rd Canadian Division (Edmonton) and 4th Canadian Division (Toronto) are appointed RJTF Commanders and are accountable to the Commander CJOC for FE activities within their respective RJTF AOs.

26. Except for North American Aerospace Defense Command (NORAD) missions and where reserved by the Chief of the Defence Staff (CDS), the Commander CJOC exercises OPCOM over all air FE operations conducted within Canadian territory, including its maritime and air approaches and the Arctic Ocean. When tasked by the CDS to transfer command or control of air forces for employment on CAF domestic operations, the Commander RCAF will transfer those forces allocated to the OPCOM of the Commander CJOC.

27. Except where reserved by the CDS and in such specific cases for which the Commander CANSOFCOM is designated the Supported Commander, the Commander CJOC exercises OPCOM of all special operations conducted within Canadian territory, including its maritime and air approaches and the Arctic Ocean. The Commander CANSOFCOM is the Special Operations Forces (SOF) advisor to the Commander CJOC. When tasked by the CDS to transfer command or control of SOF for employment on CAF domestic operations, the Commander CANSOFCOM will transfer those forces allocated to the OPCOM of the Commander CJOC.

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28. Except where reserved by the CDS, the Commander CJOC exercises OPCOM of all Military Personnel Command (MILPERSCOM) forces assigned to a land, maritime, air or special operations FE operation conducted within Canadian territory, including its maritime and air approaches and the Arctic Ocean. Under the general supervision of the Vice Chief of the Defence Staff, the Canadian Forces Provost Marshal, appointed the Commander CAF Military Police (MP) Group, provides trained MP personnel to the Commander CJOC or the Commander CANSOFCOM, as applicable, for employment in non-policing operational support roles, including but not limited to custody and detention, capacity-building training, mentoring and liaison, close protection, security, and traffic control.

29. The Commander CJOC exercises OPCOM of all Search and Rescue (SAR) operations in the Canadian SAR Region. The Commanders JTFA, JTFP and the JFACC are designated as Search and Rescue Region (SRR) Commanders for the Halifax, Victoria and Trenton SRRs respectively. The Commander CJOC is responsible, through its RJTFs, to provide a CAF Explosive Ordinance Disposal (EOD) response to all incidents involving military, or suspected military, weapons, ammunition, explosives or ordinance in Canada. In a domestic context, commanders delegated the authority to execute FE activities to conduct routine operations, contingency operations and rapid-response operations.

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Stage 2 – The domestic legal regime

Introduction

1. Canada's history is replete with examples where the CAF has played a role in preserving order or in assisting the Canadian public, including federal, provincial, or municipal governments, in times of need. Nevertheless, to call upon the CAF to perform tasks normally undertaken by civilians is an unusual event that departs from the traditional role of the military, which is to meet external threats or aggression against the nation. In respect of assisting civilian law enforcement agencies, the CAF does not have an independent mandate to perform routine law enforcement activities. As with most aspects of national defence, the use of the armed forces in a domestic role is based on a prerogative power as well as a statutory power. This EO identifies the legal bases upon which the CAF relies when providing assistance to civilian authorities or the Canadian public and examines a number of associated legal issues.

2. **What is the Crown prerogative?** The Crown prerogative is the residue of powers once exercised personally by the monarch, as curtailed over the centuries by Parliamentary statutes. Because its exact scope is often uncertain, it falls to the common law courts to determine whether a given prerogative exists or not and its extent. For this reason, the "Crown prerogative" refers to "the powers and privileges accorded by the common law to the Crown".

3. As is clear from the definition, it is the common law, or judge-made law, that determines the extent of the Crown prerogative. A non-exhaustive catalogue of general subject matters for which the courts have found that prerogatives exist includes foreign affairs, war and peace, treaty-making, other acts of state in matters of foreign affairs and defence. Other contents include powers and privileges respecting passports, power of mercy, diplomatic appointments, administration and disposal of public lands, armorial bearings, and honours and titles. Ultimately, and importantly, the content of the Crown prerogative is not static, nor absolutely defined. As noted, a power or privilege that historically belonged to the Crown may be extinguished by the passage of legislation.

4. **Crown prerogative in the defence of Canada and domestic operations.** In matters of war and peace, treaty making, defence and the armed forces are some of the powers that could be exercised by the executive as a Crown prerogative. To defend against an attack on Canadian territory, the government does not need to ask Parliament. In some cases the government has exercised the Crown prerogative for defence by making multilateral or bilateral treaties for collective defence with other nations. Significantly, the authority to defend Canada against an armed attack lies with the government, not with individual CAF commanders.

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5. ***Constitution Act, 1867.*** The key statute governing the CAF is the *National Defence Act*. But even this statute must be assessed against a rule of law standard. It must be authorized by, and be consistent with, the Constitution, including the division of powers between the federal and provincial levels and the *Charter* as interpreted by the Canadian courts. Under the *Constitution Act, 1867*, subjects are assigned to either the provincial or federal levels. Generally speaking, statutes dealing with national, international and inter-provincial matters fall within the legislative powers of Parliament (the federal level), whereas matters of a local or provincial nature fall within the jurisdiction of the provincial legislatures. Since subsection 91(7) of the *Constitution* assigns the federal government responsibility for "Militia, Military and Naval Service, and Defence". The *National Defence Act* is enacted pursuant to this federal source of legislative jurisdiction. For this reason, the CAF is primarily affected by federal law as a federal government institution. Also notable, the *Constitution* gives the federal Parliament the general authority to "make laws for the Peace, Order and Good Government of Canada". This expression has been interpreted by the Supreme Court as authorizing federal legislation in response, for instance, to an emergency, or a matter of national concern that could not be addressed effectively by provincial legislation.

6. **Legal framework, of DND and the CAF**. The line of legal authority that establishes DND and the CAF is straightforward. It can be traced from subsection 91(7) of the *Constitution* to the *NDA*, from the *NDA* to its subordinate regulations, as embodied in the QR&Os and other regulations, and then finally to orders, instructions and directives that are issued under the overarching legislative authorities. In effect, this structure is the legal authority which duly authorizes every aspect of the management and operations of the CAF. The *NDA* also provides the legal authority for establishing the organization of the CF, its components, units and other elements. In particular, the CAF can only consist of units or elements that are authorized by or under the authority of the MND.

7. **Mandate.** Under Canadian constitutional law there is a division of powers between the federal and provincial governments. The federal government is responsible for militia, military, naval services and defence. The provincial governments have responsibility over the administration of criminal law and local or civil matters in the province. Because of this division of powers, the federal government does not have an automatic right to intervene when a disaster or law enforcement issue occurs within a province. If provinces require federal resources, including the CAF, they must request such assistance. The CAF may provide the requested assistance when authorized, normally after it is determined that the assistance is in the national interest and that it is necessary in order to allow the civilian authorities to deal effectively with the situation.

8. The mandate of the CAF to provide assistance to civilian authorities or the public, or to perform public service, is to a large extent a question of process. In very simple terms, compliance with the process involves identifying who can ask for CAF assistance, and relative to the request made, who can approve the provision of the requested assistance. In other words, the legal basis for the CAF to provide assistance to civilian authorities is created when a request is made by the civilian authorities

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pursuant to legislation or some other legal instrument and a duly authorized authority approves the request.

9. **Exercising the mandate.** The exercise of the CAF mandate to provide assistance to civil authorities or to perform public service is governed by statutory provisions in legislation such as the *Charter of Rights and Freedoms,* the *Criminal Code*, the *Emergencies Act*, and the *National Defence Act (NDA)*. For example, pursuant to section 273.6 of the *NDA* the Governor-in-Council and the Minister of National Defence (MND) can authorize the CAF to perform any duty involving public service and to provide assistance in respect of any law enforcement matter. Similarly, the *Emergencies Act* provides a statutory basis for the deployment of the CAF domestically in the event of either a public welfare emergency or a public order emergency when the federal Governor in Council may cause the CAF to be employed within Canada as a special temporary measure. Notably, the Act requires consultation with provincial authorities and the powers or authorities of the provincial authorities are not displaced by the federal government's intervention. It should also be noted that the Act is not exhaustive of the measures that the federal government could take in dealing with an emergency, and to that extent the Crown prerogative has been preserved.

10. The Governor in Council, through the exercise of the Crown prerogative, has created a number of Orders-in-Council that set out procedures and conditions relative to specific circumstances when the CF might be authorized to provide assistance to civilian law enforcement authorities.

11. The Minister of National Defence (MND), pursuant to section 4 of the *NDA* has the management and direction of the CAF, including the statutory authority to make regulations concerning, among other things, the organization, administration and good government of the CAF. It is pursuant to this authority that the MND has issued direction respecting the provision of services to civilian agencies in the form of a *Ministerial Order*.

12. It is important to remember that control and administration of the CAF is exercised by the CDS. The CDS exercises his authority subject to the direction of the Minister or the Governor-in-Council, but all orders or instructions to the CAF to carry out the directions or decisions of the government of Canada or the MND must be issued by or through the CDS.

13. **Provision of Services.** The CAF is frequently asked to provide assistance in the form of a wide range of materiel and services, or the temporary use of real property, for which no specific authority exists in statute or Orders-in-Council to permit the provision of the requested assistance. This assistance may involve a short-term loan of items such as tents or mobile cooking facilities, the temporary use of an armoury, or it may involve large-scale disaster relief. The provision of these types of materiel, real property and services to civilian authorities is governed by Treasury Board Regulations and Policies, and by the *Ministerial Order for the Provision of Services Policy* (PSP).

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14. **DND Provision of Services Policy (PSP).** The PSP sets out the policy and procedures applicable to the provision of services by DND and the CAF to non-defence agencies in response to a request from those agencies for the use of defence resources. For purposes of the PSP, "service" is defined as "any service, good or use of a facility". Given this broad definition, the PSP accordingly accommodates a broad and flexible application.

15. Often requests for CAF equipment or personnel are made at the last moment and in response to an urgent situation. To address this need, the PSP was developed to permit rapid and flexible responses to requests. The PSP includes a delegation of approval authority by the MND that permits commanders to deal with the majority of requests for CAF equipment and services at the lowest practical level. The PSP sets out:

a. approval authorities for various services;

b. types of services;

c. provisions for cost recovery and waiver of costs;

c. provisions for recording of services rendered; and

e. directions for provision of some limited services to law enforcement agencies.

16. The PSP stipulates a number of conditions that must be met before a service or material is provided. The CAF will not provide assistance if the provision of the service or materiel will result in an unacceptable degradation of defence readiness or the capability to carry out defence activities. The CAF will also not provide the requested service or materiel if to do so will adversely affect the confidence that the public has in the CAF. Additionally, requested assistance should not be provided if DND/CAF will be placed in competition with private industry, or if the service or materiel requested is to be provided on a continuing basis – other government departments should be encouraged to develop their own capabilities.

17. The following are examples of large-scale humanitarian aid operations conducted under the auspices of the PSP:

a. 1996 - following flash floods in the Saguenay region;

b. 1997 - to save lives and protect property during the Manitoba flood;

c. 1998 - to protect life and recuperate damage caused by the ice storm in eastern Ontario and Quebec; and

d. 2003 – to fight forest fires in British Columbia.

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18. It should be noted that the PSP does not apply to CAF assistance to civilian law enforcement authorities when the assistance requested relates to law enforcement operations. In some situations under the PSP, CAF services may initially be provided by operational level commanders, however, due to the significance, scale, or complexity the operation may become a national concern requiring a coordinated response from the national command level. This may result in the operation evolving into a public service operation pursuant to *NDA* 273.6(1). At times during humanitarian relief operations civilian authorities may request further CAF assistance for law enforcement operations purposes. Such requests cannot be authorized under the PSP and require the staffing of separate requests that will be discussed later.

19. While the PSP is applicable to humanitarian assistance requests, there is a special regime in place for airborne search and rescue (SAR). A 1951 Cabinet Directive assigned responsibility to the Royal Canadian Air Force for the coordination of SAR resources within Canadian territory, including maritime SAR using aircraft. This responsibility has been maintained by the CAF and funding for this activity is provided in the departmental budget. It should be noted that ground based SAR, such as land searches for lost persons, is a provision of a service to which the PSP applies. Marine SAR is primarily the responsibility of the Coast Guard.

20. **Non-Defence Use of DND Real Property.** From time to time the CAF receives requests for use of a DND facility (*e.g.* use of an armoury to shelter the homeless). When these requests are received by operational level commanders, they must be referred to the appropriate Level 1 custodian for approval. A license to use real property should be used to set out all applicable terms including the duration and cost recovery of the temporary accommodation. The civil authority must accept all legal liability associated with their use of the real property.

21. Conditions must be attached to the opening of a defence establishment for use as a temporary shelter or for any other purposes. For example, if a defence establishment will be used as a temporary homeless shelter, the municipality requesting its use must agree to retaining responsibility to operate and manage the shelter program including the provision of any necessary equipment, food services and security personnel. The CAF will only provide the facilities; supervision of the guests will remain the responsibility of the civil authority at all times. The CAF will however continue to be responsible for the physical security of the armoury and defence assets. For example, during OP ARGONAUT in 2004, the CAF gave a license to the City of Toronto to use an armoury as a temporary homeless shelter.

22. **CAF Support as a Public Service.** In addition to the provision of services under the PSP, CAF support to civilian authorities may be provided as a public service. Subsection 273.6(1) of the *NDA* provides that either the Governor in Council or the MND may authorize the CAF to perform any duty involving public service. The term "public service" is not defined in the *NDA* except in the context of the liability of members of the CAF to perform any lawful duty. The *NDA* provides that "duty" includes both those duties that are military in nature, as well as public service authorized under

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section 273.6.11 The term "public service" therefore applies to a wide variety of CAF activities involving the provision of assistance to the Canadian public and civilian authorities. It includes both assistance of a civic or humanitarian nature, as well as assistance in respect of any law enforcement matters.

23. Subsection 273.6(1) permits a broad range of originators to request CAF assistance and it may be authorized by either the Governor in Council or the MND. In addition, the Governor in Council or the MND may, without an external request, determine that the CF should be directed to provide public service.

24. At times a humanitarian relief operation that is initiated on a relatively small scale and within the delegated authority of a local or regional commander under the PSP may evolve into an activity that exhausts local resources or exceeds the ability and financial authority of the local commander. In such circumstances recourse may be made to section 273.6(1), seeking the authority of either the Governor in Council or the MND to commit further resources and expend funds at a higher level than is permitted to the local commander. Depending on the nature of the operation, the MND may also declare an operation authorized pursuant to subsection 273.6(1) as a special duty operation for the purposes of the *Pension Act*.

CAF ASSISTANCE TO LAW ENFORCEMENT AGENCIES AND AID TO CIVIL POWER

25. **Introduction.** The primary role of the CAF is to defend Canada. Nevertheless, the CAF has often been requested to assist civilian law enforcement agencies in the conduct of their operations, and has been called out in aid of the civil power on three occasions in modern times. Although the CAF does not have a standing mandate for the general enforcement of the laws of Canada, the organization, training and equipment of the CAF give it capabilities sought after by civilian authorities to permit them to effectively deal with a law enforcement matter, or to restore or preserve order in the event of riots or disturbances that are beyond the ability of the civilian authorities to control.

26. Both civilian law enforcement agencies and other federal government departments may request CAF assistance. Municipal, provincial and territorial law enforcement agencies have the primary responsibility to enforce laws within their areas of responsibility. The RCMP, in its federal law enforcement role, as well as other government departments such as the Department of Fisheries and Oceans, have the primary responsibility to enforce the federal laws within their respective mandates. If CAF assistance is authorized, it is provided in support of the law enforcement agency that has jurisdiction over the matter. The requesting law enforcement agency retains responsibility for the management and execution of the law enforcement matter, including the acquisition of judicial warrants, collection and retention of evidence, arrest and detention of persons, and the activities associated with the prosecution of those charged with offences.

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27. The requisitioning of the CAF by a provincial attorney general and the resultant call out of the CAF in aid of the civil power is governed by a separate statutory regime set out in Part VI of the *NDA*. A reminder of an earlier age when civilian police forces were nascent and less capable than today, aid of the civil power remains a significant tool that may be employed at the request of provincial authorities. While the CAF may take control for purposes of restoring order during an aid of the civil power operation, the role of the CAF is to assist the civil authorities in maintaining law and order. The CAF does not replace the civil authorities who retain overall responsibility.

28. **Legal framework.** Prior to 1998 a patchwork of legal instruments had been created to deal with the use of the CAF in preserving public order in situations that do not involve the invocation of Part VI of the *NDA* (aid of the civil power). The *Canadian Forces Assistance to Provincial Police Forces Directions (CFAPPFDs)* and the accompanying *Principles for Federal (Military) Assistance to Provincial Policing* filled a void by providing clear government policy guidance and direction in respect of support to provincial authorities responsible for law enforcement. At the federal level there exist a diverse number of orders in council and interdepartmental arrangements. For example, the *Canadian Forces Armed Assistance Directions (CFAADs),* which might be characterized as the federal counterpart to Part VI of the *NDA*, creates a procedure whereby the federal RCMP can seek the assistance of the military in cases where the RCMP is unable to deal effectively with disturbances of the peace affecting the national interest. The CAF also provides assistance to a number of federal government departments and agencies responsible for law enforcement pursuant to memoranda of understanding (MOU) which rely for their legal validity on the MND's broadly defined powers and responsibilities set out in section 4 of the *NDA.* Since 1998, subsection 273.6(3) has been available as authority for the creation of MOU providing for law enforcement support of a minor nature that involves support of a logistical, technical or administrative nature and is not operational support in respect of an actual or imminent law enforcement operation.

29. As is the case with assistance to civilian authorities generally, a critical first step in addressing a request from a civilian law enforcement agency is to determine who is making the request, what type of assistance is being requested, and who has the authority to approve the request. The request process and approval authority will vary according to the legal instrument used. Analyzing the request in this way will identify which legal instrument is most appropriate for use in the circumstances. Requests for assistance must be made and authorized at the appropriate level.

30. As a general starting point when examining the legal basis upon which CAF assistance is to be provided, a statutory basis is to be preferred over one that is based solely on an exercise of the Crown prerogative. Generally speaking, statutory provisions are more clear and transparent as to their legal effect and meaning when compared to a decision made pursuant to the Crown prerogative. In this respect, the *NDA* provisions most relevant for purposes of providing legal authority for CAF support to law enforcement are found at section 273.6 (Public Service) and Part VI (Aid of the Civil

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Power). On the other hand, the legal basis relied on for the creation of the principal orders in council relating to CAF assistance to civilian law enforcement agencies, the *CFAADs* and the *CFAPPFDs*, is the Crown prerogative. These orders in council predate the enactment of section 273.6. A question therefore arises whether the orders in council remain as self-standing authorities or whether the enactment of section 273.6 has supplanted these prerogative instruments.

31. Section 273.6 may be applied to a broad range of circumstances involving requests from civilian authorities for CAF assistance in respect of law enforcement matters. It can generally be relied on even in circumstances where one of the orders in council might be applied. These orders in council have not been revoked since the enactment of section 273.6, and there is no intent to seek their revocation. What then is the legal effect of the continued existence and use of these orders in council? The answer may be found in subsection 273.6(4) which provides that the MND's authority under section 273.6 is subject to directions issued by the Governor in Council. Taking this approach, these instruments may be used as interpretative or implementing directions that provide additional guidance on how section 273.6 operates in certain circumstances. Seen in this light, the procedural aspects of the *CFAADs,* including the provisions for prepositioning a military force at the site of a disturbance, are not inconsistent with the authority of the MND under subsection 273.6(2) to approve the subsequent request from the Minister PSEP to commit the military force to take action as contemplated and detailed in the *CFAADs.* Similarly, the *CFAPPFDs* and its accompanying Principles continue to be relevant and provide guidance in respect of the matters to be considered before a request for assistance from a provincial police force may be approved. This guidance and amplifying direction are not inconsistent with the authority of the MND under subsection 273.6(2).

32. The analysis of requests for assistance from provincial police forces differs in several ways from the analytical approach to requests from another federal government department or law enforcement agency. Generally speaking, the principle that all other avenues of assistance should be exhausted before seeking the support of the CAF need not apply to requests from other federal authorities. While the principle that the use of the military against the citizens of the country should only occur as a last resort continues to have application, the objectives of federal law enforcement policies may involve cooperative arrangements to rationalize the use of available federal resources, including the CAF. Thus, there will be noticeable differences between the wider range of situations when assistance will be provided at the federal level to the RCMP and other government departments and the more narrow scope of when the CAF will provide support to provincial law enforcement agencies.

33. While the *CFAPPFDs* expressly recognize that not all forms of CAF support require high level ministerial approval, the support that is provided tends to be case specific and not of an on-going nature. In contrast, the law enforcement support role that the CAF plays in the federal sphere tends to be done on a recurring basis and often involves Minister to Minister arrangements found in MOUs. Furthermore, while the support to provincial law enforcement authorities typically involves traditional police

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work, assistance at the federal level involves a number of different law enforcement activities including hostage rescue and counter-terrorist operations, VIP protection or providing a strong federal security posture during high profile events such as occurred during the 1976 Olympics and the Kananaskis G8 Meeting, supporting RCMP counter drug operations, contributing to the NORAD counter drug program, assistance to Corrections Canada in the event of disturbances at federal penitentiaries, and providing support to the Department of Fisheries and Oceans for the enforcement of federal fisheries legislation. In addition, the CAF has provided, on an ad-hoc basis, assistance to customs and immigration officials in respect of counter-contraband and illegal immigrant operations. While the predominant requester of assistance is the RCMP, they are not the sole federal law enforcement agency that looks to the unique resources and capabilities of the CAF for support.

CAF ASSISTANCE TO PROVINCIAL LAW ENFORCEMENT AGENCIES

34. Prior to the creation of the *CFAPPFD*, doubt existed about the extent to which the CAF could be authorized to provide law enforcement assistance. Section 4 of the *NDA* provided the only statutory basis permitting the MND to approve the assistance. The broad scope of this section gave rise to arguments that its interpretation should be limited to matters of national defence and not be extended to law enforcement matters that were not clearly within the defence mandate (*i.e.*, aid of the civil power). The *CAFAPPFD* clarified the issue by providing clear direction, including the enunciation of the conditions that had to be met before the CAF assistance could be approved.

35. Since 1998, assistance to provincial law enforcement agencies may be made pursuant to section 273.6 *NDA* and the *CFAPPFD*. Together these legal instruments set out the conditions or factors to be considered before the request can be approved as well as the process to be followed for the submission of the request.

36. ***CF Assistance to Provincial Police Forces Directions (CFAPPFD).*** The *CFAPPD* and its accompanying *Principles* require that the provinces must look to their own resources first. If unable to meet their needs from their own resources the provincial police force must then seek the assistance of the RCMP. Only after having exhausted those steps should a request be made for CAF support. The *CAFAPPFD* process requires the provincial minister responsible for policing to submit a request to the federal Minister of Public Safety and Emergency Preparedness (PSEP) advising that the provincial police force "is or may be unable to deal effectively with a disturbance of the peace that is or may occur". If the Minister PSEP cannot respond with RCMP resources, the MPS may consult with the MND to seek CF assistance.

37. The *CFAPPFD* requires that the following conditions be met before a request for CAF support will be approved:

a. the provincial minister responsible for policing must submit a written request to the Minister PSEP detailing reasons for the request;

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b. the Minister PSEP and the MND must consult and both ministers must be satisfied that,

   i. the disturbance of the peace affects, or is likely to affect, the national interest, and

   ii. the disturbance cannot be effectively prevented, suppressed or otherwise dealt with except with the assistance of the CAF;

c. once so satisfied the Minister PSEP may submit a request to the MND for CAF operational assistance.

38. If the MND approves the request, he will authorize the CDS to dispatch a military force. The CDS or his designate will determine the strength, composition, arms and equipment of the force to be dispatched, and the members of the force dispatched to the site of the disturbance will act as a military force under command and control of an appointed military commander. The civilian police force retains general management of the response to the disturbance. The military commander, under the general direction of the civilian police may take any action that the military commander considers necessary to assist the police force in dealing with the disturbance of the peace. CAF assistance provided under this order in council is provided on a cost recovery basis and the province must accept liability regarding the use of the CAF in support of the police operation.

39. The *Principles* accompanying the *CFAPPFDs* established categories of assistance as well as how the approval of these various categories could be achieved. The guidance contained in the *Principles* have been further refined in directions to the CAF in which the MND, through the CDS, has delegated to operational commanders approval authority for certain categories of assistance. Determining whether a request for CAF assistance involves operational equipment or a disturbance of the peace is an essential first step in determining who can authorize the assistance. The four classes of operational assistance and the associated approval authorities are:

a. Class 1 – CAF personnel and operational equipment when the disturbance of the peace is occurring or may occur. Approval authority for this class has been retained by the MND;

b. Class 2 – non-operational equipment when the disturbance of the peace is occurring or may occur. Approval authority for this class has been delegated to the commanders of operational level formations;

c. Class 3 – CAF personnel and operational equipment when there is no potential for the occurrence of a disturbance of the peace. Approval authority for this class has been delegated to the commanders of operational level formations; and

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d. Class 4 – support for other than law enforcement operations, including CAF personnel, operational or non-operational equipment, and use of ranges, training areas and other infrastructure facilities. Approval authority for this class has been delegated to the lowest possible level of approval authority described in the Provision of Services Policy.

These categories apply only to provincial requests for assistance, they do not apply to federal requests for assistance.

40. Given their importance in determining the class of support that may be provided and who may approve the request, it is important to understand what is meant by operational equipment and to recognize when a disturbance of the peace may be occurring.

a. Operational equipment: Operational equipment is defined as any CAF equipment which, by its nature, is intended for the employment of force or as a means to deliver such capability or whose presence could be perceived by the public as being intended for the application of force. When dealing with equipment such as armoured vehicles, weapons and other war fighting equipment, the definition of "operational equipment" is self-evident. The operational nature of other CAF resources is often uncertain and the potential for their employment in a role associated with the direct employment of force will require careful consideration of the specific circumstances surrounding their potential use.

b. Disturbance of the peace: Disturbance of the peace is defined as any situation where the conduct enumerated at s.175 of the *Criminal Code* (*e.g.* fighting, screaming, shouting, swearing, using insulting or obscene language, being drunk) causes an interference with the ordinary and customary use by the public of a public place. Although the *Criminal Code* definition may be met by very low levels of public disorder or misconduct, the *CFAPPFD* requires that the level of disturbance be such that it affects, or is likely to affect, the national interest, and that the provincial police are unable to effectively prevent, suppress or otherwise deal with the disturbance without the assistance of the CAF.

41. **Application of subsection 273.6(2) *NDA* to provincial policing.** Subsection 273.6(2) provides as follows:

> *The Governor in Council, or the Minister on the request of the Minister of Public Safety and Emergency Preparedness or any other Minister, may issue directions authorizing the Canadian Forces to provide assistance in respect of any law enforcement matter if the Governor in Council or the Minister, as the case may be, considers that*
>
> *(a) the assistance is in the national interest; and*
>
> *(b) the matter cannot be effectively dealt with except with the assistance of the Canadian Forces.*

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42. For the purposes of CAF assistance to provincial policing authorities, a request made pursuant to this subsection for CAF support must be routed through provincial ministers responsible for policing to their federal counterpart, the Minister PSEP. It is the federal Minister who, after having considered the provincial minister's request, determines that the request should be made to the MND. Consideration of the provincial request by Minister PSEP and the MND should include the guidance found in the *CAFAPPFD* and the accompanying *Principles*. However, as subsection 273.6(2) has a broader applicability than the order in council, it is not necessary for the approval of assistance under this statutory provision for there to be a determination that there exists or is likely to exist a disturbance of the peace. It is sufficient for the purposes of subsection 273.6(2) that the provincial law enforcement matter in question is such that providing the requested assistance is in the national interest and the provincial police cannot effectively deal with the matter except with CAF assistance.

CAF ASSISTANCE TO FEDERAL LAW ENFORCEMENT AGENCIES AND OTHER FEDERAL GOVERNMENT DEPARTMENTS

43. Assistance to federal law enforcement agencies and other federal government departments can be provided pursuant to a number of legal instruments. These include *NDA* subsection 273.6(2), other federal statutes (*e.g. Coastal Fisheries Protection Act*), orders in council, and Minister to Minister arrangements created by MOU. Requests for CAF support falling outside of existing orders in council and MOU should be made under *NDA* subsection 273.6 (2).

44. As mentioned earlier in this chapter, the provisions of section 273.6 and existing orders in council and MOU should be examined together carefully in given circumstances in order to arrive at a correct application of subsection 273.6(2). Existing orders in council such as the *CAFAAD* and the *Assistance to Federal Penitentiaries Order* provide additional guidance that assists in applying the statutory provision. To the extent that there may be an inconsistency between section 273.6 and any of the orders in council or MOU, the provisions of the statute would prevail.

45. ***Assistance to Federal Penitentiaries Order.*** The *Assistance to Federal Penitentiaries Order* authorizes the Minister PSEP or the Commissioner of Penitentiaries to obtain military assistance from the CDS for the purpose of aiding in suppressing, preventing or otherwise dealing with a disturbance which occurs, or is likely to occur, and which is beyond the powers of the penitentiary staff to suppress or prevent. There are two possible scenarios that may lead to a request for CAF assistance. These are:

a. any circumstance that would reduce the number of Correctional Services officers available to supervise a penitentiary below acceptable limits (for example, a strike of penitentiary guards); and

b. any major riot or other disturbance at a federal penitentiary.

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46. In either of the above scenarios, the CAF is the last line of response in Correctional Services Canada (CSC) contingency plans. CSC will initially respond by reallocating internal CSC resources. If these prove insufficient, then the RCMP and other locally available police resources would be called upon to provide assistance. Only after these measures have been exhausted without success would the CAF be requested to provide assistance. This order in council has not been invoked since its inception in 1975.

47. A request for CAF support may be made orally or in writing, but if oral it must be confirmed in writing as soon as possible. Upon receipt of a request the CDS must respond by despatching a military force to the penitentiary. However, the CDS, or his designate, will determine the strength, composition, arms and equipment of the military force to be despatched. The CAF members of the force despatched will act at all times as a military body under the command and control of their military supervisors.

48. Each Joint Task Force Headquarters maintains contingency plans for provision of assistance to the federal penitentiaries in their region and conducts liaison with them on a regular basis. An important aspect of regular reconnaissance visits to the penitentiaries is to enable the identification of the type of inmate population that is resident in the institution. This information is significant for purposes of understanding the level of force that may be required in the event a military force is required to deploy there.

49. Except in the most extreme circumstances, the CAF role in assistance to CSC will be external perimeter security in order to prevent the unlawful entrance or exit of persons to and from the penitentiary. The order in council does, however, provide for CAF members to become involved in duties within the institutions that may necessitate them being in direct contact with inmates. The order in council requires that, if time permits, the officer in command of the military force shall seek authorization from the CDS before complying with any request for military assistance beyond perimeter security. The CDS will only authorize such additional support with the concurrence of the Minister PSEP or the Commissioner of Penitentiaries.

50. Two additional matters concerning this order in council are of note. First, there is no express mention of a role for the MND in the receipt and approval of a request under this order in council. To the extent that the MND's authority under section 273.6 and this order in council are inconsistent in respect of authorizing CAF assistance for a law enforcement matter, the provisions of the statute prevail and the order in council must be read to include a requirement for the Minister PSEP to make the request for CAF assistance to the MND. The second item of note is that this order in council does not apply to provincial prisons and a request for CAF assistance from provincial authorities would have to be made through the Minister PSEP pursuant to the *CAFAPPFD* and subsection 273.6(2).

51. ***Canadian Forces Armed Assistance Directions (CFAAD).*** This order in council provides a process for the federal RCMP to request CAF support to deal with

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disturbances of the peace involving offences under the *Criminal Code of Canada* or the *Security Offences Act* involving terrorists, hostage-taking or violence aimed at internationally protected persons such as diplomats. It sets up a two-stage response to such requests: the first stage is dealt with without ministerial involvement and permits positioning the CAF at the site of a disturbance while the second stage involves ministerial approvals for the commitment phase of the operation.

52. In the first stage, the Commissioner of the RCMP, if satisfied that the RCMP is not able to deal effectively with a disturbance of the peace affecting the national interest that is occurring or may occur, is authorized by this order in council to request the CDS to position a military force in anticipation of a request for armed assistance. The CDS may dispatch a force in such strength and composition, and with such arms and equipment, as the CDS or his delegated officer determines appropriate for the circumstances.

53. In the second stage, once satisfied that the RCMP is or may be unable to deal effectively with the disturbance of the peace affecting the national interest that is occurring or about to occur, the Minister PSEP will send a request to the MND for the provision of armed assistance by the CAF to the RCMP for the purpose of "assisting in suppressing, preventing or otherwise dealing with the disturbance". In responding to the Minister PSEP's request, the MND may authorize the CDS to direct a commander to the site of the potential or actual disturbance to take "whatever lawful action is deemed appropriate in the circumstances to deal with the disturbances". However, notwithstanding the Ministerial approval, it remains for the on-site police commander to make the final determination whether to employ military force. That police commander must first determine that the resources of the police present at the site of the incident are unable to deal with the disturbance and then request the military commander to take charge of the response to the disturbance of the peace. At this time, although the general management of the police response at the site remains the responsibility of the police, the military commander will take control for purposes of employing military force to resolve the incident.

54. The *CAFAAD* was created at the time that the CAF took over the counter-terrorist and hostage-rescue role from the RCMP. Its initial purpose was to facilitate the use of JTF2 in support of the RCMP. However, the order in council does not mention JTF2 and the CDS may designate any unit or element of the CAF to provide armed assistance to the RCMP, including, for example, the nuclear biological chemical response team (NBCRT).

55. **Application of *NDA* subsection 273.6(2) to federal law enforcement.** The vast majority of CAF domestic operations are initiated by a request for assistance from Canadian civilian authorities. This is certainly the case in respect of CAF assistance provide in response to requests for law enforcement assistance from provincial police, as well as requests from the RCMP and other federal government departments and law enforcement agencies. However, subsection 273.6(2) preserves the ability of the Governor in Council to act of its own authority to issue a direction authorizing the CAF

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to provide law enforcement assistance. The Governor in Council may issue such direction in the absence of a request from any civilian law enforcement agency, and is not constrained by having to await a request from the Minister PSEP. The Governor in Council may exercise this authority whenever it considers that CAF assistance in respect of any law enforcement matter may be in the national interest and the matter cannot be effectively dealt with except with the assistance of the CAF.

56. Requests for CAF assistance from other government departments and federal law enforcement agencies must be submitted by the responsible minister to the MND. If possible, consultation between departments will first include a referral of the matter to the Minister PSEP for consideration of support by the federal RCMP. If the RCMP cannot provide the necessary response, then the Minister PSEP may refer the request directly to the MND or return the matter to the responsible Minister who then makes the request for assistance to the MND. Once the MND receives the request, the MND must determine if the assistance is in the national interest, and that the matter cannot be effectively dealt with except with the assistance of the CAF. If this two-part test is met the MND may authorize the CAF to provide the requested assistance. In some cases a request may be made for ongoing CAF support to law enforcement. Such assistance may be approved under subsection 273.6 (2) and, with MND concurrence, the details of the support can be set out in a MOU.

57. **CAF Assistance pursuant to Memoranda of Understanding (MOU).** MOU are administrative arrangements that are not legally binding upon the participants, but which are very useful for setting out the nature and extent of cooperative arrangements between the participants. In the present context, MOU have often been developed to facilitate the provision of support on an on-going basis by the CAF to another department or agency of the federal government. Where the provision of such on-going support requires MND approval, as is the case with law enforcement assistance, MOU obviate the need to repeatedly seek MND approval as each incidence of support arises.

58. The following examples of existing MOU with other federal government departments or agencies relating to CAF assistance in law enforcement operations are examined in detail below:

a. CAF – RCMP, CAF Assistance in support of the RCMP in its Drug Law Enforcement Role, dated 20 Jan 2005; and

b. CAF – DFO, Surface Ship Patrols and Aerial Fisheries Surveillance, dated 17 June 1994.

59. **MOU for CAF assistance to RCMP counter drug operations.** The RCMP has the jurisdiction and the responsibility to enforce Canada's drug laws and is the lead agency for drug interdiction. Over the years the RCMP has frequently sought the specialized assistance that the CAF is capable of providing in order to more efficiently exercise its counter drug mandate. CAF support was provided under the terms of MOU that were reviewed on a periodic basis. The latest renewal occurred in response to a

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request made by Minister PSEP pursuant to subsection 273.6 (2) of the *NDA*. The MND authorized the renewal and the details of the CAF support are set out in a MOU signed between the CAF and the RCMP.

60. The MOU requires the RCMP to submit individual requests for each proposed counter drug activity with sufficient detailed information about the requirements of the operation in order for the appropriate CAF support to be identified and approved. The type of support that is often provided to the RCMP includes intelligence sharing and liaison, and surveillance of specific vessels, aircraft and vehicles of interest by military surveillance assets. For example, the CAF supports RCMP counter drug operations on the east and west coasts by providing aircraft detection and surveillance of suspected drug importation vessels. In addition, the CAF may assist in interdiction operations against identified vessels, aircraft and vehicles.

61. Other forms of assistance that are consistent with the MOU may also be provided. An example is OP SABOT, a national marijuana eradication program. The CAF assists by locating the marijuana fields and transporting the RCMP to the sites in order that RCMP officers can destroy the fields. It should be remembered that the CAF is not obligated by the terms of the MOU to provide assistance every time that it is requested. CAF support to the RCMP in its drug law enforcement role is subject to any overriding operational requirements of the CAF and the availability of resources. The MOU also provides that CDS authorized rules of engagement (ROE) provide authority for CAF members to use force when supporting an RCMP counter drug operation.

62. **MOU for CAF assistance to the Department of Fisheries and Oceans (DFO).** The DFO has the responsibility and jurisdiction to enforce Canada's fisheries laws. Pursuant to the provisions of a MOU concluded between the CAF and DFO, the CAF supports DFO surveillance and enforcement activities in waters of Canadian jurisdiction and those waters where Canada has international fisheries commitments. This support is provided through CAF ship patrols and aerial surveillance. The MOU describes the administrative arrangements for CAF support to DFO for routine fisheries surveillance patrols (FISHPATS).

63. The MOU contemplates the use of force when dealing with uncooperative vessels at sea. If enforcement activities are required against a Canadian ship suspected of violating Canadian fisheries law, upon request of the onboard DFO Fishery Officers, the Commander of the HMC Ship will, if necessary and appropriate, use escalating levels of force in accordance with CDS authorized ROE and MARCOM orders to secure compliance with Fishery Officer directions to the uncooperative vessel. If enforcement activities are required against a foreign ship, then considerable caution must be exercised and the consultative and approval process set out in the MOU must be followed. After appropriate consultation between the Minister DFO and the Minister of Foreign Affairs, the Minister DFO may make a specific request for CAF assistance to the MND.

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64. **Legal protection for CAF members providing support to DFO.** The CAF is authorized to assist in the protection of Canadian fisheries. A 1970 order in council designated commissioned officers of the CAF as "Fisheries Protection Officers" for purposes of enforcing the provisions of the *Coastal Fisheries Protection Act*, as well as the provisions of three other statutes dealing with fisheries which have since been repealed.

65. Under the *Coastal Fisheries Protection Act*, "protection officers" are authorized to take a variety of law enforcement actions, including boarding to determine compliance, taking a vessel to port, searching cargo, examining the master and crew under oath, arresting without a warrant for offences under the fisheries acts, seizing a vessel and goods and, maintaining custody of vessels and goods seized. Additionally, in accordance with regulations made pursuant to the *Act,* a protection officer may take enforcement action that is consistent with the *Act* in respect of foreign vessels that are located on the high seas but which are suspected of having engaged in unauthorized fishing in Canadian fisheries waters.

66. In addition to the designation under the 1970 order in council, in July 1994, under the authority of subsection 5(2) of the *Fisheries Act,* the Deputy Minister of Fisheries issued a certificate designating officers and non-commissioned officers of the CAF as a class of "fishery officers" under subsection 5(1), for those periods of time when, in accordance with operational orders, the CAF members are performing duties or functions under the *Fisheries Act* or the *Coastal Fisheries Protection Act*. The *Fisheries Act* confers on fishery officers powers of search with and without warrants, powers of arrest and powers of seizure. This class designation has therefore provided considerable powers and legal protection to members of the CAF when performing duties in support of DFO. Due to the nature of these duties, when performing duties as fishery officers enforcing these acts, CAF members have "peace officer" status pursuant to the definition of "peace officer" in the *Criminal Code*.

AID OF THE CIVIL POWER (*NATIONAL DEFENCE ACT* - PART VI)

67. Part VI of the *NDA* provides the Attorney General of a province the power to require the CAF to be called out in aid of the civil power for a situation involving a riot or disturbance. This power was invoked in 1969 during the Montreal police strike, the 1970 FLQ crisis, and most recently in 1990 to deal with the Oka crisis.

68. The CAF, or any part of it, is liable to be called out for service in aid of the civil power. That can occur if, in the opinion of the Attorney General of an affected province, there is a riot or disturbance of the peace that occurs or is likely to occur and which is beyond the powers of the civil authorities to suppress, prevent or deal with. All CAF members of the regular force are liable to serve in aid of the civil power. Members of the reserve force cannot be obligated to serve without their consent.

69. The provincial Attorney General may of his own volition, or on the request of a judge, make a written requisition to the CDS, or to an officer the CDS designates,

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requiring the CAF to provide service in aid of the civil power. Once the requisition is received, the CDS or his designate shall, subject to such directions as the Minister considers appropriate in the circumstances and in consultation with that Attorney General and the Attorney General of any other province that might be affected, comply with the request by calling out such part of the CAF that the CDS or his designate considers necessary for the purpose of suppressing or preventing any actual riot or disturbance or any riot or disturbance that is considered as likely to occur.

70. The requisition made by the Attorney General can be in the form set out at section 279 of the *NDA*. The form may be varied to suit the facts of the case, however the requisition must contain the specific information listed at section 280 of the *NDA*. In particular the requisition must state that the Attorney General has received information that a riot or disturbance is beyond the powers of the civil authorities to suppress or prevent or to deal with, and that the CAF is required in aid of the civil power. Further, the Attorney General must be satisfied that the CAF is required to deal with the riot or disturbance.

71. Statements of fact, and promises and undertakings contained in the requisition, are conclusive and binding on the province making the requisition. In addition, statements of fact in the requisition are not open to dispute by the CDS. Within seven days after making the requisition, the Attorney General of the province must cause an inquiry to be made into the circumstances that lead to the call out of the CAF. The Attorney General is required to send a report on the circumstances to a designated member of the Privy Council of Canada.

72. When the CAF is called out for service in aid of the civil power, it does not replace the civil authorities, it assists them in the maintenance of law and order. While on aid of the civil power duties, CAF members will have the powers and duties of constables. Further, by virtue of section 2 of the *Criminal Code*, they also have the powers and protections of peace officers. However, CAF members are not peace officers for all purposes and are not obligated to enforce civil laws, as would be the case for civilian police officers. CAF members must act as a military body, but each member will remain individually liable to obey the lawful orders of their superior officers.

73. The CAF members called out in aid of the civil power will remain on duty in such strength as the CDS or his designate deems necessary until the provincial Attorney General gives notice that the CAF are no longer required. The costs for calling out the CAF in aid of the civil power, and services rendered by the CAF, must be paid out of the Consolidated Revenue Fund.

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Suggested Questions

Q. What is the Crown prerogative?

Q. Under the *Constitution Act, 1867*, subjects are assigned at which levels? (provincial or federal levels)

Q. Who, through the exercise of the Crown prerogative, has created a number of Orders-in-Council that set out procedures and conditions relative to specific circumstances when the CF might be authorized to provide assistance to civilian law enforcement authorities?(Governor in Council)

Q. What document sets out the policy and procedures applicable to the provision of services by DND and the CAF to non-defence agencies? (DND Provision of Services Policy)

Q. What the PSP sets out? (approval authorities for various services; types of services; provisions for cost recovery and waiver of costs; rovisions for recording of services rendered; and directions for provision of some limited services to law enforcement agencies.)

Q. What are examples of large-scale humanitarian aid operations conducted under the auspices of the PSP? (1996 - following flash floods in the Saguenay region; 997 - to save lives and protect property during the Manitoba flood; 998 - to protect life and recuperate damage caused by the ice storm in eastern Ontario and Quebec; and 2003 – to fight forest fires in British Columbia.)

Q. What term "public service" means? (applies to a wide variety of CAF activities involving the provision of assistance to the Canadian public and civilian authorities. It includes both assistance of a civic or humanitarian nature, as well as assistance in respect of any law enforcement matters.)

Q. Which NDA **s**ubsection provides that either the Governor in Council or the MND may authorize the CAF to perform any duty involving public service? (273.6(1) *NDA)*

Q. What is the purpose of the *Canadian Forces Assistance to Provincial Police Forces Directions (CFAPPFDs)?*

Q. What is the purpose of the *Canadian Forces Armed Assistance Directions (CFAADs)?*

Q. Under what circumstances Section 273.6 *NDA* may be applied?

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Q. Under *CFAPPFD*, which conditions must be met before a request for CAF support will be approved? (the Minister PSEP and the MND must consult and both ministers must be satisfied that, the disturbance of the peace affects, or is likely to affect, the national interest, and the disturbance cannot be effectively prevented, suppressed or otherwise dealt with except with the assistance of the CAF; once so satisfied the Minister PSEP may submit a request to the MND for CAF operational assistance.)

Q. What are the four classes of operational assistance and their associated approval authorities?

Q. What is the purpose of the *Assistance to Federal Penitentiaries Order?*

Q. What is the application of *NDA* subsection 273.6(2) to federal law enforcement?

Q. What is the MOU for CAF assistance to RCMP counter drug operations?

Q. What is the MOU for CAF assistance to the Department of Fisheries and Oceans (DFO)?

Q. What is the legal protection for CAF members providing support to DFO?

Q. What part of the *NDA* provides the Attorney General of a province the power to require the CAF to be called out in aid of the civil power? (Part VI) Situations? (This power was invoked in 1969 during the Montreal police strike, the 1970 FLQ crisis, and most recently in 1990 to deal with the Oka crisis.)

Q. Which NDA Sections applies to the request made for aid to the civil power? (279, 280 NDA)

Q. What are the duties of the CAF when called out for service in aid to the civil power?

Note to the Instructor: Encourage students to actively participate in the lesson and to reason through problems.

Interim Summary

74. Canada's history is replete with examples where the CAF has played a role in preserving order or in assisting the Canadian public, including federal, provincial, or municipal governments, in times of need. Nevertheless, to call upon the CAF to perform tasks normally undertaken by civilians is an unusual event that departs from the traditional role of the military, which is to meet external threats or aggression against the nation. In respect of assisting civilian law enforcement agencies, the CAF does not have

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an independent mandate to perform routine law enforcement activities. As with most aspects of national defence, the use of the armed forces in a domestic role is based on a prerogative power as well as a statutory power.

75. Under Canadian constitutional law there is a division of powers between the federal and provincial governments. The federal government is responsible for militia, military, naval services and defence. The mandate of the CAF to provide assistance to civilian authorities or the public, or to perform public service, is to a large extent a question of process. The exercise of the CAF mandate to provide assistance to civil authorities or to perform public service is governed by statutory provisions in legislation such as the *Charter of Rights and Freedoms,* the *Criminal Code*, the *Emergencies Act*, and the *National Defence Act (NDA)*. For example, pursuant to section 273.6 of the *NDA* the Governor-in-Council and the Minister of National Defence (MND) can authorize the CAF to perform any duty involving public service and to provide assistance in respect of any law enforcement matter.

76. The Governor in Council, through the exercise of the Crown prerogative, has created a number of Orders-in-Council that set out procedures and conditions relative to specific circumstances when the CF might be authorized to provide assistance to civilian law enforcement authorities. The Minister of National Defence (MND), pursuant to section 4 of the *NDA* has the management and direction of the CAF, including the statutory authority to make regulations concerning, among other things, the organization, administration and good government of the CAF. It is important to remember that control and administration of the CAF is exercised by the CDS

77. The CAF is frequently asked to provide assistance in the form of a wide range of materiel and services, or the temporary use of real property, for which no specific authority exists in statute or Orders-in-Council to permit the provision of the requested assistance. The PSP sets out the policy and procedures applicable to the provision of services by DND and the CAF to non-defence agencies in response to a request from those agencies for the use of defence resources. For purposes of the PSP, "service" is defined as "any service, good or use of a facility". Given this broad definition, the PSP accordingly accommodates a broad and flexible application. The PSP stipulates a number of conditions that must be met before a service or material is provided. The CAF will not provide assistance if the provision of the service or materiel will result in an unacceptable degradation of defence readiness or the capability to carry out defence activities. It should be noted that the PSP does not apply to CAF assistance to civilian law enforcement authorities when the assistance requested relates to law enforcement operations.

78. From time to time the CAF receives requests for use of a DND facility. When these requests are received by operational level commanders, they must be referred to the appropriate Level 1 custodian for approval. A license to use real property should be used to set out all applicable terms including the duration and cost recovery of the temporary accommodation. The civil authority must accept all legal liability associated with their use of the real property. In addition to the provision of services under the PSP,

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CAF support to civilian authorities may be provided as a public service. Subsection 273.6(1) of the *NDA* provides that either the Governor in Council or the MND may authorize the CAF to perform any duty involving public service.

79. The primary role of the CAF is to defend Canada. Nevertheless, the CAF has often been requested to assist civilian law enforcement agencies in the conduct of their operations, and has been called out in aid of the civil power on three occasions in modern times. Although the CAF does not have a standing mandate for the general enforcement of the laws of Canada, the organization, training and equipment of the CAF give it capabilities sought after by civilian authorities to permit them to effectively deal with a law enforcement matter, or to restore or preserve order in the event of riots or disturbances that are beyond the ability of the civilian authorities to control. Both civilian law enforcement agencies and other federal government departments may request CAF assistance. Municipal, provincial and territorial law enforcement agencies have the primary responsibility to enforce laws within their areas of responsibility. The requisitioning of the CAF by a provincial attorney general and the resultant call out of the CAF in aid of the civil power is governed by a separate statutory regime set out in Part VI of the *NDA.*

80. Prior to 1998 a patchwork of legal instruments had been created to deal with the use of the CAF in preserving public order in situations that do not involve the invocation of Part VI of the *NDA* (aid of the civil power). The *Canadian Forces Assistance to Provincial Police Forces Directions (CFAPPFDs)* and the accompanying *Principles for Federal (Military) Assistance to Provincial Policing* filled a void by providing clear government policy guidance and direction in respect of support to provincial authorities responsible for law enforcement. As is the case with assistance to civilian authorities generally, a critical first step in addressing a request from a civilian law enforcement agency is to determine who is making the request, what type of assistance is being requested, and who has the authority to approve the request.

81. As a general starting point when examining the legal basis upon which CAF assistance is to be provided, a statutory basis is to be preferred over one that is based solely on an exercise of the Crown prerogative. Section 273.6 may be applied to a broad range of circumstances involving requests from civilian authorities for CAF assistance in respect of law enforcement matters. It can generally be relied on even in circumstances where one of the orders in council might be applied. The analysis of requests for assistance from provincial police forces differs in several ways from the analytical approach to requests from another federal government department or law enforcement agency. Generally speaking, the principle that all other avenues of assistance should be exhausted before seeking the support of the CAF need not apply to requests from other federal authorities. While the *CFAPPFDs* expressly recognize that not all forms of CAF support require high level ministerial approval, the support that is provided tends to be case specific and not of an on-going nature. In contrast, the law enforcement support role that the CAF plays in the federal sphere tends to be done on a recurring basis and often involves Minister to Minister arrangements found in MOUs.

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82. Prior to the creation of the *CFAPPFD*, doubt existed about the extent to which the CAF could be authorized to provide law enforcement assistance. Section 4 of the *NDA* provided the only statutory basis permitting the MND to approve the assistance. Since 1998, assistance to provincial law enforcement agencies may be made pursuant to section 273.6 *NDA* and the *CFAPPFD*.

83. The *CFAPPD* and its accompanying *Principles* require that the provinces must look to their own resources first. If unable to meet their needs from their own resources the provincial police force must then seek the assistance of the RCMP. If the MND approves the request, he will authorize the CDS to dispatch a military force. The CDS or his designate will determine the strength, composition, arms and equipment of the force to be dispatched, and the members of the force dispatched to the site of the disturbance will act as a military force under command and control of an appointed military commander. CAF assistance provided under this order in council is provided on a cost recovery basis and the province must accept liability regarding the use of the CAF in support of the police operation. Determining whether a request for CAF assistance involves operational equipment or a disturbance of the peace is an essential first step in determining who can authorize the assistance.

84. For the purposes of CAF assistance to provincial policing authorities, a request made pursuant to subsection 273.6(2) *NDA* for CAF support must be routed through provincial ministers responsible for policing to their federal counterpart, the Minister PSEP. It is the federal Minister who, after having considered the provincial minister's request, determines that the request should be made to the MND.

85. Assistance to federal law enforcement agencies and other federal government departments can be provided pursuant to a number of legal instruments. These include *NDA* subsection 273.6(2), other federal statutes (*e.g. Coastal Fisheries Protection Act*), orders in council, and Minister to Minister arrangements created by MOU. Requests for CAF support falling outside of existing orders in council and MOU should be made under *NDA* subsection 273.6 (2).

86. The *Assistance to Federal Penitentiaries Order* authorizes the Minister PSEP or the Commissioner of Penitentiaries to obtain military assistance from the CDS for the purpose of aiding in suppressing, preventing or otherwise dealing with a disturbance which occurs, or is likely to occur, and which is beyond the powers of the penitentiary staff to suppress or prevent. A request for CAF support may be made orally or in writing, but if oral it must be confirmed in writing as soon as possible. Upon receipt of a request the CDS must respond by despatching a military force to the penitentiary. Each Joint Task Force Headquarters maintains contingency plans for provision of assistance to the federal penitentiaries in their region and conducts liaison with them on a regular basis.

87. The *Canadian Forces Armed Assistance Directions* (*CFAAD*) provides a process for the federal RCMP to request CAF support to deal with disturbances of the peace involving offences under the *Criminal Code of Canada* or the *Security Offences Act* involving terrorists, hostage-taking or violence aimed at internationally protected

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persons such as diplomats. The *CAFAAD* was created at the time that the CAF took over the counter-terrorist and hostage-rescue role from the RCMP. Its initial purpose was to facilitate the use of JTF2 in support of the RCMP. However, the order in council does not mention JTF2 and the CDS may designate any unit or element of the CAF to provide armed assistance to the RCMP, including, for example, the nuclear biological chemical response team (NBCRT).

88. The vast majority of CAF domestic operations are initiated by a request for assistance from Canadian civilian authorities. This is certainly the case in respect of CAF assistance provide in response to requests for law enforcement assistance from provincial police, as well as requests from the RCMP and other federal government departments and law enforcement agencies. However, subsection 273.6(2) preserves the ability of the Governor in Council to act of its own authority to issue a direction authorizing the CAF to provide law enforcement assistance. Requests for CAF assistance from other government departments and federal law enforcement agencies must be submitted by the responsible minister to the MND. If possible, consultation between departments will first include a referral of the matter to the Minister PSEP for consideration of support by the federal RCMP.

89. MOU are administrative arrangements that are not legally binding upon the participants, but which are very useful for setting out the nature and extent of cooperative arrangements between the participants. In the present context, MOU have often been developed to facilitate the provision of support on an on-going basis by the CAF to another department or agency of the federal government. Where the provision of such on-going support requires MND approval, as is the case with law enforcement assistance, MOU obviate the need to repeatedly seek MND approval as each incidence of support arises.

90. The RCMP has the jurisdiction and the responsibility to enforce Canada's drug laws and is the lead agency for drug interdiction. Over the years the RCMP has frequently sought the specialized assistance that the CAF is capable of providing in order to more efficiently exercise its counter drug mandate. The MOU requires the RCMP to submit individual requests for each proposed counter drug activity with sufficient detailed information about the requirements of the operation in order for the appropriate CAF support to be identified and approved. Other forms of assistance that are consistent with the MOU may also be provided. An example is OP SABOT, a national marijuana eradication program. The CAF assists by locating the marijuana fields and transporting the RCMP to the sites in order that RCMP officers can destroy the fields.

91. The DFO has the responsibility and jurisdiction to enforce Canada's fisheries laws. Pursuant to the provisions of a MOU concluded between the CAF and DFO, the CAF supports DFO surveillance and enforcement activities in waters of Canadian jurisdiction and those waters where Canada has international fisheries commitments. The MOU contemplates the use of force when dealing with uncooperative vessels at sea. If enforcement activities are required against a Canadian ship suspected of

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violating Canadian fisheries law, upon request of the onboard DFO Fishery Officers, the Commander of the HMC Ship will, if necessary and appropriate, use escalating levels of force in accordance with CDS authorized ROE and MARCOM orders to secure compliance with Fishery Officer directions to the uncooperative vessel.

92. The CAF is authorized to assist in the protection of Canadian fisheries. A 1970 order in council designated commissioned officers of the CAF as "Fisheries Protection Officers" for purposes of enforcing the provisions of the *Coastal Fisheries Protection Act*, as well as the provisions of three other statutes dealing with fisheries which have since been repealed. In addition to the designation under the 1970 order in council, in July 1994, under the authority of subsection 5(2) of the *Fisheries Act,* the Deputy Minister of Fisheries issued a certificate designating officers and non-commissioned officers of the CAF as a class of "fishery officers" under subsection 5(1), for those periods of time when, in accordance with operational orders, the CAF members are performing duties or functions under the *Fisheries Act* or the *Coastal Fisheries Protection Act*.

93. Part VI of the *NDA* provides the Attorney General of a province the power to require the CAF to be called out in aid of the civil power for a situation involving a riot or disturbance. This power was invoked in 1969 during the Montreal police strike, the 1970 FLQ crisis, and most recently in 1990 to deal with the Oka crisis. The CAF, or any part of it, is liable to be called out for service in aid of the civil power. The provincial Attorney General may of his own volition, or on the request of a judge, make a written requisition to the CDS, or to an officer the CDS designates, requiring the CAF to provide service in aid of the civil power. The requisition made by the Attorney General can be in the form set out at section 279 of the *NDA*. Statements of fact, and promises and undertakings contained in the requisition, are conclusive and binding on the province making the requisition. When the CAF is called out for service in aid of the civil power, it does not replace the civil authorities, it assists them in the maintenance of law and order. The CAF members called out in aid of the civil power will remain on duty in such strength as the CDS or his designate deems necessary until the provincial Attorney General gives notice that the CAF are no longer required. The costs for calling out the CAF in aid of the civil power, and services rendered by the CAF, must be paid out of the Consolidated Revenue Fund.

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PART 4 – CONCLUSION

Summary

1. To be effective in operations, CAF commanders must plan, coordinate and act in a timely manner to achieve success. An empowered mission command approach to operations is fundamental to this success. The force employment concept for CAF capabilities in support of domestic operations will be defined through operations plans developed by Commander CJOC or the Commander Canadian Special Operations Forces Command (CANSOFCOM), as applicable, and approved by the Chief of the Defence Staff (CDS). As for the CAF C2 framework for domestic operations,

2. The CDS serves as the principal military advisor to the Government of Canada (GoC). In addition, the CDS fulfils his Responsibilities for the control and administration of the CAF by exercising command at the strategic level. The Commander CANSOFCOM is the principal source of expertise on the development, generation and employment of special operations forces. The Commander CJOC exercises C2 of all Regional Joint Task Forces (RJTFs), comprising: Joint Task Force North (JTFN), Joint Task Force Pacific (JTFP), Joint Task Force West (JTFW), Joint Task Force Central (JTFC), Joint Task Force East (JTFE) and Joint Task Force Atlantic (JTFA).

3. Except where reserved by the CDS, the Commander CJOC exercises OPCOM of all Military Personnel Command (MILPERSCOM) forces assigned to a land, maritime, air or special operations FE operation conducted within Canadian territory, including its maritime and air approaches and the Arctic Ocean. Under the general supervision of the Vice Chief of the Defence Staff, the Canadian Forces Provost Marshal, appointed the Commander CAF Military Police (MP) Group, provides trained MP personnel to the Commander CJOC or the Commander CANSOFCOM, as applicable, for employment in non-policing operational support roles, including but not limited to custody and detention, capacity-building training, mentoring and liaison, close protection, security, and traffic control.

4. Canada's history is replete with examples where the CAF has played a role in preserving order or in assisting the Canadian public, including federal, provincial, or municipal governments, in times of need. Under Canadian constitutional law there is a division of powers between the federal and provincial governments. The federal government is responsible for militia, military, naval services and defence. The mandate of the CAF to provide assistance to civilian authorities or the public, or to perform public service, is to a large extent a question of process. The exercise of the CAF mandate to provide assistance to civil authorities or to perform public service is governed by statutory provisions in legislation such as the *Charter of Rights and Freedoms,* the *Criminal Code*, the *Emergencies Act*, and the *National Defence Act (NDA)*. The Governor in Council, through the exercise of the Crown prerogative, has created a number of Orders-in-Council that set out procedures and conditions relative to specific circumstances when the CF might be authorized to provide assistance to civilian law enforcement authorities.

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5. The CAF is frequently asked to provide assistance in the form of a wide range of materiel and services, or the temporary use of real property, for which no specific authority exists in statute or Orders-in-Council to permit the provision of the requested assistance. The CAF will not provide assistance if the provision of the service or materiel will result in an unacceptable degradation of defence readiness or the capability to carry out defence activities. From time to time the CAF receives requests for use of a DND facility. When these requests are received by operational level commanders, they must be referred to the appropriate Level 1 custodian for approval.

6. The primary role of the CAF is to defend Canada. Nevertheless, the CAF has often been requested to assist civilian law enforcement agencies in the conduct of their operations, and has been called out in aid of the civil power on three occasions in modern times. The requisitioning of the CAF by a provincial attorney general and the resultant call out of the CAF in aid of the civil power is governed by a separate statutory regime set out in Part VI of the *NDA.* Prior to 1998 a patchwork of legal instruments had been created to deal with the use of the CAF in preserving public order in situations that do not involve the invocation of Part VI of the *NDA* (aid of the civil power). The *Canadian Forces Assistance to Provincial Police Forces Directions (CFAPPFDs)* and the accompanying *Principles for Federal (Military) Assistance to Provincial Policing* filled a void by providing clear government policy guidance and direction in respect of support to provincial authorities responsible for law enforcement.

7. As a general starting point when examining the legal basis upon which CAF assistance is to be provided, a statutory basis is to be preferred over one that is based solely on an exercise of the Crown prerogative. Section 273.6 may be applied to a broad range of circumstances involving requests from civilian authorities for CAF assistance in respect of law enforcement matters.

8. The *CFAPPD* and its accompanying *Principles* require that the provinces must look to their own resources first. If unable to meet their needs from their own resources the provincial police force must then seek the assistance of the RCMP. If the MND approves the request, he will authorize the CDS to dispatch a military force. For the purposes of CAF assistance to provincial policing authorities, a request made pursuant to subsection 273.6(2) *NDA* for CAF support must be routed through provincial ministers responsible for policing to their federal counterpart, the Minister PSEP. The *Assistance to Federal Penitentiaries Order* authorizes the Minister PSEP or the Commissioner of Penitentiaries to obtain military assistance from the CDS for the purpose of aiding in suppressing, preventing or otherwise dealing with a disturbance which occurs, or is likely to occur, and which is beyond the powers of the penitentiary staff to suppress or prevent. The *Canadian Forces Armed Assistance Directions* (*CFAAD*) provides a process for the federal RCMP to request CAF support to deal with disturbances of the peace involving offences under the *Criminal Code of Canada* or the *Security Offences Act* involving terrorists, hostage-taking or violence aimed at internationally protected persons such as diplomats.

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9. The vast majority of CAF domestic operations are initiated by a request for assistance from Canadian civilian authorities. This is certainly the case in respect of CAF assistance provide in response to requests for law enforcement assistance from provincial police, as well as requests from the RCMP and other federal government departments and law enforcement agencies. MOU are administrative arrangements that are not legally binding upon the participants, but which are very useful for setting out the nature and extent of cooperative arrangements between the participants. In the present context, MOU have often been developed to facilitate the provision of support on an on-going basis by the CAF to another department or agency of the federal government.

10. The RCMP has the jurisdiction and the responsibility to enforce Canada's drug laws and is the lead agency for drug interdiction. Over the years the RCMP has frequently sought the specialized assistance that the CAF is capable of providing in order to more efficiently exercise its counter drug mandate. The DFO has the responsibility and jurisdiction to enforce Canada's fisheries laws. Pursuant to the provisions of a MOU concluded between the CAF and DFO, the CAF supports DFO surveillance and enforcement activities in waters of Canadian jurisdiction and those waters where Canada has international fisheries commitments.

11. Part VI of the *NDA* provides the Attorney General of a province the power to require the CAF to be called out in aid of the civil power for a situation involving a riot or disturbance. This power was invoked in 1969 during the Montreal police strike, the 1970 FLQ crisis, and most recently in 1990 to deal with the Oka crisis. The CAF, or any part of it, is liable to be called out for service in aid of the civil power. The CAF members called out in aid of the civil power will remain on duty in such strength as the CDS or his designate deems necessary until the provincial Attorney General gives notice that the CAF are no longer required. The costs for calling out the CAF in aid of the civil power, and services rendered by the CAF, must be paid out of the Consolidated Revenue Fund.

Confirmation

The instructor may ask other confirmation questions.

Conclusion

12. When a disaster or other humanitarian crisis occurs within a province, the federal government may invoke its powers under the *Emergencies Act* and employ the CAF as a temporary measure to deal with the crisis. However, beyond this extraordinary legislated authority the federal government does not have an automatic right to intervene and provincial authorities must request federal assistance, including the assistance of the CAF. The CAF mandate for providing assistance to civilian authorities is limited to that which is authorized pursuant to legislation or some other legal instrument. The legal basis for CF provision of services and public service is found in legislation, regulations, and MND Orders.

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13. Although the CAF does not have a standing mandate to enforce the laws of Canada, other than in relation to CAF members and defence establishments, both provincial and federal law enforcement agencies and other government departments may request CAF assistance to enforce laws within their respective jurisdictions. There are several legal instruments through which the CAF may be authorized to assist law enforcement agencies in the execution of their mandate. Normally, the assistance requested is for a unique or special skill, capability or equipment only available from within the CAF. The request process and approval authority will vary according to the legal instrument used. Consequently, legal advisors must be aware of the various legal instruments and their respective processes. Requests for assistance must be made and authorized at the appropriate level. If CAF assistance is provided, it is always provided in support of the police force of jurisdiction. That law enforcement agency retains responsibility for the general management of the law enforcement operation.

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PO 021 ADVISE ON THE LEGAL BASES AND AUTHORITIES FOR CAF OPERATIONS

PART 1 -- LESSON IDENTIFICATION

TITLE: EO 021.03 Advise on legal bases and authorities pertaining to continental CAF operations

Performance. Advise on legal bases and authorities pertaining to continental CAF operations.

Conditions.

Given: Orders-in-Council, directives and authorizations, functioning telecommunications and network hardware.

Denied: Direct supervision

Standard. The legal officer shall advise on the legal bases and authorities for CAF continental operations.

Main Teaching Points:

- Canadian Joint Operations Command (CJOC) Concept of Operations
- Continental defence arrangements and agreements

Method. This EO will be accomplished by a combination of self-study and class lectures. Students will be required to read assigned materials and be prepared to respond to questions.

Duration. One 45-minute period.

References. *B-GJ-005-104/FP-024 The Operational Law Manual (Draft), Chapter 25*
Canadian Joint Operations Command website, available at:
http://cjoc-coic.mil.ca/sites/intranet-eng.aspx?page=14540

Training/ Learning Aids. Standard classroom with whiteboard and projection system/handouts; CD materials; Legal Officer Qualification Course (LOQC) Instructors Handbook – Module(s) [XXX]

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Note to the instructor. The developmental lesson shall be conducted in structured manner, using a list of questions to the class. Instructors are to complement each segment of the developmental lesson by follow-up and direct questions taking into account the flow and direction of the discussion. Interim summaries shall be conducted at the end of each segment to confirm the material was learned and provide a basis from which the discussion can progress to the next segment. A review of the main teaching points will then take place at the end of the period.

PART 2 – INTRODUCTION

Objective: The instructor shall describe the legal bases and authorities pertaining to continental CAF operations as outlined in Module [XXX] of the LOQC Instructors Handbook.

Introduction: Canada is a member of two important alliances created by treaty: the North American Aerospace Defence Command (NORAD) and the North Atlantic Treaty Organisation (NATO). This EO briefly provides an overview of the key aspects of both treaties highlighting, in particular, the organisation of each alliance and their role.

Outline:

- Stage 1 – Canadian Joint Operations Command (CJOC) Concept of Operations
- Stage 2 – Continental defence arrangements and agreements

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PART 3 – BODY OF THE LESSON

Stage 1 – Canadian Joint Operations Command (CJOC) Concept of Operations

Canadian Joint Operations Command (CJOC)

Introduction

1. On Friday 5 October 2012, Canadian Joint Operations Command (CJOC) stood up, amalgamating the former formations, units and headquarters of Canada Command, Canadian Expeditionary Force Command and Canadian Operational Support Command. CJOC anticipates and conducts Canadian Forces operations (less operations conducted solely by NORAD Command or CANSOFCOM) and develops, generates and integrates joint force capabilities for operations.

2. CJOC comprises task forces and elements employed on operations; standing domestic Regional Joint Task Force Headquarters in Yellowknife, Victoria, Edmonton, Toronto, Montreal and Halifax; the Joint Operational Support Group, headquartered in Kingston with units across Canada; a worldwide network of liaison officers and command and control, intelligence, and support nodes; and a headquarters in Ottawa. CJOC exercises operational control of the Joint Forces Air Component Command, Maritime Component Command, 1st Canadian Division Headquarters, and Special Operations Coordination Element.

3. As the Command responsible for CAF operations, CJOC:

   a. contributes to strategic understanding of the operating environment and the formulation of strategic direction;

   b. anticipates operations by understanding the operating environment and preparing for potential operations with our partners;

   c. conducts assigned operations, from warning to termination, ensuring that the conduct of operations contributes to the achievement of national strategic goals as directed by the CDS; and

   d. develops, generates and integrates joint force capabilities, enabling maritime, land, air and special operations at home and abroad.

4. Commander CJOC is assisted by three Deputy Commanders; the Commanders are each supported by a Command Chief Warrant Officer. The Commander delegates authorities to the Deputy Commanders to focus on the following areas of geographical and functional responsibility.

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a. Deputy Commander (Continental) – Anticipate and conduct operations in the Western Hemisphere, including oversight of Regional Joint Task Force Headquarters and domestic missions;

b. Deputy Commander (Expeditionary) – Anticipate and conduct operations outside the Western Hemisphere, including oversight of deployed Task Forces; and

c. Deputy Commander (Support) – Conduct operational support, space and cyber operations, develop and maintain the framework for command and control, intelligence, surveillance and reconnaissance, and sustainment capabilities; generate operational-level support and sustainment capabilities; and exercise oversight of the Joint Operational Support Group, operational support hubs and strategic lines of communication.

6. The Commanders are enabled by a single, unified staff – CJOC Headquarters – led by the Chief of Staff. Assistant Chiefs of Staff manage issues in the Continental, Expeditionary and Support focus areas and are responsive to the corresponding Deputy Commanders. The Chief of Staff allocates staff resources and synchronizes staff effort to produce the effects and products required by the Commanders.

Suggested Questions

Q. What are CJOC responsibilities for CAF operations?

Q. What are the roles of CJOC Deputy Commanders?

Note to the Instructor: Encourage students to actively participate in the lesson and to reason through problems.

Interim Summary

7. On Friday 5 October 2012, Canadian Joint Operations Command (CJOC) stood up, amalgamating the former formations, units and headquarters of Canada Command, Canadian Expeditionary Force Command and Canadian Operational Support Command. CJOC comprises task forces and elements employed on operations; standing domestic Regional Joint Task Force Headquarters in Yellowknife, Victoria, Edmonton, Toronto, Montreal and Halifax; the Joint Operational Support Group, headquartered in Kingston with units across Canada; a worldwide network of liaison officers and command and control, intelligence, and support nodes; and a headquarters in Ottawa. CJOC exercises operational control of the Joint Forces Air Component Command, Maritime Component Command, 1st Canadian Division Headquarters, and Special Operations Coordination Element.

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8. Commander CJOC is assisted by three Deputy Commander (Continental, Expeditionary and Support); the Commanders are each supported by a Command Chief Warrant Officer. The Commander delegates authorities to the Deputy Commanders to focus on the following areas of geographical and functional responsibility. The Commanders are enabled by a single, unified staff – CJOC Headquarters – led by the Chief of Staff. Assistant Chiefs of Staff manage issues in the Continental, Expeditionary and Support focus areas and are responsive to the corresponding Deputy Commanders. The Chief of Staff allocates staff resources and synchronizes staff effort to produce the effects and products required by the Commanders.

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Stage 2 – Continental defence arrangements and agreements

Introduction

1. Canada is a member of two important alliances created by treaty: the North American Aerospace Defence Command (NORAD) and the North Atlantic Treaty Organisation (NATO).

NORTH AMERICAN AEROSPACE DEFENSE COMMAND (NORAD)

2. **Background.** Established in 1958, the North American Aerospace Defence Command (NORAD) is a bi-national United States and Canadian command charged with the missions of aerospace warning and aerospace control for North America. Aerospace warning includes the monitoring of man-made objects in space and the detection, validation, and warning of attack against North America whether by aircraft, missiles, or space vehicles, utilizing mutual support arrangements with other commands and in support of the designated commands responsible for missile defence of North America.

3. Aerospace control includes providing surveillance and control of the airspace of Canada and the United States. In accordance with the NORAD Agreement, the document used to establish the command, the NORAD commander in chief (CINC), and the deputy commander in chief (DCINC) cannot be of the same nationality. In case of the absence or incapacity of CINC NORAD, DCINC NORAD assumes command. It must be noted that the common usage terms are Commander NORAD (Comd NORAD) and Deputy Commander NORAD (DComd NORAD) vice CINC and DCINC. The common usage terms will be used from this point forward. By an exchange of diplomatic notes on August 5, 2004, the two governments agreed that: "NORAD's aerospace and warning mission for North America also shall include aerospace warning, as defined in NORAD's Terms of Reference, in support of the designated commands responsible for missile defence of North America". The note further states that: "This decision is independent of any discussion on possible cooperation on missile defence".

4. **Organisation.** NORAD's surveillance and control responsibility for North American airspace is divided among three NORAD Regions, one in Canada (Canadian NORAD Region – CANR), one in the continental United States, and one in Alaska. NORAD's headquarters is located in Colorado Springs, Colorado on Peterson Air Force Base. This HQ shares its facilities and most of its personnel with the US NORTHERN Command (NORTHCOM), with many of its US personnel filling both NORAD and NORTHCOM positions. However, the NORAD J3 (Operations) and NORAD J5 (Plans) do not share personnel with the NORTHCOM J3 and J5. CAF personnel are assigned to NORAD duties only.

5. **Operations.** To accomplish the aerospace warning mission, Comd NORAD is responsible for providing integrated tactical warning and attack assessment (ITW/AA) of

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an aerospace attack on North America to the governments of Canada and the United States. NORAD's aerospace control mission includes detecting and responding to any air-breathing threat to North America. To accomplish this mission, NORAD utilizes a network of ground-based radars and fighters to detect, intercept and if necessary engage any air-breathing threat to the continent. As a part of its aerospace control mission NORAD assists in the detection and monitoring of aircraft suspected of illegal drug trafficking. This information is passed to civilian law enforcement agencies to help combat the flow of illegal drugs into North America.

6. **Air Defence – Canadian Contribution.** 1 Canadian Air Division (1 Cdn Air Div) is the military organisation responsible for providing combat-ready air forces to meet Canada's commitments to the defence of North America and to maintain the sovereignty of Canadian airspace. Canadian air defence forces assigned to NORAD include Tactical Fighter Squadrons at 4 Wing Cold Lake, Alberta, and at 3 Wing Bagotville, Quebec. All squadrons fly the CF-18 fighter aircraft. Additionally, 21 Aircraft Control and Warning Squadron performs the surveillance and control functions.

7. **Counter-Drug Mission.** In 1989, the U.S. government decided to attack the drug problem along three lines: countering the production of illegal drugs at their source, detecting and stopping their transit into North America, and reducing distribution and use throughout the United States. The U.S. government consulted with the Canadian government on the counter-drug mission and Canada fully concurred with proposed NORAD drug interdiction efforts. In 1991, NORAD was tasked with carrying out the second line of defence, the detection and monitoring of the aerial drug smuggling threat into North America.

8. In cooperation with U.S. drug law enforcement agencies and the Royal Canadian Mounted Police (RCMP), CANR monitors all air traffic approaching the coast of Canada. Any aircraft that has not filed a flight plan may be directed by Canadian NORAD assets to land and be inspected by the RCMP and Customs Canada.

9. **Canada-U.S. Defence Cooperation.** Canada-U.S. defence cooperation is an essential component of our strategy for the defence of Canada, and a key underpinning of this cooperation is the broad ranging and multileveled partnership between the two countries providing for the defence of North America. Today there are over 80 treaty-level defence agreements and more than 250 MOUs between the two countries.

10. In 1945, the Canada-U.S. Military Cooperation Committee (MCC) was formed to facilitate combined planning for the defence of North America. Its first task was to revise the wartime Canada-U.S. Defence Plan that evolved into the Basic Security Plan (BSP) that provides for the coordinated use of both countries' forces in the event of hostilities in North America. More recently the MCC was called upon to revise the terms of reference for NORAD and develop a new Canada-U.S. Basic Security Document. Today the MCC continues to act as a direct link between the respective national military staffs.

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11. One of the most recent developments in Canada-U.S. defence cooperation is the establishment of a Canada-U.S. Planning Group. The Planning Group will be based at NORAD HQ in Colorado Springs. The Planning Group will have a combined staff of Canadian and American personnel headed by a Canadian Lieutenant-General, but it will be independent of both NORAD & NORTHCOM. The purpose of the Planning Group is to:

a. better coordinate Canada-U.S. maritime surveillance, intelligence sharing and threat assessments; and

b. prepare contingency plans and improve the coordination of military support to civilian authorities.

12. In Canada, Commander NORAD is responsible to the GoC and to the Government of the US for the execution of missions assigned to NORAD. In accordance with the NORAD Agreement, these missions include: aerospace warning, aerospace control, and maritime warning. Among other duties, Comd NORAD is responsible for developing plans consistent with the national policies of Canada and the US for the deployment and operational use of all forces made available to NORAD. Comd NORAD exercises command and control of HQ NORAD and all NORAD regions as well as operational control of assigned engagement forces made available to NORAD through appropriate national authorities. In addition, Comd NORAD is delegated command, control, liaison, and planning authorities in accordance with the NORAD Agreement.

13. In addition to CAF operations, the CDS also has responsibilities relating to the NORAD. The NORAD Agreement establishes that the CDRNORAD is responsible to the Government of the United States of America, communicating through the Chairman of the Joint Chiefs of Staff (CJCS) of the United States and to the Government of Canada (GoC) through the CDS. All orders and instructions to NORAD that are required to give effect to the decisions and to carry out the directions of the GoC or the MND shall be issued by or through the CDS.

THE NORTH ATLANTIC TREATY ORGANISATION (NATO)

14. **The Origins of the Alliance.** The concept of a Western Europe-based countervailing defensive alliance developed during the post-World War II period as a reaction to the fear that the USSR might seek to extend its control. The signature of the *Brussels Treaty* of March 1948 marked the determination of five Western European countries (Belgium, France, Luxembourg, the Netherlands and the United Kingdom) to develop a common defence system and to strengthen the ties between them in a manner which would enable them to resist ideological, political and military threats to their security.

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15. The *Brussels Treaty* countries then began negotiations with the United States and Canada with a view to creating a single North Atlantic Alliance based on security guarantees and mutual commitments between Europe and North America. The talks expanded to include Denmark, Iceland, Italy, Norway and Portugal. These negotiations culminated in the creation of the *North Atlantic Treaty*4 in April 1949, bringing into being a common security system based on a partnership among these 12 countries.

16. ***The North Atlantic Treaty.*** The preamble to the treaty sets out that the Parties reaffirm their faith in the purposes and principles of the UN Charter, and states that "they are determined to safeguard the freedom, common heritage and civilisation of their peoples" and that "they seek to promote stability and well-being in the North Atlantic area". To accomplish these goals, the Parties "are resolved to unite their efforts for collective defence and for the preservation of peace and security".

17. Perhaps the most important Article of the treaty is Article 56, which sets out the mutual self-defence provision as follows: "an armed attack against one or more of (the Parties) in Europe or North America shall be considered an attack against them all". In the event that such an armed attack occurs, the Parties, by the terms of the treaty, agree that each "will assist the Party or Parties so attacked by taking forthwith, individually and in concert with the other Parties, such action as it deems necessary, including the use of armed force, to restore and maintain the security of the North Atlantic area".

18. The treaty expressly states that the reaction to an armed attack contemplated by Article 5 would take place as an "exercise of the right of individual or collective self-defence recognized by Article 51 of the Charter of the United Nations", and that the fact of the attack and the response will be immediately reported to the UN Security Council. In the event that the Security Council has itself "taken the measures necessary to restore and maintain international peace and security", the Parties will terminate their own measures.

19. **NATO Military combat and enforcement operations.** On 2 October 2001, in response to the tragic events of 11 September 2001 NATO countries invoked the Article 5 collective self-defence clause for the first time in the history of the organisation. On 24 October 2001, pursuant to Article 51 of the UN Charter. Canada informed the Security Council of the UN that it was exercising its right of self-defence against Al Qaeda and the Taliban.

20. **The North Atlantic Treaty Organisation (NATO).** NATO, sometimes referred to as the Alliance, is made up of all signatories to the *North Atlantic Treaty*, and has as its fundamental role to safeguard the freedom and security of its member countries by political and military means. NATO is considered a "regional organization" within the meaning of Chapter VIII of the UN Charter and has historically participated in Chapter VII stabilization operations such as enforcing Security Council resolutions relating to the no-fly zone over the former Yugoslavia during the UNPROFOR mandate and later with respect to enforcing the Dayton Accord as part of the IFOR and SFOR missions. In

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1999 NATO conducted an air campaign over Kosovo to stop serious violations of human rights. More recently NATO has been involved with enforcing those resolutions relating to ISAF operations in Afghanistan. Since the collapse of the Soviet Union and the dissolution of the Warsaw Pact, NATO's defence focus is no longer concentrated in specific directions or geographic areas. Today, the threat to security in the North Atlantic area can come from any direction, from within the region or from far beyond NATO's traditional geographical area of interest.

21. **The process of NATO enlargement.** The *North Atlantic Treaty*, at Article 10, expressly provides that other European States may be invited to join the treaty. Since the creation of the *North Atlantic Treaty* and NATO there have been six rounds of enlargement, resulting in sixteen countries joining the twelve founding members and raising the NATO membership total to 28 countries. In 1952, Greece and Turkey acceded to the Treaty. The Federal Republic of Germany joined the Alliance in 1955. In 1982 Spain became a member. The Czech Republic, Hungary and Poland joined in 1999. In March 2004 seven new countries formally joined the Alliance: Bulgaria, Estonia, Latvia, Lithuania, Romania, Slovakia and Slovenia. In April 2009, Albania and Croatia were the latest members to join the Alliance.

22. **NATO Headquarters.** The NATO Headquarters in Brussels, Belgium, is the political headquarters of the Alliance and the permanent home of the North Atlantic Council, and the Military Committee.

23. **The North Atlantic Council (NAC).** The NAC, established by Article 9 of the *North Atlantic Treaty*, has effective political authority and power of decision in NATO. Each member country is represented at the NAC, normally by a representative of ambassadorial rank. Decisions at the NAC are made on the basis of consensus. The Council issues declarations and communiqués explaining the Alliance's policies and decisions to the general public and to governments of countries, which are not members of NATO.

24. **The NATO Secretary General.** The Secretary General (SG) is a senior international statesperson at NATO and is nominated by the member governments. The SG's primary function is to chair the North Atlantic Council. The SG also acts as principal spokesperson for NATO in external relations, and helps facilitate the flow of information, and mediate disputes, between member nations.

NATO MILITARY STRUCTURE

25. **The NATO Military Committee (MC).** The MC is a subsidiary body set up under the NAC whose purpose is to assist and advise the NAC on military matters. The MC is officially made up of the Chiefs of Defence (CHODs) of the NATO member countries, known in this role as NATO Chiefs of Staff, who are normally represented in council by senior military officers in the position of Military Representative. The Chairman of the

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Military Committee (CMC) is elected by the committee members, and is, effectively, the highest ranking military member of NATO.

26. **Allied Command Operations (ACO).** ACO is headquartered at Supreme Headquarters Allied Power Europe (SHAPE), near Mons, Belgium. ACO is commanded by Supreme Allied Commander Europe (SACEUR). ACO is responsible at the strategic level for all alliance operations, and has two subordinate operational standing Joint Force Commands (JFCs): one in Brunssum, Netherlands, the other in Naples, Italy. Both JFCs have the capability to conduct operations from their locations, but also have the capability to deploy land-based Combined Joint Task Forces (CJTFs) to other locations as required. ACO also has a more limited operational standing Joint Headquarters (JHQ) in Lisbon, Portugal. The JHQ has the capability to deploy a sea-based CJTF. Subordinated to the Joint Force Commanders are six Joint Force Component Commands (JFCCs), and four static and two deployable Combined Air Operations Centres (CAOCs), for use in operations.

27. **Allied Command Transformation (ACT).** ACT is headquartered at Norfolk, Virginia, U.S.A. Supreme Allied Commander Transformation (SACT) commands ACT. ACT oversees the transformation of NATO's military capabilities.

28. **Canada - United States Regional Planning Group (CUSRPG).** The CUSRPG is composed of military representatives of Canada and the United States. Its function is to coordinate the defence efforts of NATO in the Canada-United States (CANUS) region. There is no overall NATO commander for the region. Command arrangements therefore depend on the existing structures of the Canadian and United States armed forces and the North American Aerospace Defence Command (NORAD). The Chief of the Defence Staff of Canada and the United States Chairman of the Joint Chiefs of Staff are responsible to the NATO Military Committee (MC) for the co-ordination of NATO matters in the CANUS region.

NATO PARTNERSHIPS

29. **The Euro-Atlantic Partnership Council (EAPC).** The EAPC was set up in 1997 to succeed the North Atlantic Cooperation Council. It brings together the 26 Allies and 20 Partners, usually at the ambassadorial level, for political negotiations on NATO-partner cooperation.

30. **The Euro-Atlantic Partnership Council (EAPC), Partnership for Peace.** Whereas the EAPC is the primary forum for political cooperation between NATO and partner countries, the Partnership for Peace (PFP) is geared towards defence cooperation. PFP was created in 1994 and has been joined by 30 countries26, ten of which have become full NATO members.

31. **NATO-Russia Council (NRC).** The NRC was established in May 2002 in the wake of the September 11 terrorist attacks. The purpose of the NRC is to provide an

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opportunity for the NATO countries and Russia to work together as equals to pursue opportunities for joint action.

32. **The Mediterranean Dialogue (MD).** The MD was launched in 1994 and provides a forum for political consultations and practical cooperation between NATO and its seven Mediterranean partners: Algeria, Egypt, Israel, Jordan, Mauritania, Morocco and Tunisia.

33. **The Istanbul Cooperation Initiative (ICI).** The ICI began in 2004 as a means to facilitate bilateral practical cooperation between NATO and countries of the broader Middle East.

Suggested Questions

Q. What is the NORAD Air Defence – Canadian Contribution?

Q. What is the NORAD Counter Drug mission?

Q. What is the Canada-U.S. Defence Cooperation?

Q. What is The North Atlantic Treaty?

Q. What is the North Atlantic Council?

Q. Which organizations are in the NATO military structure?

Q. What is the NATO Military Committee?

Q. What is the Allied Command Operations?

Q. What is the Allied Command Transformation?

Q. What is the Canada - United States Regional Planning Group?

Q. Which organizations are in the NATO partnerships?

Q. What is the Euro-Atlantic Partnership Council?

Q. What is the Partnership for Peace?

Q. What is the NATO-Russia Council?

Q. What is the Mediterranean Dialogue?

Q. What is the Istanbul Cooperation Initiative?

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Note to the Instructor: Encourage students to actively participate in the lesson and to reason through problems.

Interim Summary

34. Established in 1958, NORAD is a bi-national United States and Canadian command charged with the missions of aerospace warning and aerospace control for North America. In accordance with the NORAD Agreement, the document used to establish the command, the NORAD commander in chief (CINC), and the deputy commander in chief (DCINC) cannot be of the same nationality. In case of the absence or incapacity of CINC NORAD, DCINC NORAD assumes command. NORAD's surveillance and control responsibility for North American airspace is divided among three NORAD Regions, one in Canada (Canadian NORAD Region – CANR), one in the continental United States, and one in Alaska. NORAD's headquarters is located in Colorado Springs, Colorado on Peterson Air Force Base. 1 Canadian Air Division (1 Cdn Air Div) is the military organisation responsible for providing combat-ready air forces to meet Canada's commitments to the defence of North America and to maintain the sovereignty of Canadian airspace.

35. In 1989, the U.S. government decided to attack the drug problem along three lines: countering the production of illegal drugs at their source, detecting and stopping their transit into North America, and reducing distribution and use throughout the United States. In cooperation with U.S. drug law enforcement agencies and the Royal Canadian Mounted Police (RCMP), CANR monitors all air traffic approaching the coast of Canada. Canada-U.S. defence cooperation is an essential component of our strategy for the defence of Canada, and a key underpinning of this cooperation is the broad ranging and multileveled partnership between the two countries providing for the defence of North America. In 1945, the Canada-U.S. Military Cooperation Committee (MCC) was formed to facilitate combined planning for the defence of North America. Its first task was to revise the wartime Canada-U.S. Defence Plan that evolved into the Basic Security Plan (BSP) that provides for the coordinated use of both countries' forces in the event of hostilities in North America. One of the most recent developments in Canada-U.S. defence cooperation is the establishment of a Canada-U.S. Planning Group. The Planning Group will be based at NORAD HQ in Colorado Springs.

36. In Canada, Commander NORAD is responsible to the GoC and to the Government of the US for the execution of missions assigned to NORAD. In accordance with the NORAD Agreement, these missions include: aerospace warning, aerospace control, and maritime warning. In addition to CAF operations, the CDS also has responsibilities relating to the NORAD. The NORAD Agreement establishes that the CDRNORAD is responsible to the Government of the United States of America, communicating through the Chairman of the Joint Chiefs of Staff (CJCS) of the United States and to the Government of Canada through the CDS.

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37. The NATO origins goes back to the concept of a Western Europe-based countervailing defensive alliance developed during the post-World War II period as a reaction to the fear that the USSR might seek to extend its control. The signature of the *Brussels Treaty* of March 1948 marked the determination of five Western European countries (Belgium, France, Luxembourg, the Netherlands and the United Kingdom) to develop a common defence system and to strengthen the ties between them in a manner which would enable them to resist ideological, political and military threats to their security.

38. The preamble to the *North Atlantic Treaty* sets out that the Parties reaffirm their faith in the purposes and principles of the UN Charter, and states that "they are determined to safeguard the freedom, common heritage and civilisation of their peoples" and that "they seek to promote stability and well-being in the North Atlantic area". Article 56 of the treaty sets out the mutual self-defence provision as follows:

"an armed attack against one or more of (the Parties) in Europe or North America shall be considered an attack against them all". In the event that such an armed attack occurs, the Parties, by the terms of the treaty, agree that each "will assist the Party or Parties so attacked by taking forthwith, individually and in concert with the other Parties, such action as it deems necessary, including the use of armed force, to restore and maintain the security of the North Atlantic area".

The treaty expressly states that the reaction to an armed attack contemplated by Article 5 would take place as an "exercise of the right of individual or collective self-defence recognized by Article 51 of the Charter of the United Nations".

39. On 2 October 2001, in response to the tragic events of 11 September 2001 NATO countries invoked the Article 5 collective self-defence clause for the first time in the history of the organisation. On 24 October 2001, pursuant to Article 51 of the UN Charter. Canada informed the Security Council of the UN that it was exercising its right of self-defence against Al Qaeda and the Taliban. NATO, sometimes referred to as the Alliance, is made up of all signatories to the *North Atlantic Treaty*, and has as its fundamental role to safeguard the freedom and security of its member countries by political and military means.

40. NATO is considered a "regional organization" within the meaning of Chapter VIII of the UN Charter and has historically participated in Chapter VII stabilization operations such as enforcing Security Council resolutions relating to the no-fly zone over the former Yugoslavia during the UNPROFOR mandate and later with respect to enforcing the Dayton Accord as part of the IFOR and SFOR missions. In 1999 NATO conducted an air campaign over Kosovo to stop serious violations of human rights. More recently NATO has been involved with enforcing those resolutions relating to ISAF operations in Afghanistan. The *North Atlantic Treaty*, at Article 10, expressly provides that other European States may be invited to join the treaty.

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41. The NATO Headquarters in Brussels, Belgium, is the political headquarters of the Alliance and the permanent home of the North Atlantic Council, and the Military Committee. NATO is composed of 28 member States. The NATO Secretary General (SG) is a senior international statesperson at NATO and is nominated by the member governments. The SG's primary function is to chair the North Atlantic Council. The SG also acts as principal spokesperson for NATO in external relations, and helps facilitate the flow of information, and mediate disputes, between member nations. The NATO military structure is composed of the NATO Military Committee, the Allied Command, the Allied Command and the Canada - United States Regional Planning Group (CUSRPG). NATO Partnerships include the Euro-Atlantic Partnership Council, the Partnership for Peace, the NATO-Russia, the Mediterranean Dialogue and the Istanbul Cooperation Initiative.

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PART 4 – CONCLUSION

Summary

1. On Friday 5 October 2012, Canadian Joint Operations Command (CJOC) stood up, amalgamating the former formations, units and headquarters of Canada Command, Canadian Expeditionary Force Command and Canadian Operational Support Command. CJOC comprises task forces and elements employed on operations; standing domestic Regional Joint Task Force Headquarters in Yellowknife, Victoria, Edmonton, Toronto, Montreal and Halifax; the Joint Operational Support Group, headquartered in Kingston with units across Canada; a worldwide network of liaison officers and command and control, intelligence, and support nodes; and a headquarters in Ottawa. CJOC exercises operational control of the Joint Forces Air Component Command, Maritime Component Command, 1st Canadian Division Headquarters, and Special Operations Coordination Element.

2. Commander CJOC is assisted by three Deputy Commander (Continental, Expeditionary and Support); the Commanders are each supported by a Command Chief Warrant Officer. The Commander delegates authorities to the Deputy Commanders to focus on the following areas of geographical and functional responsibility. The Commanders are enabled by a single, unified staff – CJOC Headquarters – led by the Chief of Staff. Assistant Chiefs of Staff manage issues in the Continental, Expeditionary and Support focus areas and are responsive to the corresponding Deputy Commanders. The Chief of Staff allocates staff resources and synchronizes staff effort to produce the effects and products required by the Commanders.

3. Established in 1958, NORAD is a bi-national United States and Canadian command charged with the missions of aerospace warning and aerospace control for North America. In accordance with the NORAD Agreement, the document used to establish the command, the NORAD commander in chief (CINC), and the deputy commander in chief (DCINC) cannot be of the same nationality. In case of the absence or incapacity of CINC NORAD, DCINC NORAD assumes command. NORAD's surveillance and control responsibility for North American airspace is divided among three NORAD Regions, one in Canada (Canadian NORAD Region – CANR), one in the continental United States, and one in Alaska. NORAD's headquarters is located in Colorado Springs, Colorado on Peterson Air Force Base. 1 Canadian Air Division (1 Cdn Air Div) is the military organisation responsible for providing combat-ready air forces to meet Canada's commitments to the defence of North America and to maintain the sovereignty of Canadian airspace.

4. In Canada, Commander NORAD is responsible to the GoC and to the Government of the US for the execution of missions assigned to NORAD. In accordance with the NORAD Agreement, these missions include: aerospace warning, aerospace control, and maritime warning. In addition to CAF operations, the CDS also has responsibilities relating to the NORAD. The NORAD Agreement establishes that the

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CDRNORAD is responsible to the Government of the United States of America, communicating through the Chairman of the Joint Chiefs of Staff (CJCS) of the United States and to the Government of Canada through the CDS.

5. The NATO origins goes back to the concept of a Western Europe-based countervailing defensive alliance developed during the post-World War II period as a reaction to the fear that the USSR might seek to extend its control. The signature of the *Brussels Treaty* of March 1948 marked the determination of five Western European countries (Belgium, France, Luxembourg, the Netherlands and the United Kingdom) to develop a common defence system and to strengthen the ties between them in a manner which would enable them to resist ideological, political and military threats to their security.

6. NATO is considered a "regional organization" within the meaning of Chapter VIII of the UN Charter and has historically participated in Chapter VII stabilization operations such as enforcing Security Council resolutions relating to the no-fly zone over the former Yugoslavia during the UNPROFOR mandate and later with respect to enforcing the Dayton Accord as part of the IFOR and SFOR missions. The NATO Headquarters is located in Brussels, Belgium. NATO is composed of 28 member States. The NATO Secretary General (SG) is a senior international statesperson at NATO and is nominated by the member governments. The SG's primary function is to chair the North Atlantic Council. The SG also acts as principal spokesperson for NATO in external relations, and helps facilitate the flow of information, and mediate disputes, between member nations. The NATO military structure is composed of the NATO Military Committee, the Allied Command, the Allied Command and the Canada - United States Regional Planning Group (CUSRPG). NATO Partnerships include the Euro-Atlantic Partnership Council, the Partnership for Peace, the NATO-Russia, the Mediterranean Dialogue and the Istanbul Cooperation Initiative.

Confirmation

The instructor may ask other confirmation questions.

Conclusion

7. This EO provided a general overview of CJOC Concept of Operations, Canada's military participation in NORAD and NATO. It is important to understand the basic structure and function of these key alliance organisations. A solid understanding of the basic roles and functions of the alliances will assist in dealing with legal issues arising from CAF operations conducted in support of the alliances. Legal issues arising from inter-operability matters, such as ROE development, SOFA, and command and control, will be easier to identify and resolve if operational legal advisors understand the purpose and function of the alliances.

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PO 022 PROVIDE LEGAL SUPPORT DURING THE PLANNING OF OPERATIONS

PART 1 -- LESSON IDENTIFICATION

Title: EO 022.02 Provide legal advice on OPP products.

Performance. Provide legal advice on OPP products.

Conditions.

Given: References including description of the operational level planning as conducted by the CAF, when and where it is used, Joint Operational Planning Group (JOPG), types and steps to be followed.

Denied: Direct supervision

Standard. The legal officer shall advise on the legal bases for the planning of CAF operations.

Main Teaching Points:

- Products reviewed by the legal officer
- Products produced by the legal officer

Method. This EO will be accomplished by a combination of self-study and class lectures. Students will be required to read assigned materials and be prepared to respond to questions.

Duration. One 15-minute period.

References. *B-GJ-005-300/FP-001 Operations*
B-GJ-005-500/FP-000 The CF Operational Planning Process

Training/ Learning Aids. Standard classroom with whiteboard and projection system/handouts; CD materials; Legal Officer Qualification Course (LOQC) Instructors Handbook – Module(s) [XXX]

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Note to the instructor. The developmental lesson shall be conducted in structured manner, using a list of questions to the class. Instructors are to complement each segment of the developmental lesson by follow-up and direct questions taking into account the flow and direction of the discussion. Interim summaries shall be conducted at the end of each segment to confirm the material was learned and provide a basis from which the discussion can progress to the next segment. A review of the main teaching points will then take place at the end of the period.

PART 2 – INTRODUCTION

Objective: The instructor shall describe the OPP procedure as outlined in Module [XXX] of the LOQC Instructors Handbook.

Introduction:

The CAF Force Employment (FE) process includes all activities required to plan, conduct and review CAF operations. The activities inherent to the FE process are independent of organization or command level. Commanders and staffs at the operational level headquarters plan and conduct routine and contingency operations on behalf of the Chief of Defence Staff (CDS). On behalf of the CDS, the CAF Operational Commanders are designated specific areas of responsibility for the planning and conduct of operations and for passing CDS direction to subordinate commanders. The Environmental Chiefs of Staff (ECS) are wholly responsible and accountable to the CDS for force generation activities including training for operations. The process used to prepare plans and orders for CAF operations is called the CAF Operational Planning Process (CAF OPP). This planning process is applicable to all aspects of the employment of military force not just war fighting.

Outline:

Stage 1 – Products reviewed by the legal officer

Stage 2 – Products produced by the legal officer

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PART 3 – BODY OF THE LESSON

Stage 1 – Products reviewed by the legal officer.

Introduction

1. Since 1990 the number of CAF operational missions has increased by 300 per cent when compared to the 1945 - 1989 time period. With this rapid growth in operations came recognition of the impact of legal issues on the conduct of CAF operations and the requirement for timely and effective legal advice.

2. Just as the nature of domestic and international operations are unquestionably becoming more complex, so too are the legal issues that arise prior to, during, and following an operation. The complexities and sensitivities of most CAF operations, both domestic and international, require the operational commander at any level to have a sound understanding of the legal issues associated with such operations. The challenge for the commander is to obtain timely and accurate operational legal advice in order to ensure that the mission is successfully executed in accordance with the rule of law.

3. **The operational legal advisor.** The role of an operational legal advisor is unique in legal practice. There is no equivalent role in private practice or in government service. The role of the CAF operational legal advisor is to facilitate the lawful conduct of operations by providing timely and accurate legal services and advice to commanders at the strategic, operational and tactical levels during all phases of the operation.

4. Some legal advisors are posted to positions (such as with CJOC Continental, Expeditionary, Support) which are directly involved in support of operational formations and units. Others are selected in response to requests from operational commanders to have a legal officer deployed with a specific operation, including requests from coalition or alliance forces (*e.g.* NATO) to provide a CAF legal officer to a coalition or alliance legal billet. Those legal advisors are required and expected to provide independent legal advice to the operational commander and the commander's staff when advising on the operational planning process. Legal advisors involved in that process should be proactive identifying potential legal issues and responsive when advice is sought. The key is to ensure the commander is able to successfully execute the mission within the legal framework by facilitating prompt, accurate and practical legal advice.

5. Legal advisors are legally not part of the operational chain of command and are not members of the commander's staff (*i.e.* not "staff" judge advocates). This issue can often cause confusion and, occasionally, tension between commanders, their staffs and legal advisors. Therefore, it is crucial for legal advisors to address this issue with commanders as soon as possible to ensure a clear shared understanding of the matter.

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6. **Role of the operational legal advisor.** During the operational planning process (OPP), the legal officer is intimately involved attending all planning sessions and reviewing all courses of action (COAs) developed by the team. The legal officer attends all briefings to the COMD (Mission analysis brief, info brief, and decision brief) to deal with any legal issues/questions that may arise during the briefing. The legal officer also reviews all OPP products, especially the OPLAN and its annexes, attend the planning sessions to ensure that if there are legal concerns with any of the COAs considered by the team that the legal concerns are made known before they are too far into the planning cycle.

Suggested Questions

Q. Why legal advisors are not legally part of the operational chain of command?

Q. What is the role of the legal advisor during the operational planning process?

Interim Summary

7. Since 1990 the number of CAF operational missions has increased by 300 per cent when compared to the 1945 - 1989 time period. With this rapid growth in operations came recognition of the impact of legal issues on the conduct of CAF operations and the requirement for timely and effective legal advice. The role of an operational legal advisor is unique in legal practice. There is no equivalent role in private practice or in government service. The role of the CAF operational legal advisor is to facilitate the lawful conduct of operations by providing timely and accurate legal services and advice to commanders at the strategic, operational and tactical levels during all phases of the operation.

8. Some legal advisors are posted to positions (such as with CJOC Continental, Expeditionary, Support) which are directly involved in support of operational formations and units. Others are selected in response to requests from operational commanders to have a legal officer deployed with a specific operation, including requests from coalition or alliance forces (*e.g.* NATO) to provide a CAF legal officer to a coalition or alliance legal billet. During the operational planning process (OPP), the legal officer is intimately involved attending all planning sessions and reviewing all courses of action (COAs) developed by the team. The legal officer attends all briefings to the COMD (Mission analysis brief, info brief, and decision brief) to deal with any legal issues/questions that may arise during the briefing. The legal officer also reviews all OPP products, especially the OPLAN and its annexes, attend the planning sessions to ensure that if there are legal concerns with any of the COAs considered by the team that the legal concerns are made known before they are too far into the planning cycle.

Note to the Instructor: Encourage students to actively participate in the lesson and to reason through problems.

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Stage 2 – Products produced by the legal officer.

Introduction

1. The legal officer is intimately involved in the OPP process preparing the legal annex to the OPLAN. The following is the generic content of a legal annex.

2. The legal annex is part of the Op Order and includes:

   a. the aim;

   b. the legal framework;

   c. the legal support;

   d. the legal organization; and

   e. the general legal guidance (Code of Service Discipline, Aid to Law Enforcement Agencies (ALEA), Aid of the Civil Power, Peace Officer status, Use of Force, Summary Cards, Protection from Civil Liability, Information and Intelligence Collection and Sharing, Legal Support to Military Police and CF National Investigation Service (CFNIS), Claims By or Against the Crown, Contracts, Rental Vehicles, Military Administrative Investigations, Environmental Protection, Continuing Legal Consultation).

3. **Aim.** The aim of the legal annex is to outline the legal framework and organization for the specific operation and to provide general guidance on legal issues that are likely to arise.

4. **Legal framework.** CAF participation to operations will be usually requested by the Minister of Public Safety (MPS) under Subsection 273 .6(2) of the National Defence Act (NDA). The Minister of National Defence (MND) approval will be given to conduct operations. In accordance with command direction, the use of CAF personnel and materiel is currently limited to law enforcement assistance with the Royal Canadian Mounted Police (RCMP). Additional requests for support not related to assistance to law enforcement agencies (ALEAs) will be responded to in accordance with the Provision of Services Manual (B-GS-055-000/AG-001, Provision of Services Manual), or, in exceptional circumstances and as recommended by the appropriate legal advisor, be approved as a public service under Subsection 273.6(1) of the NDA. Further assistance may also be requisitioned by civilian authorities in accordance with the NDA and other legal instruments. In Canada, CAF operations will be governed primarily by Canadian domestic law. For those aspects of operations extending beyond Canadian territory, such as NORAD operations and maritime security, other Canadian and international law may also apply.

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5. **Legal support.** During domestic or international operations, the principal role of legal officers is to provide advice to supported comds and staff, as required. Main areas of legal advice include:

a. legal basis for each task, including its legal authority and limitations;

b. Rules of Engagement (ROE);

c. use of force;

d. application of all federal and provincial legislation, regulations, Orders in Council (OIC) Memorandum of Understanding (MoU), and other directives;

e. legal implications of CAF members having or not having peace officer status;

f. legal aspects of communications monitoring or interception;

g. liaison and coordination with the legal advisors and staffs of Other Government Departments (OGDs) and Other Government Agencies (OGAs);

h. other operational law topics such as CAF maritime/land/air operations, Counter Terrorism, Chemical, Biological, Radiological, Nuclear and Explosive (CBRNE), Defence Controlled Access Area Regulations (DCAARs)/Inspection and Search Defence Regulations (ISDRs), special duty issues, permissible activities under Ministerial and OIC authorizations, etc;

i. review of arrangements for provision of logistical, technical or administrative support;

j. CAF and individual liability exposure;

k. legal risk management;

l. claims by and against the Crown;

m. military justice and the Code of Service Discipline;

n. military administrative law, including personnel issues, summary investigations and boards of inquiry; and

o. other legal matters of particular interest for comds and the CAF.

6. During any operation, legal implications are many and varied. Comds and their staffs should seek legal advice with respect to the planning and execution of all phases of operations. Supporting Legal Officers should be fully involved, at the earliest possible

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stage including, in the review of all orders and directives, Frag Os, Rules of Engagement Requests (ROEREQs), use of force direction and use of summary cards.

7. **Legal Organization.** The primary Judge Advocate General (JAG) offices involved in providing legal advice in relation to legal matters arising during operations are:

a. CJOC Continental Legal Advisor (LEGAD) as LEGAD to CJOC Continental;

b. Canadian Special Operations Force Command (CANSOFCOM) LEGAD as LEGAD to CANSOFCOM;

c. the local Assistant Judge Advocate General (AJAG) as LEGAD to the local Comd Joint Task Force (JTF). Additional LEGADs may physically be collocated with the local Task Force (TF) and may be augmented by additional legal officers as required;

d. Director Law/Intelligence and Information Operations (DLaw/Int & Info Ops) as the LEGAD to Chief of Defence Intelligence (CDI); and

e. Strategic Joint Staff (SJS) LEGAD as advisor to the SJS.

8. CAF activity in a specific operation might be in support of the RCMP. Legal advice to the RCMP is provided by the Department of Justice. CAF planners and operators should encourage consultation between the RCMP and their LEGADs when legal issues arise.

9. **General legal guidance.** All personnel (both military and civilian) participating in operations- are bound by Canadian law, and are expected to comply with the law during all aspects of the operation.

10. **Code of Service Discipline.** The Code of Service Discipline applies to all CAF personnel deployed on operations. LEGADs will provide clarification as to the applicability of the Code of Service Discipline to Reserve Force members. Persons authorized to lay charges and presiding officers should consult with their legal advisors in order to ensure that these Queen's Regulations and Orders (QR&O) provisions are respected. The chain of command must be informed of any member involved in the operation taken into custody by civilian authorities.

11. **Aid to Law Enforcement Agencies (ALEA).** Operations to ALEA involve a broad spectrum of CAF support, including public service, ceremonial, logistics and assistance to law enforcement activities. CAF have currently been apportioned to provide assistance to the RCMP for law enforcement activities. The CAF has no independent mandate to engage in civil law enforcement activities All CAF ALEA is in support of the RCMP. CAF members remain under military command and control at all times during the provision of ALEA; they are not to be tasked by civilian authorities such as municipal or provincial government or police officials.

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12. **Aid of the Civil Power.** It is not the role of the CAF to provide support in the event of a riot or disturbance. The CAF can only be tasked to provide such support, in the event of a riot or disturbance or where a riot or disturbance is likely to occur, when the attorney general of the province believes dealing with the situation is beyond the powers of the civil authorities. The attorney general must make a requisition in writing to the Chief of the Defence Staff (CDS) and requisition the assistance of the CAF pursuant to Section 277 of the NDA. The CDS, or such officer as he may designate, can then call out such part of the CAF as he considers appropriate in the circumstances, subject to directions from the MND and in consultation with the attorney general making the requisition and the attorney general of any other province that may be affected.

13. **Peace Officer Status.** Peace Officers are public authorities responsible to maintain the public peace and enforce the law. In accordance with QR&O 22.01, CAF personnel employed on operations might have peace officer status when assisting the RCMP in law enforcement duties but only when so employed. Peace Officer status ceases when CAF personnel are no longer performing assistance to law enforcement duties. CAF personnel with Peace Officer status have all the powers and protections of Peace Officers as set out in the Criminal Code and the special protection from civil and criminal liability enjoyed by Peace Officers. CAF members without Peace Officer status have no more authority over the civilian population than they would otherwise have when performing their normal day-to-day duties. Specifically, CAF personnel without Peace Officers status do not have the enhanced powers of arrest, detention, investigation, or traffic control enjoyed by Peace Officers. While peace officer status provides certain legal protections during the conduct of law enforcement, these tasks shall only be conducted as directed by the chain of command, and shall be within the scope of the existing request and authorizations for the operation. Peace officer status should not be perceived to authorize the conduct of policing tasks outside of the existing authorized support framework for the operation.

14. **Use of Force.** Canadian law, specifically the Criminal Code of Canada, governs the use of force during operations conducted on Canadian territory. . In accordance with the Use of Force in Canadian Forces Operations Manual (B-GJ-005-501/FP-001, August 2008), the use of force in personal, unit and self-defence is authorized without further reference to the ROE. All other use of force must be authorized by the ROE and conducted in accordance with the principles outlined in the aforementioned Manual.

15. **Use of Force Summary Cards.** These cards, also known as Soldiers Cards, will be prepared and distributed, summarizing the ROE and, in particular, the policy on searches, arrest and detention. Only the Comd CJOC Continental has the authority to approve a use of force summary card on behalf of the CDS. The local JTF Comd will seek approval of Comd CJOC Continental prior to the issuance of any use of force summary card. The Use of Force Summary Card includes the following topics; self-defence, minimum force, deadly force, non-deadly force related to property, detention, search and other situations, the escalation of force procedure, the force posture state,

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the use of force and CAF Code of Conduct violations and a summary of the CAF Code of Conducts principles.

16. **Protection from Civil Liability.** Any member of the CAF, when properly authorized to act as a peace officer, acting on reasonable grounds, is justified in doing what he or she is authorized to do in accordance with Section 25 of the *Criminal Code of Canada*. Pursuant to Treasury Board Policy on Claims and Ex Gratia Payments, CAF members acting in accordance with their orders and ROE will be indemnified against civil liability so long as they act honestly, without malice, within the scope of their duties and in accordance with Departmental expectations. Legal officers can provide further information as required.

17. **Information and Intelligence Collection and Sharing.** Information and intelligence collection and sharing may be possible for domestic operations. Operations must be based on appropriate legal authority. Specific legal advice should be sought on a case-by-case basis for matters of this nature. In general, the CAF may collect and share defence intelligence pursuant to the NDA and the CAF's defence of Canada mandate, in accordance with existing intelligence programmes and legal authorities. The collection, production, and dissemination of security intelligence shall be performed primarily by Canadian Forces National Counter-Intelligence Unit (CFNCIU) in accordance with Defence Administrative Orders and Directives 8002.

18. While acting in support of the RCMP on a specific operation, the CAF may be permitted to assist the RCMP in collecting intelligence, pursuant to the lawful authority of the RCMP. The RCMP remains responsible to obtain any required judicial authorizations and to ensure that any CAF assistance to act upon such authorizations is sought in strict accordance with the terms and limitation of those authorizations. The conduct of intelligence collection and information sharing will be in accordance with Canadian law and policy direction from the CDI.

19. **Legal Support to Military Police (MP).** On operations LEGADs will provide legal advice to MP on matters such as jurisdiction, investigations, search and seizure, arrest and detention and the application of laws and regulations. Peace Officer jurisdiction for MP is generally limited to defence establishments and/or persons who are subject to the Code of Service Discipline. Accordingly, civilian police should be encouraged to seek assistance from other police forces whose members have peace officer status, before seeking law enforcement assistance from MP during emergency situations.

20. **Canadian Forces National Investigation Service (CFNIS).** Investigations of a serious or sensitive nature conducted under the jurisdiction of the CFNIS may result in charges being laid by the CFNIS. Legal officers assigned to operations may act as liaison between the RCMP and comds as required.

21. **Claims By or Against the Crown.** Claims for damage to property, death, or personal injury will be dealt with in accordance with existing Government of Canada

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policy by the local AJAG working with DND/CF LA Claims and Civil Litigation as appropriate. These offices have the sole authority within operations to settle claims of any kind. Anyone who improperly authorizes the payment of a damages or related claim may be in violation of the Financial Administration Act and possibly held personally liable to reimburse the Crown for such amounts as he or she authorizes to payout of Public or Non-public funds.

22. CAF members are prohibited from accepting responsibility for any claim or potential claim, or otherwise admitting liability for a claim against the Crown without the express authority of a legal officer (QR&O 19.41). Any instance of a claim by or against the Crown arising from an operation shall be reported to the chain of command and to the local AJAG as soon as practicable. Reports will include a complete investigation and details of the claimant(s). Where the investigation may delay the local AJAG being notified, information concerning the claimant(s) is to be provided as quickly as possible, with an estimate of when the investigation should be completed. A copy of all investigation reports shall be submitted to the local AJAG for claims settlement purposes. Regulations and orders governing the conduct of service investigations are contained in QR&O Chapter 21. The Treasury Board Policy on Claims and Ex Gratia Payments sets out the policies of the Treasury Board that must be followed in processing claims by and against the Crown. Legal officers are available to review Standing Operating Procedures (SOPs) dealing with the above matters.

23. **Contracts.** The J4 JTF cell is generally the lead for identifying supply and services needs and may participate in negotiating contracts for them. The local LEGAD should be consulted if required. Spending authorities are governed by A-FN-I00-002/AG-006 - Delegation of Authorities for Financial Administration for the DND and the CAF. The J8 cell should be consulted as required with regard to signing and spending authorities. As a general rule, the CAF will negotiate and compensate in the normal fashion the use of goods and services that are required for any operation. Although there may arise situations in which the CAF has the right to seize property or goods for operational purposes, this will be extremely unusual and must be dealt with on a case-by-case basis. Specific legal advice should be sought prior to ordering any such seizure.

24. CJOC Continental JEngr is the lead for identifying and negotiating the use of real property, ie, buildings and lands. C-08-005-120/AG-000 Realty Asset Management Manual deals with the Departmental authorities for entering into transactions, such as leases. It should be noted that no operational comd in Canada has the authority to enter into real property transactions. The NDHQ office that deals with this matter is the Director General Realty Policy and Plans.

25. **Rental Vehicles.** The CAF is responsible for damages caused to rental vehicles when they are being used for official purposes. Rental vehicles are not to be used for personal or pleasure use. In addition, the acceptable use for rental vehicles is outlined in the rental agreement and standing offer. Certain uses, for example off-road use, may violate the rental agreement and may create liability for the DND/CAF, and personal

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liability for the CAF member. The use of rental vehicles shall be in accordance with any agreements in place with the rental company. LEGADs are available to review these agreement and advise on what is considered authorized use. Claims against the Crown cannot be settled unless there is a record of the damage caused. In accordance with A-LM-158-005/AG-001 - Transportation Manual, all personnel driving rental vehicles must maintain a vehicle log and must report any damage caused to the vehicle, the circumstances under which the damage was caused, and witness reports. Failure to do so may result in individuals and or their units being held responsible for the cost of any required repairs.

26. **Military Administrative Investigations.** The increasingly complex nature of service investigations and their subsequent legal ramifications, both for the CAF and for individual service members, merits legal officer involvement from the earliest stages of any investigation. Terms of Reference (TOR) or Convening Orders for service investigations should be reviewed by a legal officer to ensure they are complete and incorporate guidance on any legal issues that the investigating officer/board is likely to encounter. Administrative investigations (SI/BOI) shall not be used investigations into alleged misconduct or disciplinary purposes. If an investigator or board encounters evidence relating to a possible criminal or disciplinary offence, they must stop the investigation and consult with the appropriate LEGAD.

27. **Environmental Protection.** The CAF will comply with legislation, where applicable, regarding the protection of the environment, and to exercise care to minimize damaging impacts on the environment. Legal officers are available to provide legal advice on the risk of liability associated with CAF operations that may affect the environment. The JTF J Engr cell is the lead for Environmental Assessments and the JTF J3 cell is the lead for Environmental Protection.

28. **Continuing Legal Consultation.** As planning develops and operations are concluded, numerous legal issues are encountered where consultation with LEGADs is required. Plans and operations staffs are encouraged to include their LEGADs during the planning and execution phases of the operation. Experience has shown that a collaborative planning approach minimizes subsequent staff work when legal issues are identified, prioritized and actioned at the earliest stage possible.

Suggested Questions

Q. What is the content of the legal annex?

Q. What is the aim of the legal annex?

Q. What is the content of the legal framework in the legal annex?

Q. What are the main areas of legal advice given by the legal advisor?

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Q. What is the content of the Use of Force Summary Cards?

Q. What is the policy on rental vehicles?

Interim Summary

29. The legal officer is intimately involved in the OPP process preparing the legal annex to the OPLAN. The legal annex is part of the Op Order and includes the aim, the legal framework, the legal support the legal organization and the general legal guidance. he aim of the legal annex is to outline the legal framework and organization for the specific operation and to provide general guidance on legal issues that are likely to arise.

30. CAF participation to operations will be usually requested by the Minister of Public Safety (MPS) under Subsection 273 .6(2) of the National Defence Act (NDA). The Minister of National Defence (MND) approval will be given to conduct operations. In accordance with command direction, the use of CAF personnel and materiel is currently limited to law enforcement assistance with the Royal Canadian Mounted Police (RCMP). During domestic or international operations, the principal role of legal officers is to provide advice to supported comds and staff, as required. During any operation, legal implications are many and varied. Comds and their staffs should seek legal advice with respect to the planning and execution of all phases of operations.

31. The primary JAG offices involved in providing legal advice in relation to legal matters arising during operations are the CJOC Continental LEGAD, CANSOFCOM LEGAD, the local AJAG as LEGAD to the local Comd JTF, DLaw/Int & Info Ops)as the LEGAD to Chief of Defence Intelligence (CDI); and SJS)LEGAD.

32. Ultimately, the legal advisor will provide advice on the general legal guidance on many issues such as the Code of Service Discipline, Aid to Law Enforcement Agencies (ALEA), Aid of the Civil Power, Peace Officer status, Use of Force, Summary Cards, Protection from Civil Liability, Information and Intelligence Collection and Sharing, Legal Support to Military Police and CF National Investigation Service (CFNIS), Claims By or Against the Crown, Contracts, Rental Vehicles, Military Administrative Investigations, Environmental Protection and Continuing Legal Consultation.

Note to the Instructor: Encourage students to actively participate in the lesson and to reason through problems.

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PART 4 – CONCLUSION

Summary

1. Since 1990 the number of CAF operational missions has increased by 300 per cent when compared to the 1945 - 1989 time period. With this rapid growth in operations came recognition of the impact of legal issues on the conduct of CAF operations and the requirement for timely and effective legal advice.

2. Some legal advisors are posted to positions (such as with CJOC Continental, Expeditionary, Support) which are directly involved in support of operational formations and units. During the operational planning process (OPP), the legal officer is intimately involved attending all planning sessions and reviewing all courses of action (COAs) developed by the team. The legal officer attends all briefings to the COMD (Mission analysis brief, info brief, and decision brief) to deal with any legal issues/questions that may arise during the briefing. The legal officer also reviews all OPP products, especially the OPLAN and its annexes, attend the planning sessions to ensure that if there are legal concerns with any of the COAs considered by the team that the legal concerns are made known before they are too far into the planning cycle.

3. The legal officer is intimately involved in the OPP process preparing the legal annex to the OPLAN. The legal annex is part of the Op Order and includes the aim, the legal framework, the legal support the legal organization and the general legal guidance. he aim of the legal annex is to outline the legal framework and organization for the specific operation and to provide general guidance on legal issues that are likely to arise.

4. CAF participation to operations will be usually requested by the Minister of Public Safety (MPS) under Subsection 273 .6(2) of the National Defence Act (NDA). The Minister of National Defence (MND) approval will be given to conduct operations. In accordance with command direction, the use of CAF personnel and materiel is currently limited to law enforcement assistance with the Royal Canadian Mounted Police (RCMP).

5. Ultimately, the legal advisor will provide advice on the general legal guidance on many issues such as the Code of Service Discipline, Aid to Law Enforcement Agencies (ALEA), Aid of the Civil Power, Peace Officer status, Use of Force, Summary Cards, Protection from Civil Liability, Information and Intelligence Collection and Sharing, Legal Support to Military Police and CF National Investigation Service (CFNIS), Claims By or Against the Crown, Contracts, Rental Vehicles, Military Administrative Investigations, Environmental Protection and Continuing Legal Consultation.

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Confirmation

The instructor may ask other confirmation questions.

Conclusion

6. It is critical that operational legal advisors and commanders understand the role and responsibilities of the legal advisor. Given the inherent nature of providing legal advice (*e.g.* existence of solicitor/client privilege) and the statutorily mandated role of the JAG, commanders and their staffs must appreciate the requirement for legal advisors to be able to provide independent legal advice. Without such independence, there is a clear risk that the legal advisor may not be able to provide the commander with prompt, accurate and balanced advice. This will increase the risk of mission failure.

7. On the other hand, operational legal advisors must appreciate the often fluid and complex nature of operations. They must understand military operations in general and the commander's intent for a specific mission. The legal advisor's role is to facilitate the commander's ability to successfully execute the mission within the rule of law. This can only truly be achieved if the advisor is a fully integrated member of the mission and the commander's staff. The operational legal advisor should make every effort to ensure the commander's direction is executed promptly, effectively and within the law. While there may be occasions when a legal advisor may have to advise a commander that a particular course of action or direction is unlawful, such occasions will be rare. On such occasions commanders have welcomed the advice, as they want to ensure that operations are conducted lawfully. However, illegality should not be confused with operational activities that may contain acceptable levels of legal risk. The legal advisor should be able to offer the commander alternative solutions that will be in compliance with the law in cases where a proposed course of conduct would be unlawful.

8. The role of an operational legal advisor is unique in legal practice. There is no equivalent role in private practice or in government service. The legal advisor is not a member of a law firm, but, rather, a member the CAF Legal Branch. The legal advisor is a legal officer, not a lawyer in uniform.

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PO 022 PROVIDE LEGAL SUPPORT DURING THE PLANNING OF OPERATIONS

PART 1 -- LESSON IDENTIFICATION

Title: EO 022.01 Provide legal input to the Operational Planning Process (OPP)

Performance. Provide legal input to the OPP.

Conditions.

Given: References including description of the operational level planning as conducted by the CF, when and where it is used, Joint Operational Planning Group (JOPG), types and steps to be followed.

Denied: Direct supervision

Standard. The legal officer shall advise on the legal bases for the planning of CAF operations.

Main Teaching Points:

- The Operational planning process (OPP)

Method. This EO will be accomplished by a combination of self-study and class lectures. Students will be required to read assigned materials and be prepared to respond to questions.

Duration. One 25-minute period.

References. *B-GJ-005-300/FP-001 Operations*
B-GJ-005-500/FP-000 The CF Operational Planning Process

Training/ Learning Aids. Standard classroom with whiteboard and projection system/handouts; CD materials; Legal Officer Qualification Course (LOQC) Instructors Handbook – Module(s) [XXX]

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Note to the instructor. The developmental lesson shall be conducted in structured manner, using a list of questions to the class. Instructors are to complement each segment of the developmental lesson by follow-up and direct questions taking into account the flow and direction of the discussion. Interim summaries shall be conducted at the end of each segment to confirm the material was learned and provide a basis from which the discussion can progress to the next segment. A review of the main teaching points will then take place at the end of the period.

PART 2 – INTRODUCTION

Objective: The instructor shall describe the OPP procedure as outlined in Module [XXX] of the LOQC Instructors Handbook.

Introduction:

The CAF Force Employment (FE) process includes all activities required to plan, conduct and review CAF operations. The activities inherent to the FE process are independent of organization or command level. Commanders and staffs at the operational level headquarters plan and conduct routine and contingency operations on behalf of the Chief of Defence Staff (CDS). On behalf of the CDS, the Canadian Forces Operational Commanders are designated specific areas of responsibility for the planning and conduct of operations and for passing CDS direction to subordinate commanders. The Environmental Chiefs of Staff (ECS) are wholly responsible and accountable to the CDS for force generation activities including training for operations. The process used to prepare plans and orders for CAF operations is called the CAF Operational Planning Process (CAF OPP). This planning process is applicable to all aspects of the employment of military force not just war fighting.

Outline:

Stage 1 – The Operational planning process (OPP)

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PART 3 – BODY OF THE LESSON

Stage 1 – The Operational planning process.

Introduction

1. A CAF Operation is defined as the employment of an element or elements of the CAF to perform a specific mission. Meanwhile Force Employment is defined, at the strategic level, as the application of military means to achieve specified objectives or effects through such activities as operations, defence diplomacy, and unilateral, bilateral or multilateral defence activities. CAF operations are enhanced when environmental components operate in concert or jointly. For instance, close air support operations require close cooperation and planning between land and air components. When participating in allied or coalition operations CAF elements will typically be operating in a joint environment.

2. There are two categories of CAF operations:

a. **Routine Operations**. Routine operations are force employment activities that are normally recurring in nature and can usually be planned for and programmed.

b. **Contingency Operations**. Contingency operations are deliberate operations planned in advance of known events or events that could reasonably be expected, thereby permitting a relatively formal planning process. Contingency operations can be conducted either domestically or internationally. If an operation does not clearly fall into the routine category, then it is a contingency operation and a grouping, specifically tailored to the operation is generated. Contingency operations may be planned in either a deliberate or rapid response mode. Any grouping created for a contingency operation, regardless of size, is called a Task Force (TF). If more than one service is involved in the operation it will be called a Joint Task Force (JTF).

DOMESTIC OPERATIONS

3. Domestic operations of either category are initially conducted by one of the regional JTF formations: JTF(Pacific), JTF(Western), JTC(Central), JTF(Eastern), JTF(Atlantic), or JTF(North).

4. **Routine Operations**. Routine operations are those that fall within the delegated authority of the operational commander (for example, Comd JTF(Atlantic)) and can be conducted with the resources integral to the formation. In routine operations, TFs are formed and Task Force Commanders (TF Comds) are normally appointed on the initiative of the operational commander. In this case, the TF Comd reports to the tasking formation.

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5. **Contingency Operations**. There will be times when a domestic contingency operation is beyond the capabilities of a single regional JTF. The response to such operations will often be based on Contingency Operation Plans (CONPLANs) that are prepared and controlled by the Commander Canadian Joint Operations Command (Comd CJOC) Continental, on behalf of the CDS. The designated TF Comd will report to the CDS through the Comd CJOC Continental. Any component of the CAF may be employed on domestic contingency operations depending on the situation. In such a scenario, CJOC Continental would determine the capabilities that are required for the operation and these capabilities would be transferred from their parent ECS or Level 1 to CJOC Continental on authority of the CDS for the duration of the situation or emergency.

6. **Transitions**. As a routine operation develops, there may be indicators that it will soon overwhelm the capabilities of the initiating commander. CJOC Continental monitors all routine operations to ensure that when support is requested or the limit of authority is insufficient, supplementary orders are issued to designate the operation as a contingency and to establish the necessary structure and chain of command to resolve the situation.

INTERNATIONAL CONTINGENCY OPERATIONS

7. Commanders and their staffs must be able to plan, conduct and review military operations either unilaterally or with allied or coalition forces. Consequently, it is important that the force employment process for major operations feature commonality with our allies. There are some new concepts that are being developed within Canada and by NATO and our key allies such as the Effects Based Approach to Operations, the Comprehensive Approach and Strategic Operational Design.

PRINCIPLES OF CAF OPERATIONS

8. The planning and control functions of NDHQ in operations should be confined, as far as practicable, to the strategic-level, leaving operational activities to the Operational Commands and tactical activities to subordinate commanders. The Operational Commander is responsible for determining and stating the operational requirements, in terms of capabilities, to support his concept of operations (CONOPS). The statement of operational requirements (SOR) includes the requirement for multi-domain capabilities in the functions of command, sense, act, shield, and sustain. Where the Operational Commander's requirements exceed those initially apportioned or allocated by the CDS, securing these resources must be addressed during the planning process as part of an SJS-led coordination of force generation.

PHASES OF AN OPERATION

9. CAF operations are generally conducted in five (5) phases. These phases are:

a. warning,

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b. preparation,

c. deployment,

d. employment, and

e. redeployment.

10. **Warning**. The warning phase begins once DND comes to believe that CAF participation in a new operation might be a possibility, owing to events on the ground (either and home or abroad) and government consideration of a response. During this phase, the CDS will issue an Initiating Directive (ID) to the appropriate Operational Commander and the potential force generators with guidance on the planning activities to be undertaken. The Operational Command begins planning and, in conjunction with strategic level staffs, prepares intelligence assessments and starts joint intelligence preparation of the battlespace on the potential area of operations. Possible courses of action (COAs) for the preparation and deployment of a Canadian TF are developed.

11. **Preparation**. Upon receiving Government approval, the CDS will order, either verbally or written in the ID or a tasking order, force employers and force generators to initiate the preparation phase. During this phase, the CDS Directive and follow-on operational commander's Op O will be issued.

12. **Deployment**. The deployment phase involves the strategic move of the Canadian TF to the theatre or regional JTF Area of Operations (AO). Force generators will declare to the CDS that their units are operationally ready (Op Ready) for deployment. The Operational Commander, assisted by CANOSCOM, exercises control of this phase.

13. **Employment**. This phase begins when the Operational Commander and the TF declares that the various components of the TF are Op Ready for Employment and the transfer of command authority (TOCA) directions specified in the CDS Directive and/or operational commander Op O are executed. The common relationships are as follows:

a. The Canadian TF Comd is functioning in the coalition or alliance operational chain of command; in this case, the entire Canadian TF will normally be assigned OPCOM to the Commander of the Canadian TF; or

b. The Canadian TF Comd is not functioning in the coalition or operational chain of command; the Canadian TF elements are normally assigned OPCON to the Commander of an alliance or coalition command. In this case, the principal function of the Canadian TF Comd will be as the Canadian National Comd (CNC) and the TFHQ serves as a National Command Element (NCE).

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14. **Redeployment**. The redeployment phase starts on issue of direction to redeploy. While the TF is being assembled for the return home, certain elements of the TF may be required to continue their employment phase missions. Similar to the deployment phase, the Operational Commander, assisted by CJOC Support, exercises overall control of the movement portion of the redeployment phase. When the Operational Commander is satisfied that all aspects of the operation are complete, including such activities as the post-operation accounting and the collection of data for the Lessons Learned process, the Termination Order will be issued.

LEVELS OF PLANNING

15. There are four distinct, but related, planning levels:

a. government policy,

b. strategic,

c. operational, and

d. tactical.

16. Prior to and during an operation, there will be some degree of planning at all levels; however, the level of command that conducts the planning will vary depending on the scope and complexity of the operation. The Minister and the Government is the decisive voice at the policy level. At the official level, the policy and strategic interests of the Department and the Forces are represented by the Deputy Minister and the CDS.

17. **Strategic Level (Departmental) Planning.** The Government of Canada creates national policies and objectives, which its various departments support by developing a range of options to address domestic or international crises. These response options exist across the spectrum of the diplomatic, information, military and economic elements of national power.

18. **Operational Level Planning.** As previously stated, the process used to prepare plans and orders for CAF operations is called the CAF Operational Planning Process (CAF OPP). Operational commanders and staffs use this process to translate strategic direction into missions and tasks for subordinate, tactical level commanders.

19. **Tactical Level Planning.** Subordinate commanders prepare tactical-level plans or orders that govern the deployment and employment of forces and the conduct of battles, engagements or specific tasks in support of the mission.

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STAGES TO THE OPERATIONAL PLANNING PROCESS

20. There are five stages involved in the planning process:

a. Stage 1 – Initiation;

b. Stage 2 – Orientation;

c. Stage 3 – Course of Action development;

d. Stage 4 – Plan development; and

e. Stage 5 – Plan review.

21. The responsibilities associated with the five stages of the planning process are not always clear. Thus, there are some areas of operations planning where it is impractical to state, in advance of an operation, who will perform which planning functions or tasks. Therefore, coordination between the strategic and operational planning levels is essential if a seamless transition of responsibilities is to be made as the process develops. The five planning stages will become unique activities at the strategic and operational levels.

STAGE 1 – INITIATION

22. Operations planning may be initiated at varying levels in response to either political or military events. In the case of plans or orders developed at the strategic level, the CDS will receive political direction from the Government. For plans and orders developed at subordinate levels of command, the Initiating Authority will be the next superior level commander. However, the operational level commanders, for CONPLANs, may initiate prudent military planning linked to the Defence Plan and in accordance with their terms of reference (TOR).

23. Once the Initiating Directive is received the following activities takes place:

a. **Activate Planning Staff**. Designate, notify, and activate the planning staff. An important aspect of this activity is the establishment of the necessary staff contacts with higher and/or subordinate formations who will provide input to the planning process.

b. **Gather Planning Tools**. The staff prepares for the mission analysis immediately on receipt of an initiating directive/ Wng O by gathering the tools needed to do the mission analysis. These may include among other things:

(1) Higher commander's order or plan, with graphics;

(2) Maps/charts and electronic geomatic media on the area of operations;

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(3) SOPs as necessary; and

(4) Appropriate publications and documentation.

c. **Guidelines to Staff**. Guidelines how to apply the planning process for the particular operation may be issued and could include direction on (not exhaustive):

(1) how the Staff is to coordinate their internal efforts;

(2) establishing the necessary external higher and subordinate staff contacts; and

(3) ensuring that information from supporting and /or subordinate elements is rapidly passed to the planning staff as the situation or circumstances change. Information flow must be a "push" versus "pull" system.

d. **Initial Assessment**. Once the initiating directive is received, it is vital that the commander, with his key staff, assesses the timeline for completing the planning process. Operational planning is a time-sensitive process and time, above all actors, will determine the detail of the plan. This assessment will provide an initial allocation of available time to complete the plan. It will require that a balance be struck between the desire for detailed planning and the reality of completing the plan in the time available. Subordinate and supporting formations must be given time to complete their portions of the plan. Depending on the planning environment the commander may abbreviate the OPP.

e. **Identify Threats.** During the initial assessment of the higher headquarters' order/plan an initial review of the threats that could be encountered is also conducted. This evaluation examines whether there will be appropriate time to prepare for the mission, conditions of the forces available, availability of strategic lift (if required) and other factors.

f. **Commander's Initial Guidance**. The commander may issue initial direction that could include:

(1) how to abbreviate the OPP, if required;

(2) initial time allocation;

(3) liaison officers to dispatch;

(4) initial reconnaissance to begin;

(5) authorized movement; and

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(6) additional tasks the commander requires the staff to accomplish.

g. **Wng O to Subordinate/Supporting Formations**. In a rapid response action-planning scenario, a preliminary Wng O could be issued at this stage if subordinate and or supporting formations are known.

STAGE 2 - ORIENTATION

24. On receipt of an initiating directive, a commander must orient the staff towards the requirements of the new operation. This is where the commander must place his personal energies to ensure that subsequent activities are focused. However, the commander should be careful not to confine the thinking process of the staff. The key product of the Orientation Stage is the Commander's Planning Guidance.

25. **Mission Analysis**. The first stage towards the production of the Commander's Planning Guidance is mission analysis. The commander with assistance from the staff is responsible for conducting the overall mission analysis. Mission analysis is cognitive and can be initiated with a brainstorming exercise between the commander and key staff. This analysis has two objectives: it determines the nature of the problem, and confirms the results to be achieved. The mission analysis may indicate that the mission cannot be achieved by a single military action and a campaign plan will be produced. The following paragraphs describe activities conducted during the mission analysis.

26. **Review of Situation**. This stage is used to identify the boundaries of the problem. It is a first look at environmental, political, and geographic factors. In addition, a review of enemy and friendly forces, administrative, logistic and command and control factors may be undertaken.

27. **Review Higher Level Direction**. The commander and his staff thoroughly analyze the higher commander's order to ensure they completely understand: assumptions, constraints and restraints, objectives, end state, criteria for success, and tasks. The commander has specific responsibilities in this stage to designate the end state and the criteria for success for the staff. In this analysis process the following factors must be considered:

a. **Critical Facts and Assumptions**. The staff gathers two categories of information concerning assigned tasks — facts and assumptions. Facts are statements of known data concerning the situation, including enemy and friendly dispositions, available forces, unit strengths, and material readiness. Assumptions are suppositions about the current or future situation that are assumed to be true in the absence of facts. They take the place of necessary, but unavailable facts and fill the gaps in what the commander and the staff knows about a situation. An assumption is appropriate if it meets the tests of validity and necessity. Validity means the assumption is likely to be true. The initiating

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directive will likely include a list of assumptions that have been made by the issuing (higher) commander. If the validity of these assumptions changes, the higher headquarters will advise its subordinate HQs.

b. **Constraints/Restraints**. A higher commander normally places some constraints on his subordinate commanders that restrict their freedom of action. Constraints take the form of a requirement to do something (for example, maintain a reserve of one division, maintain a fighter squadron on alert, conduct maritime interdiction operations in a specific area). Restraints are prohibitions on action (for example, no reconnaissance forward of a line before H-hour).

c. **Key Strengths and Weaknesses (Own and Enemy)**. Strengths are those qualities that are particularly effective against a given opposing force in a given situation. Weaknesses are vulnerabilities, which could be attacked to help defeat a force or nation. This determination can take the form of a simple centre of gravity analysis, a more detailed Strange Analysis, portions of a Systemic Operational Design or an Effects Based Approach.

d. **Tasks (Assigned/Implied)**. Specified tasks are those specifically assigned by a higher headquarters. Implied tasks are those that must be performed to accomplish a specified task or the overall mission, but which are not explicitly stated in the higher headquarters' order. Implied tasks are derived from a detailed analysis of the higher headquarters' order, the enemy situation and courses of action, and the terrain. Only those implied tasks that require allocation of resources should be retained. After analysing specified and implied tasks, they present to the commander for his approval a tentative list of tasks that *must* be executed to accomplish the mission. These tasks are the *essential tasks*.

e. **Objectives**. The clearly defined, decisive and attainable goal toward which every operation is directed.

f. **End State**. The set of conditions that describe the achievement of policy goals.

g. **Transition Conditions.** At the strategic level, transition conditions define the expansion, conversion, reduction or exit of CAF from a national or multinational operation. At the operational and tactical level, transition conditions define the set of desired conditions at the conclusion of a campaign, an operation, or their stages or phases.

h. **Force Capabilities and Groupings**. The commander and staff examine additions to and deletions from the current task organization, support relationships, and status (current capabilities and limitations) of all component units. They consider the relationship between specified and implied tasks and available assets. From this they determine if they have the assets to perform all specified and implied tasks. If there are shortages, they identify additional resources needed for mission success.

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i. **Command and Control (C2) Structure Required**. As with force capabilities, it is advantageous to identify the C2 arrangements early in the CAF OPP. At this point, this need not be complicated and deals primarily with authority for the operation, transfer of command authority (TOCA) and emergency C2 arrangements.

j. **Assess Risk**. The commander and staff identify potential risks based on the staff analysis and make an initial assessment of the risk level (extremely high, high, medium and low) for each risk. The commander also makes an initial assessment of where he might accept greater risk in executing his mission. The commander alone must decide on the level of acceptable risk that he is willing to take to succeed. If a commander assesses that the potential risk is too great they direct the development of additional controls or they modify, change, or reject the mission.

k. **Proposed Timeline**. The commander and staff refine their initial plan for the use of available time. They compare the time needed to accomplish essential tasks to the higher commander's time line to ensure that the plan is completed in the allotted time.

28. **Develop Mission Statement**. A draft Mission Statement for the operation is prepared based on the mission analysis. The Mission Statement must achieve the end state and answer these questions related to the operation:

a. Who (what types of forces) will execute the action?

b. What type of action (for example, attack, defend) is contemplated?

c. When will the action begin?

d. Where will the action occur (area of operations and objectives)?

e. Why (for what purpose) will each force conduct its part of the operation?

29. **Prepare Mission Analysis Brief**. The mission analysis briefing is given to both the commander and the staff. This helps the commander and the staff develop a shared vision of the nature of the mission and the results to be achieved. At the discretion of the commander, the mission analysis briefing may be part of a planning conference for subordinate and supporting commanders. The mission analysis briefing summarizes the directives, decisions, initial concerns, and describes the mission perceived by the commander. Its purpose is to integrate the mission analysis and to solicit any additional guidance from the commander. From this briefing, the mission statement is finalized and the Commander's Planning Guidance is prepared to reflect the commander's approval of the direction taken.

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30. **Develop/Issue the Commander's Planning Guidance**. The Commander's approval of the Mission Analysis forms the basis of the final outcome of the Orientation Stage — The Commander's Planning Guidance. It is a formal written document that is the product of the briefing amplified by additional direction provided by the Commander. The guidance provides updated direction and should also enable subordinate or supporting commanders to begin their preliminary preparations. It also serves to inform the higher headquarters of the commander's guidance, and thus allows them to indicate concurrence. In general terms, planning guidance should include:

a. the commander's mission analysis;

b. the commander's mission statement and intent;

c. confirmation of the Area of Operations, Area of Influence and Area of Interest;

d. the commander's critical information requirements;

e. direction on COA development;

f. latest date/time for issuing the Operational Order (OP O); and

g. other information as required (such as the strategic command and control relationship).

STAGE 3 - COURSES OF ACTION (COA) DEVELOPMENT

31. COA development begins with a review of the commander's Planning Guidance, produced in the previous stage. This provides the necessary direction and guidance to the planning staff to continue the estimate process and shape the development of the initial COAs. A COA is a possible option open to the commander that would accomplish the mission. It is initially stated in broad terms, with further details determined during the actual COA analysis. Additionally, it provides a framework for the necessary staff analysis that must consider all factors and deductions to determine the viability of the various options. Planners produce a comprehensive range of initial COAs, which achieve the mission. The commander may be briefed or intervene periodically to provide further direction and focus to the planning staff by eliminating some options and narrowing others. The final stage of this planning stage is the selection by the Commander of a COA followed by the preparation and issue by the staff of the Commander's CONOPS.

32. **Review Commander's Planning Guidance (CPG)**. Although the staff have been intimately involved in the development of the CPG, it is nonetheless important to ensure a common understanding of the Commander's intent as articulated in this document. This is particularly critical for subordinate and supporting formations.

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33. **Staff Analysis**. Staff analysis identifies the factors and the derived deductions that are relevant to the operation being planned. As well, this activity will provide the vital answer to the question as to whether the mission is achievable based on the limitations imposed by higher authorities. The staff analysis is a challenging activity; it requires the planning staff to derive logical deductions from each of the factors being considered. Asking the question "So what?" is a valid method and time tested way of drawing the necessary conclusions from the analysis. Deductions, of course, must be relevant to the accomplishment of the mission derived from the Orientation Stage and must contribute to the development of COAs open to the enemy or own forces. Exclude irrelevant deductions. The staff analysis is an iterative process. It may be necessary to consider other factors, and to revise deductions as the analysis continues and potentially affects earlier conclusions. The following factors (not an exhaustive list) need to be examined.

a. **Area of Operations (AOO)**. Any analysis must begin with an appreciation of the AOO. At the operational level this factor involves a broad view of not only such physical elements as the topography, oceanography and meteorology, but issues related to the political, diplomatic, alliance/coalition, economic, cultural, religious and host nation(s) situation in the region.

b. **Opposing Forces Capabilities**. A thorough analysis of the opposing force is fundamental in the development of COAs. All sources of information must be exploited to gain information on the potential threat that own forces could face if and when the mission is executed.

c. **Political Considerations**. The ultimate authority to execute a plan resides with the political authorities. The Initiating Direction is expected to identify concisely the political requirements of the potential military option. The nature of the political process will usually mean that certain assumptions will have to be made at the strategic level in the early stages of the strategic planning process, when the CDS initiating directive is being prepared. Also, due to the nature of military operations today, it is imperative that commanders at all levels be aware of the changing political climate through which they have received the authority to execute their plan.

d. **Own Forces Capabilities**. Typically, higher authorities will have placed a ceiling on the numbers and types of forces that could be expected for the operation. This of course must be fully appreciated since the course of action open will be constrained by this fact. As well, if the operation is to be executed in an alliance or coalition context (which is most likely) then issues related to language, C2, doctrinal compatibility, force capacities and capabilities and weapon systems integration take on added significance. These aspects of ones- own forces must be considered as to their impact on COA development.

e. **Time and Space**. Define the limitations or opportunities that time and space may impose on the achievement of the stated objectives. The topography of the AOO

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and any special features need to be considered as to their affect on the movement and sustainment of forces. Related to space is time. Analyse the impact of timelines that have been imposed on the operation by higher authorities or by circumstances dictated by other factors, such as weather, diplomatic/political initiatives, own or opposing force readiness and disposition, and others. The concepts of manoeuvre, tempo, synchronization, culminating points and operational pauses are related elements that need to be carefully examined (from the perspective of both sides) so as to anticipate their affects on the mission and on the selection of the best COA.

f. **Command and Control**. C2 arrangements are a critical aspect of any COA. The analysis of C2 arrangements considers the requirements of superior as well as subordinate and supporting formations. In an alliance/coalition context the analysis of these relationships takes on added importance.

g. **Logistics and Movement**. This factor will have a significant impact on the identification of COAs that are feasible and ultimately on the best COA. The force's capability to prepare for an operation, deploy to the theatre (in either a benign or hostile environment) and the ability to sustain the operation are key factors in deciding on the best COA.

h. **Rules of Engagement (ROE)**. A thorough analysis of the implications of ROE on an operation is a vital aspect of developing feasible COAs that meet the stated mission.

i. **Conflict Termination**. This term is generally used to define those specific conditions, which when met, will lead to a cessation of conflict activities. These conditions are represented by the strategic objectives (both military and political) which have been identified as the desired end state. It is also generally accepted that conflict termination implies those "post-hostilities" activities that preserve and reinforce the political and military objectives achieved. Consequently, the staff analysis must consider the desired or expected nature of the post-conflict "landscape" in physical terms as well as in terms of the political, diplomatic, and economic environment of the AOO. This analysis will have a very significant impact on the COAs that are open to the Commander.

j. **Risk**. Of course any consideration of COAs needs to be based on a thorough understanding of the level of risk that is acceptable and/or inherent in carrying out the operation. Risk needs to be analyzed in terms of:

(1) the mission itself (benign environment or not, forward presence versus risk of provocation);

(2) force protection requirements (for example risk of casualties, fratricide, terrorism and risk to own Center of Gravity);

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(3) the level of risk that the commander is willing to accept; and

(4) the risks determined by the staff in analyzing their own areas of responsibility.

k. **Assigned/Implied Tasks**. These tasks are derived as previously outlined. Analysis of tasks will result in deductions that will impact on the timing of the operation, force preparation requirements, the types and size of forces that will be required to carry out the operation, the phasing of the operation, command and control relationships and other mission related issues. Also identified are potential specific force requirements, deficiencies or surpluses related to the tasks to be performed.

34. **Develop Enemy Forces Courses of Action**. Enemy courses should be developed first, regardless of which side has the initiative. The staff synthesizes all the accumulated intelligence that is available to derive COAs that are realistically open to the opposing force. A clear understanding is required of what the enemy's objectives are in the AOO, their capabilities, and their method of operation (doctrine or lack thereof, experience and culture). Once these courses have been defined, determine the advantages and disadvantages to the enemy for each course to deduce the most likely and most dangerous enemy course(s). This analysis will in turn set the stage for the determination of own COAs.

35. **Develop Own Forces Courses of Action**. A recommended approach to COA development is presented below. From this process and these considerations, advantages and disadvantages relative to the accomplishment of the aim and the degree of risk involved can be assessed.

a. Begin by developing ways to accomplish the tasks associated with the mission. The staff may want to think two levels down (how would subordinate and component formations accomplish the task);

b. Then integrate and synchronize these ideas in terms of the operational level concepts and operational functions (end state, sequencing, tempo, Command, Sense, Act, Shield, Sustain);

c. Ensure a focus on end states (own and enemy) is maintained and on the Decisive Points that may lead to those end states;

d. Broadly scope out the possible phases of the COA and initial sequencing of forces including main and supporting efforts;

e. Identify broad Component Level missions/tasks;

f. Clearly describe the COA in a statement supported by sketches as required;

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g. Test the viability of each COA by assessing suitability (does it meet the mission, Commanders intent, accomplish tasks), feasibility (force structure and resources to mount and sustain), acceptability (does it account for limitations placed on the operation, is it worth the risk, ROE requirements, does it counter enemy COAs) exclusivity (is it fundamentally different from other proposed COAs) and completeness;

h. Determine preliminary command and organizational relationships; and

i. As a final check, own courses should be revisited as to how they counter the expected enemy COA, against the deductions and conclusions drawn earlier in the process, and against the principles of war, which have been decided on as benchmarks for the operation. The superior commander's intent may have emphasized certain aspects of the operation that will be an important measure of the merits of a particular course of action.

36. **Present Information Brief**. The Commander is formally advised of the COAs, both enemy and friendly, that are under consideration by the staff in the Information Brief. Courses presented should not be so narrow as to create an unmanageable number of options, nor so broad as to have no distinguishable features worthy of analysis.

37. **Commander/COS Provide Further Direction**. The commander will consider the information and provide direction on further COA development.

38. **COA Validation**. Following the Information Brief, the planning staff undertakes further development of COAs selected by the Commander or COS. This effort includes:

a. The consideration of additional planning guidance issued by the Commander during the Information Brief;

b. The refinement of the COAs selected by the Commander for development;

c. The development of new COAs directed by the Commander; and

d. The continuation of staff checks and analyses to support the attainment of friendly COAs.

39. **Wargaming**. A method of comparing COAs is Wargaming. Wargaming can be done manually or, if time permits and the resources are available, can be computer assisted using a computer simulation model.

40. **Compare COAs**. The staff is now ready to prepare a graphic representation that shows the Commander clearly and objectively the comparison of the selected COAs. A

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technique to present this information for the Commander's consideration is the Decision Matrix.

41. **Deliver Decision Brief**. This is a formal briefing that is orchestrated by the COS. It needs to follow a logical sequence so that the staff's choice for the best COA is clearly articulated. The briefing serves three purposes in the planning process:

a. To present impartially each of the COAs selected for development, and provide a detailed comparison;

b. To inform the commander, appropriate subordinate commanders and staff of the thrust of planning and potential issues; and

c. To allow staff elements and liaison officers the opportunity to offer direct advice to the commander in their areas of expertise with respect to the COAs.

42. **Commander Selects COA**. The Commander selects the preferred COA. The staff in turn will translate this COA into a Concept of Operations (CONOPS). If the Commander is not satisfied with the comparison or with the validity of the assessment, or other considerations have emerged which the Commander deems important, the staff may be directed to conduct further COA analysis.

43. **CONOPS**. The final event of this stage is the preparation and issue by the staff of the Commander's CONOPS. This is always a formal written product, which at the discretion of the Commander, can be briefed to the appropriate authorities. A CONOPS can be described as a clear and concise statement of the line of action chosen by a Commander in order to accomplish his mission. In general the CONOPS accomplishes the following:

a. Expresses the Commander's methodology and rationale to attain specific objectives;

b. Advises the Initiating Authority of the Commander's intentions and provides an instrument for him to concur and, if necessary, to obtain political approval; and

c. Informs subordinate commanders, headquarters' staff and supporting formations of the scope, nature and likely tasking required for their plans.

44. The CONOPS will be submitted to the Initiating Authority for approval. CONOPS approval by the Initiating Authority is normally a prerequisite for the full development of a plan or OP O.

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STAGE 4 - PLAN DEVELOPMENT

45. An approved plan or OP O will be the final product of the planning process. The following key events are included in this stage of the process:

a. develop / coordinate the production of the plan, including attachments;

b. seek approval from higher authority; and

c. issue the plan or OP O.

46. **Seek CONOPS Approval from Higher Authority**. Before proceeding with the effort of fully developing the detailed plan, the Commander seeks out and gains the approval of higher authority for the CONOPS.

47. **Identify and Resolve Issues/Shortfalls**. The development of the plan is to be based on the approved CONOPS. At this point in the process the planning staff will have a very clear picture of the issues and shortfalls, which could impede the execution of the mission as the Commander envisions in the CONOPS. The resolution of these issues and shortfalls will affect how the plan is developed from the CONOPS.

48. **Prepare the Plan**. The information required to prepare the plan should now be available to the staff. It is a matter of consolidating, collating and manipulating that information into a complete, coherent and clear expression of the plan.

49. **Synchronize Annexes and/or Supporting Plans (SUPLANs)**. Annexes and/or SUPLANs are integral parts of the plan. An Annex is used to provide details concerning a specific aspect of the plan. The use of Annexes keeps the size of the body of the plan manageable, and allows selected addressees to receive copies of only those Annexes that are of direct interest to them. SUPLANs are used when the amount of detail required is too great for the use of an Annex. SUPLANs are stand-alone plans that support another plan by providing detailed direction and information on a particular aspect of that plan.

50. **Develop Branches and Sequels if Required**. The requirement for Branch and Sequel plans will depend on the operational situation. Branches and Sequels may, in turn, result in the amendment or adaptation of the primary plan.

a. A Branch Plan is a contingency option built into the basic plan for changing the disposition, orientation or direction of movement and for accepting or declining battle. They give the Commander flexibility by anticipating enemy reactions that could alter the plan. The requirement for a Branch Plan would normally manifest itself during the COA Development stage, particularly during Wargaming. The staff may assess that an option is available to the enemy that is not necessarily included in the most likely or most dangerous enemy COA that is being used as the basis of wargaming. In this case it would be prudent to develop a Branch

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Plan to deal with this potential contingency. This plan, probably not as detailed or well-developed as the main plan that it complements, most importantly needs to identify the additional resources and forces that would be required; and

b. Sequels are subsequent operations that flow from the successful execution of the current operation. Sequels ensure that the planning process continuously looks ahead to deal with the next operation. For example a Commander whose mission was to regain territory or to rout an enemy from a particular JOA must look ahead to transitioning from conflict termination to a stabilization operation. A Sequel is the vehicle for planning this operation.

51. **Submit Plan for Approval**. The plan is submitted to initiating authorities for authorisation as necessary.

52. **Issue the Approved Plan**. The approved plan (as a Campaign Plan, OPLAN, CONPLAN, OP O) will be issued to those formations and staffs that will be responsible for its execution. A plan can only be initiated following the order of the higher authority and this will be done with an Implementation Order (Impl O) or an OP O.

STAGE 5 - PLAN REVIEW

53. A Plan/OP O must be reviewed regularly to evaluate its viability. The evaluation may be conducted through exercises, war gaming or techniques such as logistics flow modelling. In terms of time and quantifiable results, the most effective method may be computer-based war games. However, an independent staff analysis (that is, by officers not directly involved in plan preparation) is also an effective evaluation method. The choice of review methodology will be dictated by time and the availability of resources. If major changes are required and time permits, the planning process should be recommenced from the Orientation Stage. Plan Review has two major applications: Progress Review and a Periodic Review.

a. **Progress Review**. In the planning, preparation and execution phases, orders must be continually reviewed. This is essential to ensure that required changes can be incorporated to ensure the mission continues to be achievable. Warning Orders (Wng Os) are updated by issuing supplementary Wng Os and the OP O is changed by issuing Fragmentary Orders (Frag Os).

b. **Periodic Review**. All plans have a limited period of validity due to the changing circumstances upon which they were based. Plans and associated SUPLANs must be reviewed at least every 24 months.

54. **Conduct Progress Review of an Operation**. Progress reviews are conducted when the plan is being executed. For example, during an operation, the plan must be reviewed continually by comparing its validity in the current situation. The staff should

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ask the question *"has the situation or the assumptions changed?"* to confirm the relevance of the plan, and to identify whether update action is required. This essential process ensures that required changes or Branch plans can be incorporated in time to achieve the mission, especially in response to new threats that were not considered in the original plan. During an operation, significant changes in the situation may trigger the review of a plan, or the review may be directed by higher authority. Once the review is complete, recommendations are presented to the commander to deal with the changed situation.

55. **Conduct Periodic CONPLAN Review**. Periodic staff reviews will help to ensure that a contingency operations plan remains valid, since they all have a limited period of validity. Plan obsolescence usually occurs through changes in the circumstances upon which the plans were based.

56. **Conduct Detailed Exercise/Wargaming**. Rehearsing the plan is a very effective method of gaining detailed knowledge on its effectiveness to achieve the desired results. Of course this is extremely costly in terms of people, resources and equipment. Alternatively, manual or computer based wargaming offers a cost-effective alternative. A "low tech" method that could provide useful feedback is to have the plan objectively reviewed and evaluated by independent, experienced staff officers, who were not directly involved in the preparation of the plan.

57. **Reinitiate OPP as Required**. If major changes are identified, and time permits, the planning process should be recommenced from the Orientation stage. This will result in a review of all applicable factors to derive appropriate recommendations for changes. These recommendations should once again be presented to the Commander at a Decision briefing. If time is limited, the review of the planning process may be abbreviated and confined to an assessment of the new situation, the definition of its potential effects on the current plan and recommendations for required changes. All planners must be proactive to anticipate the requirements to achieve success in the next task. Planning does not stop when the plan is written and issued. The planning process never terminates until the selected and approved strategic and operational objectives have been accomplished, and the deployed forces have returned to their home stations.

58. **Update and Issue Amendments to Plans as Required**. If only minor changes or amendments to plans are required as a result of the review process, the approval of the higher authority need not necessarily be sought. These changes can be issued directly to formations and staffs who have responsibility for the plan. The Commander will determine the need to seek approval for these types of changes.

59. **Prepare and Issue Plans as Required**. If planning is re-initiated a revised plan that supersedes the existing one will be prepared and issued. The review cycle would then begin anew.

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Suggested Questions

Q. What are two categories of CAF operations?

Q. What are CAF routine operations?

Q. What are CAF contingency operations?

Q. What are the five phases of an operation?

Q. At the Operation level, what is the warning phase?

Q. At the Operation level, what is the preparation phase?

Q. At the Operation level, what is the deployment phase?

Q. At the Operation level, what is the employment phase?

Q. At the Operation level, what is the redeployment phase?

Q. What are the four distinct, but related, planning levels?

Q. What is the Strategic Level (Departmental) Planning?

Q. What is the Operational Level Planning?

Q. What is the Tactical Level Planning?

Q. What are the five stages involved in the operational planning process?

Q. At the Initiation stage, when the Initiating Directive is received, what activities take place? (7 types)

Q. At the orientation stage, what is the mission analysis?

Q. During the mission analysis process, what factors must be considered? (11)

Q. A draft Mission Statement for the operation is prepared based on the mission analysis. The Mission Statement must address which questions related to the operation? (5 questions)

Q. In general terms, the Commander's Planning Guidance should include which elements? (7 elements)

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Q. At the Course of Action stage, Staff analysis identifies the factors and the derived deductions that are relevant to the operation being planned. Which factors need to be examined? (11 factors)

Q. At the Course of Action stage, Staff analysis needs to consider the level of risk. Risk needs to be analyzed in which terms? (4 terms)

Q. At the Course of Action stage, a recommended approach to COA development should cover which issues? (9 issues)

Q. At the Plan Development stage, an approved plan or OP O will be the final product of the planning process. Which key events are included in this stage of the process? (7 events)

Q. At the Plan Review stage, what are the two major applications?

Q. On which occasion the OPP should be reinitiated?

Note to the Instructor: Encourage students to actively participate in the lesson and to reason through problems.

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PART 4 – CONCLUSION

Summary

1. A CAF Operation is defined as the employment of an element or elements of the CAF to perform a specific mission. Meanwhile Force Employment is defined, at the strategic level, as the application of military means to achieve specified objectives or effects through such activities as operations, defence diplomacy, and unilateral, bilateral or multilateral defence activities. CAF operations are enhanced when environmental components operate in concert or jointly. For instance, close air support operations require close cooperation and planning between land and air components. When participating in allied or coalition operations CAF elements will typically be operating in a joint environment. There are two categories of CAF operations; routine and contingency operations. Domestic operations of either category are initially conducted by one of the regional JTF formations: JTF(Pacific), JTF(Western), JTC(Central), JTF(Eastern), JTF(Atlantic), or JTF(North).

2. Commanders and their staffs must be able to plan, conduct and review military operations either unilaterally or with allied or coalition forces. Consequently, it is important that the force employment process for major operations feature commonality with our allies. There are some new concepts that are being developed within Canada and by NATO and our key allies such as the Effects Based Approach to Operations, the Comprehensive Approach and Strategic Operational Design.

3. The planning and control functions of NDHQ in operations should be confined, as far as practicable, to the strategic-level, leaving operational activities to the Operational Commands and tactical activities to subordinate commanders. The Operational Commander is responsible for determining and stating the operational requirements, in terms of capabilities, to support his concept of operations (CONOPS). The statement of operational requirements (SOR) includes the requirement for multi-domain capabilities in the functions of command, sense, act, shield, and sustain. CAF operations are generally conducted in five phases. These phases are warning, preparation, deployment, employment, and redeployment. There are four distinct, but related, planning levels: government policy, strategic, operational, and tactical.

4. There are five stages involved in operational the planning process: Stage 1 – Initiation; Stage 2 – Orientation; Stage 3 – Course of Action development; Stage 4 – Plan development; and Stage 5 – Plan review. The responsibilities associated with the five stages of the planning process are not always clear. Thus, there are some areas of operations planning where it is impractical to state, in advance of an operation, who will perform which planning functions or tasks. Therefore, coordination between the strategic and operational planning levels is essential if a seamless transition of responsibilities is to be made as the process develops. The five planning stages will become unique activities at the strategic and operational levels.

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5. At Stage 1 – Initiation, Operations planning may be initiated at varying levels in response to either political or military events. In the case of plans or orders developed at the strategic level, the CDS will receive political direction from the Government. For plans and orders developed at subordinate levels of command, the Initiating Authority will be the next superior level commander. However, the operational level commanders, for CONPLANs, may initiate prudent military planning linked to the Defence Plan and in accordance with their terms of reference (TOR). Once the Initiating Directive is received the following activities takes place; Activate Planning Staff, Gather Planning Tools, Guidelines to Staff, Initial Assessment, Identify Threats, Commander's Initial Guidance and Wng O to Subordinate/Supporting Formations.

6. At Stage 2 – Orientation, on receipt of an initiating directive, a commander must orient the staff towards the requirements of the new operation. This is where the commander must place his personal energies to ensure that subsequent activities are focused. However, the commander should be careful not to confine the thinking process of the staff. The key product of the Orientation Stage is the Commander's Planning Guidance. The first stage towards the production of the Commander's Planning Guidance is mission analysis. The commander with assistance from the staff is responsible for conducting the overall mission analysis. Mission analysis is cognitive and can be initiated with a brainstorming exercise between the commander and key staff. This analysis has two objectives: it determines the nature of the problem, and confirms the results to be achieved. The mission analysis may indicate that the mission cannot be achieved by a single military action and a campaign plan will be produced.

7. The activities conducted during the mission analysis include the following: Review of Situation, Review Higher Level Direction, Critical Facts and Assumptions, Constraints/Restraints, Key Strengths and Weaknesses (Own and Enemy), Tasks (Assigned/Implied),Objectives, End State, Transition Conditions (Force Capabilities and Groupings, Command and Control (C2) Structure Required, Assess Risk, Proposed Timeline and Develop Mission Statement), Prepare Mission Analysis Brief and Develop/Issue the Commander's Planning Guidance.

8. At Stage 3 – Courses of Action Development, COA development begins with a review of the commander's Planning Guidance, produced in the previous stage. This provides the necessary direction and guidance to the planning staff to continue the estimate process and shape the development of the initial COAs. A COA is a possible option open to the commander that would accomplish the mission. It is initially stated in broad terms, with further details determined during the actual COA analysis. Additionally, it provides a framework for the necessary staff analysis that must consider all factors and deductions to determine the viability of the various options. Planners produce a comprehensive range of initial COAs, which achieve the mission. The commander may be briefed or intervene periodically to provide further direction and focus to the planning staff by eliminating some options and narrowing others. The final stage of this planning stage is the selection by the Commander of a COA followed by the preparation and issue by the staff of the Commander's CONOPS.

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9. Staff analysis identifies the factors and the derived deductions that are relevant to the operation being planned. As well, this activity will provide the vital answer to the question as to whether the mission is achievable based on the limitations imposed by higher authorities. The staff analysis is an iterative process. It may be necessary to consider other factors, and to revise deductions as the analysis continues and potentially affects earlier conclusions. The following factors (not an exhaustive list) need to be examined; Area of Operations (AOO), Opposing Forces Capabilities, Political Considerations, Own Forces Capabilities, Time and Space, Command and Control, Logistics and Movement, Rules of Engagement (ROE), Conflict Termination, Risk and Assigned/Implied Tasks.

10. Enemy courses should be developed first, regardless of which side has the initiative. The staff synthesizes all the accumulated intelligence that is available to derive COAs that are realistically open to the opposing force. A clear understanding is required of what the enemy's objectives are in the AOO, their capabilities, and their method of operation (doctrine or lack thereof, experience and culture). Once these courses have been defined, determine the advantages and disadvantages to the enemy for each course to deduce the most likely and most dangerous enemy course(s). This analysis will in turn set the stage for the determination of own COAs. The Commander is formally advised of the COAs, both enemy and friendly, that are under consideration by the staff in the Information Brief. Courses presented should not be so narrow as to create an unmanageable number of options, nor so broad as to have no distinguishable features worthy of analysis.

11. The commander will consider the information and provide direction on further COA development. Following the Information Brief, the planning staff undertakes further development of COAs selected by the Commander or COS. A method of comparing COAs is Wargaming. Wargaming can be done manually or, if time permits and the resources are available, can be computer assisted using a computer simulation model. The Decision Brief is a formal briefing that is orchestrated by the COS. It needs to follow a logical sequence so that the staff's choice for the best COA is clearly articulated. The Commander selects the preferred COA. The staff in turn will translate this COA into a Concept of Operations (CONOPS). The final event of this stage is the preparation and issue by the staff of the Commander's CONOPS. This is always a formal written product, which at the discretion of the Commander, can be briefed to the appropriate authorities. A CONOPS can be described as a clear and concise statement of the line of action chosen by a Commander in order to accomplish his mission.

12. At Stage 4 – Plan Development, an approved plan or OP O will be the final product of the planning process. The following key events are included in this stage of the process: develop / coordinate the production of the plan, including attachments; seek approval from higher authority; and issue the plan or OP O. Before proceeding with the effort of fully developing the detailed plan, the Commander seeks out and gains the approval of higher authority for the CONOPS. The development of the plan is to be based on the approved CONOPS. At this point in the process the planning staff will have a very clear picture of the issues and shortfalls, which could impede the execution

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of the mission as the Commander envisions in the CONOPS. The resolution of these issues and shortfalls will affect how the plan is developed from the CONOPS.

13. The information required to prepare the plan should now be available to the staff. It is a matter of consolidating, collating and manipulating that information into a complete, coherent and clear expression of the plan. Annexes and/or SUPLANs are integral parts of the plan. An Annex is used to provide details concerning a specific aspect of the plan. The use of Annexes keeps the size of the body of the plan manageable, and allows selected addressees to receive copies of only those Annexes that are of direct interest to them. SUPLANs are used when the amount of detail required is too great for the use of an Annex.

14. The requirement for Branch and Sequel plans will depend on the operational situation. The plan is submitted to initiating authorities for authorisation as necessary. The approved plan (as a Campaign Plan, OPLAN, CONPLAN, OP O) will be issued to those formations and staffs that will be responsible for its execution. A plan can only be initiated following the order of the higher authority and this will be done with an Implementation Order (Impl O) or an OP O.

15. At Stage 5 – Plan Review, a Plan/OP O must be reviewed regularly to evaluate its viability. The evaluation may be conducted through exercises, war gaming or techniques such as logistics flow modelling. In terms of time and quantifiable results, the most effective method may be computer-based war games. However, an independent staff analysis is also an effective evaluation method. The choice of review methodology will be dictated by time and the availability of resources. If major changes are required and time permits, the planning process should be recommenced from the Orientation Stage. Plan Review has two major applications: Progress Review and a Periodic Review.

16. Progress reviews are conducted when the plan is being executed. For example, during an operation, the plan must be reviewed continually by comparing its validity in the current situation. The staff should ask the question *"has the situation or the assumptions changed?"* to confirm the relevance of the plan, and to identify whether update action is required. Periodic staff reviews will help to ensure that a contingency operations plan remains valid, since they all have a limited period of validity. Plan obsolescence usually occurs through changes in the circumstances upon which the plans were based. Rehearsing the plan is a very effective method of gaining detailed knowledge on its effectiveness to achieve the desired results. Of course this is extremely costly in terms of people, resources and equipment. Alternatively, manual or computer based wargaming offers a cost-effective alternative.

17. If major changes are identified, and time permits, the planning process should be recommenced from the Orientation stage. This will result in a review of all applicable factors to derive appropriate recommendations for changes. These recommendations should once again be presented to the Commander at a Decision briefing. If time is limited, the review of the planning process may be abbreviated and confined to an

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assessment of the new situation, the definition of its potential effects on the current plan and recommendations for required changes. If only minor changes or amendments to plans are required as a result of the review process, the approval of the higher authority need not necessarily be sought. These changes can be issued directly to formations and staffs who have responsibility for the plan. The Commander will determine the need to seek approval for these types of changes. If planning is re-initiated a revised plan that supersedes the existing one will be prepared and issued. The review cycle would then begin anew.

Confirmation

The instructor may ask other confirmation questions.

Conclusion

18. The OPP is a coordinated process to determine the best method of achieving the desired end state in support of strategic guidance. This process enables the commander to translate strategy and objectives into a unified plan for military action by describing how operations and logistics will be used to achieve success within a given time and space. The aims of the operational planning process are:

a. to standardize the planning process within the CAF;

b. to ensure strategic/political control is maintained during the development phase of a campaign plan;

c. to enable staffs to translate political goals, objectives, priorities, and end state into a strategic military end state and operational objectives;

d. to enable commanders to guide the development of the plan including the synchronization of operational combat functions; and

e. to maximize the commander's and staff's creative thinking and associated thought processes.

19. The output of the planning process is a CONPLAN or OPLAN, designed to achieve an assigned desired campaign end state. The OPP drives the analytical, practical, and mechanical processes that produce the plans, orders, and directives for the execution of the campaign. The campaign plan results from the application of the OPP and provides direction to the component commanders for the planning and execution of tactical missions to achieve the operational objectives. The campaign plan provides the guidance for the development of subordinate commanders' plans, which will be executed by a series of Op Os. The operational framework is the tool used to achieve decentralization of command by identifying subordinate commanders and establishing command relationships for each phase of a campaign. The layout of the

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operational framework should flow from the campaign design and be related to specific decisive points and lines of operation.

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PO 023 ADVISE ON THE USE OF FORCE

PART 1 -- LESSON IDENTIFICATION

TITLE: EO 023.01 Advise on Rules of Engagement (ROE)

Performance. Advise on Rules of Engagement (ROE)

Conditions.

Given: ROE Directives

Denied: Direct supervision

Standard. The legal officer shall advise on the rules of engagement (ROE).

a. advise on generation of ROE

b. advise on application of ROE

Main Teaching Points:

- Purpose of ROE
- Factors influencing ROE
- Coordination and staffing of ROE
- Promulgation of ROE
- Implementation and precedence of ROE
- Summary Cards
- Commanders' Responsibility

Method. This EO will be accomplished by a combination of self-study and class lectures. Students will be required to read assigned materials and be prepared to respond to questions.

Duration. One 45-minute period.

References. *B-GJ-005-501/FP-001 Use of Force for CF Operations*
B-GJ-005-104/FP-021 Law of Armed Conflict at the Operational and Tactical Level

Training/ Learning Aids. Standard classroom with whiteboard and projection system/handouts; CD materials; Legal Officer Qualification Course (LOQC) Instructors Handbook – Module(s) [XXX]

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Note to the instructor. The developmental lesson shall be conducted in structured manner, using a list of questions to the class. Instructors are to complement each segment of the developmental lesson by follow-up and direct questions taking into account the flow and direction of the discussion. Interim summaries shall be conducted at the end of each segment to confirm the material was learned and provide a basis from which the discussion can progress to the next segment. A review of the main teaching points will then take place at the end of the period.

PART 2 – INTRODUCTION

Objective: The instructor shall describe the ROE procedure as outlined in Module [XXX] of the LOQC Instructors Handbook.

Introduction: Rules of Engagement (ROE) are an indispensable instrument of C2 for ordering and controlling the use of force or actions which might be construed as provocative during military operations. ROE are orders issued by military authority that define the circumstances, conditions, degree, manner, and limitations within which force, or actions which might be construed as provocative, may be applied to achieve military objectives in accordance with national policy and the law. The term "orders" is to be interpreted as the authorized limit of force approved by higher command and should not be interpreted as an obligation to use force. That use of force, and in particular, the authority to use deadly force by CAF to accomplish a mission receives detailed scrutiny and attention by the senior leadership of the CAF.

This EO will focus on ROE issues.

Outline:

Stage 1 – Purpose of ROE

Stage 2 – Factors influencing ROE

Stage 3 – Coordination and staffing of ROE

Stage 4 – Promulgation of ROE

Stage 5 – Implementation and precedence of ROE

Stage 6 – Summary Cards

Stage 7 – Commanders' Responsibility

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PART 3 – BODY OF THE LESSON

Stage 1 – Purpose of ROE

Introduction

1. In general, ROE control the use of force or actions which might be construed as provocative in national self-defence, defence of personnel and property (force protection) not included under CAF personal, unit or force self-defence and mission accomplishment.

2. With the exception of self-defence, ROE provide the sole authority to CAF to use force or actions which might be construed as provocative. ROE are applicable throughout the entire spectrum of conflict. Utilizing a positive command model, Canadian ROE are written as permissive to use force or actions which might be construed as provocative. ROE are not used to assign missions or tasks nor are they used to give tactical instructions. The CDS is the sole authority for the authorization of ROE or changes to the authorized ROE. Except in extreme situations, no commander or member of the CAF may issue "orders" to use force which could be construed as ROE or guidance that is more permissive than the ROE authorized by the CDS.

3. In Canada, ROE are defined as "orders" that are intended to ensure that commanders and their subordinates do not use force or other measures beyond that authorized by higher command. ROE also provide confirmation as to the level of force that commanders or individuals are legitimately authorized to employ in support of their mission.

4. When up to deadly force is authorized by ROE, it is not direction to use deadly force but is authority to use the full range of force up to and including deadly force by a commander or an individual.

Suggested Questions

Q. Who is the sole authority for the authorization of ROE or changes to the authorized ROE?

Q. Do ROE provide the sole authority to CAF to use force or actions which might be construed as provocative?

Q. When up to deadly force is authorized by ROE, can we use deadly force at any time?

Note to the Instructor: Encourage students to actively participate in the lesson and to reason through problems.

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Interim Summary

5. With the exception of self-defence, ROE provide the sole authority to CAF to use force or actions which might be construed as provocative. In Canada, ROE are defined as "orders" that are intended to ensure that commanders and their subordinates do not use force or other measures beyond that authorized by higher command. When up to deadly force is authorized by ROE, it is not direction to use deadly force but is authority to use the full range of force up to and including deadly force by a commander or an individual.

Stage 2 – Factors influencing ROE

Introduction

6. Now that we know the purpose of ROE, we will see the factors that influence those ROE. In order to control the use of military force, the Canadian government and military staffs will be guided by the following factors:

a. **Legal Prescriptions**. Any use of force must comply with Canadian domestic law and international law. International laws include:

(1) **The Law of Armed Conflict (LOAC)**. The body of international law that governs the conduct of hostilities during an armed conflict;

(2) **International Human Rights Law**. IHRL is a set of international rules, established by treaty or custom, on the basis of which individuals and groups can expect or claim certain protection or benefits from governments; and

(3) **United Nations Prescriptions**. During UN authorized or mandated operations the use of force must comply with the UN Charter and applicable UN Security Council resolutions, mandates and mission statements.

b. **Political and Policy Considerations**. To secure and protect national interests at home and abroad, the Government of Canada establishes policies, goals and objectives. The CAF with its use of force is but one method in implementing these policies and objectives. Other methods include economic, social, cultural, diplomatic and technological instruments. However, the use of force by the CAF must always be in concert with these other instruments and the overall policies and objectives of the government;

c. **Diplomatic Considerations**. During international operations and, in particular, during combined operations, the overall military objectives and the use of force will be influenced by the collective objectives of the alliance or

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coalition. These diplomatic considerations may ultimately limit legitimate uses of force, or they may permit a greater latitude in the use of force than would be permitted in a purely Canadian operation; and

d. **Operational Requirements**. The use of force will also depend on current and future operational considerations. Permission to engage particular targets, while they may be engaged lawfully under the LOAC, may be prohibited for operational reasons. Further, the use of force may also be restricted in designated circumstances to avoid fratricide.

Suggested Questions

Q. What are the legal prescriptions that influence ROE?

Q. What are the political and policy considerations that the Government of Canada use to implement its policies and objectives?

Q. Under what circumstance the use of force may be restricted?

Note to the Instructor: Encourage students to actively participate in the lesson and to reason through problems.

Interim Summary

7. Any use of force must comply with Canadian domestic law and international law, such as the LOAC, International Human Rights Law and United Nations Prescriptions. In order to secure and protect national interests at home and abroad, the Government of Canada establishes policies, goals and objectives by using methods including economic, social, cultural, diplomatic and technological instruments. During international operations and, in particular, during combined operations, the overall military objectives and the use of force will be influenced by the collective objectives of the alliance or coalition. The use of force will also depend on current and future operational considerations.

Stage 3 – Coordination and staffing of ROE

Introduction

8. **Time lines**. The time required to gain CDS approval on ROE issues depends on a variety of factors. A ROE request submitted through the chain of command may be reviewed by the SJS and approved by the CDS within hours of its receipt at NDHQ. The review, analysis and approval of complex ROE issues may take many days or weeks to resolve. Issues which may seem relatively unimportant at the tactical level quite often have significant diplomatic, legal and policy implications at the strategic level. Some

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ROE may require liaison with the Minister of National Defence, Department of Foreign Affairs, Canada's allies or other Headquarters. Further, there may be some issues for which the CDS will not delegate approval authority even when he is absent from NDHQ. In these circumstances the delays in communicating the issue to the CDS and gaining a decision can be expected. Therefore it is essential that Commanders provide the chain of command with the maximum amount of lead-time on all emerging ROE issues as they arise in theatre.

9. **Co-ordination between SJS, Operational Commands and the Task Force Commander**. Coalition, NATO and UN ROE are often disseminated to nations through diplomatic channels which can delay the receipt of these documents at NDHQ by days and even weeks. Task Force Commanders could receive ROE documents well in advance of the contributing nation's National Headquarters. Therefore, Task Force Commanders shall contact the appropriate Operational Commander immediately on receipt of all ROE documents and, if required, forward the applicable documents to the Operational Headquarters without delay. Conversely, the Operational Commander, in consultation with the SJS will apprise the Task Force Commander(s) of any emerging ROE issues as quickly as possible.

10. **Teamwork**. Canadian ROE doctrine emphasizes an effective dialogue between the Task Force Commander, the Operational Commander's staff and the SJS. Prior to an operation, the SJS/Operational Command will make every effort to include the Task Force Commander and staff in developing the initial ROE. If this is not possible or practicable, the Operational Commander will brief the Task Force Commander on the ROE. Once the operation is underway, it is understood that the Task Force Commander may require additional ROE based on an updated appreciation of the threat, the concept of operations and campaign plan. However, all ROE requests must be well substantiated and will always be subject to legal and policy review in accordance with the mandate of the mission.

11. **National ROE Team**. In general, when a ROE request is received by the CDS through the chain of command, it receives the immediate attention of the ROE team. This team comprises:

a. SJS ROE desk officer (s) (Chair);

b. Applicable Canadian Joint Operations Command (CJOC) representatives;

c. Environmental Chief of Staff representatives;

d. Applicable ADM (Pol)/DGIS Pol representative;

e. JAG or representative;

f. Task Force Commander or representative if practicable; and

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g. Specialist officers (CFPM, Med, etc) as required.

12. **Key Documents**. There are number of key documents that are required before ROE can be developed. These documents include:

a. the legal basis for the mission (e.g. a UN Security Council Resolution);

b. a clear mandate and mission;

c. the political and diplomatic objectives of the mission;

d. the military objectives for the mission;

e. an accurate threat assessment;

f. the Operational/Task Force Commander's mission analysis, estimate and concept of operations with clearly defined tasks; f.

g. the force structure and weapons; and

h. other ROE in use in theatre by other participants.

13. At the strategic level, the CDS will include overall guidance on the political policy to assist commanders in planning and reacting correctly as a crisis unfolds. This policy should normally be described in narrative terms that will convey the national approach to a crisis, the objective and the means.

Suggested Questions

Q. Prior to an operation, what is the role of the SJS/Operational Command?

Q. Who compose the National ROE team?

Q. What are the key documents that are required before ROE can be developed?

Note to the Instructor: Encourage students to actively participate in the lesson and to reason through problems.

Interim Summary

14. The time required to gain CDS approval on ROE issues may depend on a variety of factors, including the number and the complexity of the issues. Thus, it is essential that Commanders provide the chain of command with ample notice of all emerging ROE issues as soon they arise in theatre or are anticipated. Co-ordination between SJS, Operational Commands and the Task Force Commander is essential since Coalition,

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NATO and UN ROE are often disseminated to nations through diplomatic channels which can delay the receipt of these documents at NDHQ by days and even weeks. The Operational Commander, in consultation with the SJS will apprise the Task Force Commander(s) of any emerging ROE issues as quickly as possible. Prior to an operation, the SJS/Operational Command will make every effort to include the Task Force Commander and staff in developing the initial ROE. However, all ROE requests must be well substantiated and will always be subject to legal and policy review in accordance with the mandate of the mission. In general, when a ROE request is received by the CDS through the chain of command, it receives the immediate attention of the ROE team and key documents will be required before ROE can be developed.

Stage 4 – Promulgation of ROE

Introduction

15. The primary goal of Canada's use of force doctrine and ROE architecture is to provide direction on the use of force or actions which might be construed as provocative which is clear, concise, precise and comprehensive. This direction is normally issued through the ROE Authorization (ROEAUTH) message or, in specific circumstances, a Use of Force Directive may be used.

16. In some operations alliance (e.g. NATO) or coalition ROE or a separate Use of Force Directive may be approved by the CDS for use by the CAF. The decision on which document to use is based upon the individual requirements of each mission, including: participation of allies or coalition partners; mission requirements which may require amplifying direction not normally contained in The Use of Force in CF Operations; and, the state of ROE training of the force.

17. **Release of CAF ROE**. During operations in which the CAF are involved, it may be necessary or appropriate to inform participating coalition forces and friendly states of all or part of Canadian ROE and self-defence measures. This may only be done on the authority of the CDS. Participating coalition forces and friendly states may be provided with this information for the following reasons:

a. to enable members of coalition forces to adopt compatible use of force measures when a single or unified system of ROE will not be adopted; and

b. to enable members of coalition forces and friendly states to predict Canadian responses and to act accordingly.

18. Before releasing ROE to other nations, it must be emphasized that the intentional or inadvertent compromise of the Canadian ROE to a potential adversary may jeopardize a commander's options and the execution of the mission. Therefore, the risks of disseminating this information must always be weighed against the potential benefits.

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The CDS is the authority for the release of ROE information to nations not participating in the corresponding operation.

19. **Release to the Public**. The full ROE contain sensitive material, the publication of which, in certain circumstances, could disadvantage CF personnel or allied forces deployed on operations. There are, however, instances where, for operational reasons it is advantageous for general information concerning the level of force which could be used in an operation to be made available for open publication to the media and the public. Any such release of ROE related information would be in an abridged form and subject to approval by the Commander of CJOC.

20. **Access to Information Act (AIA)**. For reasons of operational security, ROE are not to be released under an AIA request unless specifically authorized by the CDS or Commander of CJOC.

The ROE Message system

21. The ROE message system is a rapid and concise method of authorizing and issuing mission specific ROE for an operation. It requires that a Commander and the force are well versed and trained in The Use of Force in CF Operations, and the standard Canadian definitions, principles and concepts on self-defence. Therefore, the CDS may elect to issue ROE via a ROE message which only contains the numbered ROE and amplifying remarks.

22. Detailed message formats and rules for ROE messages are contained in Annex B of The Use of Force in CF Operations manual. In summary, four types of messages (two or more of which may be combined in a single message) are:

a. ROE Requests (ROEREQ) message that can be submitted by anyone in the chain of command to request ROE;

b. ROE Authorization (ROEAUTH) message only issued by or under the authority of the CDS;

c. ROE Implementation (ROEIMP) message issued by commanders below the CDS as required to provide ROE to their forces; and

d. ROE Amplification (ROEAMPN) message used by the CDS or subordinate commanders to clarify or amplify direction given in a ROEAUTH or ROEIMP.

Suggested Questions

Q. What is the primary goal of Canada's use of force doctrine and ROE architecture?

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Q. Under which authority and for what reasons, release of CAF ROE to participating coalition forces would be authorized?

Q. Which message format is contained in The Use of Force in CF Operations manual Annex B?

Note to the Instructor: Encourage students to actively participate in the lesson and to reason through problems.

Interim Summary

23. The primary goal of Canada's use of force doctrine and ROE architecture is to provide direction on the use of force or actions which might be construed as provocative which is clear, concise, precise and comprehensive. In some operations alliance (e.g. NATO) or coalition ROE or a separate Use of Force Directive may be approved by the CDS for use by the CAF. During operations in which the CAF are involved, it may be necessary or appropriate to inform participating coalition forces and friendly states of all or part of Canadian ROE and self-defence measures. This may only be done on the authority of the CDS. Before releasing ROE to other nations, it must be emphasized that the intentional or inadvertent compromise of the Canadian ROE to a potential adversary may jeopardize a commander's options and the execution of the mission. The full ROE contain sensitive material, the publication of which, in certain circumstances, could disadvantage CF personnel or allied forces deployed on operations but under special circumstances, release of ROE related information would be in an abridged form and subject to approval by the Commander of CJOC. For reasons of operational security, ROE are not to be released under an AIA request unless specifically authorized by Commander of CJOC. The ROE message system is a rapid and concise method of authorizing and issuing mission specific ROE for an operation. Detailed message formats and rules for ROE messages are contained in Annex B of The Use of Force in CF Operations manual.

Stage 5 – Implementation and precedence of ROE

Introduction

24. **Normal Procedure**. The normal procedure for requesting, authorizing and implementing ROE follows a chain of command between the CDS and all subordinate commanders within the CAF. The CDS authorizes ROE, and subordinate commanders implement the ROE (that is, pass it down the chain of command). Commanders may withhold implementation of all or part of the ROE without CDS approval. However, they must inform the CDS that they have done so. When appropriate, communications between commanders and the CDS concerning ROE shall be sent for information to subordinate and supporting commanders whose forces are involved in the operation. Subordinate commanders must not assume a ROE has been authorized to them or their

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forces until they receive a ROE implementation message from their immediate commander.

25. **Emergency Procedure**. In extremis, if command, control and communications systems become impaired or if timely communication with the CDS is impossible, Canadian commanders may need to implement ROE without prior CDS approval. In extraordinary circumstances, Canadian commanders may do so if, in their judgement, an emergency arises where the delay in obtaining authorization of ROE would jeopardize the mission. Any ROE, which are implemented in this fashion, shall be in accordance with the authorized mandate of the operation and the CDS is to be informed at the earliest opportunity.

26. **International Forces**. Within an alliance or coalition, when CAF personnel are under the Operational Control of one commander and the Tactical Control of another, the ROE of the Tactical Commander shall apply, unless the ROE are more permissive than those of the Operational Control Commander or have not been approved by the CDS. In the latter case, CAF units will comply with their last CDS approved ROE until the new ROE are approved.

27. **National Forces**. The above does not apply when CF formations or personnel etc. transfer OPCON/TACON from one CAF commander to another as the ROE for both commanders have been approved by the CDS. The personnel, unit or formation shall adhere to the ROE of the CF commander that has been given operational or tactical control. Commanders gaining control of CAF forces shall ensure that they are in possession of approved ROE of the joining force and any other directions issued on the use of force.

Suggested Questions

Q. What is the normal procedure to implement ROE?

Q. What is the emergency procedure to implement ROE?

Q. What is the precedence of ROE when CAF are involved in operations with coalition forces?

Note to the Instructor: Encourage students to actively participate in the lesson and to reason through problems.

Interim Summary

28. The normal procedure for requesting, authorizing and implementing ROE follows a chain of command between the CDS and all subordinate commanders within the CAF. In extremis, if command, control and communications systems become impaired or if timely communication with the CDS is impossible, Canadian commanders may need to

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implement ROE without prior CDS approval. Within an alliance or coalition, when CAF personnel are under the Operational Control of one commander and the Tactical Control of another, the ROE of the Tactical Commander shall apply. The above does not apply when CF formations or personnel etc. transfer OPCON/TACON from one CAF commander to another as the ROE for both commanders have been approved by the CDS.

Stage 6 – Summary Cards

Introduction

29. The meaning of authorized ROE must be carefully communicated to all ranks. To be certain of this, there must be a system in place to ensure that the ROE are understood and are being appropriately interpreted. A means to provide direction and guidance to individual members of the force may be in the form of a summary card. Examples of summary cards include Soldier's Card, Aide-mémoire or similar documents. This direction, from commanders to their subordinates, must outline those elements of the ROE considered to be most essential, and the interpretation of the responses allowed. The direction to CAF personnel must always be clear, whether dealing with warning shots, a fleeing individual who has previously been considered a hostile threat, or any other situation requiring the application of force. Consequently, whenever amendment of these documents would better reflect necessary guidance, they should be changed without delay. Although the commander normally issues these forms of summary cards or other amplifying direction, they must receive Comd CJOC approval, on behalf of the CDS, before being disseminated to subordinate commanders and CAF.

30. The use of summary cards shall not be relied on as the sole method of providing direction to individuals. Such reliance results in an unacceptably high risk that the guidance in the summary card will be misunderstood and applied out of context. While the summary card provides a useful tool with which to guide the application of ROE, it is not to be used in isolation and shall be supported by appropriate training.

Suggested Questions

Q. How do we communicate ROE to all ranks?

Q. Which authority authorizes the dissemination of Summary cards?

Note to the Instructor: Encourage students to actively participate in the lesson and to reason through problems.

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Interim Summary

31. The meaning of authorized ROE must be carefully communicated to all ranks. To be certain of this, there must be a system in place to ensure that the ROE are understood and are being appropriately interpreted. The use of summary cards shall not be relied on as the sole method of providing direction to individuals. While the summary card provides a useful tool with which to guide the application of ROE, it is not to be used in isolation and shall be supported by appropriate training.

Stage 7 – Commanders' Responsibility

Introduction

32. Under international humanitarian law, in order to prevent and suppress breaches, commanders are responsible for ensuring that members of the armed forces under their command are aware of their obligations under the LOAC. Commanders are responsible, with respect to members of the armed forces under their command and other persons under their control, to prevent and, where necessary, to suppress and to report to competent authorities, breaches of the LOAC. A commander who is aware that subordinates or other persons under his control are about to commit or have committed a breach of the LOAC is required to initiate such steps as are necessary to prevent violations of the LOAC and, where appropriate, to initiate disciplinary or penal action against these persons. The fact that a subordinate committed a breach of the LOAC does not absolve superiors from penal or disciplinary responsibility. Superiors are guilty of an offence if they knew, or had information which should have enabled them to conclude, in the circumstances ruling at the time, that the subordinate was committing or about to commit a breach of the LOAC, and they did not take all feasible measures within their power to prevent or repress the breach. Under domestic law, the same principles would apply and commanders shall report to the proper authority any infringement of the pertinent statutes, regulations, rules, orders and instructions governing the conduct of any person subject to the Code of Service Discipline when the officer cannot deal adequately with the matter.

33. Commanders at all levels must ensure their subordinates are trained on the meaning and application of the ROE for assigned missions, and on any subsequent changes. In addition, commanders at all levels must ensure their subordinate commanders take the following steps to ensure that the authorized level of force is properly applied:

a. read, understand, appropriately interpret, and disseminate the ROE;

b. seek additional guidance or direction through the commander should the situation change, or if the existing ROE are insufficient or a particular situation is not adequately covered by the ROE; and

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c. seek clarification if there is any perceived discrepancy within the ROE in effect, or if the role and the ROE have diverged and are no longer compatible.

34. **Preparatory and in-theatre training**. Commanders at every level must ensure that any individual or unit capable of applying force, up to and including deadly force, has been trained in the interpretation and application of ROE. All CAF personnel shall receive refresher training periodically throughout the mission. Commanders should consider the recommendations of subordinate commanders when ROE are being formulated and following their implementation. Responsibility for implementation of ROE rests with the commander. The commander disseminates the ROE and any additional direction or amplification, if required, to commanders of all components of a force.

35. **Restrictions on ROE imposed by the Commander.** ROE are issued by the CDS to a commander and he/she is not permitted to exceed the authorized ROE. The commander may impose more restrictive limits on the actions of assigned forces but if the commander withholds ROE which were previously authorized by the CDS, the CDS shall be informed through the SJS.

36. **Conduct of operations**. While subordinates can always be held accountable for their own actions, commanders are responsible for the actions of their subordinates and for ensuring that all operations are conducted in accordance with orders and applicable legal prescriptions. Although commanders may delegate the authority for operations, they are still responsible for the conduct of their forces even if their forces are under someone else's operational or tactical control.

37. **Response to changes in operational situation**. Because military operations are dynamic, commanders must continually evaluate the direction provided in terms of the situation and mission to ensure their direction remains appropriate and applicable. This is particularly important in the promulgation of mission-specific hostile intent criteria. Commanders must not hesitate to request changes or clarification to direction previously provided. Even when concurrence from higher authority is not required, consultations with superiors are encouraged whenever possible.

38. **Procedures for changes to ROE**. All requests for changes (that is, additional ROE or authorization to use a greater level of force) to ROE shall be forwarded through the chain of command to the CDS for approval. Commanders who withhold ROE, previously authorized by the CDS, need not request CDS permission to subsequently implement them, however, they must inform the CDS. All commanders have a responsibility to ensure compliance with the rule of law.

Suggested Questions

Q. May commanders impose more restrictive limits on ROE previously authorized by the CDS?

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Q. On which occasion commanders are responsible for the actions of their subordinates during the conduct of operations?

Q. What is the procedure for changes to ROE?

Note to the Instructor: Encourage students to actively participate in the lesson and to reason through problems.

Interim Summary

39. Commanders at all levels must ensure their subordinates are trained on the meaning and application of the ROE for assigned missions, and on any subsequent changes. Commanders at every level must ensure that any individual or unit capable of applying force, up to and including deadly force, has been trained in the interpretation and application of ROE. All CAF personnel shall receive refresher training periodically throughout the mission. ROE are issued by the CDS to a commander and he/she is not permitted to exceed the authorized ROE. While subordinates can always be held accountable for their own actions, commanders are responsible for the actions of their subordinates and for ensuring that all operations are conducted in accordance with orders and applicable legal prescriptions. Because military operations are dynamic, commanders must continually evaluate the direction provided in terms of the situation and mission to ensure their direction remains appropriate and applicable. All requests for changes to ROE shall be forwarded through the chain of command to the CDS for approval. All commanders have a responsibility to ensure compliance with the rule of law.

PART 4 – CONCLUSION

Summary

40. With the exception of self-defence, ROE provide the sole authority to CAF to use force or actions which might be construed as provocative. In Canada, ROE are defined as "orders" that are intended to ensure that commanders and their subordinates do not use force or other measures beyond that authorized by higher command. Any use of force must comply with Canadian domestic law and international law, such as the LOAC, International Human Rights Law and United Nations Prescriptions. The use of force will also depend on current and future operational considerations. The time required to gain CDS approval on ROE issues may depends on a variety of factors, such as the complexity of ROE issues. Thus, it is essential that Commanders provide the chain of command with the maximum amount of lead-time on all emerging ROE issues as they arise in theatre. In general, when a ROE request is received by the CDS through the chain of command, it receives the immediate attention of the ROE team and key documents will be required before ROE can be developed.

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41. The primary goal of Canada's use of force doctrine and ROE architecture is to provide direction on the use of force or actions which might be construed as provocative which is clear, concise, precise and comprehensive. The normal procedure for requesting, authorizing and implementing ROE follows a chain of command between the CDS and all subordinate commanders within the CAF. The meaning of authorized ROE must be carefully communicated to all ranks. To be certain of this, there must be a system in place to ensure that the ROE are understood and are being appropriately interpreted. Commanders at all levels must ensure their subordinates are trained on the meaning and application of the ROE for assigned missions, and on any subsequent changes. Commanders at every level must ensure that any individual or unit capable of applying force, up to and including deadly force, has been trained in the interpretation and application of ROE. All commanders have a responsibility to ensure compliance with the rule of law.

Confirmation

The instructor may ask other confirmation questions.

Conclusion

The instructor recapitulates the lesson.by linking the introduction to the conclusion.

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PO 023 ADVISE ON THE USE OF FORCE

PART 1 -- LESSON IDENTIFICATION

TITLE: EO 023.02 ADVISE ON SELF-DEFENCE

Performance. Advise on self-defence.

Conditions.

Given: Self-defence doctrine and types of self-defence.

Denied: Direct supervision

Standard. The legal officer shall advise on self-defence issues.

Main Teaching Points:

- Use of force and self-defence in domestic operations
- Hostile acts and hostile intent
- Categories of self-defence
- Use of force and self-defence in international operations

Method. This EO will be accomplished by a combination of self-study and class lectures. Students will be required to read assigned materials and be prepared to respond to questions.

Duration. One 45-minute period.

References. *B-GJ-005-501/FP-001 Use of Force for CF Operations*
B-GJ-005-104/FP-024 The Operational Law Manual (Draft)
Criminal Code of Canada, Sections 26, 27, 30, 34, 37 to 42

Training/ Learning Aids. Standard classroom with whiteboard and projection system/handouts; CD materials; Legal Officer Qualification Course (LOQC) Instructors Handbook – Module(s) [XXX]

Note to the instructor. The developmental lesson shall be conducted in structured manner, using a list of questions to the class. Instructors are to complement each segment of the developmental lesson by follow-up and direct questions taking into account the flow and direction of the discussion. Interim summaries shall be conducted at the end of each segment to confirm the material was learned and provide a basis from which the discussion can progress to the next segment. A review of the main teaching points will then take place at the end of the period.

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PART 2 – INTRODUCTION

Objective: The instructor shall describe the self-defence doctrine as outlined in Module [XXX] of the LOQC Instructors Handbook.

Introduction: Controlling the use of force or actions which might be construed as provocative during operations is both an operational and a legal imperative. The ROE architecture studied in the previous EO has been developed to control the use of force or actions which might be construed as provocative. This architecture ensures that political direction and objectives, as well as the rule of law, are accurately translated into military orders and actions to achieve assigned missions. Thus, the CAF may use force or actions which might be construed as provocative in self-defence and/or as authorized by ROE issued by or under the authority of the CDS. The right of self-defence is one of the express exemptions found in the UN Charter to the general prohibition on the use of force. This EO provides an overview of the right of individual and collective self-defence and highlights some of the current key legal issues relating to its scope and ambit. Every member of the CAF who may be required to use force in self-defence or to accomplish a mission must have a reasonable level of knowledge and understanding of the ROE and supporting doctrine.

Outline:

Stage 1 – Use of force and self-defence in domestic operations

Stage 2 – Hostile acts and hostile intent

Stage 3 – Categories of self-defence

Stage 4 – Use of force and self-defence in international operations

PART 3 – BODY OF THE LESSON

Stage 1 – Use of force and self-defence in domestic operations

Introduction

1. The basis for the use of force in domestic operations is statute law, primarily the *Criminal Code.* This legal foundation has been incorporated into procedures developed to allow the military chain of command to control the use of force. This has been accomplished through the creation of guidance in policy and doctrine such as the CAF manual, the *Use of Force in CF Operations.* CAF policy and doctrine provide the following start points for considering the use of force in domestic operations:

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a. the use of force is controlled by the chain of command through implementation of CDS authorized rules of engagement (ROE) or similar use of force directions;

b. self-defence is related to, but separate from ROE and applies no matter what other factors are present;

c. self-defence is not controlled by ROE but may be restricted for operational or policy reasons;

d. self-defence includes defending oneself and any other member of the CAF from a hostile act or demonstrated hostile intent; and

e. all other uses of force are controlled by ROE.

2. The *Criminal Code* authorizes the use of force in defence of persons and property or to prevent the commission of certain serious crimes in separate but related categories that at times overlap. As a result, the use of force may at times be justified under more than one section of the *Criminal Code.*

3. **Self-defence**. The *Criminal Code* sections dealing with self-defence have in common a concept of "justified use of force". This reflects the influence of a common law principle that in circumstances where the use of force is necessary, the harm sought to be prevented could not be prevented by less violent means and the injury done, or reasonably expected to be done, is not disproportionate to the harm it is intended to prevent. Thus, the law authorizes the use of force in circumstances where it is necessary and justifiable, but absent necessity and the justification prescribed in the law, the use of force would be unlawful.

4. Section 34 of the *Criminal Code* requires that to justify the use of force to repel an unprovoked assault the force used cannot be intended to cause death or serious bodily harm and it cannot exceed that which is necessary to defend oneself. Anyone who is unlawfully assaulted and who causes death or serious bodily harm in repelling the assault is justified in having used force but only if the use of such force to repel the attack is based on a reasonable apprehension of death or serious injury from the violence of the assault, and if the person attacked had a reasonable belief that there was no other way to protect oneself from death or serious injury.

5. Similarly, section 37 of the *Criminal Code* sets out the conditions under which it is justified to use force to prevent an assault on oneself or anyone under one's protection. To be justified, the force used must be no more than is necessary to prevent the assault or the repetition of the assault. The *Criminal Code* does not define the term "under protection" but it would likely include members of one's immediate family and anyone whom the person has a legal duty to protect, such as a person detained by a CAF member.

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6. **Use of force to protect property.** Under Canadian law there is no legal basis to defend property with deadly force unless there also exists a coincident threat of death or serious bodily harm to a person. Section 27 of the *Criminal Code* provides justification for the use of as much force as is reasonably necessary to prevent the commission of serious offences that would likely cause immediate and serious injury to any person or their property. What is reasonable and necessary force is a question of fact that will vary depending on the prevailing circumstances at the time the force is used. Section 27 should be read together with other *Criminal Code* sections relating to the protection of property as the amount of permissible force that may be used varies with the class of property in question and whether the harm to the property poses a danger to any person.

7. The right to protect different classes of property is expressly provided for in sections 38 to 42 of the *Criminal Code*. Subject always to the requirement that no more force than necessary be used, as a general rule, progressively more force may be used as one moves from defending personal (movable) property in one's possession to defending real property or a dwelling house. The greatest level of force may be justified when the defence of property is inextricably linked to defending persons from a threat of death or grievous bodily harm. The extent to which force may be used also varies with the situation. In all cases, the legal justification to use force to protect property is based upon the threat to the individual attempting to prevent the trespassing, theft, damage or destruction of the property, or the threat to other persons that would be caused by the trespassing, theft, damage or destruction of the property.

8. During some domestic operations, CDS approved ROE may authorize CAF members to use non-deadly force to defend specified property. This would not prevent CAF members from using reasonable and justified force, up to and including deadly force, in self-defence should the trespassing, theft, damage or destruction of the property likely cause the death or serious injury to CAF members or any person.

9. **Use of force and maintenance of law and order.** The maintenance of law and order is primarily the responsibility of the civilian police authorities. Except in those cases where they are employed in a law enforcement assistance role, or when performing aid of the civil power duties, CAF members have no special status or obligation to enforce the law. When employed in a law enforcement assistance or aid of the civil power role CAF members will be issued ROE specifically designed to enable them to carry out authorized law enforcement tasks. When employed on other domestic operations such as humanitarian assistance missions, the law permits, but does not require, CAF members to intervene to stop the commission of an offence that might occur in their presence. In these circumstances it would not be possible to issue ROE authorizing the use of force as the chain of command cannot lawfully require CAF members to take action. However, in these circumstances the CAF members would have the same right as ordinary Canadians to intervene to stop the crime.

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10. Although the *Criminal Code* contains specific provisions empowering police officers and others with peace officer status to use reasonable force to do what they are authorized or required to do to enforce or administer the law, the *Criminal Code* also contains a number of provisions that provide justification for ordinary persons, including CAF members not engaged in law enforcement assistance operations, to use force when taking action to prevent the commission of an offence. The most common circumstances under which ordinary persons may be legally justified in using force to uphold the law and restore order include the prevention of a breach of the peace or the commission of an indictable offence; *i.e.*, a serious offence for which the offender could be arrested without a warrant. As noted earlier, section 27 of the *Criminal Code* provides that anyone is justified in using as much force as is reasonably necessary to prevent the commission of an indictable offence. Section 30 provides that anyone who witnesses a breach of the peace may use as much force as is reasonably necessary to stop the breach and to detain the person breaching the peace in order to place him or her into the custody of a peace officer.

11. CAF members who are authorized to assist law enforcement agencies will receive specific orders to carry out their assigned duties, including ROE and direction on which weapons they will be allowed for use during the law enforcement assistance operation. In addition, while performing their assigned duties they will have peace officer status, providing them with protection from criminal and civil liability.

12. **Unlawful use of force.** CAF members are individually liable for the force used by them. A CAF member who acts outside the scope of what the law authorizes to be done, or who acts on a belief or grounds that are not reasonable in the circumstances, or who uses more force than is reasonable and justifiable as necessary in the circumstances to achieve the purpose for using the force, may be held to have used excessive force. This may result in charges under either the *Criminal Code* or the *Code of Service Discipline.* Pursuant to section 26 of the *Criminal Code* everyone authorized by law to use force is criminally responsible for using excessive force according to the nature and quality of the act that constitutes the excess.

Suggested Questions

Q. What are the start points for considering the use of force in domestic operations?

Q. Under Canadian law, what is the legal basis to defend property with deadly force?

Q. Are CAF members legally justified in using force to uphold the law and restore order including the commission of an indictable offence?

Q. Are CAF members individually liable for the force used by them?

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Note to the Instructor: Encourage students to actively participate in the lesson and to reason through problems.

Interim Summary

13. The basis for the use of force in domestic operations is statute law, primarily the *Criminal Code.* This legal foundation has been incorporated into procedures developed to allow the military chain of command to control the use of force. The *Criminal Code* authorizes the use of force in defence of persons and property or to prevent the commission of certain serious crimes in separate but related categories that at times overlap. As a result, the use of force may at times be justified under more than one section of the *Criminal Code* and sections dealing with self-defence have in common a concept of "justified use of force". This reflects the influence of a common law principle that in circumstances where the use of force is necessary, the harm sought to be prevented could not be prevented by less violent means and the injury done, or reasonably expected to be done, is not disproportionate to the harm it is intended to prevent.

14. The maintenance of law and order is primarily the responsibility of the civilian police authorities. Except in those cases where they are employed in a law enforcement assistance role, or when performing aid of the civil power duties, CAF members have no special status or obligation to enforce the law. Although the *Criminal Code* contains specific provisions empowering police officers and others with peace officer status to use reasonable force to do what they are authorized or required to do to enforce or administer the law, the *Criminal Code* also contains a number of provisions that provide justification for ordinary persons, including CAF members not engaged in law enforcement assistance operations, to use force when taking action to prevent the commission of an offence. CAF members are individually liable for the force used by them and anyone who uses more force than is reasonable and justifiable as necessary in the circumstances to achieve the purpose for using the force, may be held to have used excessive force.

Stage 2 – Hostile acts and hostile intent

Introduction

15. Hostile acts and hostile intent are each divided into two separate categories. For hostile acts, there is hostile act against Canada and hostile act against CAF personnel, units or forces. For hostile intent, there is hostile intent against Canada and hostile intent against CAF personnel, units or forces.

16. **Hostile act against Canada**. A hostile act against Canada is an attack or other action that threatens the security of Canada, its forces, citizens, territory or property. A response by the CAF to hostile acts against Canada will be initiated by government direction. The following are examples of contraventions of international law that may be construed by the government as hostile acts against Canada:

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a. the unlawful detention or targeting of Canadian citizens in a foreign country;

b. conducting mine laying operations in Canadian territorial waters or laying mines outside these waters when such actions limit or restrict the movement of Canadian forces or Canadian shipping;

c. landing units equipped for military action or agents within Canadian territory;

d. approaching airborne objects;

e. activities which interfere with a lawfully sanctioned military mission; and

f. an attack or unlawful detention or seizure of Canadian shipping or aircraft.

17. A response by CAF to these acts shall be controlled by ROE. Mission-specific examples for an operation will normally be provided depending on the operation, mandate, and area of operations.

18. **Hostile act against CAF personnel, units or forces**. An attack or other use of force against CAF personnel where there is a reasonable apprehension that death or serious injury will be the likely result. An immediate response to attacks on CAF personnel, units or forces is authorized in self-defence. Examples of hostile acts against CAF personnel, units or forces may include:

a. firing small arms, ordnance or NBC weapons at or in the vicinity of CAF where there is a risk of death or serious injury; and

b. conducting mine laying operations when such actions pose a risk of death or serious injury to CAF.

19. **Hostile intent against Canada**. Hostile intent against Canada is the threat of an attack or other action that threatens the security of Canada, citizens, territory or property. A response by the CAF to hostile intent against Canada will be initiated by government direction and shall be controlled by ROE. Examples of hostile intent against Canada may include:

a. one or more aircraft approaching at high speed in direct flight from a potential enemy's force or occupied or controlled territory without proper clearance, after an appropriate alert state has been declared;

b. the diversion of shipping or aircraft carrying cargo to or from Canada; and

c. threats to attack or seize Canadian property.

20. **Hostile intent against CAF personnel, units or forces**. The threat of an attack or other use of force against CAF personnel where there is a reasonable apprehension that death or serious injury will be the likely result. An immediate response to hostile

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intent towards CAF personnel, units or forces is authorized in self-defence. Examples of hostile intent against CAF personnel, units or forces may include:

a. weapon pointed directly at an individual;

b. arrangement of units into battle formation;

c. fire-control systems locked on;

d. weapons launcher loaded and pointed;

e. acoustic detection of torpedo or missile-tube doors in operation;

f. detection of data-link or sensor transmissions of a type associated with attack; and

g. hostile electronic-countermeasures activity.

21. **Determination of hostile intent against Canada and CAF personnel, units or forces**. Although precise criteria can be established for identifying hostile acts, it is more difficult to recognize hostile intent. Therefore, mission specific hostile intent criteria shall be issued. Two basic decision indicators must be satisfied by the Commander to constitute hostile intent against Canada or against CAF personnel, units or forces. These are:

a. capability and preparedness to use force, and

b. evidence and intelligence information.

22. Evidence indicating an intention to attack, in addition to capability and preparedness is enhanced by political policy guidance, increasing indications of enemy mobilization and warlike gestures revealed by intelligence sources. The weight of evidence and intelligence indicating an intention to attack must be compelling. For example, isolated acts of harassment, without intelligence information supporting enemy mobilization or other warlike gestures, would not normally be considered hostile intent. Since operations are conducted in a fluid environment Commander's must constantly review and revise where necessary their hostile intent criteria and ensure all participating forces and personnel are aware of any changes.

Suggested Questions

Q. What is a hostile act?

Q. What is a hostile intent?

Q. What could constitute a hostile act?

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Q. What could constitute a hostile intent?

Note to the Instructor: Encourage students to actively participate in the lesson and to reason through problems.

Interim Summary

23. Hostile acts and hostile intent are each divided into two separate categories. A hostile act against Canada is an attack or other action that threatens the security of Canada, its forces, citizens, territory or property. A response by CAF to these acts shall be controlled by ROE. Mission-specific examples for an operation will normally be provided depending on the operation, mandate, and area of operations. A hostile act against CAF personnel, units or forces is an attack or other use of force against CAF personnel where there is a reasonable apprehension that death or serious injury will be the likely result. A hostile intent against Canada is the threat of an attack or other action that threatens the security of Canada, citizens, territory or property. A hostile intent against CAF personnel, units or forces is the threat of an attack or other use of force against CAF personnel where there is a reasonable apprehension that death or serious injury will be the likely result. Although precise criteria can be established for identifying hostile acts, it is more difficult to recognize hostile intent. Therefore, mission specific hostile intent criteria shall be issued. Evidence indicating an intention to attack, in addition to capability and preparedness is enhanced by political policy guidance, increasing indications of enemy mobilization and warlike gestures revealed by intelligence sources.

Stage 3 – Categories of self-defence

Introduction

24. For practical purposes, self-defence is divided into two separate categories; national self-defence; and personal, unit or force self-defence. Under law, nations have the right to use force to protect their citizens, territory and assets against a hostile act or hostile intent. A nation's military forces also have a right of self-defence, which in practice, is related to, but separate from national self-defence. The authority for the CAF to use force in self-defence is different for each category. Personal, unit and force self-defence is a standing authorization (unless specifically restricted) for military forces; national self-defence requires further direction. In either situation, any action taken against a hostile or potentially hostile force must adhere to the use of force and engagement principles.

25. **National self-defence**. National self-defence is defined as the defence of Canada, Canadian citizens, territory and property from hostile acts or hostile intent. A hostile act or hostile intent may not necessarily involve attack or threat of an attack; therefore, the use of force may not always be the response to such acts or intent

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26. In responding to hostile acts or incidents of hostile intent against Canada, the Government of Canada will consider a number of deterrent options that may include diplomatic, economic, technological or military actions. To de-escalate a situation the government may wish to deliberately limit military involvement. Therefore, when acting in support of national self-defence, CAF will require specific ROE.

27. **Foreign violations of Canadian territory, territorial waters or airspace.** Violations of Canadian territory, territorial waters or airspace may be dealt with by the CAF in accordance with Canadian instructions. Although a violation of these areas may be construed to be a hostile act, commanders are not automatically authorized to respond with force in national self-defence. Amplifying direction concerning violations of Canadian airspace, territory or territorial waters are promulgated in separate contingency plans. In general, however, if a Canadian unit or force witnesses such a violation, the commander will pursue the violator(s) in accordance with national procedures and immediately report the violation and all actions taken to the appropriate higher authority. No action to counter the violation may be taken until specifically authorized by the CDS.

28. **Personal, unit or force self-defence**. In some allied systems, self-defence is controlled through ROE. Under the Canadian system the use of force in personal, unit and force self-defence is separate from ROE. Whereas ROE may change during an operation, personal, unit and force self-defence is a constant. All members of the CAF must know that, with or without ROE, they are entitled to use force in self-defence. Both international law and Canadian domestic laws recognize the authority to use appropriate force in self-defence, up to and including deadly force. Without further written or oral direction CAF personnel are entitled to use force in self-defence to protect oneself, other members of the CAF and non-Canadian military personnel who are attached or seconded to CAF against a hostile act or hostile intent.

29. **Exercising the right of self-defence**. Without assuming unacceptable risk, commanders, or CAF personnel when alone, shall make every reasonable effort to control a situation without the use of force. When time and conditions permit, the potentially hostile force shall be warned of the situation and further warned that self-defensive action will be taken as necessary. In exercising the right of self-defence, the responsible commander or individual, as applicable, must identify the presence of an immediate and compelling need to use force. However, there is no obligation to use force in self-defence and commanders may legitimately order individuals or units under their command not to respond to hostile intent. Such an order would be based on that commander's responsibility, in certain circumstances, to control the escalation of force.

30. **Response to hostile intent**. CAF are not required by international or domestic law to receive an attack before they are authorized to respond in self-defence with deadly force. Under certain circumstances force, up to and including deadly force, may be used to protect CAF against hostile intent.

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31. **Restriction on response to hostile intent**. There may be extraordinary circumstances where the Government of Canada, in support of higher national interests, may direct CAF to take all necessary action excluding the use of deadly force when facing hostile intent. Such direction would be exceptional and under constant review by the chain of command. The purpose of such direction would normally be to limit the escalation of a situation. This in no way limits the ability of an individual or commander to use minimum force in self-defence in response to a hostile act.

32. The authority to restrict the response to hostile intent also exists within the military chain of command. In exceptional circumstances, and only when there is a clear need to de-escalate a situation with no other alternative, a commander may restrict subordinates in their right to respond to hostile intent. Such direction would be exceptional and, if it is intended by the commander for such an order to exist, the chain of command will inform the CDS by the quickest means available that such an order has been given to CAF. No non-Canadian commander may impose such a restriction on CAF without the approval of the CDS.

33. **Hold fire orders**. The restriction on a response to hostile intent should not be confused with an order to hold fire which an on-scene-commander has given to gain a tactical advantage prior to engaging or disengaging an adversary. Such orders are not a restriction or infringement of the right of personal, unit or force self-defence.

34. **Self-defence during combined operations**. When the CAF is participating in a United Nations (UN), formal alliance (NATO, CANUS, etc), or coalition operation, the definition of self-defence will normally be expanded, through ROE authorization, to include all members of the force.

35. **Cross-boundary or cross-border fire**. Unless specifically directed otherwise in the ROE, cross-boundary or cross-border fire is authorized as a response in self-defence to hostile fire. Under these circumstances it may be returned across another nation's boundary or border without that nation's consent, only if a hostile force persists in committing hostile acts and the requirement to respond is immediate. Where cross-boundary or cross-border fire is required for reasons other than self-defence, specific ROE must be authorized.

Suggested Questions

Q. What are the categories of self-defence?

Q. Under which circumstances members of the CAF are entitled to use force in self-defence?

Q. Do CAF require by international or domestic law to receive an attack before they are authorized to respond in self-defence with deadly force?

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Q. Is cross-boundary or cross-border fire authorized as a response in self-defence to hostile fire?

Note to the Instructor: Encourage students to actively participate in the lesson and to reason through problems.

Interim Summary

36. For practical purposes, self-defence is divided into two separate categories; national self-defence; and personal, unit or force self-defence. The authority for the CAF to use force in self-defence is different for each category. National self-defence is defined as the defence of Canada, Canadian citizens, territory and property from hostile acts or hostile intent. In responding to hostile acts or incidents of hostile intent against Canada, the Government of Canada will consider a number of deterrent options such as diplomatic or military actions. Violations of Canadian territory, territorial waters or airspace may be dealt with by the CAF in accordance with Canadian instructions. Although a violation of these areas may be construed to be a hostile act, commanders are not automatically authorized to respond with force in national self-defence. In some allied systems, self-defence is controlled through ROE. Under the Canadian system the use of force in personal, unit and force self-defence is separate from ROE.

37. Without assuming unacceptable risk, commanders, or CAF personnel when alone, shall make every reasonable effort to control a situation without the use of force. CAF are not required by international or domestic law to receive an attack before they are authorized to respond in self-defence with deadly force. Under certain circumstances force, up to and including deadly force, may be used to protect CAF against hostile intent. There may be extraordinary circumstances where the Government of Canada, in support of higher national interests, may direct CAF to take all necessary action excluding the use of deadly force when facing hostile intent. The authority to restrict the response to hostile intent also exists within the military chain of command. The restriction on a response to hostile intent should not be confused with an order to hold fire which an on-scene-commander has given to gain a tactical advantage prior to engaging or disengaging an adversary. When the CAF is participating in a United Nations (UN), formal alliance (NATO, CANUS, etc), or coalition operation, the definition of self-defence will normally be expanded, through ROE authorization, to include all members of the force. Unless specifically directed otherwise in the ROE, cross-boundary or cross-border fire is authorized as a response in self-defence to hostile fire.

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Stage 4 – Use of force and self-defence in international operations

Introduction

38. At the international level, public international law is comprised of both treaty law and customary international law. The right of individual and collective self-defence in customary international law operates and retains a "separate existence" from Article 51 of the UN Charter and continues to exist and apply separately from international treaty law.

39. Article 51 of the UN Charter states:

> *Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security. Measures taken by Members in the exercise of this right of self-defence shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security.*

40. This part of the EO will overview some of the key legal issues which currently exist in relation to the law of self-defence and which may have an impact on the decision of whether to deploy the CAF and on how force is to be used if such a decision to deploy is made.

41. **"Armed attack".** While the UN Charter recognizes the right of self-defence "when an armed attack occurs", it does not define what is meant by an "armed attack". There is a consensus on the proposition that an armed attack includes kinetic force applied by the armed forces of a state.

42. As a general statement "armed attack" includes military force, which usually takes the form of kinetic force, but may include, depending on the circumstances, activities like computer network attack when the scale and effects of these activities have destructive consequences. International law makes a distinction between "most grave forms" (armed attacks) from "less grave forms". In short the "scale and effects" of a particular use of force will be assessed with some instances of force being of "lesser gravity than an armed attack". Additionally, as the tragic events of 11 September 2001 have demonstrated armed attacks can be committed by non-state entities using non-military, unconventional or improvised means, *i.e.* hijacked civilian airlines.

43. **"Occurs": self-defence, anticipatory self-defence, and pre-emptive self-defence.** A right of self-defence arises when an armed attack occurs. Legal debates have focused on whether a state can respond in self-defence only after the blow has landed, when the threat of the attack is imminent or merely a possibility. Generally speaking, the right of self-defence arises whenever an armed attack has occurred or when the threat of an armed attack is imminent rather than merely possible. In what is referred to as the *Caroline Formula*, the right of self-defence arises when there is "a

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necessity of self-defence, instant, overwhelming, leaving no choice of means and no moment of deliberation".

44. The nature of the threat and the means of attack will be considerations in predicting the attack and determining whether the threat is imminent. Consequently, activities taken by terrorists who do not distinguish themselves from the civilian population when preparing and carrying out an attack will be relevant. Likewise, the characteristics of a weapon system will also be considered. This would include consideration of not only the procedures involved in activating the system but its destructive capacity as well. For example, the nature of launching a WMD, when contrasted with the firing of a rifle, will be considered in the determination of imminence.

45. The use of force in defence of a threat that is imminent has sometimes been referred to as anticipatory self-defence. Generally speaking, states that have responded to imminent threats have characterized their actions as self-defence rather than anticipatory self-defence. This is primarily for two reasons. First, there is no need to qualify self-defence as anticipatory given that the law of self-defence allows for action when a threat is imminent. Second, as noted, terms such as anticipatory or pre-emptive are used in a variety of ways and any qualification of self-defence as anticipatory will inevitably lead to unnecessary debate. Consequently, when states act in self-defence to threats that are imminent, reference is made to self-defence not anticipatory self-defence.

46. **Defence of nationals outside the territory of the state.** Armed attacks on state property and state officials outside the territory of a victim state (*e.g.* warships and military members) will give rise to a right of self-defence. With respect to private citizens it is expected that the host state will defend those nationals in situations where citizens are being attacked or threatened. Where a host nation is unwilling or unable to defend those foreign nationals a legal right to protect nationals abroad exists. This right is viewed either as an act of self-defence or a right that exists in customary law independent from the right of self-defence.

47. **Necessity and proportionality.** The use of force in self-defence is restricted to that which is necessary and proportional to meet the lawful objective of removing the threat or defending against the attack.

48. **Geographic and temporal parameters.** Military responses in self-defence are not limited to the geographic location in which the armed attack occurred or within any pre-determined time frame. Rather the geographic and temporal parameters of a response are defined by the principles of necessity and proportionality.

49. **The "Until clause" of Article 51.** Article 51 recognizes the right of a state to act in self-defence "until the Security Council has taken measures necessary to maintain international peace and security". Debate has arisen as to the effect of this limitation, particularly in circumstances where self-defence is being exercised and the Security Council has issued resolutions on the matter. In these situations, such as the 1991 Gulf

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War and the post 9/11 "Campaign Against Terrorism", the Security Council measures would have to have eliminated the threat in order for the limitation contained in the "until clause" to come into effect.

50. **The "Reporting requirement" of Article 51.** Pursuant to Article 51 of the UN Charter members who exercise their right of self-defence shall "immediately" report their actions to the Security Council. Failure to make such a report will not affect the legality of the actions taken. However, the reporting to the Security Council, usually by way of an "Article 51 letter", will provide important evidence of a State's assertion that it is acting in self-defence. Conversely, failure to report may be considered when a State's claim of self-defence is scrutinized by UN Members. Before it commenced its "Campaign Against Terrorism", Canada informed the Security Council that it would respond in individual and collective self-defence against Al-Qaeda and the Taliban.

51. **Security Council Resolutions: enforcement action, self-defence or both?** On occasion a situation may arise when the legal authority for self-defence exists and the Security Council then issues one or more resolutions. At this moment, the complexity of the legal framework authorizing the use of force increases. An immediate issue, as discussed above, will be whether the Security Council has triggered the "until clause" and has taken "measures necessary" extinguishing the right of self-defence. If not, the resolution will have to be scrutinized to precisely determine what, if anything, it authorizes beyond what would be permissible under the right of self-defence. The existence of a right of self-defence coupled with Security Council resolutions addressing the same situation have arisen in a number of international operations involving the CAF. These include Korea in the 1950s, the 1991 Gulf War and the "Campaign Against Terrorism." Issues such as whether troops can cross into North Korea or Iraq as an exercise of self-defence or as part of the authorization to "restore international peace and security in the area" arose. Likewise, the relationship between a mandate to "restore international peace and security" or "the maintenance of security in Kabul" is different than acting in self-defence against Al-Qaeda. These types of issues will have a direct impact on the OPLAN, ROE, as well as the targeting framework. Consequently, it will be important to identify the distinct legal bases upon which an operation may rest as well as the precise scope of operations which each legal basis may provide.

52. **Collective self-defence.** The legal prerequisites for the exercise of individual self-defence are equally applicable to collective self-defence – an armed attack having occurred or the imminent threat of an armed attack about to occur. Consequently, when a state is the victim of an armed attack it may "request" other states to assist in its defence. NATO and NORAD are the two most relevant Canadian "regional arrangements" which facilitate the collective implementation of self-defence. On 2 October 2001 Canada and the other NATO states invoked the collective self-defence mechanism contained within Article 5 of the North Atlantic Treaty.

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Suggested Questions

Q. Public international law is comprised of which laws?

Q. What would constitute an"armed attack"?

Q. What means anticipatory self-defence?

Q. Under which circumstances the defence of nationals outside the territory of the state would be allowed?

Q. When collective self-defence would apply?

Note to the Instructor: Encourage students to actively participate in the lesson and to reason through problems.

Interim Summary

53. At the international level, public international law is comprised of both treaty law and customary international law. While the UN Charter recognizes the right of self-defence "when an armed attack occurs", it does not define what is meant by an "armed attack". As a general statement "armed attack" includes military force, which usually takes the form of kinetic force, but may include, depending on the circumstances, activities like computer network attack when the scale and effects of these activities have destructive consequences. A right of self-defence arises when an armed attack occurs. Legal debates have focused on whether a state can respond in self-defence only after the blow has landed, when the threat of the attack is imminent or merely a possibility. The nature of the threat and the means of attack will be considerations in predicting the attack and determining whether the threat is imminent. The use of force in defence of a threat that is imminent has sometimes been referred to as anticipatory self-defence. Generally speaking, states that have responded to imminent threats have characterized their actions as self-defence rather than anticipatory self-defence.

54. Armed attacks on state property and state officials outside the territory of a victim state (*e.g.* warships and military members) will give rise to a right of self-defence. The use of force in self-defence is restricted to that which is necessary and proportional to meet the lawful objective of removing the threat or defending against the attack. Military responses in self-defence are not limited to the geographic location in which the armed attack occurred or within any pre-determined time frame. Article 51 recognizes the right of a state to act in self-defence "until the Security Council has taken measures necessary to maintain international peace and security". Pursuant to Article 51 of the UN Charter members who exercise their right of self-defence shall "immediately" report their actions to the Security Council. On occasion a situation may arise when the legal authority for self-defence exists and the Security Council then issues one or more

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resolutions. At this moment, the complexity of the legal framework authorizing the use of force increases. The legal prerequisites for the exercise of individual self-defence are equally applicable to collective self-defence – an armed attack having occurred or the imminent threat of an armed attack about to occur. On 2 October 2001 Canada and the other NATO states invoked the collective self-defence mechanism contained within Article 5 of the North Atlantic Treaty.

PART 4 – CONCLUSION

Summary

55. The basis for the use of force in domestic operations is statute law, primarily the *Criminal Code.* This legal foundation has been incorporated into procedures developed to allow the military chain of command to control the use of force. The maintenance of law and order is primarily the responsibility of the civilian police authorities. Except in those cases where they are employed in a law enforcement assistance role, or when performing aid of the civil power duties, CAF members have no special status or obligation to enforce the law. CAF members are individually liable for the force used by them and anyone who uses more force than is reasonable and justifiable as necessary in the circumstances to achieve the purpose for using the force, may be held to have used excessive force. Hostile acts and hostile intent are each divided into two separate categories. A hostile act against Canada is an attack or other action that threatens the security of Canada, its forces, citizens, territory or property. A hostile intent against Canada is the threat of an attack or other action that threatens the security of Canada, citizens, territory or property

56. For practical purposes, self-defence is divided into two separate categories; national self-defence; and personal, unit or force self-defence. The authority for the CAF to use force in self-defence is different for each category. National self-defence is defined as the defence of Canada, Canadian citizens, territory and property from hostile acts or hostile intent. In responding to hostile acts or incidents of hostile intent against Canada, the Government of Canada will consider a number of deterrent options such as diplomatic or military actions.

57. At the international level, public international law is comprised of both treaty law and customary international law. While the UN Charter recognizes the right of self-defence "when an armed attack occurs", it does not define what is meant by an "armed attack". As a general statement "armed attack" includes military force, which usually takes the form of kinetic force, but may include, depending on the circumstances, activities like computer network attack when the scale and effects of these activities have destructive consequences. A right of self-defence arises when an armed attack occurs. Armed attacks on state property and state officials outside the territory of a victim state (*e.g.* warships and military members) will give rise to a right of self-defence. The use of force in self-defence is restricted to that which is necessary and proportional

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to meet the lawful objective of removing the threat or defending against the attack. Pursuant to Article 51 of the UN Charter members who exercise their right of self-defence shall "immediately" report their actions to the Security Council. On occasion a situation may arise when the legal authority for self-defence exists and the Security Council then issues one or more resolutions.

Confirmation

The instructor may ask other confirmation questions.

Conclusion

The instructor recapitulates the lesson by linking the introduction to the conclusion.

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PO 024 ADVISE ON LEGAL ISSUES PERTAINING TO PW & DETAINEES

PART 1 -- LESSON IDENTIFICATION

TITLE: EO 024.01 Advise on status

Performance. Advise on status

Conditions.

Given: References including Geneva Conventions III & IV, Use of Force in CF Operations Manual, and PW Handling, Detainees and Interrogation and Tactical Questioning in International Operations Manual.

Denied: Direct supervision

Standard. The legal officer shall advise on the status pertaining to PW & detainees.

Main Teaching Points:

- Applicable legal regimes

Method. This EO will be accomplished by a combination of self-study and class lectures. Students will be required to read assigned materials and be prepared to respond to questions.

Duration. One 10-minute period.

References. *Convention (III) relative to the Treatment of Prisoners of War*, Geneva, 12 August 1949
Convention (IV) relative to the Protection of Civilian Persons in Time of War, Geneva, 12 August 1949
Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977
SOR/91-134 *Prisoner-of-War Status Determination Regulations*
B-GJ-005-104/FP-024 The Operational Law Manual (Draft) Chapter 29
B-GJ-005-104/FP-021 Law of Armed Conflict at the Operational and Tactical Level
B-GJ-005-110/FP-020 Prisoner of War Handling, Detainees and Interrogation & Tactical Questioning in International Operations

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Training/ Learning Aids. Standard classroom with whiteboard and projection system/handouts; CD materials; Legal Officer Qualification Course (LOQC) Instructors Handbook – Module(s) [XXX]

Note to the instructor. The developmental lesson shall be conducted in structured manner, using a list of questions to the class. Instructors are to complement each segment of the developmental lesson by follow-up and direct questions taking into account the flow and direction of the discussion. Interim summaries shall be conducted at the end of each segment to confirm the material was learned and provide a basis from which the discussion can progress to the next segment. A review of the main teaching points will then take place at the end of the period.

PART 2 – INTRODUCTION

Objective: The instructor shall advise on the status pertaining to PWs & detainees as outlined in Module [XXX] of the LOQC Instructors Handbook.

Introduction: During the course of CAF operations, CAF units and members have detained and will continue to detain individuals. Pursuant to CAF doctrine, detainees are any persons who are non-consensually in the custody, care and control of CAF personnel. During CAF domestic operations, detainees could include a variety of persons such as civilians committing a breach of the peace during CAF assistance to Canadian law enforcement authorities. During international operations detainees could include: local civilians who interfere with the mission, petty criminals, international criminals, prisoners of war (PW) or other persons who have taken part in hostilities against CAF or other Allied/Coalition forces, such as unlawful combatants.

Outline:

Stage 1 – Applicable legal regimes

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PART 3 – BODY OF THE LESSON

Stage 1 – Applicable legal regimes

Introduction

1. Persons may be detained by the CAF across the entire spectrum of international CAF operations legally categorized from peacekeeping to armed conflict. Generally, the type of operation and the legal basis for it will define the types of persons that the CAF is authorized to detain.

2. **Armed Conflict Operations in International Armed Conflict.** The LOAC is the primary body of law that defines a state's obligations towards detainees during armed conflict. The precise treatment accorded detainees during international armed conflicts is determined by their legal status but all detainees, whatever their status, are entitled, as a minimum, to a basic level of humane treatment. Under the LOAC relating to international armed conflicts, there are two basic categories of persons: combatants and civilians.

3. **Armed Conflict Not of an International Character.** The majority of the LOAC deals with armed conflicts of an international character. However, some of the LOAC addresses armed conflicts not of an international character (most commonly civil wars). Common Article 3 to the GCs, 1949 and AP II, 1977 are the key legal instruments applicable to armed conflicts not of an international character. One of the significant differences in the rules applicable to non-international armed conflict is that there is no combatant status and, therefore, no entitlement to PW status. Government authority is entitled to treat its opponents in accordance with its national laws (*i.e.*, as common criminals or traitors).

4. Despite the differences in the rules applicable to international and non-international armed conflicts, the growing number and complexity of non-international armed conflicts has blurred the legal lines of demarcation between the two. Accordingly, in light of the increasingly complex operational and security environments, there is growing recognition that many of the rules and concepts applicable in international armed conflicts should apply to non-international ones. Moreover, it is CAF policy to apply the spirit and principles of the entirety of the LOAC during all its international deployments. It may also be useful to consider applying the spirit and principles of international human rights law, particularly when the CAF is involved in armed conflict not of an international character.

5. **Non-Armed Conflict Operations.** These operations can include a broad range of military operations that do not reach the level and intensity of armed conflict. Examples of non-armed conflict operations can include, but are not limited to, humanitarian assistance, non-combatant evacuation operations (NEO) and United Nations (UN) supported or mandated missions, such as peacekeeping and peace

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enforcement. The LOAC does not apply as a matter of law to such non-armed conflict operations though the CAF will apply the spirit and principles during all international operations. Accordingly, the key difference between detainees in armed conflict and non-armed conflict operations is that there are no categories of "combatants", "unlawful combatants", "PWs", and civilian "internees" as defined under the LOAC during non-armed conflict operations.

6. **Combatant Status.** Lawful combatants are entitled to participate in hostilities. They have "combat immunity" which is, in effect, a license to kill, wound or capture enemy combatants and to destroy military objectives. Such acts would be serious criminal offences under normal peacetime laws but during an armed conflict they are lawful. The LOAC provides a legal shield to the lawful combatant. If captured by the enemy, a lawful combatant cannot be tried for participating in hostilities, for killing enemy combatants, causing the deaths of civilians (killed unintentionally during attacks on lawful targets) or for destroying enemy property. Similarly, a lawful combatant may not be tried by his/her own state or another state for committing lawful acts of combatancy.

7. Once captured, lawful combatants are entitled to prisoner-of-war (PW) status and benefit from the protection of the Third Geneva Convention (GC III), which is reflective of customary international LOAC. Article 4 of GC III delineates the conditions for PW status. In conflicts to which API applies, those conditions have been relaxed by Art 44. However, Article 44 is not regarded as declaratory of customary law. This could be important in conflicts where AP I does not apply as a matter of treaty law (such as the fighting in Afghanistan in 2002). There are two particularly important aspects of being a PW. First, the person is generally only subject to the laws, regulations and orders in effect for the armed forces of the Detaining Power. Second, the person may only be tried by the same courts and under the same procedures applicable to those armed forces.

8. **Civilian Status.** AP I represents the first attempt to codify and define the term "civilian" under the LOAC. Article 50 of AP I indicates that a "civilian" is any person who does not belong to one of the categories of persons referred to in Article 4A (1), (2), (3) and (6) of GC III and Article 43 of AP I. Essentially, this means a civilian is anyone who is not a combatant.

9. Civilians, other than those who take up arms spontaneously as combatants in a *levée en masse*, are not entitled to take part in hostilities. Civilians are to be protected under the LOAC. They are not lawful targets and not, generally, PWs. Any detention of a civilian is by exception, usually in accordance with the provisions of GC IV. The general protection of civilians against the effects of hostilities is, perhaps, the most fundamental principle of the LOAC. This is the principle of distinction. This basic concept has long been established in customary law and was codified in AP I Article 48. Its goal is to "ensure in every feasible manner that international armed conflicts are waged solely among the combatants of the belligerent parties". However, just as it is possible to lose combatant immunity by failing to comply with the LOAC, so too can

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civilians lose their protection if they take a direct part in hostilities and violate the principle of distinction.

10. **Unlawful Combatants / Unprivileged Belligerents.** The terms "unlawful combatant" and "unprivileged belligerent" are nowhere found in the GCs, APs or any other Convention. The terms exist in customary international law and have been affirmed in jurisprudence, state practice and academic commentary. The LOAC has denied the status of lawful combatant to fighters who conduct violence for private rather than public purposes or who carry out specific unprivileged acts. Historically there have been two types of unlawful combatants/unprivileged belligerents: combatants who are authorized to fight by a legitimate party to a conflict (*i.e.* state or state-like entity) but whose conduct (usually spying) negates their status upon capture, and civilians (other than a *levée en masse*) who are not lawful combatants but nevertheless participate in hostilities. Generally, such persons are, upon capture, not entitled to PW status. Nevertheless, the denial of PW status does not mean that such detainees would have no right or protections under international law and the LOAC. At a minimum, they would be entitled to humane treatment under customary law. While classifying detainees as unlawful combatants/unlawful belligerents and not according them PWs status when they do not comply with the requirements for that status does not breach international law this can in no way justify abuse, torture or any other form of inhumane treatment of detainees.

11. **Categories of Detainees.** Other than the specific categories of detainees defined under the LOAC (*e.g.* "combatants", "unlawful combatants", "unprivileged belligerents", "PWs", and civilian "internees"), there are common categories of persons detained during all international CAF operations.

12. The categories of detainees during all international CAF operations will be defined by the combination of the legal mandate for the mission (*e.g.*, LOAC and United Nations Security Council Resolutions), the strategic guidance issued by the Government of Canada, the Chief of the Defence Staff's Operation Order, the Rules of Engagement and the Task Force Commander's Operation Order. Generally the main categories of persons detained (short or long term) can include, though not be limited to:

a. Combatants/PWs (LOAC);

b. Unlawful combatants (LOAC);

c. Civilian internees (LOAC);

d. Civilians in assigned residences (LOAC);

e. Persons who demonstrate hostile intent or commit a hostile act against CAF members or units;

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f. Persons who demonstrate hostile intent or commit a hostile act against Allied/Coalition members or units;

g. Persons who obstruct or interfere with the mission;

h. Persons who demonstrate hostile intent or commit a hostile act against mission essential force property;

i. Persons who enter or attempt to enter defence controlled areas without authority; and

j. Persons who commit or are suspected of committing serious crimes, including war crimes, crimes against humanity or other breaches of the LOAC and international human rights law.

13. **PW Status**. The definition of PW status is derived primarily from the wording of Article 4 of GC III. The following personnel, immediately upon falling into the hands of a capturing force, acquire PW status and are protected by GC III:

a. Members of the enemy armed forces (including militias or volunteer corps forming part of the armed forces).

b. Members of other militias or volunteer corps, including organised resistance movements belonging to the enemy, which fulfil the following conditions:

(1) They are commanded by a person responsible for his subordinates.

(2) They have a fixed distinctive sign recognisable at a distance.

(3) They carry arms openly.

(4) They conduct their operations in accordance with the laws and customs of war.

c. Members of enemy regular armed forces who profess allegiance to a government or an authority not recognised by the Canadian Government.

d. Persons who accompany the armed forces without actually being members thereof, e.g. war correspondents, supply contractors, welfare workers, members of labour units, civil members of aircraft crews, etc., provided that they are authorised by the Armed Force which they accompany, who shall provide them with an identity card confirming their status.

e. Members of crews, including masters, pilots and apprentices of the Merchant Marine and the crews of civil aircraft of the Parties to the conflict, who do not

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benefit by more favourable treatment under any other provisions of International Law.

f. Inhabitants of non-occupied territory who spontaneously take up arms on the approach of invading forces, without having had time to form themselves into regular armed units, provided that they carry arms openly and respect the laws of war.

g. In certain restricted circumstances, the provision of paragraph 1b can be relaxed so that it is sufficient if a combatant carries his arms openly during each military engagement and during such time as he is visible to the adversary while he is engaged in a military deployment preceding the launching of an attack in which he is to participate. In cases of this nature, it may be necessary to hold a PW Status Determination Tribunal.

14. **Medical Personnel and Chaplains**. Permanent medical personnel and chaplains attached to the Armed Forces are not PW when they fall into the hands of an adverse Party. If required by the state of health, spiritual needs and numbers of PW, they may be retained in order to carry out their duties on behalf of PW and are termed 'Retained Personnel'. While being held they are to receive the benefits and protection of PW status. Any such personnel who are not required shall be returned as soon as possible to the Party to whom they belong. Auxiliary medical personnel are PW when they fall into the hands of an adverse party, but shall be employed on their medical duties if required.

15. **Indeterminate Status**. A person who takes part in hostilities and who becomes a captive shall be presumed to be a PW if: he claims the status of PW; he appears to be entitled to that status; or if such status is claimed on his behalf by the Government or power upon which he depends. Should any doubt arise as to whether that person is entitled to PW status, he shall continue to have such status and, therefore, be protected by GC III until such time as his status has been determined by a competent tribunal.

16. **Persons Captured During Operations Outside Of Armed Conflict**. It should be noted that PW provisions only apply during an international armed conflict and only to parties to that conflict, and not, for example, to peacekeeping forces. The provisions can also apply in an internal armed conflict where parties have so agreed. The principles of the LOAC should be applied as a matter of practice. The treaties do not delineate what amounts to an armed conflict, although there is a widely accepted definition, proposed by the ICRC, which states "*any difference between two states and leading to the intervention of members of the armed forces is an armed conflict*". The International Criminal Tribunal for the Former Yugoslavia also defined what it believed to be an armed conflict. There is also guidance on what is not armed conflict, for example, internal disturbances and tensions, such as riots, isolated and sporadic acts of violence and other acts of a similar nature.

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17. **PW in Coalition Operations.** Due to the fact that Canada is likely to find itself involved in Coalition Operations, currently and in the future, the issue of PW and detainee handling has taken on new dimensions. The nature of Canadian involvement may be such that the CAF will simply not have the resources in theatre for CAF personnel to set up PW status determination tribunals or establish PW camps, thereby failing to comply with Geneva Convention III, relative to the Treatment of Prisoners of War. Accordingly, CAF personnel may have to hand over possible PW to other members of the Coalition force. This scenario may also be true for other nations. Because a force could consist of several nations each supplying only a small number of personnel, more than one State could find itself in the position of not being able to comply with Geneva Convention III. However, the absence of resources will not release a State from responsibility under the LOAC. Geneva Convention III clearly states that the Power which detains PW, meaning the Power to which the individuals or military units who have captured them are responsible, is responsible for the treatment given them. PW may be transferred from the original detaining Power, but only to another State that is a party to the Convention. In practical terms, this means that a Coalition of states could not create a separate organization to deal with PW.

18. Persons detained or captured as a result of operations outside international armed conflict will be subject to local and national law and, so long as there is reason to believe that their human rights will be respected, should be handed over to the appropriate authority at the earliest opportunity. They may be disarmed but must be allowed to keep all of their personal property and steps should be taken to establish their identity. If there exists any uncertainty as to status, then persons detained shall be accorded the same rights as PW until such time as their status is clarified and /or they are turned over to civilian authorities. Detained persons must be treated humanely and in accordance with the basic standards for the treatment of PW. Directions for handling detainees, including those suspected of crimes against humanity and war crimes, are to be included in the operational plan or in Standing Operating Procedures.

Suggested Questions

Q. What are the two basic categories of persons under the LOAC? (Combatants and civilians)

Q. What are the key legal instruments applicable to armed conflicts not of an international character? (Common Article 3 to the GCs, 1949 and AP II, 1977)

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Q. Which types of operations are considered Non-Armed Conflict Operations?
(Humanitarian assistance, non-combatant evacuation operations (NEO) and United Nations (UN) supported or mandated missions, such as peacekeeping and peace enforcement)

Q. When a combatant is captured, to what protection is he entitled?
(PW status and benefit from the protection of the Third Geneva Convention (GC III). Article 4 of GC III delineates the conditions for PW status.)

Q. Who is entitled to a Civilian Status? (Essentially, anyone who is not a combatant)

Q. What are unlawful combatants / unprivileged belligerents?
(The LOAC has denied the status of lawful combatant to fighters who conduct violence for private rather than public purposes or who carry out specific unprivileged acts)

Q. What are the categories of detainees? (see para 13)

Q. Who is entitled to PW Status? (see para 14)

Q. When captured by enemy forces, are Medical Personnel and Chaplains considered PWs? (see para 15)

Q. How Canada deals with PW in Coalition Operations? (see paras 18, 19)

Note to the Instructor: Encourage students to actively participate in the lesson and to reason through problems.

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PART 4 – CONCLUSION

Summary

1. The LOAC is the primary body of law that defines a state's obligations towards detainees during armed conflict. The precise treatment accorded detainees during international armed conflicts is determined by their legal status but all detainees, whatever their status, are entitled, as a minimum, to a basic level of humane treatment. The majority of the LOAC deals with armed conflicts of an international character. However, some of the LOAC addresses armed conflicts not of an international character (most commonly civil wars). Despite the differences in the rules applicable to international and non-international armed conflicts, the growing number and complexity of non-international armed conflicts has blurred the legal lines of demarcation between the two. Non-Armed Conflict Operations can include a broad range of military operations that do not reach the level and intensity of armed conflict. Examples of non-armed conflict operations can include, but are not limited to, humanitarian assistance, non-combatant evacuation operations (NEO) and United Nations (UN) supported or mandated missions, such as peacekeeping and peace enforcement.

2. Lawful combatants are entitled to participate in hostilities. They have "combat immunity" which is, in effect, a license to kill, wound or capture enemy combatants and to destroy military objectives. Once captured, lawful combatants are entitled to prisoner-of-war (PW) status and benefit from the protection of the Third Geneva Convention (GC III), which is reflective of customary international LOAC. Article 4 of GC III delineates the conditions for PW status. AP I represents the first attempt to codify and define the term "civilian" under the LOAC. Article 50 of AP I indicates that a "civilian" is any person who does not belong to one of the categories of persons referred to in Article 4A (1), (2), (3) and (6) of GC III and Article 43 of AP I. Civilians, other than those who take up arms spontaneously as combatants in a *levée en masse*, are not entitled to take part in hostilities. The terms "unlawful combatant" and "unprivileged belligerent" are nowhere found in the GCs, APs or any other Convention. The terms exist in customary international law and have been affirmed in jurisprudence, state practice and academic commentary.

3. The categories of detainees during all international CAF operations will be defined by the combination of the legal mandate for the mission (*e.g.*, LOAC and United Nations Security Council Resolutions) and the definition of PW status is derived primarily from the wording of Article 4 of GC III. Permanent medical personnel and chaplains attached to the Armed Forces are not PW when they fall into the hands of an adverse Party. If required by the state of health, spiritual needs and numbers of PW, they may be retained in order to carry out their duties on behalf of PW and are termed 'Retained Personnel'. A person who takes part in hostilities and who becomes a captive shall be presumed to be a PW if: he claims the status of PW; he appears to be entitled to that status; or if such status is claimed on his behalf by the Government or power upon which he depends.

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4. It should be noted that PW provisions only apply during an international armed conflict and only to parties to that conflict, and not, for example, to peacekeeping forces. The provisions can also apply in an internal armed conflict where parties have so agreed. Due to the fact that Canada is likely to find itself involved in Coalition Operations, currently and in the future, the issue of PW and detainee handling has taken on new dimensions. The nature of Canadian involvement may be such that the CAF will simply not have the resources in theatre for CAF personnel to set up PW status determination tribunals or establish PW camps, thereby failing to comply with Geneva Convention III, relative to the Treatment of Prisoners of War. Accordingly, CAF personnel may have to hand over possible PW to other members of the Coalition force. This scenario may also be true for other nations.

5. Persons detained or captured as a result of operations outside international armed conflict will be subject to local and national law and, so long as there is reason to believe that their human rights will be respected, should be handed over to the appropriate authority at the earliest opportunity. Directions for handling detainees, including those suspected of crimes against humanity and war crimes, are to be included in the operational plan or in Standing Operating Procedures.

Confirmation

The instructor may ask other confirmation questions.

Conclusion

6. The legal, operational and policy issues arising from detainee handling and treatment during international operations can be varied, nuanced and complex. Resolution of such issues requires a basic understanding of the key international legal frameworks, primarily the LOAC and international human rights law. While handling and treatment of detainees can vary according to the legal status of the detainees, it must be emphasized that CAF policy is to treat all detainees, regardless of their legal status, humanely in a manner consistent with the standard of PW treatment as defined in *Geneva Convention (GC) III*. Moreover, it is prohibited in all circumstances to torture, abuse or to treat inhumanely any detainee.

7. It is crucial to account for detainees as a key planning factor in all CAF operations. If this does not occur, then CAF commanders will be faced with the problem of handling detainees, possibly in large numbers, for whom little provision has been made in terms of treatment, transfer, use of force, questioning, processing and logistics. If such problems occur, then the conduct of operations will likely be severely impacted and detainees may be subjected to improper treatment. This would be unacceptable for Canada, CAF commanders and CAF members and would likely result in mission failure. Conversely, a fully informed appreciation of detainee issues and full consideration of such issues in the operational planning process will contribute to mission success and will reaffirm the professionalism, effectiveness, honour and humanity of the CAF.

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PO 024 ADVISE ON LEGAL ISSUES PERTAINING TO PW & DETAINEES

PART 1 -- LESSON IDENTIFICATION

TITLE: EO 024.02 Advise on status determination

Performance. Advise on status determination

Conditions.

Given: References including Geneva Conventions III & IV, Use of Force in CF Operations Manual, and PW Handling, Detainees and Interrogation and Tactical Questioning in International Operations Manual.

Denied: Direct supervision

Standard. The legal officer shall advise on the status pertaining to PW & detainees.

Main Teaching Points:

- PW determination under GCIII

Method. This EO will be accomplished by a combination of self-study and class lectures. Students will be required to read assigned materials and be prepared to respond to questions.

Duration. One 10-minute period.

References. *Convention (III) relative to the Treatment of Prisoners of War*, Geneva, 12 August 1949
Convention (IV) relative to the Protection of Civilian Persons in Time of War, Geneva, 12 August 1949
Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977
SOR/91-134 *Prisoner-of-War Status Determination Regulations*
B-GJ-005-104/FP-024 The Operational Law Manual (Draft) Chapter 29
B-GJ-005-104/FP-021 Law of Armed Conflict at the Operational and Tactical Level
B-GJ-005-110/FP-020 Prisoner of War Handling, Detainees and Interrogation & Tactical Questioning in International Operations

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Training/ Learning Aids. Standard classroom with whiteboard and projection system/handouts; CD materials; Legal Officer Qualification Course (LOQC) Instructors Handbook – Module(s) [XXX]

Note to the instructor. The developmental lesson shall be conducted in structured manner, using a list of questions to the class. Instructors are to complement each segment of the developmental lesson by follow-up and direct questions taking into account the flow and direction of the discussion. Interim summaries shall be conducted at the end of each segment to confirm the material was learned and provide a basis from which the discussion can progress to the next segment. A review of the main teaching points will then take place at the end of the period.

PART 2 – INTRODUCTION

Objective: The instructor shall advise on the status determination pertaining to PWs & detainees as outlined in Module [XXX] of the LOQC Instructors Handbook.

Introduction: During the course of CAF operations, CAF units and members have detained and will continue to detain individuals. Pursuant to CAF doctrine, detainees are any persons who are non-consensually in the custody, care and control of CAF personnel. During CAF domestic operations, detainees could include a variety of persons such as civilians committing a breach of the peace during CAF assistance to Canadian law enforcement authorities. During international operations detainees could include: local civilians who interfere with the mission, petty criminals, international criminals, prisoners of war (PW) or other persons who have taken part in hostilities against CAF or other Allied/Coalition forces, such as unlawful combatants.

Outline:

Stage 1 – PW determination under Geneva Convention III

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PART 3 – BODY OF THE LESSON

Stage 1 – Title

Introduction

1. Article 5 of GC III addresses the issue of the legal status of a captured or detained person who has committed a belligerent act during an international armed conflict. It notes that a person who belongs to any of the categories under Article 4 will be treated in all respects as a PW. If there is a doubt about whether a detainee is entitled to PW status, Article 5 delineates the requirement to conduct a status determination tribunal.

2. **PW Status Determination.** Canada enacted the *Geneva Conventions Act* which approves the GCs and APs I & II and incorporates grave breaches into domestic law as offences. Pursuant to section 8 of the Act, the Minister of National Defence (MND) enacted the *Prisoner of War Status Determination Regulations (SOR/91-13419),* which allow for the establishment of a tribunal to determine whether a detainee brought before it is entitled to PW status.

3. Neither the GCs nor the *PW Status Determination Regulations* oblige the CAF to conduct status determination tribunals prior to transferring detainees to another state. For example, in a coalition context, it would be virtually impossible for operations to be conducted in accordance with the campaign plan if every member of the coalition was required to conduct a status determination tribunal prior to transferring detainees to another authority. This would significantly impair the coalition commander's ability to plan operations and deploy coalition resources because all the forces could be occupied with screening and conducting status determination tribunals. International law provides for the transfer of detainees as long as the Detaining Power is satisfied that the receiving authority is willing and able to apply the appropriate international legal standards. Generally, a "Detaining Power" will be the Power or Party which detains an individual for any period of time beyond that reasonably required between initial capture and transfer to another Power and which has the ability and resources to the maintain a long-term detention facility. Thus, if a status determination tribunal is required, it can be conducted by a Party that is willing and able to apply the appropriate international legal standards. This reflects the reality of coalition operations by only obliging one of the coalition members, usually the one with the ability and resources to deal with large scale processing of detainees, to screen detainees or, if necessary, to hold status determination tribunals.

4. Article 7 of the *PW Status Determination Regulations* describes a screening process for detainees. Although this Article could be interpreted as creating a positive duty for each Commanding Officer to conduct a screening of every person detained by their respective units, such an interpretation would be too narrow and not sufficiently practicable, contextual or purposive. The *PW Status Determination Regulations* must be

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read in the context of the application of the GCs and in light of the realities of military operations, particularly coalition military operations.

5. The realities of military operations, especially coalition operations, require a purposive application of the Regulations. The lack of a purposive application would likely result in operations being unreasonably hampered and confusion in the chain of command. For example, during most combat operations, the initial capture of enemy forces following an engagement is often chaotic and emotionally highly charged. It is invariably not practical for the precise status of the detainee to be determined at the time of capture. The procedural requirements for conducting a status determination tribunal under the regulations are time consuming and, realistically, can only be achieved under secure circumstances. It would be unreasonable and unfair for both the Detaining Power and the detainee if the tribunal had to be conducted at the moment of apprehension by the capturing unit.

6. Regarding screening of detainees, a key point is determining what is "practicable" in an operational setting. QR&O Article 1.065 states "practicable" shall be construed as "physically possible". Similarly, the ability to hold status determination tribunals must be interpreted in light of the complexity of those tribunals including the ability to collect and disclose evidence, the preparation of minutes of proceedings, the provision of representation and the attendance of witnesses. Realistically, such tribunals can only be conducted at an established secure location. In military operations, it may well be physically impossible to establish a secure location in every place a CAF unit is located in order to screen detainees or conduct status determination tribunals.

7. In a coalition operation, such as the Campaign Against Terrorism, PW status determination would practically speaking be carried out by authorities who have the ability and resources to deal with the processing of detainees. Such authorities usually assume the responsibility of establishing and maintaining coalition short and long-term detention facilities. Other coalition forces, such as the CAF, would not likely be assigned the task of screening or conducting status determination tribunals. In this sense, the *PW Status Determination Regulations* would not likely apply as the CAF is not required by the Coalition Commander to deal with any more than the transitory custody of detained persons. In other words, it would not necessarily be the responsibility of the CAF in a coalition operation to screen, conduct status determination tribunals or establish and maintain the coalition short and long-term detention facilities.

8. Moreover, the GCs require a status determination tribunal only if there is doubt as to whether persons, having committed a belligerent act and having fallen into the hands of the enemy, are entitled to PW status. Article 5 is unclear about who must have a doubt in order for status determination tribunals to be conducted. The ICRC Commentary on this issue is minimal. However, jurisprudence and state practice (*i.e.* creation of PW status determination tribunal under national laws) indicate that the doubt must arise with the Detaining Power. This is logical given that the GCs apply to states and it is states that are responsible for persons captured by its forces. Accordingly, if the

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Detaining Power has no doubt that a detained person is or is not entitled to PW status then there would be no legal requirement to conduct PW status determination tribunals.

Suggested Questions

Q. Which GC and Article addresses the issue of the legal status of a captured or detained person who has committed a belligerent act during an international armed conflict? (GC III Article 5)

Q. Under which Regulation PW Status is established? (*Prisoner of War Status Determination Regulations (SOR/91-13419)*)

Q. Is the CAF obliged to conduct status determination tribunals prior to transferring detainees to another state? (No)

Q. Which Article under the *PW Status Determination Regulations* describes a screening process for detainees? (Article 7)

Q. What means "practicable" in an operational setting regarding screening of detainees? (QR&O Article 1.065 states "practicable" shall be construed as "physically possible")

Q. On which occasion the GCs require a status determination tribunal? (Only if there is doubt as to whether persons, having committed a belligerent act and having fallen into the hands of the enemy, are entitled to PW status)

Note to the Instructor: Encourage students to actively participate in the lesson and to reason through problems.

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PART 4 – CONCLUSION

Summary

1. Canada enacted the *Geneva Conventions Act* which approves the GCs and APs I & II and incorporates grave breaches into domestic law as offences. Pursuant to section 8 of the Act, the Minister of National Defence (MND) enacted the *Prisoner of War Status Determination Regulations (SOR/91-13419),* which allow for the establishment of a tribunal to determine whether a detainee brought before it is entitled to PW status. Neither the GCs nor the *PW Status Determination Regulations* oblige the CAF to conduct status determination tribunals prior to transferring detainees to another state.

2. Article 7 of the *PW Status Determination Regulations* describes a screening process for detainees. The realities of military operations, especially coalition operations, require a purposive application of the Regulations. The lack of a purposive application would likely result in operations being unreasonably hampered and confusion in the chain of command. Regarding screening of detainees, a key point is determining what is "practicable" in an operational setting. QR&O Article 1.065 states "practicable" shall be construed as "physically possible".

3. In a coalition operation, such as the Campaign Against Terrorism, PW status determination would practically speaking be carried out by authorities who have the ability and resources to deal with the processing of detainees. Such authorities usually assume the responsibility of establishing and maintaining coalition short and long-term detention facilities. Moreover, the GCs require a status determination tribunal only if there is doubt as to whether persons, having committed a belligerent act and having fallen into the hands of the enemy, are entitled to PW status. Article 5 is unclear about who must have a doubt in order for status determination tribunals to be conducted.

Confirmation

The instructor may ask other confirmation questions.

Conclusion

4. The legal, operational and policy issues arising from detainee handling and treatment during international operations can be varied, nuanced and complex. Resolution of such issues requires a basic understanding of the key international legal frameworks, primarily the LOAC and international human rights law. While handling and treatment of detainees can vary according to the legal status of the detainees, it must be emphasized that CAF policy is to treat all detainees, regardless of their legal status, humanely in a manner consistent with the standard of PW treatment as defined in

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Geneva Convention (GC) III. Moreover, it is prohibited in all circumstances to torture, abuse or to treat inhumanely any detainee.

5. It is crucial to account for detainees as a key planning factor in all CAF operations. If this does not occur, then CAF commanders will be faced with the problem of handling detainees, possibly in large numbers, for whom little provision has been made in terms of treatment, transfer, use of force, questioning, processing and logistics. If such problems occur, then the conduct of operations will likely be severely impacted and detainees may be subjected to improper treatment. This would be unacceptable for Canada, CAF commanders and CAF members and would likely result in mission failure. Conversely, a fully informed appreciation of detainee issues and full consideration of such issues in the operational planning process will contribute to mission success and will reaffirm the professionalism, effectiveness, honour and humanity of the CAF.

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PO 024 ADVISE ON LEGAL ISSUES PERTAINING TO PW & DETAINEES

PART 1 -- LESSON IDENTIFICATION

TITLE: EO 024.03 Advise on standard of treatment

Performance. Advise on standard of treatment

Conditions.

Given: References including Geneva Conventions III & IV, Use of Force in CF Operations Manual, and PW Handling, Detainees and Interrogation and Tactical Questioning in International Operations Manual.

Denied: Direct supervision

Standard. The legal officer shall advise on the standard of treatment pertaining to PW & detainees.

Main Teaching Points:

- Applicable legal regime and policy

Method. This EO will be accomplished by a combination of self-study and class lectures. Students will be required to read assigned materials and be prepared to respond to questions.

Duration. One 5-minute period.

References. *Convention (III) relative to the Treatment of Prisoners of War*, Geneva, 12 August 1949
Convention (IV) relative to the Protection of Civilian Persons in Time of War, Geneva, 12 August 1949
Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977
SOR/91-134 *Prisoner-of-War Status Determination Regulations*
B-GJ-005-104/FP-024 The Operational Law Manual (Draft) Chapter 29
B-GJ-005-104/FP-021 Law of Armed Conflict at the Operational and Tactical Level
B-GJ-005-110/FP-020 Prisoner of War Handling, Detainees and Interrogation & Tactical Questioning in International Operations

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Training/ Learning Aids. Standard classroom with whiteboard and projection system/handouts; CD materials; Legal Officer Qualification Course (LOQC) Instructors Handbook – Module(s) [XXX]

Note to the instructor. The developmental lesson shall be conducted in structured manner, using a list of questions to the class. Instructors are to complement each segment of the developmental lesson by follow-up and direct questions taking into account the flow and direction of the discussion. Interim summaries shall be conducted at the end of each segment to confirm the material was learned and provide a basis from which the discussion can progress to the next segment. A review of the main teaching points will then take place at the end of the period.

PART 2 – INTRODUCTION

Objective: The instructor shall advise on the standard of treatment pertaining to PWs & detainees as outlined in Module [XXX] of the LOQC Instructors Handbook.

Introduction: Throughout the history of warfare, the capture and treatment of prisoners has been an emotive subject. The taking of Prisoners of War (PW) has always been a part of the mechanism of war and their treatment has fluctuated between the barbarous and the honourable. Prisoners are taken not only by reason of man's humanity but also for other more pragmatic reasons. The taking of PW reduces the enemy's numerical strength and fighting capacity. The knowledge that the enemy holds friends and colleagues as captives depresses the morale of those remaining free and may even constrain the tactics of their commanders. Finally, PW are an important source of information. The standards a nation sets for the treatment of those whom it makes PW should be a benchmark of that nation's culture and humanity, on display for all to see. It is the requirement to establish a benchmark, which dictates the need for clear doctrine and, where necessary, instructions governing the treatment of PW.

Outline:

Stage 1 – Applicable legal regime and policy

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PART 3 – BODY OF THE LESSON

Stage 1 – Applicable regime and policy

Introduction

1. The treatment and handling of detainees is one of the most important aspects of any mission. The standard a nation sets for the treatment of those whom it detains is often a benchmark of that nation's culture and humanity, on display for all to see. Also, for operational commanders, it is imperative to have a clear understanding of detainee issues properly to plan and successfully to execute the overall military mission. Often the success of a mission is measured by the way in which military forces deal with detainees. Accordingly, the focus is on key legal issues arising from the detention of persons during CAF international operations.

2. **Treatment of Detainees.** The treatment accorded detainees during international CAF operations could be based on the determination of their legal status (*e.g.* combatants, unlawful combatants, civilian internees, war criminals, petty criminals and so on). However, it is CAF policy, to treat all detainees, regardless of their legal status, humanely in a manner consistent with the standard of PW treatment as defined in GC III. This standard of care is the highest one that can be provided to a detained person.

3. The standards of treatment that PWs are entitled to are detailed in several CAF publications such as the "Code of Conduct for CAF Personnel", "The Law of Armed Conflict at the Operational and Tactical Level" and "Prisoner of War Handling, Detainees and Interrogation & Tactical Questioning in International Operations". This policy creates a single clear standard of humane treatment for all detainees during CAF international operations. However, providing PW treatment to a detainee does not mean that, as a matter of law, the individual is entitled to PW status.

4. **Restraints, Blindfolds, Hoods and Security.** Restraints will only be employed for the purposes of force protection or for the protection of the detained individual. Similarly blindfolds, and in exceptional cases, hoods, may only be used for limited periods of time when it is necessary to deprive the detainee of sight for force protection or for the protection of the detained individual. The use of restraints, blindfolds, hoods or similar protection measures is by exception and only as specifically authorized in orders and Rules of Engagement issued by the Chief of the Defence Staff on a operation-by-operation basis.

5. Searches of detainees shall be conducted using CAF-authorized methods and only as specifically authorized in orders and Rules of Engagement issued by the Chief of the Defence Staff. When a search is conducted it must be ensured that the dignity of the individual is respected.

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6. **National Responsibility.** Captured personnel are the responsibility of the Power detaining them, with their rights and status regulated in accordance with the *GC III*. The rules embodied in the *GC III* are generally regarded as being part of the customary international law. This implies that the basic principles therein are binding even upon a state, which has not become a party to this Geneva Convention. Persons detained, regardless of status, shall in all circumstances be treated humanely. The standard for all detained persons is that of GC III. The responsibility for the treatment of PWs rests upon the Detaining Power. Failure to properly care for PWs may make that power liable to pay compensation, while the individuals responsible for such ill treatment or for allowing it to occur, are liable to be tried as war criminals.

7. **Persons who may not be made PWs.** Diplomatic representatives of the adverse party must not be made PWs and must be allowed to return to their own country. Neutral diplomats, including military and other service attaches accompanying the forces of the adverse party in the field, may not be taken prisoner so long as they have a certificate of identity and have taken no part in hostilities. They may, however, be ordered to leave the conflict area.

8. Subject to specified advantageous differences in treatment based on rank, gender or health, all PWs are to be treated alike without any adverse distinction based on race, nationality, religious belief or political opinions, or any other distinction founded on similar criteria. PWs must at all times be treated humanely and must be protected, particularly against any acts of violence or intimidation, as well as against insults and public curiosity. PWs are entitled to respect for their persons and honour and must be allowed to exercise the rights attaching to their civil capacity to the extent that the captivity permits. They must also be maintained by the Detaining Power without charge. Female PWs must be treated with due regard to their gender and must in no case be treated less favourably than male PWs. Their gender must also be taken into account in the allocation of labour and in the provision of sleeping and sanitary facilities. They must also be specially protected against rape and other sexual assaults.

9. Reprisals against PWs are prohibited. It is forbidden to kill PWs. The fact that captors are unable to provide the necessary facilities or personnel to restrict their movements or because they will have to be fed, thus reducing the supplies available to the captors, or because they may gain their liberty as a result of an early success by the forces to which they belong are no exceptions to the rule. In other words, self-preservation or military necessity can never provide an excuse for the murder of PWs.

10. **The Protecting Power.** The Protecting Power is a non-belligerent State, which has been designated by a Party to the conflict and accepted by the adverse Party and has agreed to carry out the functions assigned to a Protecting Power. A "substitute" is an organisation acting in place of a Protecting Power when agreement of Protecting Power nominations between Parties to the conflict cannot be reached. Belligerents, almost by definition, will normally sever all social, commercial and diplomatic contact between each other at the outset of hostilities. In such circumstances there are unlikely to be any formal channels of communication at any level between those involved on

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opposing sides of a conflict. In order to secure the supervision and implementation of International Humanitarian Law (IHL) each Party to an international armed conflict shall, at the outbreak of hostilities, designate a Protecting Power and, if possible, accept the designation made by the adverse Party. If agreement cannot be reached on a neutral or other State to act as Protecting Power, an impartial humanitarian organisation (such as the ICRC) shall offer its good offices and be designated as a substitute.

11. Whilst there is an obligation upon Parties to the conflict to designate a Protecting Power, there is no guarantee that nominations will be acceptable to the adverse Party. Should there be no agreement after the subsequent intercession of the ICRC to mediate, then an offer by the ICRC or any other impartial humanitarian organisation to act as a 'substitute' Protecting Power, as defined in the previous paragraph, should be accepted. The Protecting Power will exercise its function through:

a. **Representatives**. The normal diplomatic and consular personnel of the Protecting Power.

b. **Delegates**. Persons appointed by the Protecting Power to discharge its functions under the GCs. Delegates will normally be nationals of the Protecting Power or of another neutral state. Members of the ICRC may also be appointed as delegates by the Protecting Power. It will normally be the Delegates who ensure, through physical checking, that PW are being treated in accordance with the GCs and AP I.

12. **Inspection Facilities**. Representatives and Delegates of Protecting Powers and ICRC Delegates have the right to investigate the treatment and administration of PW wherever they may be and are to be allowed to interview PW without witnesses. They are to be given support and cooperation in this work. For Canada, this right can be temporarily delayed for reasons of imperative military necessity by the MND (Minister of National Defence) in Canada and the Joint Task Force (JTF) Commander outside Canada. The treatment of Canadian PW and the standing of Canada in the eyes of the International Community will depend, to a large extent, on the manner in which the Protecting Power reports that enemy PW are being treated. The provision of full and open inspection facilities will assist in establishing a favourable impression of the quality of Canada's treatment of PW.

13. **Passes for Representatives and Delegates**. Passes for representatives of the Protecting Power and their properly accredited delegates are to be issued under arrangements made within the AOO. On behalf of Canada, the DCDS staff at NDHQ will advise the Joint Task Force Headquarters (JTFHQ) on the policy to be adopted towards facilitating visits to PW by Representatives and Delegates.

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Suggested Questions

Q. How detainees captured by CAF personnel shall be treated?
(Treat all detainees, regardless of their legal status, humanely in a manner consistent with the standard of PW treatment as defined in GC III)

Q. Are all detainees entitled to PW Status?
(Providing PW treatment to a detainee does not mean that, as a matter of law, the individual is entitled to PW status)

Q. When restraints and the use of blindfolds should be authorized?
(Restraints will only be employed for the purposes of force protection or for the protection of the detained individual. Blindfolds, and in exceptional cases, hoods, may only be used for limited periods of time when it is necessary to deprive the detainee of sight for force protection or for the protection of the detained individual)

Q. Who's responsible for captured personnel?
(Captured personnel are the responsibility of the Power detaining them, with their rights and status regulated in accordance with the *GC III*)

Q. Which personnel may not be made PWs?
(Diplomatic representatives of the adverse party must not be made PWs and must be allowed to return to their own country)

Q. What is the common standard for treatment of PWs?
(Subject to specified advantageous differences in treatment based on rank, gender or health, all PWs are to be treated alike without any adverse distinction based on race, nationality, religious belief or political opinions, or any other distinction founded on similar criteria)

Q. What is a Protecting Power?
(The Protecting Power is a non-belligerent State, which has been designated by a Party to the conflict and accepted by the adverse Party and has agreed to carry out the functions assigned to a Protecting Power)

Q. Through whom the Protecting Power will exercise its functions?
(Delegates, normal diplomatic and consular personnel of the Protecting Power)

Q. What are the duties of the ICRC with regards to PWs?
(Representatives and Delegates of Protecting Powers and ICRC Delegates have the right to investigate the treatment and administration of PW wherever they may be and are to be allowed to interview PW without witnesses)

Note to the Instructor: Encourage students to actively participate in the lesson and to reason through problems.

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PART 4 – CONCLUSION

Summary

1. The treatment accorded detainees during international CAF operations could be based on the determination of their legal status (*e.g.* combatants, unlawful combatants, civilian internees, war criminals, petty criminals and so on). The standards of treatment that PWs are entitled to are detailed in several CAF publications such as the "Code of Conduct for CAF Personnel", "The Law of Armed Conflict at the Operational and Tactical Level" and "Prisoner of War Handling, Detainees and Interrogation & Tactical Questioning in International Operations". Restraints will only be employed for the purposes of force protection or for the protection of the detained individual. Similarly blindfolds, and in exceptional cases, hoods, may only be used for limited periods of time when it is necessary to deprive the detainee of sight for force protection or for the protection of the detained individual. Searches of detainees shall be conducted using CAF-authorized methods and only as specifically authorized in orders and Rules of Engagement issued by the Chief of the Defence Staff.

2. Captured personnel are the responsibility of the Power detaining them, with their rights and status regulated in accordance with the *GC III*. The rules embodied in the *GC III* are generally regarded as being part of the customary international law. Diplomatic representatives of the adverse party must not be made PWs and must be allowed to return to their own country. Subject to specified advantageous differences in treatment based on rank, gender or health, all PWs are to be treated alike without any adverse distinction based on race, nationality, religious belief or political opinions, or any other distinction founded on similar criteria. Female PWs must be treated with due regard to their gender and must in no case be treated less favourably than male PWs. Reprisals against PWs are prohibited. It is also forbidden to kill PWs.

3. The Protecting Power is a non-belligerent State, which has been designated by a Party to the conflict and accepted by the adverse Party and has agreed to carry out the functions assigned to a Protecting Power. If agreement cannot be reached on a neutral or other State to act as Protecting Power, an impartial humanitarian organisation (such as the ICRC) shall offer its good offices and be designated as a substitute. Whilst there is an obligation upon Parties to the conflict to designate a Protecting Power, there is no guarantee that nominations will be acceptable to the adverse Party.

4. Representatives and Delegates of Protecting Powers and ICRC Delegates have the right to investigate the treatment and administration of PW wherever they may be and are to be allowed to interview PW without witnesses. They are to be given support and cooperation in this work. Passes for representatives of the Protecting Power and their properly accredited delegates are to be issued under arrangements made within the AOO. On behalf of Canada, the DCDS staff at NDHQ will advise the Joint Task Force Headquarters (JTFHQ) on the policy to be adopted towards facilitating visits to PW by Representatives and Delegates.

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Confirmation

The instructor may ask other confirmation questions.

Conclusion

4. The legal, operational and policy issues arising from detainee handling and treatment during international operations can be varied, nuanced and complex. Resolution of such issues requires a basic understanding of the key international legal frameworks, primarily the LOAC and international human rights law. While handling and treatment of detainees can vary according to the legal status of the detainees, it must be emphasized that CAF policy is to treat all detainees, regardless of their legal status, humanely in a manner consistent with the standard of PW treatment as defined in *Geneva Convention (GC) III*. Moreover, it is prohibited in all circumstances to torture, abuse or to treat inhumanely any detainee.

5. It is crucial to account for detainees as a key planning factor in all CAF operations. If this does not occur, then CAF commanders will be faced with the problem of handling detainees, possibly in large numbers, for whom little provision has been made in terms of treatment, transfer, use of force, questioning, processing and logistics. If such problems occur, then the conduct of operations will likely be severely impacted and detainees may be subjected to improper treatment. This would be unacceptable for Canada, CAF commanders and CAF members and would likely result in mission failure. Conversely, a fully informed appreciation of detainee issues and full consideration of such issues in the operational planning process will contribute to mission success and will reaffirm the professionalism, effectiveness, honour and humanity of the CAF.

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PO 024 ADVISE ON LEGAL ISSUES PERTAINING TO PW & DETAINEES

PART 1 -- LESSON IDENTIFICATION

TITLE: EO 024.04 Advise on interrogation and questioning

Performance. Advise on interrogation and questioning

Conditions.

Given: References including Geneva Conventions III & IV, Use of Force in CF Operations Manual, and PW Handling, Detainees and Interrogation and Tactical Questioning in International Operations Manual.

Denied: Direct supervision

Standard. The legal officer shall advise on interrogation and questioning pertaining to PW & detainees.

Main Teaching Points:

- Applicable legal regime and policies

Method. This EO will be accomplished by a combination of self-study and class lectures. Students will be required to read assigned materials and be prepared to respond to questions.

Duration. One 5-minute period.

References. *Convention (III) relative to the Treatment of Prisoners of War*, Geneva, 12 August 1949
Convention (IV) relative to the Protection of Civilian Persons in Time of War, Geneva, 12 August 1949
Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977
SOR/91-134 *Prisoner-of-War Status Determination Regulations*
B-GJ-005-104/FP-024 The Operational Law Manual (Draft) Chapter 29
B-GJ-005-104/FP-021 Law of Armed Conflict at the Operational and Tactical Level
B-GJ-005-110/FP-020 Prisoner of War Handling, Detainees and Interrogation & Tactical Questioning in International Operations

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Training/ Learning Aids. Standard classroom with whiteboard and projection system/handouts; CD materials; Legal Officer Qualification Course (LOQC) Instructors Handbook – Module(s) [XXX]

Note to the instructor. The developmental lesson shall be conducted in structured manner, using a list of questions to the class. Instructors are to complement each segment of the developmental lesson by follow-up and direct questions taking into account the flow and direction of the discussion. Interim summaries shall be conducted at the end of each segment to confirm the material was learned and provide a basis from which the discussion can progress to the next segment. A review of the main teaching points will then take place at the end of the period.

PART 2 – INTRODUCTION

Objective: The instructor shall advise on interrogation and questioning of PWs & detainees as outlined in Module [XXX] of the LOQC Instructors Handbook.

Introduction: During the course of CAF operations, CAF units and members have detained and will continue to detain individuals. Pursuant to CAF doctrine, detainees are any persons who are non-consensually in the custody, care and control of CAF personnel. During CAF domestic operations, detainees could include a variety of persons such as civilians committing a breach of the peace during CAF assistance to Canadian law enforcement authorities. During international operations detainees could include: local civilians who interfere with the mission, petty criminals, international criminals, prisoners of war (PW) or other persons who have taken part in hostilities against CAF or other Allied/Coalition forces, such as unlawful combatants.

Outline:

Stage 1 – Applicable legal regime and policies

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PART 3 – BODY OF THE LESSON

Stage 1 – Applicable legal regime and policies

1. **Introduction.** The treatment of detainees held for interrogation and tactical questioning will comply with Canadian law and relevant international laws, conventions and agreements. The primary aim of interrogation and tactical questioning is the timely extraction of information and intelligence from a detainee in a humane manner and the dissemination of that product to the relevant command in order that it may be used in the production of intelligence estimates and in decision-making.

2. **Definition**. Interrogation and tactical questioning (TQ) are intelligence-gathering activities, defined as follows:

   a. **Interrogation**. Interrogation is the systematic questioning of a PW to obtain information of intelligence value;

   b. **Tactical Questioning (TQ)**. The first questioning and screening to which a PW is subjected to obtain information of immediate tactical value.

3. Within the CAF, the term "interrogation" may be used to refer to intelligence gathering or criminal investigation. Subjects of interrogation and TQ will, as a minimum, be provided the protection accorded by the Third Geneva Convention (relative to the treatment of PW).

4. **Purpose**. The aim of any interrogation or TQ is to obtain usable and reliable information, in a lawful manner and in the least amount of time, which meets the intelligence requirements of any echelon of command. A successful interrogation or TQ produces information which is timely, complete, clear, and accurate. In the spectrum of intelligence, interrogation is classified as a human intelligence (HUMINT) activity. It is an integral part of the larger intelligence architecture intended to provide commanders with a timely understanding of the situation, thus allowing them to possess the initiative and achieve mission success.

5. **Concept**. Interrogation and TQ are controlled, systematic processes by which specified personnel question individuals in order to obtain information. The following are inherent concepts integral to interrogation and TQ;

   a. **Interrogation and TQ are Controlled**. PW are interrogated or tactically questioned in accordance with well-defined information requirements. The location, method, and conditions of interrogation are all closely regulated;

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b. **Interrogation and TQ are Systematic**. Interrogation and TQ are planned, deliberate intelligence gathering activities which form part of the larger intelligence operation; and

c. **Specified Personnel Conduct Interrogation and TQ**. Successful interrogation and TQ require a solid understanding of the needs of the particular intelligence operation and skill in conduct. For this reason, only specified personnel are authorized to conduct interrogation and TQ, specifically:

(1) **Interrogation**. Only interrogators from the CF Intelligence Branch who are trained in accordance with CAF standards are authorized to conduct interrogations. Scientific and technical intelligence specialists may assist in interrogations but must be similarly qualified in order to conduct interrogations on their own; and

(2) **Tactical Questioning**. In a unit, only designated personnel trained to CAF standards will conduct TQ.

6. Although the actual conduct of interrogation is restricted to specified personnel, all CAF personnel involved in PW handling play an important part in its success. Commanders at all levels, troops who first capture a PW, and those responsible for the evacuation chain can all assist in effective interrogation by conducting proper PW handling and ensuring that processing occurs in a timely, efficient manner.

7. **Principles**. Interrogation and TQ are governed by the following key principles:

a. all interrogation and TQ activity will fully comply with Canadian law and relevant international laws, conventions, and agreements, including the Third Geneva Convention (relative to the treatment of PW), and the *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984)*;

b. PW must be humanely treated at all times;

c. PW must at all times be protected, particularly against acts of violence or intimidation and against insults and public curiosity;

d. PW are entitled in all circumstances to respect for their persons and their honour. Women shall be treated with all the regard due to their sex and shall in all cases benefit from treatment as favourable as that granted to men. Children who have not attained the age of 18 years shall be the object of special respect;

e. no physical or mental torture, nor any other form of coercion, may be inflicted on PW to secure from them information of any kind whatever.

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8. **Interrogation and TQ in Special Circumstances**. CAF policy is that the basic principles of the LOAC must be applied, as a minimum, by all members of the CAF taking part in all Canadian military operations other than Canadian domestic operations. Accordingly, all detainees will be provided with the same standard of treatment and care afforded to PW.

9. **Suspicion of Criminal Offences**. It is possible that in the course of interrogation or TQ, information may be rendered that is related to a possible or known war crime or other criminal offence. Command directives should specify a procedure to inform military police and arrange for the appropriate disposition of the individual in such circumstances.

10. **Conduct of Interrogation and TQ**. The primary aim of interrogation and TQ is the timely extraction of information and/or intelligence from PW in a humane manner, and the dissemination of that product to the relevant command in order that it may be used in the production of intelligence estimates and in decision-making. The chain of command is responsible for the handling, guarding, administration, welfare, interrogation and tactical questioning of PW. The J2 coordinates interrogation and tactical questioning in support of intelligence collection.

11. **Interrogation and TQ Organization.** It is important that the interrogation and tactical questioning organization is as flexible and straightforward as possible. Normally, interrogators will only be found at formation level, however interrogation teams may be forward deployed in accordance with the specific tactical situation. By definition, tactical questioning is only conducted at the unit level.

12. **Interrogation and TQ Procedures.** PW shall be categorized according to their assessed intelligence value as early after capture as possible in order to ensure the timely exploitation of information. This may be done by the capturing unit, or by a subsequent interrogation organization. This categorization will be reassessed at all stages of the PW evacuation chain.

13. PW are to be questioned in a language that they understand. This may necessitate that interrogation and tactical questioning be conducted through the use of a translator. The use of a translator does not limit the interrogators' and tactical questioners' responsibility for the conduct of the interrogation and tactical questioning. Interrogation and tactical questioning will be conducted through the use of CF-authorized questioning and interviewing techniques. If in the course of interrogation or tactical questioning, information is rendered that is related to a possible or known war crime or other criminal offence, the immediate action unless otherwise specified shall be to continue the operationally-oriented questioning while ensuring that military police are informed as soon as practicable. Where there is doubt, a CAF legal officer shall be consulted.

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14. Additionally, the following specific concerns apply to tactical questioning:

a. tactical questioning directed at PW shall be limited in scope and concerned solely with gathering information of immediate tactical value;

b. tactical questioning shall not cause undue delay in the evacuation of a PW;

c. tactical questioning shall be conducted in a manner that does not adversely affect subsequent interrogation of a PW.

15. The following is specifically PROHIBITED during the interrogation and TQ:

a. outrages upon the personal dignity including humiliation and degradation,

b. adverse treatment on the basis of sex, sexual orientation, or ethnic, religious or cultural background of the PW,

c. diet restrictions,

d. sensory deprivation or manipulation through the use of blindfolds, hoods, earmuffs, loud music, bright lights or other methods,

e. sleep deprivation or manipulation,

f. close confinement, except when PW are serving a disciplinary or penal sanction, or where necessary to safeguard their health,

g. using animals, such as dogs, for intimidation purposes,

h. any stress positions.

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Suggested Questions

Q. What is the definition of interrogation?
(Interrogation is the systematic questioning of a PW to obtain information of intelligence value)

Q. What is definition of tactical questioning (TQ)?
(The first questioning and screening to which a PW is subjected to obtain information of immediate tactical value)

Q. What is the aim of any interrogation or TQ?
(To obtain usable and reliable information, in a lawful manner and in the least amount of time, which meets the intelligence requirements of any echelon of command)

Q. What is the concept of interrogation and TQ?
(Controlled, systematic processes by which specified personnel question individuals in order to obtain information)

Q. Who could interrogate and ask tactical questions to PW and Detainees?
(Only interrogators from the CF Intelligence Branch who are trained in accordance with CAF standards are authorized to conduct interrogations In a unit, only designated personnel trained to CAF standards will conduct TQ)

Q. Which principles govern interrogation and TQ of PW and Detainees?
(Fully complies with Canadian law and relevant international laws; humanely treated at all times; protection against acts of violence or intimidation and against insults and public curiosity; respect for their persons and their honour; no physical or mental torture, nor any other form of coercion)

Note to the Instructor: Encourage students to actively participate in the lesson and to reason through problems.

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PART 4 – CONCLUSION

Summary

1. The treatment of detainees held for interrogation and tactical questioning will comply with Canadian law and relevant international laws, conventions and agreements. The primary aim of interrogation and tactical questioning is the timely extraction of information and intelligence from a detainee in a humane manner and the dissemination of that product to the relevant command in order that it may be used in the production of intelligence estimates and in decision-making.

2. The aim of any interrogation or tactical questioning (TQ) is to obtain usable and reliable information, in a lawful manner and in the least amount of time, which meets the intelligence requirements of any echelon of command. A successful interrogation or TQ produces information which is timely, complete, clear, and accurate. In the spectrum of intelligence, interrogation is classified as a human intelligence (HUMINT) activity. It is an integral part of the larger intelligence architecture intended to provide commanders with a timely understanding of the situation, thus allowing them to possess the initiative and achieve mission success. Although the actual conduct of interrogation is restricted to specified personnel, all CAF personnel involved in PW handling play an important part in its success. Commanders at all levels, troops who first capture a PW, and those responsible for the evacuation chain can all assist in effective interrogation by conducting proper PW handling and ensuring that processing occurs in a timely, efficient manner.

3. CAF policy is that the basic principles of the LOAC must be applied, as a minimum, by all members of the CAF taking part in all Canadian military operations other than Canadian domestic operations. Accordingly, all detainees will be provided with the same standard of treatment and care afforded to PW. It is important that the interrogation and tactical questioning organization is as flexible and straightforward as possible. Normally, interrogators will only be found at formation level, however interrogation teams may be forward deployed in accordance with the specific tactical situation. By definition, tactical questioning is only conducted at the unit level. PW shall be categorized according to their assessed intelligence value as early after capture as possible in order to ensure the timely exploitation of information. This may be done by the capturing unit, or by a subsequent interrogation organization. This categorization will be reassessed at all stages of the PW evacuation chain.

4. PWs are to be questioned in a language that they understand. This may necessitate that interrogation and tactical questioning be conducted through the use of a translator. The use of a translator does not limit the interrogators' and tactical questioners' responsibility for the conduct of the interrogation and tactical questioning. Interrogation and tactical questioning will be conducted through the use of CAF authorized questioning and interviewing techniques. If in the course of interrogation or tactical questioning, information is rendered that is related to a possible or known war crime or other criminal offence, the immediate action unless otherwise specified shall be

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to continue the operationally-oriented questioning while ensuring that military police are informed as soon as practicable. Where there is doubt, a CAF legal officer shall be consulted.

Confirmation

The instructor may ask other confirmation questions.

Q. What is the primary aim of interrogation and TQ?
(Timely extraction of information and/or intelligence from PW in a humane manner, and the dissemination of that product to the relevant command in order that it may be used in the production of intelligence estimates and in decision-making)

Q. What specific concerns would apply to tactical questioning?
(Shall be limited in scope and concerned solely with gathering information of immediate tactical value; shall not cause undue delay in the evacuation of a PW; shall be conducted in a manner that does not adversely affect subsequent interrogation of a PW)

Q. What would be specifically PROHIBITED during the interrogation and TQ of PW and Detainees?
(Outrages upon the personal dignity; adverse treatment on the basis of sex, sexual orientation, or ethnic, religious or cultural background of the PW, diet restrictions, sensory deprivation or manipulation through the use of blindfolds, hoods, earmuffs, loud music, bright lights or other methods, sleep deprivation or manipulation, close confinement, except when PW are serving a disciplinary or penal sanction, or where necessary to safeguard their health, using animals, such as dogs, for intimidation purposes, any stress positions)

Conclusion

5. The legal, operational and policy issues arising from detainee handling and treatment during international operations can be varied, nuanced and complex. Resolution of such issues requires a basic understanding of the key international legal frameworks, primarily the LOAC and international human rights law. While handling and treatment of detainees can vary according to the legal status of the detainees, it must be emphasized that CAF policy is to treat all detainees, regardless of their legal status, humanely in a manner consistent with the standard of PW treatment as defined in *Geneva Convention (GC) III*. Moreover, it is prohibited in all circumstances to torture, abuse or to treat inhumanely any detainee.

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6. It is crucial to account for detainees as a key planning factor in all CAF operations. If this does not occur, then CAF commanders will be faced with the problem of handling detainees, possibly in large numbers, for whom little provision has been made in terms of treatment, transfer, use of force, questioning, processing and logistics. If such problems occur, then the conduct of operations will likely be severely impacted and detainees may be subjected to improper treatment. This would be unacceptable for Canada, CAF commanders and CAF members and would likely result in mission failure. Conversely, a fully informed appreciation of detainee issues and full consideration of such issues in the operational planning process will contribute to mission success and will reaffirm the professionalism, effectiveness, honour and humanity of the CAF.

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PO 024 ADVISE ON LEGAL ISSUES PERTAINING TO PW & DETAINEES

PART 1 -- LESSON IDENTIFICATION

TITLE: EO 024.05 Advise on release, transfer or return

Performance. Advise on release, transfer or return

Conditions.

Given: References including Geneva Conventions III & IV, Use of Force in CF Operations Manual, and PW Handling, Detainees and Interrogation and Tactical Questioning in International Operations Manual.

Denied: Direct supervision

Standard. The legal officer shall advise on release, transfer or return pertaining to PW & detainees.

Main Teaching Points:

- Applicable legal regime and policies

Method. This EO will be accomplished by a combination of self-study and class lectures. Students will be required to read assigned materials and be prepared to respond to questions.

Duration. One 10-minute period.

References. *Convention (III) relative to the Treatment of Prisoners of War*, Geneva, 12 August 1949
Convention (IV) relative to the Protection of Civilian Persons in Time of War, Geneva, 12 August 1949
Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977
SOR/91-134 *Prisoner-of-War Status Determination Regulations*
B-GJ-005-104/FP-024 The Operational Law Manual (Draft) Chapter 29
B-GJ-005-104/FP-021 Law of Armed Conflict at the Operational and Tactical Level
B-GJ-005-110/FP-020 Prisoner of War Handling, Detainees and Interrogation & Tactical Questioning in International Operations

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Training/ Learning Aids. Standard classroom with whiteboard and projection system/handouts; CD materials; Legal Officer Qualification Course (LOQC) Instructors Handbook – Module(s) [XXX]

Note to the instructor. The developmental lesson shall be conducted in structured manner, using a list of questions to the class. Instructors are to complement each segment of the developmental lesson by follow-up and direct questions taking into account the flow and direction of the discussion. Interim summaries shall be conducted at the end of each segment to confirm the material was learned and provide a basis from which the discussion can progress to the next segment. A review of the main teaching points will then take place at the end of the period.

PART 2 – INTRODUCTION

Objective: The instructor shall advise on release, transfer or return pertaining to PWs & detainees as outlined in Module [XXX] of the LOQC Instructors Handbook.

Introduction: During the course of CAF operations, CAF units and members have detained and will continue to detain individuals. Pursuant to CAF doctrine, detainees are any persons who are non-consensually in the custody, care and control of CAF personnel. During CAF domestic operations, detainees could include a variety of persons such as civilians committing a breach of the peace during CAF assistance to Canadian law enforcement authorities. During international operations detainees could include: local civilians who interfere with the mission, petty criminals, international criminals, prisoners of war (PW) or other persons who have taken part in hostilities against CAF or other Allied/Coalition forces, such as unlawful combatants.

Outline:

Stage 1 – Applicable legal regime and policies

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PART 3 – BODY OF THE LESSON

Stage 1 – Applicable legal regime and policies

Introduction

1. While all PWs are to be released and repatriated immediately upon the cessation of active hostilities, parties to the conflict are to repatriate, regardless of rank or number, all seriously wounded and sick when fit to travel. When possible, agreements should be made between the parties, with the co-operation of neutral countries, for the detention of such persons in neutral territory pending such repatriation. Arrangements should also be made for the retention in neutral territory of able-bodied PWs who have undergone a long period of captivity. PWs should not be repatriated against their wishes during hostilities.

2. **Transfer of Detainees.** Practically speaking, the current roles and structure of CAF units participating in international operations are not suited to deal with any more than the transitory custody of detained persons. The clear majority of CAF international operations are Allied/Coalition ones (*e.g.* UN mandated missions or the Campaign Against Terrorism). In the context of coalition operations, persons detained by the CAF in the theatre of operations will likely be transferred either

3. Generally, international law permits the transfer of detainees between states as long as the transferring state is satisfied that the accepting state is willing and able to abide by international obligations for the handling and humane treatment of detainees. For example, portions of the LOAC, as reflected in the provisions of GCs III & IV, provide for the transfer of captured or detained persons who have taken part in hostilities to other nations who are willing and able to apply the standards for handling and treatment of such persons. In such situations it usually remains the responsibility of the Detaining Power to determine the legal status of a detainee. Importantly, the mere fact that an individual captured by the CAF during an international operation may be defined as a "detainee" under CAF doctrine or the *PW Status Determination Regulations* does not necessarily make Canada a "Detaining Power" under international law. A "Detaining Power" can be either a Transferring or Accepting Power. As noted previously, a "Detaining Power" will generally be the Power which detains an individual for any period of time beyond that reasonably required between initial capture and transfer and which has the ability and resources to the maintain a long-term detention facility. The main purpose of classifying an individual captured by the CAF as a "detainee" (as defined under CAF doctrine or under the *PW Status Determination Regulations*) is that it triggers the CAF policy to treat all detainees, regardless of their legal status or regardless of whether Canada is a "Detaining Power", humanely in manner consistent with the standard of PW treatment as defined in GC III.

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4. A transferring state's responsibility regarding a detainee does not end at the moment of transfer. For example, if a transferred detainee has PW status, Canada would have a residual obligation, pursuant to Article 12 GC III, to take effective measures to correct any situation upon being notified that the provisions of GC III are not being complied with in any important respect. Normally, the role of notifying a transferring state rests with the Protecting Power (often the ICRC).

5. Under customary international law, an argument can be made that a residual obligation analogous to that found at Article 12 GC III for PWs also exists for unlawful combatants or other civilian detainees (*e.g.* petty criminals and persons interfering with the mission) who are transferred to an accepting state. Accordingly, Canada would likely have a residual obligation to take effective measures to correct any situation upon being notified by an entity similar to a Protecting Power that an accepting state has failed, in any important way, to treat the transferred detainee humanely in a manner consistent with the standard required under international law. The ability of such an entity to engage the Canadian authorities in individual cases would depend upon its being aware of the transfer of a particular detainee by the CAF.

6. **PW Handling During Coalition Operations**. The issue of how to handle PW during Coalition operations can be solved by designating one or more States, which are parties to the Convention, as receiving Powers. Under GC III, PW can be transferred from one State to another as long as the original detaining State has satisfied itself that the receiving State is willing and able to apply the Convention. This issue would have to be resolved between participating States before any transfer of PW could occur, and should occur early in the coalition campaign planning phase.

7. Even if all States are satisfied that the receiving State(s) will apply the Convention and proceed to hand over the PW, the original detaining States will continue to have responsibility for these PW. GC III states that if the original transferring State is notified that the receiving State has failed to carry out the provisions "in any important respect", the transferring State will have to take measures to correct this situation. Such measures could include taking back the PW in question.

8. Once again, the Convention fails to explain what is meant by "in any important respect"; however, at a minimum, this would include any of the acts relating to grave breaches of the Convention. General conditions of internment would have to be respected, including such things as food, hygiene, labour, and quarters. The decision not to determine PW status, where doubt exists, would also be an important failure to carry out the provisions of the Convention that would require the transferring State to take measures. The failure to respect this particular provision could result in an individual being denied PW status and charged with a criminal offence for acts which would have been lawful if committed by a combatant.

9. If members of a Coalition operation discover that a receiving State(s) is not acting in accordance with the Convention the measures that these States are obliged to take will depend upon the nature of the failure. If the receiving State does not have

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enough food, medical supplies, or medical personnel, the transferring States may directly supply whatever is lacking. If this still does not correct the situation or it becomes apparent that the receiving Power is acting out of ill will, the other States will have to request that the prisoners be returned. The Convention is clear that such requests must be complied with. The original transferring States can arrange for the prisoners to be transferred to another State(s) if they are still unable to deal with them. However, in the event that no other States are willing or able to take on responsibility for the prisoners, each State will either have to take back the PW captured by its forces and establish camps or release them.

10. **Transfers Between Canadian PW Establishments**. Transfers of PW between camps and compounds belonging to Canada are to be carried out in accordance with the following principles:

a. Transfers are to take place with the best interests of the PW in mind.

b. Transfers are not to be carried out with the intention of hindering or delaying the repatriation of PW.

c. In planning a transfer, the climatic conditions to which PW have become accustomed are to be taken into consideration and steps are to be taken to ensure that the transfer is not prejudicial to their health.

d. The transfer is to be carried out in a humane manner with PW being provided, in transit, with food and water, appropriate clothing, accommodation and medical attention where necessary.

e. Adequate precautions are to be taken to ensure the safety of PW in the course of the journey, especially if this involves travel by sea or air.

f. Sick or wounded PW are only to be transferred where this is necessary to ensure their personal safety or to enable them to receive better medical treatment.

g. PW are to be allowed to take their personal effects with them on transfer and are to be accompanied by their PW documentation.

h. If combat threatens a camp, PW are not to be transferred from the camp unless they can be transferred in reasonable safety or unless they are at greater risk by remaining in the camp than by being transferred.

11. **International Transfers**. The transfer of PW between Canada and another nation will be subject to the following additional constraints:

a. No PW captured by Canada are to be transferred to the custody of any other nation without specific authority from NDHQ. Such authorisation is to be

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sought even in the case of a temporary transfer of PW planned, for example, to alleviate overcrowding in Canadian PW facilities.

b. PW are only to be transferred from Canadian custody to that of a nation which is a Party to the GCs and then only after specific authority has been given by NDHQ. The decision as to whether or not PW captured by Canada may be transferred to the custody of another nation will be determined by the Government of Canada.

c. Even after PW captured by Canada have been transferred to the custody of another nation, there is still a residual responsibility placed on Canada regarding their treatment. If the Government of Canada is notified by the Protecting Power, usually the ICRC, that the Detaining Power to whom the PW have been transferred is not complying with the provisions of the GCs, Canada has a duty to correct the problem, or to take the PW back into Canadian custody.

d. PW captured by another nation are only to be transferred into Canadian custody with the specific authority of NDHQ.

e. PW transferred from the custody of another nation into Canadian custody are to be treated in every respect in the same way as PW captured by Canada.

12. **Administrative Considerations**. GC III lays down a number of administrative provisions with which the staff of PW camps must comply when transferring PW. These are as follows:

a. **Notice of Transfer**. PW are to be given sufficient notice of transfer to enable them to pack their belongings and inform their next of kin of their transfer.

b. **Forwarding of Mail**. Before they are transferred to another camp, PW are to be told of their new postal address in sufficient time to inform their Next of Kin before their departure. This is to be done by the dispatch of a new capture card.

c. **Prisoner Lists**. The PWIB is kept informed of the movements of PW in the following manner:

(1) A list of all PW who are to be transferred either within the Canadian system or to a camp outside the Canadian system, is to be made up before the transfer takes place and a copy sent to the PWIB.

(2) A list of all PW transferred into Canadian custody from another nation is to be sent to the PWIB as soon as possible after the transfer.

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d. **Movement of Personal Effects.** Administrative points relating to the movement of personal effects are:

(1) PW may take only the personal effects which they may reasonably carry and in any case, no more than 25 kilograms.

(2) The Camp Commander, in agreement with the Prisoners' Representative, is to make arrangements for the subsequent forwarding of any personal or community property which PW have not been able to take with them to their new location.

e. **PW Accounts**. As a basic principle, when PW are transferred, their accounts move with, or very closely after them. In the case of transfer of PW to another Detaining Power, any currency which they have which is not in $C will move with their accounts and they are to be given credit notes reflecting any credit balance which is in their account.

13. **Termination of Captivity**. Apart from death in captivity, the captivity of PW can be ended in three ways:

a. Through an exchange of PW in the course of a break in hostilities.

b. By repatriation of sick and wounded PW while hostilities continue.

c. By release and repatriation of PW at the end of hostilities.

14. **PW Exchange.** PW exchange is outside the provisions of GC III and although in the past there have been instances of the exchange of PW, man for man, in the course of truces or temporary cessation in hostilities, such instances are likely to be the exception. Canada will not engage in PW exchange without the specific authority of the CDS. When such authority is granted, the exchange is to take place under the supervision of the Protecting Power or the ICRC.

15. **Repatriation of Sick and Wounded PW**. GC III places a duty on belligerents:

a. To repatriate PW who are seriously wounded or ill, regardless of numbers and ranks, back to their own countries, after first having afforded them sufficient medical treatment to enable them to travel. PW who are wounded in accidents can benefit from the same provisions of GC III as those who are wounded unless the injuries are self-inflicted. The exception to this provision is that no PW who is eligible for repatriation may be repatriated against his wishes.

b. To make arrangements with neutral nations for sick and wounded PW to be accommodated in the country or territories of those neutral countries for the duration of hostilities.

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c. **Assessment of PW for Repatriation - The Mixed Medical Commission.** The assessment of PW to determine their eligibility for repatriation is normally to be carried out by Mixed Medical Commissions. However, PW, who in the opinion of a medical officer of the Canadian or Coalition Forces are seriously injured or sick, may be repatriated without having to be examined by a Mixed Medical Commission. Regulations for Mixed Medical Commissions, covering their composition and method of work, and details of the medical conditions forming the criteria for the different types of repatriation are set out in GC III. The most important regulations relating to the Commissions are summarised as follows:

(1) Each Commission is to consist of three members. Two of these, of whom one should be a physician and the other a surgeon, are, wherever possible, to be from a neutral country, appointed by the ICRC and approved by the belligerents. The third member is to be a medical officer of the Canadian Forces who is also to be responsible for the administration of the Commission. One of the neutral members is to be the Chairman of the Commission.

(2) The Commission will:

(a) Examine PW who have applied for or been recommended for repatriation.

(b) Inspect the medical records of those PW.

(c) Determine which cases are eligible for repatriation or for transfer to a neutral country.

(3) The decisions of the Commission are to be based on a majority vote by the members of the Commission.

d. Each camp is to be visited by a Mixed Medical Commission at an interval of not more than 6 months.

e. The decisions of the Mixed Medical Commission on each specific case are to be passed to the PW, Canada, the Protecting Power (if appointed) and the ICRC within a month of their visit. Canada is required to implement the decision of the Mixed Medical Commission within 3 months of the date of receiving the decision of the Commission.

f. A Medical Officer of the same nationality as the PW, employed as Retained Personnel, and the PW Prisoners' Representative are both entitled to be present at the examination of PW by the Commission.

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16. **Eligibility for Repatriation**. GC III lays down the following criteria for determining which PW are eligible for repatriation:

a. **Criteria for Eligibility for Direct Repatriation**. The following categories of PW are to be repatriated to their own country:

(1) Incurably wounded and sick PW whose mental or physical fitness appears to have been gravely diminished.

(2) Wounded and sick PW who, according to medical opinion, are not likely to recover within one year, whose condition requires treatment and whose mental or physical fitness appears to have been gravely diminished.

(3) Wounded and sick PW who have recovered from their wounds or illness but whose mental and physical fitness appears to have been gravely and permanently diminished.

b. **Criteria for Eligibility for Transfer to a Neutral Country**. The following categories of PW may be transferred to and accommodated in a neutral country:

(1) Wounded and sick PW whose recovery may be expected within one year of the date of the wound or the beginning of the illness, if treatment in a neutral country might increase the prospects of a more certain and speedy recovery.

(2) PW whose mental or physical health, according to medical opinion, is seriously threatened by continued captivity, but whose accommodation might remove such a threat.

c. **Criteria for Eligibility for Further Repatriation from a Neutral Country**. The exact criteria for the further repatriation of PW will be agreed between the belligerents through the offices of the Neutral Country, the Protecting Power or the ICRC. In general, however, PW who fall into the following categories should be repatriated:

(1) PW whose state of health has deteriorated so as to fulfil the conditions laid down for direct repatriation.

(2) PW whose mental or physical powers remain, even after treatment, considerably impaired.

17. **Costs of Repatriation of Sick and Wounded PW**. The costs involved in repatriating sick or wounded PW or of transporting them to the territory of a neutral power will be met as follows:

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a. From the PW Camp to the national border of the country in which the PW Camp is located, by Canada.

b. From the national border of the country to either the neutral country or the PW's own country, by the nation on which the PW depends.

18. **Further Military Employment of Repatriated PW**. No repatriated person may be further employed on active military service. This does not preclude a repatriated person from engaging in medical or purely administrative duties in the service of the armed forces of his country.

19. **Release and Repatriation at the end of Hostilities**. The over-riding principles governing the release and repatriation of PW at the end of hostilities are that:

a. The repatriation process must take place with the minimum of delay as soon as possible after the end of active hostilities.

b. Repatriation should be carried out in accordance with a properly constituted Repatriation Plan. This is to cover such matters as the administration and documentation of the former PW, arrangements for gathering them together at one or more locations, their feeding and accommodation and their onward movement to their home country.

20. **Guidelines for Release and Repatriation**. The release and repatriation of PW is to be conducted in accordance with the following guidelines:

a. The arrangements for release and repatriation are to be made known to all PW as soon as they are finalised.

b. Repatriation is to be carried out in accordance with the same principles which determine the Transfer of PW.

c. Any items of value impounded on capture and any foreign currency belonging to PW are to be restored to them or, if this is not possible, despatched to the PWIB.

d. PW are to be allowed to take with them their personal belongings and any other items which may have been sent to them during the period in which they have been in captivity. Depending on transport constraints, an upper limit on the amount of baggage a PW may take with him on repatriation may be imposed but PW are, in any case, to be allowed to travel with at least 25 kilograms of personal belongings.

e. Where criminal proceedings are in train against a PW for an indictable offence, a ruling from the CDS on the disposal of the PW is to be sought in each individual case. The same procedure is to be applied to PW who have

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already been convicted for an indictable offence and who are undergoing punishment at the time of the cessation of hostilities. Where the DND rules that a PW is to complete a sentence of punishment before release and repatriation, details of the PW are to be forwarded to his national authorities through the PWIB.

21. **Costs of Repatriation**. The costs of repatriation of PW at the end of hostilities are to be apportioned equitably between Canada and the nation on which the PW depend. The basis for the apportionment is that Canada will bear the costs of PW transport between the PW camp and either the port or airport of embarkation, or the point on the national border of the country nearest to the territory of the nation on which the PW depend. The repatriation process is not to be delayed in any way by negotiations to determine the apportionment of the costs.

22. **Asylum for PW**. It is Canadian policy that PW should not be repatriated against their will. Arrangements for PW who do not wish to return to their state of origin will depend on the circumstances at the time but may include applications for asylum under normal procedures. Guidance in such cases should be sought from DND through NDHQ.

Suggested Questions

Q. International law permits the transfer of detainees between states under which conditions? (As long as the transferring state is satisfied that the accepting state is willing and able to abide by international obligations for the handling and humane treatment of detainees)

Q. How the issue of handling PW during Coalition operations can be solved? (By designating one or more States which are parties to the Convention as receiving Powers. Under GC III, PW can be transferred from one State to another as long as the original detaining State has satisfied itself that the receiving State is willing and able to apply the Convention)

Q. Which general conditions of internment would have to be respected? (Things such as food, hygiene, labour, and quarters)

Q. What should be done if members of a Coalition operation discover that receiving States are not acting in accordance with the Convention regarding PW handling? (If the receiving Power is acting out of ill will, the other States will have to request that the prisoners be returned. However, in the event that no other States are willing or able to take on responsibility for the prisoners, each State will either have to take back the PW captured by its forces and establish camps or release them)

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Q. Under which principles transfers of PW between camps and compounds belonging to Canada are to be carried out? (See para 10)

Q. Under which constraints the transfer of PW between Canada and another nation are to be carried out? (See para 11)

Q. Under GC III, what are the administrative considerations with which the staff of PW camps must comply when transferring PW? (Notice of transfer, forwarding of mail, prisoner lists, movement of personal effects and PW Accounts)

Q. Apart from death in captivity, which way the captivity of PW can be ended? (Through an exchange of PW in the course of a break in hostilities; by repatriation of sick and wounded PW while hostilities continue; by release and repatriation of PW at the end of hostilities)

Q. What are the duties of the Mixed Medical Commission? (See para 15)

Q. Under GC III, what are the criteria for eligibility for direct repatriation? (See para 16 a))

Q. Under GC III, what are the criteria for eligibility for transfer to a neutral country? (See para 16 b))

Q. Under GC III, what are the criteria for eligibility for further repatriation from a neutral country? (See para 16 c))

Q. Under which principles the release and repatriation of PW shall be governed? (See para 19)

Q. Under which guidelines the release and repatriation of PW are to be conducted? (See para 20)

Q. What to do if a PW asking for asylum? (It is Canadian policy that PW should not be repatriated against their will. Guidance in such cases should be sought from DND through NDHQ)

Note to the Instructor: Encourage students to actively participate in the lesson and to reason through problems.

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PART 4 – CONCLUSION

Summary

1. Generally, international law permits the transfer of detainees between states as long as the transferring state is satisfied that the accepting state is willing and able to abide by international obligations for the handling and humane treatment of detainees. For example, portions of the LOAC, as reflected in the provisions of GCs III & IV, provide for the transfer of captured or detained persons who have taken part in hostilities to other nations who are willing and able to apply the standards for handling and treatment of such persons. In such situations it usually remains the responsibility of the Detaining Power to determine the legal status of a detainee.

2. A transferring state's responsibility regarding a detainee does not end at the moment of transfer. For example, if a transferred detainee has PW status, Canada would have a residual obligation, pursuant to Article 12 GC III, to take effective measures to correct any situation upon being notified that the provisions of GC III are not being complied with in any important respect. Under customary international law, an argument can be made that a residual obligation analogous to that found at Article 12 GC III for PWs also exists for unlawful combatants or other civilian detainees (*e.g.* petty criminals and persons interfering with the mission) who are transferred to an accepting state.

3. The issue of how to handle PW during Coalition operations can be solved by designating one or more States, which are parties to the Convention, as receiving Powers. Even if all States are satisfied that the receiving State(s) will apply the Convention and proceed to hand over the PW, the original detaining States will continue to have responsibility for these PW. If members of a Coalition operation discover that a receiving State(s) is not acting in accordance with the Convention the measures that these States are obliged to take will depend upon the nature of the failure. If the receiving State does not have enough food, medical supplies, or medical personnel, the transferring States may directly supply whatever is lacking.

4. Transfers of PW between camps and compounds belonging to Canada are to be carried out according to some principles. The transfer of PW between Canada and another nation will be subject to some constraints. GC III lays down a number of administrative provisions with which the staff of PW camps must comply when transferring PW, such as notice to transfer, forwarding of mail, prisoner lists, movement of personal effects and PW accounts.

5. The captivity of PW can be ended in three ways: through an exchange of PW in the course of a break in hostilities; by repatriation of sick and wounded PW while hostilities continue; and by release and repatriation of PW at the end of hostilities. PW exchange is outside the provisions of GC III and although in the past there have been instances of the exchange of PW, man for man, in the course of truces or temporary cessation in hostilities, such instances are likely to be the exception.

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6. GC III places a duty on belligerents to repatriate PW who are seriously wounded or ill, regardless of numbers and ranks, back to their own countries, after first having afforded them sufficient medical treatment to enable them to travel. The assessment of PW to determine their eligibility for repatriation is normally to be carried out by Mixed Medical Commissions. However, PW, who in the opinion of a medical officer of the Canadian or Coalition Forces are seriously injured or sick, may be repatriated without having to be examined by a Mixed Medical Commission. Regulations for Mixed Medical Commissions, covering their composition and method of work, and details of the medical conditions forming the criteria for the different types of repatriation are set out in GC III. Such criteria are for eligibility for direct repatriation, for transfer to a neutral country and for further repatriation from a neutral country. The costs involved in repatriating sick or wounded PW or of transporting them to the territory of a neutral power will be met as follows: from the PW Camp to the national border of the country in which the PW Camp is located, by Canada; and from the national border of the country to either the neutral country or the PW's own country, by the nation on which the PW depends.

7. The over-riding principles governing the release and repatriation of PW at the end of hostilities are that the repatriation process must take place with the minimum of delay as soon as possible after the end of active hostilities and repatriation should be carried out in accordance with a properly constituted Repatriation Plan. The release and repatriation of PW will be conducted in accordance with specific guidelines. The costs of repatriation of PW at the end of hostilities are to be apportioned equitably between Canada and the nation on which the PW depend. The basis for the apportionment is that Canada will bear the costs of PW transport between the PW camp and either the port or airport of embarkation, or the point on the national border of the country nearest to the territory of the nation on which the PW depend. The repatriation process is not to be delayed in any way by negotiations to determine the apportionment of the costs.

8. It is Canadian policy that PW should not be repatriated against their will. Arrangements for PW who do not wish to return to their state of origin will depend on the circumstances at the time but may include applications for asylum under normal procedures. Guidance in such cases should be sought from DND through NDHQ.

Confirmation

The instructor may ask other confirmation questions.

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Conclusion

9. The legal, operational and policy issues arising from detainee handling and treatment during international operations can be varied, nuanced and complex. Resolution of such issues requires a basic understanding of the key international legal frameworks, primarily the LOAC and international human rights law. While handling and treatment of detainees can vary according to the legal status of the detainees, it must be emphasized that CAF policy is to treat all detainees, regardless of their legal status, humanely in a manner consistent with the standard of PW treatment as defined in *Geneva Convention (GC) III*. Moreover, it is prohibited in all circumstances to torture, abuse or to treat inhumanely any detainee.

10. It is crucial to account for detainees as a key planning factor in all CAF operations. If this does not occur, then CAF commanders will be faced with the problem of handling detainees, possibly in large numbers, for whom little provision has been made in terms of treatment, transfer, use of force, questioning, processing and logistics. If such problems occur, then the conduct of operations will likely be severely impacted and detainees may be subjected to improper treatment. This would be unacceptable for Canada, CAF commanders and CAF members and would likely result in mission failure. Conversely, a fully informed appreciation of detainee issues and full consideration of such issues in the operational planning process will contribute to mission success and will reaffirm the professionalism, effectiveness, honour and humanity of the CAF.

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PO 025 ADVISE ON TARGETING

PART 1 -- LESSON IDENTIFICATION

TITLE: EO 025.01 Advise on targeting doctrine and directives

Performance. Advise on targeting doctrine and directives

Conditions.

Given: References including the CF Targeting Framework and specific operational legal targeting issues (e.g. dual use targets, combatants, unprivileged belligerents and other persons who take part in hostilities, military objectives, target lists, collateral damages issues).

Denied: Direct supervision

Standard. The legal officer shall advise on targeting doctrine and directives.

Main Teaching Points:

- CAF targeting doctrine, framework and cycle
- Applicable principles of Jus in Bello
- Key distinctions in types of targeting

Method. This EO will be accomplished by a combination of self-study and class lectures. Students will be required to read assigned materials and be prepared to respond to questions.

Duration. One 60-minute period.

References. *Convention (III) relative to the Treatment of Prisoners of War*, Geneva, 12 August 1949, article 4 a (1), (2), (3), (6)
Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977, Articles 43, 48, 49(1), 50 to 57
B-GJ-005-104/FP-024 The Operational Law Manual (Draft) Chapter 28
B-GJ-005-104/FP-021 Law of Armed Conflict at the Operational and Tactical Level, Chapter 4
AJP-3.9 NATO Allied Joint Doctrine for Joint Targeting, Chapters 1 to 4

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Training/ Learning Aids. Standard classroom with whiteboard and projection system/handouts; CD materials; Legal Officer Qualification Course (LOQC) Instructors Handbook – Module(s) [XXX]

Note to the instructor. The developmental lesson shall be conducted in structured manner, using a list of questions to the class. Instructors are to complement each segment of the developmental lesson by follow-up and direct questions taking into account the flow and direction of the discussion. Interim summaries shall be conducted at the end of each segment to confirm the material was learned and provide a basis from which the discussion can progress to the next segment. A review of the main teaching points will then take place at the end of the period.

PART 2 – INTRODUCTION

Objective: The instructor shall advise on the targeting doctrine and directives as outlined in Module [XXX] of the LOQC Instructors Handbook.

Introduction: The decision to authorize CAF participation in domestic and in international operations rests with the Government of Canada. The Minister of National Defence has the management and direction of the CAF. Unless the Governor in Council otherwise directs, all orders and instructions to the CAF that are required to give effect to the decisions and to carry out the directions of the Government of Canada or the Minister shall be issued by or through the CDS.

Outline:

Stage 1 – CAF targeting doctrine, framework and cycle

Stage 2 – Applicable principles of Jus in Bello

Stage 3 – Key distinctions in types of targeting

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PART 3 – BODY OF THE LESSON

Stage 1 – CAF targeting doctrine, framework and cycle

Introduction

1. Pursuant to the legal bases upon which an international or national defence operation is authorized and conducted, as well as on Government of Canada directions, the CDS establishes military objectives for the mission and issues planning guidance, including direction on targeting, to subordinate commanders.

2. **The CAF Targeting Framework.** The CAF Targeting Framework is a classified annex to the *Use of Force Manual*. It provides the CAF with a structure to allow effective and timely decision-making relating to targeting both prior to and during CAF participation in Canadian, coalition or alliance peace-support operations and in armed conflict. This framework focuses the military strategy and operational requirements of targeting. The aim of the Targeting Framework is to establish CAF sanctioned decision-making processes from military strategic guidance through to the execution of the mission. While the Targeting Framework is an annex to the *Use of Force Manual*, and while it is related to ROE, it is not ROE. It creates a process by which the CAF validates who or what could be targeted during a CAF operation. The level of force used to target a person or object is set out in the ROE.

3. **The CAF Targeting Directive.** In order to establish CAF sanctioned decision-making processes from military strategic guidance through to the execution of the mission, the CAF has developed a targeting process, which is described in the CAF Targeting Directive. The CAF Targeting Directive for international operations reflects the CAF views on the application of domestic and international laws, particularly the LOAC on the use of force and targeting. It is applicable to CAF naval, land and air operations.

4. The LOAC contains a number of principles to ensure that military forces select and prosecute targets that are legitimate during international operations. Military commanders and planners must apply these principles. These principles guide military commanders and planners in determining what objects, areas and persons are legitimate targets.

5. Not only does the CAF Targeting Directive ensure LOAC is complied with but it also lays out a structured approval system for target selection and engagement and is used as a basis for the CDS to provide mission-specific direction regarding targeting for CAF operations, as required. Although the Targeting Directive is related to ROE, it is not ROE. Moreover, a targeting directive does not assign missions or tasks, nor is it used to give tactical instructions. Its purpose is to validate persons or objects as legitimate targets.

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6. Through the CAF Targeting Directive, the CDS may authorize commanders at the various levels with decision-making authority relating to targeting. Specified legal officers at the strategic, operational and tactical levels are responsible for advising those commanders responsible for decisions made within the targeting process. Generally, the "targeting" team consists of a legal advisor, an intelligence officer and an operations officer. They all provide specialized advice to the commander who has decision-making authority for targeting. A Targeting Directive will be issued for every CAF operation in which targeting is required.

The Joint Targeting Cycle

7. **Definitions.** To better understand targeting issues, some definitions are required.

a. **Target**. A target is a selected geographic area, object, capability, person, or organization (including their will, understanding, and behaviour); which can be influenced as part of the military contribution to a political end-state. A target is normally not critical in and of itself but rather its importance is derived from its potential contribution to achieving the commander's military objective(s).

b. **Targeteer**. A targeteer is a person qualified to advise commanders on the validity of targets, the means to affect such targets and the appropriate means of measuring achieved affects.

c. **Joint Targeting**. Joint targeting is the process of determining the effects necessary to achieve the commander's objectives, identifying the actions necessary to create the desired effects based on means available, selecting and prioritizing targets, and the synchronization of fires with other military capabilities and then assessing their cumulative effectiveness and taking remedial action if necessary. It is both an operational level and component level command function.

d. **Joint Targeting Coordination Board (JTCB).** A group formed by the Joint Force Commander to accomplish broad targeting oversight functions that may include but are not limited to coordinating targeting information, providing targeting guidance, synchronization, and priorities, and refining the joint integrated prioritized target list.

e. **Joint Targeting Working Group (JTWG).** The JTWG supports the JTCB by conducting initial collection, consolidation and prioritization of targets and synchronization of target planning and coordination on behalf of the JFC.

8. As the international security situation continues to evolve, different responses from security alliances are required. While military operations utilizing acts of force or threat thereof to deter or coerce an adversary remain necessary, military forces may also be used to support humanitarian goals. NATO forces must therefore be able to

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employ and coordinate a complex integration of lethal and non-lethal actions in the midst of a variety of threat environments in a wide range of operations.

9. A well-developed, flexible targeting process is required so that NATO joint forces can successfully carry out actions authorised by the North Atlantic Council (NAC), as directed by the strategic commander (SC) and executed by the JFC. At the operational level, targeting focuses on determining specific actions to take, lethal and non-lethal, to create the desired effects and realize the JFC's operational objectives. While carrying out an action on a target remains a tactical event, the effect must be relevant to the JFC's operational objectives.

10. **Phases.** The joint targeting cycle consists of six phases. The phases are built upon the principles of effective and efficient joint targeting. The cycle focuses targeting options on the Joint Force Commander's (JFC) objectives for operations, while diminishing the likelihood of undesirable consequences.

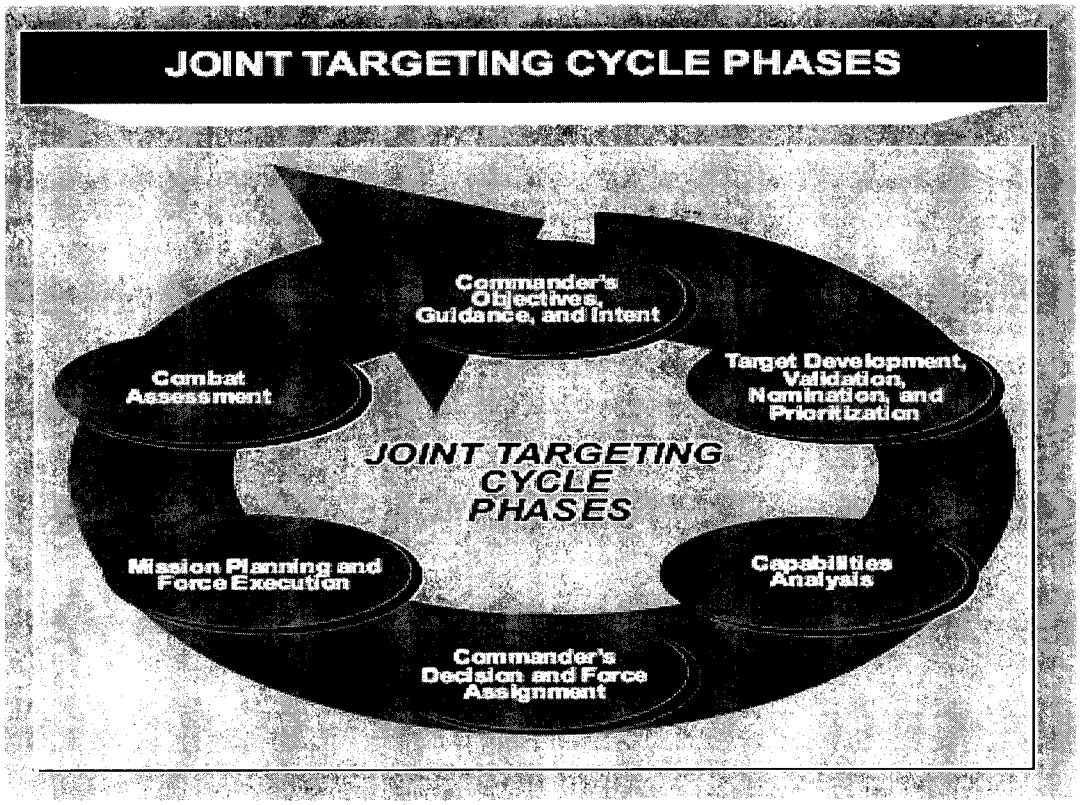


Figure II-1. Joint Targeting Cycle Phases

11. **Phase 1 — Analysis of the JFC's Objectives, Guidance, and Intent.**

a. Guidance from the political, strategic, and operational levels directs targeting. The first activity of the joint targeting process is to translate the JFC's objectives, guidance and intent into discrete tasks, each logically and directly related to the overall desired end state. The JFC's objectives, guidance and

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intent are conveyed to Components in the form of the JFC OPLAN[9] and Joint Coordination Order (JCO). The JFC must clearly identify what is to be operationally accomplished and under what circumstances and parameters, including appropriate measures of effectiveness (MOE).

b. The components must develop their own objectives, tasks and supporting target nominations that will achieve JFC objectives. This method of planning ensures that tactical operations are ultimately driven by NAC objectives.

12. **Phase 2 — Target Development, Validation, Nomination, and Prioritisation.**

a. **Target Development** - Target Development involves the analysis of the adversary to determine the best targets to engage in order to achieve the JFC's objectives. Intelligence Preparation of the Battle Space (IPB) will normally build basic information on adversary facilities, organizations, individuals, and equipment. Multiple target analysis methods, such as Target System Analysis (TSA) and Critical Node Analysis, are normally employed to identify the adversary's strengths, weaknesses, and Centres of Gravity (COG). The analysis performed in target development must be conceived of as proceeding through successively greater levels of detail, flowing from the macro (broad scope) level to the micro (narrowly focused) level. Critical to the success of the entire targeting process is the establishment of intelligence requirements at all levels, which in turn drives the production of collection plans. The ultimate goal of this expansive research is to support COG analysis and determine exploitable vulnerabilities of the adversary. Targeteers will then select specific targets and target elements that can efficiently be engaged to affect the COG.

b. **Validation** - Target validation is conducted to ensure compliance with the JFC's objectives, guidance, and intent, and with relevant international law. Target validation also verifies the accuracy and credibility of all source analysis used to develop a target.

c. **Nomination** - Once potential targets are identified and validated, they are nominated through the proper channels for approval.

d. **Prioritization** – Nominated targets are prioritised based on the JFC's objectives, guidance and intent to maximize effective use of joint force capabilities while minimizing the likelihood of unintended, and potentially undesired, consequences.

13. **Phase 3 — Capabilities Analysis.** This phase analyses the prioritized targets from the target development phase and matches appropriate capabilities in order to achieve the JFC's objectives whilst minimising undesirable effects. The capabilities analysis includes both lethal and non-lethal options and related means in order to allow.

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the JFC to have a clear understanding of capability requirements and all possible options available upon which to base his ultimate employment decisions.

14. **Phase 4 — Force Planning and Assignment.** This phase integrates the capabilities analysis results with the operational considerations resulting in prioritised targets being assigned to the available engagement assets. This is the foundation for the planning and execution of operations that perform discrete tasks that support the JFC's objectives.

15. **Phase 5 — Mission Planning and Force Execution**. The component commanders are responsible for the conduct of this phase. It deals with the direct planning and execution of engagements, and includes co-ordinating the necessary assets to conduct assessments of such engagements.

16. **Phase 6 — Assessment**.

a. Assessment is used to measure progress of the joint force toward mission accomplishment. The assessment process is continuous and directly tied to the commander's decisions throughout planning, preparation and execution of operations. Assessment is performed at all levels. Strategic and operational level assessment efforts concentrate on broader tasks, effects, objectives, and progress toward the desired end state and are incorporated in strategy and guidance development.

b. Tactical level assessment typically focuses on task accomplishment and target engagement. Combat assessment (CA) is an example of tactical level assessment and typically focuses on determining the results of weapons engagement (with both lethal and non-lethal capabilities.) Combat assessment is composed of three interrelated components: battle damage assessment (BDA); weapons effectiveness assessment (WEA); and future targeting or reNATO/engagement recommendations; and

c. **Measures of Effectiveness (MOE).** MOE in military operations are defined as tools used to measure results achieved in the overall mission and execution of assigned tasks. MOE are a prerequisite to the performance of assessment. Assessment of such indicators normally takes place at the tactical, operational, and strategic levels of operations, and goes beyond counting craters or vehicles destroyed. These measures help determine progress towards accomplishing tasks, creating effects, and achieving objectives. Well-devised MOE, and other measures and indicators should be observable and measurable, enabling the JFC's staff and components to understand the casual linkage between specific tasks, creating the desired effects, and objectives, as well as guide future action.

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The Purpose of the Joint Targeting Cycle

17. The joint targeting cycle (JTC) has a logical progression that aids decision-making and provides the JFC with a methodology linking objectives with effects throughout the battlespace. It is flexible enough to be adapted to any military operation desired and across diverse functional areas, such as air interdiction and information operations. This process enables the JFC to most effectively employ allocated resources to achieve the assigned objectives.

18. Joint forces require a common joint targeting process in order to minimize the likelihood of conflicting or duplicative actions during military operations, as well as to mitigate potentially undesirable consequences resulting from the outcome of those operations. Consequently, components must understand the joint targeting process if they are to create the effects necessary to accomplish the JFC's objectives. A common understanding of the joint targeting process and adherence to its principles among joint force staff and subordinate component staffs ability to:

a. Ensure JFC compliance with NAC, MC and SC guidance and instructions;

b. Comply with JFC objectives, guidance, and intent;

c. Focus on adversary's centres of gravity (COG) and related decisive points (DPs);

d. Coordinate, synchronize, and de-conflict actions;

e. Rapidly respond to targets that present limited opportunities for action;

f. As resources permit, assign the most appropriate means to the proposed target;

g. Minimize duplication of effort;

h. Expedite assessment of executed operations;

i. Provide a common perspective on all targeting efforts performed in support of the commander; and

j. Fully integrate all capabilities.

19. **Targeting Principles.** The joint targeting principles are:

a. **Focused**. The targeting process is focused on achieving the JFC's objectives efficiently and effectively within the parameters set by the NAC, Military Committee (MC), and SC, as limited by applicable rules of

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engagement (ROE) and relevant international law, and strives to minimize collateral damage (CD) and fratricide;

b. **Effects**. Targeting is concerned with supporting the creation of effects to achieve the JFC's objectives;

c. **Interdisciplinary**. Targeting requires the integrated efforts of many functional experts/disciplines and capabilities;

d. **Systematic**. In supporting the JFC's campaign objectives, the targeting process seeks to create effects in a systematic manner;

e. **Timeliness**. Targeting is often time critical. It is, therefore, fundamental that the transfer of information from source to user be as direct and as fast as possible. The timely initial reporting assessment is also critical;

f. **Control and Coordination**. Due to its importance, complexity, and potential political sensitivity, targeting policy and direction is normally retained at the highest practical joint level whilst the authority for the execution of that policy is delegated to the lowest practicable level. In order to avoid duplication, fratricide and confusion from the inability to coordinate, it is important that a system of centralised control is maintained on the targeting process. Proper use of the command structure and the management and coordinating functions of the joint target coordination board (JTCB) and the joint coordination board (JCB) should be utilised to ensure that the targeting process is fully coordinated both across, and up and down the command levels;

g. **Exploitation and Objectivity**. Time permitting, all available information sources should be utilised and exploited methodically to ensure that the complete picture is obtained and that vital information is not overlooked. The sampling of information, to obtain only that which fits a pre-conceived idea, must be avoided;

h. **Accessibility and Security**. All the information produced to support the targeting process should, wherever possible, be held on shared databases. However, sensitive information may need to be stored and disseminated on a 'need to know' basis in order to preserve Operations Security (OPSEC). The need for OPSEC must be balanced with the need for timely access; and

i. **Reliability and Responsiveness**. It is important that the information produced is as accurate as possible. It must be factually correct and portray the situation as it actually is, and not how the analyst (or the commander) might like it to be. Assessment products must be tailored to answer the commander's questions accurately and concisely.

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20. **Legal Considerations.** The conduct of NATO operations is controlled by international customary and conventional law and the domestic law of the participating nations, which impose boundaries upon targeting decisions and actions. While for policy and other reasons, targeting may be more restrictive than that permitted by international law, it may never be more permissive. Legal advisors play a key role in reviewing the targeting to facilitate compliance with legal principles. Those principles have already been covered which are the following: Military Necessity, Humanity, Distinction, Proportionality, Military Objective and Responsibility.

21. **Collateral Damage (CD) Considerations.** All reasonably feasible precautions in the choice of means and methods of attack must be taken with a view to avoiding, and in any event to minimising, expected incidental loss of civilian life, injury to civilians and damage to civilian objects.

22. **Collateral Damage Estimation (CDE).** The CDE process is required to support the proportionality test by which commanders determine whether the expected CD would, in total, be excessive in relation to the concrete and direct military advantage anticipated. To perform this test, commanders must be supported by a CDE process that predicts, within acceptable levels of accuracy, the expected levels of CD likely to be produced by the type of attack envisaged. Compliance with applicable legal obligations is a national issue. Therefore nations will have individual policies regarding the methodologies and tools by which CDE is conducted. These policies are driven by political and economic factors in addition to legal obligations and as such, they may be more restrictive than strictly required by the law.

23. A generic CDE process will usually employ some form of "tiering" methodology, with increasing levels of CD risk at each tier. The level of risk will be described in a form (for example % risk of death or injury to civilians in the open, or to a building of a particular type) measurable by defined CDE tools that will be employed by designated, qualified, operators. The same tools will be used to mitigate risks, by modelling the variables in an attack – this is particularly true of lethal action. These include the parameters (direction, height, speed etc) and the time of the attack (some targets are best attacked at times when the target is not in normal use, for instance at night); the weapon(s) to be used; the local environment and geography of the target; the characteristics of the target itself, for example if it contains hazardous or environmentally damaging material; the weather conditions for the attack and any other structures or civilians within a given distance from the target.

24. For targets of a politico-strategic importance, authority to prosecute will often be held at the national level. In the majority of other cases a designated officer will normally be empowered by his nation to authorise attacks against targets. Assuming that the officer has access to relevant legal, political and CD estimation information, and a full understanding of the military advantage anticipated in attacking the target, he will be able to perform the proportionality test and authorise his nation's military forces to attack targets in support of the JFC's operation plan (OPLAN) if appropriate. Any targets that fall outside his delegated authority would be referred back to his nation for clearance.

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25. To accelerate the process, pre-approval of certain targets or target sets in particular circumstances (for example where there is a low probability of CD or where speed of response is vital to avoid potentially greater risk of CD) may be authorised on the basis that, at the time of final attack authorisation, the proportionality test is repeated to ensure that it remains valid. This pre-approval may be exercised through the NAC in the early stages of operational planning.

Joint Targeting Considerations at the Strategic Level

26. **General.** A general overview of NATO targeting approval process at the strategic level is as follows. The NAC defines military mission and issues an Initiating Directive through the MC to the SC. The SC develops a strategic-level OPLAN. This plan contains target sets by phase, including possible time sensitive targets (TST). The plan is passed through the MC to NAC seeking NAC approval of the target sets. Within the scope of the NAC-approved target sets, the SC provides targeting guidance to the operational level (JFC/CJTF). This targeting guidance will detail the commander's intent on how targets that fall in the approved target sets will be selected for attack. Relevant operational level NATO commander(s) approve the JPTL, to include pre-recognized TSTs, for each phase of the operation based on approved target sets and reflecting the strategic targeting guidance. At the tactical level, targets are engaged in accordance with higher-level targeting guidance, approved ROE, the LOAC and, if specified, within the agreed collateral damage limitations.

27. **Political Direction.** The NAC provides the MC with the overarching military objectives and guidance for a campaign including any constraints and restraints that it wishes to impose. The NAC should provide the SC with objectives and guidance (O&G) that are clear, comprehensive, and that define the ROE and other limitations. The NAC reviews the target sets proposed by the SC, authorises them in their entirety, or elements thereof and issues any constraints and restraints that they wish to impose. NAC authorisation enables the SC to delegate the authority to prosecute targets to the appropriate commander.

28. **Political Level Targeting Responsibilities to Strategic Commander (SC)**. The NAC should provide the SC with O&G that are clear, comprehensive, and unambiguously define restrictions and other limitations that are to be imposed or that other nations participating in a NATO coalition effort or whose sovereign territories may be involved may place on the campaign. It must address the use of both lethal and non-lethal means. The NAC must also approve the target set(s) provided by the SC and issue any constraints and restraints that they wish to impose. NAC authorisation enables the SC to delegate the authority to prosecute targets by either lethal or nonlethal means to the appropriate military level.

29. **The Military Strategic Level**. At the military strategic level, armed forces are deployed and employed within an overarching political framework and in an integrated synchronised fashion with other non-military initiatives (e.g. diplomatic or economic) to achieve the strategic objectives of the Alliance. The MC considers the realistic

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contribution that military force can make to the achievement of Alliance objectives and provides advice to the NAC in the form Military Response Options (MRO).

30. **Military Strategic Direction**. If the NAC decides that military intervention is required, it issues a NAC Initiating Directive. This NAC political guidance authorises the detailed OPP to commence. The MC is responsible for translating NAC political guidance into strategic military direction for the SC. The SC is responsible for the development of a military strategic-level Operation Plan (OPLAN) outlining the mission, command and financial arrangements as well as the command and control (C2) responsibilities. When endorsed by the MC and approved by the NAC, this OPLAN is provided to the operational commander for development and for the implementation of NAC approved ROE. Thereafter the SC monitors the operational level planning and execution of the campaign. The OPP describes a logical sequence of processes and procedures undertaken by commanders and staffs to conduct mission analysis and determine the best method for accomplishing assigned tasks and achieve a desired military end state. OPP also includes the identification of military forces and capabilities required to carry out the operation at the strategic, operational, and tactical command levels; they encompass both advance planning and crisis response planning (CRP). The Targeting Annex/Appendix to the CONPLAN/OPLAN/SDP is the focal point of all targeting matters for that specific operation. All relevant targeting matters for the operation must be included. The contents will vary depending on the level (strategic/operational/tactical) of the planning involved.

Joint Targeting Considerations at the Operational Level

31. **General.** Due to its importance, complexity, and potential political sensitivity, targeting policy and direction is normally retained at the highest practical joint level whilst the authority for the execution of that policy is delegated to the lowest practicable level. The targeting process is governed by the NAC, guided by ACO policy and plans, driven by the JFC direction and guidance and is subject to the relevant international law and ROE. It is usually further constrained by the requirement to ensure that NATO maintains its cohesion by keeping public opinion positive.

32. **Strategic Commander (SC) Targeting Responsibilities**. The SC should:

a. Clearly define the objectives of the military operation and which target sets and associated categories the JFC is authorised to approve for attack;

b. Detail under what circumstances, and by what process, the JFC must seek further authorisation from higher authority for the approval to engage any targets that are accorded special ROE;

c. Provide the JFC with an integrated database (IDB) on integrated command and control – joint targeting system (ICC-JTS). The IDB is a NATO releasable extract of the USA modernised integrated database (MIDB);

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d. Request the provision of target material for the Joint Operations Area (JOA) from the nations;

e. Ensure that information about emerging discovered targets is passed to the JFC for inclusion in appropriate databases;

f. Ensure that requests from subordinate units for target materials are passed to the nations and subsequently supplied national target materials are distributed to those subordinate units that require access to them; and

g. Assist and advise as required, subordinate formations/units to ensure that they appropriate suitable functional area services with the necessary communications capacity, to support the targeting process.

Targeting and Synchronization During Operations

33. **The Joint Coordination Process**. The JFC directs the JCB and under his authority the JCB assigns execution responsibilities, prioritizes, deconflicts and synchronizes all aspects of tactical activities. It ensures that Info Op and the targeting effort are coordinated and focused on the Commander's objectives and follow his direction and guidance. The board is responsible for providing joint objectives to the CCs, for specifying the supported/supporting relationship of the CCs and approving the apportionment of air assets. The JCB will also review target prioritization, restrictions, and allocation for execution. Other responsibilities include:

a. Review and recommend JFC approval of the Joint Coordination Order (JCO), which is executed by the Combined Joint Operations Centre (CJOC). Resolve any conflicts in the supported/supporting commander relations;

b. Provide proposals for JFC decision on the composition of and relationship between CCs, and guidance for formations or units not delegated to subordinate commanders, especially those earmarked as operational reserves;

c. Review and recommend JFC approval of all products from the Joint Targeting Coordination Board (JTCB) , Information Operation Coordination Board (IOCB) and other established working groups; and

d. Allocate available strategic Intelligence, Surveillance and Reconnaissance (ISR) assets to the appropriate CC for tasking, recommended by the Daily Assets Reconnaissance Board (DARB), and provide oversight on their support to the joint targeting process.

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34. **Joint Targeting Coordination Board (JTCB)**. The JFC may establish and task an organisation to accomplish targeting oversight functions or may delegate the responsibility to a subordinate commander. Typically, the JFC may create a JTCB comprised of representatives from the Joint Force Headquarters (JFHQ) and all components of the Joint Force and, if required, national liaison representatives. If the JFC so designates, a JTCB would be an integrating centre providing a macro-level targeting review mechanism.

Interim Summary

35. The CAF Targeting Framework is a classified annex to the *Use of Force Manual.* It provides the CAF with a structure to allow effective and timely decision-making relating to targeting both prior to and during CAF participation in Canadian, coalition or alliance peace-support operations and in armed conflict. This framework focuses the military strategy and operational requirements of targeting. The aim of the Targeting Framework is to establish CAF sanctioned decision-making processes from military strategic guidance through to the execution of the mission.

36. The CAF Targeting Directive for international operations reflects the CAF views on the application of domestic and international laws, particularly the LOAC on the use of force and targeting. It is applicable to CAF naval, land and air operations. The LOAC contains a number of principles to ensure that military forces select and prosecute targets that are legitimate during international operations.

37. Not only does the CAF Targeting Directive ensure LOAC is complied with but it also lays out a structured approval system for target selection and engagement and is used as a basis for the CDS to provide mission-specific direction regarding targeting for CAF operations, as required. Through the CAF Targeting Directive, the CDS may authorize commanders at the various levels with decision-making authority relating to targeting. Specified legal officers at the strategic, operational and tactical levels are responsible for advising those commanders responsible for decisions made within the targeting process.

38. The joint targeting cycle consists of six phases. The phases are built upon the principles of effective and efficient joint targeting. The cycle focuses targeting options on the JFC's objectives for operations, while diminishing the likelihood of undesirable consequences. The six phases are the following: (1) Analysis of the JFC's Objectives, Guidance, and Intent, (2) Target Development, Validation, Nomination, and Prioritisation, (3) Capabilities Analysis, (4) Force Planning and Assignment, (5) Mission Planning and Force Execution, (6) Assessment.

39. The joint targeting cycle (JTC) has a logical progression that aids decision-making and provides the JFC with a methodology linking objectives with effects throughout the battlespace. It is flexible enough to be adapted to any military operation desired and across diverse functional areas, such as air interdiction and information

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operations. This process enables the JFC to most effectively employ allocated resources to achieve the assigned objectives.

40. A common understanding of the joint targeting process and adherence to its principles among joint force staff and subordinate component staffs ability to ensure JFC compliance with NAC, MC and SC guidance and instructions; comply with JFC objectives, guidance, and intent; focus on adversary's centres of gravity (COG) and related decisive points (DPs); coordinate, synchronize, and de-conflict actions; rapidly respond to targets that present limited opportunities for action; as resources permit, assign the most appropriate means to the proposed target; minimize duplication of effort; expedite assessment of executed operations; provide a common perspective on all targeting efforts performed in support of the commander; and fully integrate all capabilities.

41. The joint targeting principles are focused; effects; interdisciplinary; systematic; timeliness; control and coordination; exploitation and objectivity; accessibility and security; and reliability and responsiveness. All reasonably feasible precautions in the choice of means and methods of attack must be taken with a view to avoiding, and in any event to minimising, expected incidental loss of civilian life, injury to civilians and damage to civilian objects.

42. The CDE process is required to support the proportionality test by which commanders determine whether the expected CD would, in total, be excessive in relation to the concrete and direct military advantage anticipated. To perform this test, commanders must be supported by a CDE process that predicts, within acceptable levels of accuracy, the expected levels of CD likely to be produced by the type of attack envisaged. A generic CDE process will usually employ some form of "tiering" methodology, with increasing levels of CD risk at each tier. The level of risk will be described in a form (for example % risk of death or injury to civilians in the open, or to a building of a particular type) measurable by defined CDE tools that will be employed by designated, qualified, operators. The same tools will be used to mitigate risks, by modelling the variables in an attack – this is particularly true of lethal action.

43. For targets of a politico-strategic importance, authority to prosecute will often be held at the national level. In the majority of other cases a designated officer will normally be empowered by his nation to authorise attacks against targets. To accelerate the process, pre-approval of certain targets or target sets in particular circumstances (for example where there is a low probability of CD or where speed of response is vital to avoid potentially greater risk of CD) may be authorised on the basis that, at the time of final attack authorisation, the proportionality test is repeated to ensure that it remains valid.

44. As for the Joint Targeting Considerations at the Strategic Level, the NAC defines military mission and issues an Initiating Directive through the MC to the SC. The SC develops a strategic-level OPLAN. This plan contains target sets by phase, including possible time sensitive targets (TST). The NAC provides the MC with the overarching

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military objectives and guidance for a campaign including any constraints and restraints that it wishes to impose. The NAC should provide the SC with objectives and guidance (O&G) that are clear, comprehensive, and that define the ROE and other limitations. At the military strategic level, armed forces are deployed and employed within an overarching political framework and in an integrated synchronised fashion with other non-military initiatives (e.g. diplomatic or economic) to achieve the strategic objectives of the Alliance. If the NAC decides that military intervention is required, it issues a NAC Initiating Directive. This NAC political guidance authorises the detailed OPP to commence. The MC is responsible for translating NAC political guidance into strategic military direction for the SC.

45. As for the Joint Targeting Considerations at the Operational Level, due to its importance, complexity, and potential political sensitivity, targeting policy and direction is normally retained at the highest practical joint level whilst the authority for the execution of that policy is delegated to the lowest practicable level. The targeting process is governed by the NAC, guided by ACO policy and plans, driven by the JFC direction and guidance and is subject to the relevant international law and ROE. It is usually further constrained by the requirement to ensure that NATO maintains its cohesion by keeping public opinion positive.

46. As for Targeting and Synchronization during operations, the Joint Coordination Process directs the JCB and under his authority the JCB assigns execution responsibilities, prioritizes, deconflicts and synchronizes all aspects of tactical activities. It ensures that Info Op and the targeting effort are coordinated and focused on the Commander's objectives and follow his direction and guidance. The board is responsible for providing joint objectives to the CCs, for specifying the supported/supporting relationship of the CCs and approving the apportionment of air assets.

47. The JFC may establish and task an organisation to accomplish targeting oversight functions or may delegate the responsibility to a subordinate commander. Typically, the JFC may create a Joint Targeting Coordination Board comprised of representatives from the Joint Force Headquarters (JFHQ) and all components of the Joint Force and, if required, national liaison representatives. If the JFC so designates, a JTCB would be an integrating centre providing a macro-level targeting review mechanism.

Suggested Questions

Q. What is the focus of the CAF Targeting Framework?
(The framework focuses the military strategy and operational requirements of targeting)

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Q. What is the aim of the CAF Targeting Framework?
(To establish CAF sanctioned decision-making processes from military strategic guidance through to the execution of the mission)

Q. What does the CAF Targeting Directive lay out?
(A structured approval system for target selection and engagement and is used as a basis for the CDS to provide mission-specific direction regarding targeting for CAF operations)

Q. Who is generally part of the "targeting" team and what is their role?
(A legal advisor, an intelligence officer and an operations officer. They all provide specialized advice to the commander who has decision-making authority for targeting)

Q. What are the Joint Targeting Cycle phases?
(1) Analysis of the JFC's Objectives, Guidance, and Intent.
(2) Target Development, Validation, Nomination, and Prioritisation.
(3) Capabilities Analysis.
(4) Force Planning and Assignment.
(5) Mission Planning and Force Execution.
(6) Assessment.

Q. What is the purpose of the Joint Targeting Cycle? (See para 17)

Q. What are the principles of the Joint Targeting Cycle? (See paras 18, 19)

Q. What are the legal considerations of the Joint Targeting Cycle?
(See para 20)

Q. What is the Collateral Damage Estimation (CDE)? (See paras 22 to 25)

Q. What are the Joint Targeting Considerations at the Strategic Level?
(See paras 26 to 30)

Q. What are the Joint Targeting Considerations at the Operational Level?
(See paras 31, 32)

Q. What are the tasks of the Joint Coordination Process during operations?
(See paras 33, 34)

Note to the Instructor: Encourage students to actively participate in the lesson and to reason through problems.

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PART 3 – BODY OF THE LESSON

Stage 2 – Applicable principles of Jus in Bello

Introduction

1. As noted, the LOAC contains a number of principles and rules to ensure that only military objectives are engaged and that the adverse effects of hostilities on civilians and civilian objects are minimized.

2. **Key Rules and Principles.** Some of the key rules and principles applicable during armed conflict and, as a matter of policy during military operations outside armed conflict, include the following:

a. As a general rule civilians and civilian objects shall not be the object of attack;

b. Targets shall be limited strictly to military objectives. In so far as persons are concerned, only members of the enemy's armed forces or persons taking a direct part in hostilities are lawful targets. In so far as objects are concerned, military objectives are limited to those objects which by their nature, location, purpose or use make an effective contribution to military action and whose total or partial destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite military advantage;

c. In cases of doubt, a person is presumed to be a civilian until the contrary is established. Similarly, there is a presumption that an object which is normally dedicated to civilian purposes is not being used to make an effective contribution to military action and thus it should not be attacked;

d. In addition to the general requirement of distinguishing between military objectives and civilians and civilian objects, there are a number of specialized regimes which prohibit, or severely restrict, attacks on certain objects, such as medical facilities, cultural property and dams, dykes and nuclear generating stations;

e. Planners and commanders must take all feasible precautions to verify that the target is a military objective, and not a civilian or a civilian object, and that it is not subject to any of the specialized regimes of protection discussed below;

f. Planners and commanders shall refrain from launching an attack which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilians, damage to civilian objects, or a combination thereof,

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which would be excessive in relation to the concrete and direct military advantage anticipated; and

g. Planners and commanders must take all feasible precautions in the choice of means and methods of attack to avoid, and in any event to minimize, incidental civilian loss and damage. (*i.e.* collateral damage).

3. **The Principle of Distinction - Civilians and Civilian Objects.** As a general rule, civilians and civilian objects shall not be the object of attack. Commanders must at all times distinguish between the civilian population and combatants and between civilian objects and military objectives.

4. Importantly, this rule is separate and distinct from the proportionality rule, which concerns the law of targeting relating to "collateral damage". For the most part, this rule is self-evident and uncomplicated. An application of the plain reading of the rule will shield the vast majority of civilians from direct attack. Most civilian objects are used for exclusive civilian purposes and like civilians are easily identified.

5. While most civilians are easily identifiable the precise scope of the definition of what is a "civilian" is the subject of debate. The debate raises key questions such as:

a. Is a person still a “civilian” if they take a direct part in hostilities without distinguishing himself/herself from the civilian population? Often such persons are referred to as “unlawful combatants” or “unprivileged belligerents”.

b. Is a civilian contractor who performs both military and non-military functions simultaneously or at different times still a “civilian” or an “unlawful combatant”?

6. In addition to civilians and civilian objects there are other groups of persons, such as Prisoners of War, and objects, which are protected from being attacked by specialized legal regimes. Such regimes exist for:

a. Wounded, sick and shipwrecked members of the armed forces and the medical personnel and facilities used for treating them;

b. Other wounded and sick and medical facilities;

c. Prisoners of war;

d. Religious, cultural and historic objects, as defined at Article 53 AP1 and in the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict, 1954 and the 1999 Second Hague Protocol for the Protection of Cultural Property in the Event of Armed Conflict. These

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cultural objects are protected from attack when their actual use remains free from military character;

e. Objects indispensable to the survival of the civilian population; and

f. Dams, dykes and nuclear electrical generating stations, so long as these are not being used in regular, significant and direct support of military operations and an attack is the only feasible way to terminate such support.

7. As a matter of general practice most of the persons and objects protected from targeting will be quite evident and the vast majority of persons and objects will not be the object of attack.

8. **The Principle of Distinction - Military Objectives.** As previously noted, the general rule is that "targets shall be limited to military objectives".

9. However before describing parameters of a "military objective" it is important to note that a military objective includes persons such as "combatants", other "persons who take part in hostilities" as well as military objects such as weapons and vehicles, and battle space such as land and sea.

10. AP 1, Article 52(2) makes the distinction between objects and persons and states:

> Attacks shall be limited strictly to military objectives. In so far as objects are concerned, military objectives are limited to those objects which by their nature, location, purpose or use make an effective contribution to military action, and whose total or partial destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite military advantage.

11. For targeting purposes the legal analysis involved in determining whether a potential target is a military object is carried out by what has sometimes been referred to as the "two prong test". The "first prong" of the analysis asks:

> Whether the potential target by virtue of its nature, location, purpose or use makes an effective contribution to military action?

12. If the answer is no, then the potential target is not a military objective and must not be the target of attack. If the answer is yes, the "second prong" of the analysis asks:

> Would the total or partial destruction, capture or neutralization, in the circumstances ruling at the time, offer a definite military advantage?

13. Before the exact scope and parameters of each prong is identified it is very important at this point to note that a common error in applying the "two prong test"

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occurs when "dual use" (objects used for military purposes but otherwise would be civilian) targets are considered. Often, when dual use targets are considered by reference to the two-prong analysis, there is a mistaken tendency to incorporate the issue of proportionality into the analysis.

14. Only if a potential target passes the two-prong test and is considered a "military objective" would any consideration of proportionality then be undertaken. Application of the proportionality test is discussed below.

15. **The Doubt Rule.** Importantly, in cases of doubt as to whether a person or object is protected from attack, there are certain presumptions to take into account. Thus, in the case of doubt whether a person is a civilian, that person shall be considered to be a civilian. In the case of an object which is normally dedicated to civilian purposes, such as a place of worship, a house or other dwelling or a school, is being used to make an effective contribution to military action, it shall be presumed not to be so used. Therefore, in such cases, the person or object shall not be the object of attack unless it is shown that the person is taking a direct part in hostilities or the object is being used to make an effective contribution to military action. The application of the doubt rule should be able to resolve most targeting issues, which arise because of the ambiguous factual or legal nature of the person or object identified as a possible target.

16. **Proportionality**. Treaty LOAC does not contain an express stand-alone rule on proportionality. Expressly inserting the above quote was significant, because it codified in treaty form the notion that "collateral damage" was not unlawful *per se*.

17. As has been noted, "resolution of the proportionality equation requires a determination of the relative worth of military advantage gained on one side and civilian casualties or damage to civilian objects on the other".

18. Key questions which make the application of the proportionality rule difficult to apply in practice concern:

a. What are the relative values to be assigned to the military advantage gained and the injury to civilians and/or the damage to civilian objects?;

b. What factors are included/excluded when balancing the relative weights?; and

c. "What is the standard of measurement in time and space"?

19. Key operational law issues have focused on the concept of "concrete and direct military advantage anticipated". Specifically, the issue is whether the advantage anticipated is viewed and assessed with respect to a particular attack (tactical and operational) in and of itself or of the attack considered as a whole from the viewpoint of the overall campaign (strategic). Canada, upon signing AP1 made the following statement: "the military advantage anticipated from an attack is intended to refer to the

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advantage anticipated from the attack considered as a whole and not from isolated or particular parts".

20. In balancing the various factors required by the proportionality calculus, three points are important to stress. Firstly, it is a relative assessment, not a scientific equation, which produces quantifiable determinations. Secondly, from a legal perspective, it is important that the military advantage and civilian loss be clearly identified before the proportionality calculation is made. Thirdly, that a balancing of these interests is deliberately taken on a case-by-case basis.

21. As previously noted, it is only at the proportionality stage of the analysis that a determination of whether a dual use target, which has been determined to be a military objective, can be targeted. In making the proportionality assessment a number of issues relating to command responsibility, the standard of care, sufficiency of evidence (intelligence) arise.

22. **Means and Methods of Warfare.** As previously noted, "The right of the parties to the conflict to choose methods and means of warfare is not unlimited". From a targeting perspective this means that weapon selection will have to be made in a way that meets the principles of distinction and proportionality.

23. Proportionality issues arise with respect to weapons selection and method of delivery. This is complicated in situations where one method of delivery will reduce risk to friendly forces but increase collateral damage. A method of delivery that reduces risk to friendly forces but increases collateral damage is permissible, so long as it would not be excessive in relation to the concrete and direct military advantage anticipated.

24. Other related issues arise when a commander must ration precision weapons or ammunition. Means and methods planning may also impact on the target selection process as it relates to weaponeering. Weaponeering is defined as the process of determining the quantity of a specific type of lethal or non-lethal weapons required to achieve a specific level of damage to a given target, considering target vulnerability, weapons characteristics and effects, and delivery parameters. Weaponeering also considers such things as enemy actions (the effects of actions and countermeasures), munition delivery errors and accuracy, damage mechanism and criteria, probability of kill, weapon reliability, and trajectory. The commander's intent and end state, desired effects, tasks, and guidance provide the basis for weaponeering assessment activities. Weaponeering is subjective; there is no standard established for this capability. However, the ability to effectively weaponeer a target is essential to achieving the commander's desired effects.

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standard established for this capability. However, the ability to effectively weaponeer a target is essential to achieving the commander's desired effects. Weaponeering information is also required in order to conduct collateral damage estimation. There is no international legal requirement that a commander must always use the most precise weapon system. Rather weapon selection is determined by operational factors and the principles of distinction and proportionality.

Specific Operational Legal Targeting Issues

26. **Dual use targets.** A potential target may be used by both the civilian population and the military. Generally, such objects appear to be civilian except they are used for military purposes. The mere fact that it has a dual use does not mean that it cannot be a military object and hence a lawful target of attack. It is necessary to carry out the two-prong analysis set out above. If the potential target, which has a dual use, is a military objective under that analysis, then its destruction is permitted provided that the proportionality test is met.

27. **Combatants, Unlawful Combatants and Other Persons Take a Part in Hostilities.** During international armed conflict "combatants" are military objectives. For purposes of brevity, combatants are members of the armed forces of a party to the conflict and irregular soldiers who:

a. belong to an organized group;

b. where the group belongs to a party to the conflict;

c. the group is commanded by a person responsible for his subordinates;

d. the group ensures that its members have a fixed distinctive sign recognizable at a distance;

e. the group ensures that its members carry their arms openly; and

f. the group ensures that its members conduct their operations in accordance with the laws of war.

28. Persons who fall into these categories are "combatants" and at all times are military objectives regardless of whether they are, or are not, actively participating in hostilities at the time they are attacked.

29. Article 44 (3) AP1 extends the traditional definition of combatants to include persons who, due to "situations in armed conflicts where, owing to the nature of the hostilities", cannot distinguish themselves from the civilian population. They nonetheless acquire combatant status, provided that they meet certain specified conditions relating to the carrying of arms. It must be stressed however that this provision only applies to

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combatants who "owing to the nature of hostilities" cannot distinguish themselves. It is debatable whether this treaty provision is reflective of customary international law.

30. Civilians who participate in hostilities but do not meet the above criteria may fall within the category of "unprivileged belligerents" or "unlawful combatants" and are lawful military objectives. Usually, they are persons who fight but have not taken the steps to ensure they are distinguished from the civilian population (through uniforms, carrying weapons openly) or fail to conduct hostilities in accordance with the LOAC. For example, members of Al Qaeda or the Taliban may not qualify as combatants because they have not properly distinguished themselves, or complied with LOAC and therefore may "forfeit" the protections of PW status. Other types of unprivileged belligerents include spies and mercenaries.

31. Article 51(3) of API states that civilians are protected from hostilities "unless and for such time as they take a direct part in hostilities". Consequently, a separate and distinct issue relates to the scope of what is meant by "taking a direct part in hostilities". The breadth of this phrase has not been entirely resolved under international law. Persons only involved in civil defence or policing, which are not integrated into the armed forces, are not taking part in hostilities.

32. Significant operational legal debate has centered around civilians accompanying or performing contracting work with military forces or performing work directly related to supporting military combat activities.

33. **Military objectives.** Generally, most targets are easy to identify as military and easily meet the criteria of "military objective". Distinction and proportionality concerns aside, a number of issues do arise however either because of the characteristics of the target or from the wording used to define "military objective".

34. **Target Lists.** Some debate exists about whether commanders can create Target Lists that identify a number of objects (*e.g.* barracks, radars, telephone lines, bridges etc.), which then automatically constitute "military objectives" requiring no further review before being engaged. The debate centers around whether it is possible to determine in advance of the execution phase that a particular object can be attacked. Most militaries and the ICRC have offered lists of objects, which would clearly fall within this category. The use of a non-exhaustive list of targets, so long as they continue to meet the definition of "military objective", does not violate LOAC.

35. **First Prong: Does the potential target make "an effective contribution" to military action?** In the vast majority of cases a straightforward application of a plain reading of the first prong rule will resolve the issue of whether a potential target makes an effective contribution to the military action. The application of the "doubt rule" would additionally resolve the issue in many of those few cases where uncertainty remains.

36. Nonetheless, a few "hard cases" or difficult issues may remain. Often the resolution of the hard cases is inextricably linked to legal debate and conflicting state

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practice on the precise definition of "nature, location, purpose or use" and "effective contribution". While a number of points of debate relating to the exact nature of the "first prong" exist, two issues are clearly of the most practical significance: the temporal aspect of "nature, location, purpose and use" and the precise definition of "effective contribution".

37. One issue concerns whether a proposed target has to be making an effective contribution to military action by virtue of its location, purpose or use at the time the targeting decision is made or whether the proposed target only has to have the potential or possibility to make an effective contribution at some point in the future. Potential targets which have no current, but merely "possible", "theoretical" or "potential" future ability to make an effective contribution to military action are outside the scope of the first prong and therefore do not constitute a military objective (*e.g.*, a motor vehicle production facility that could be converted to the production of military vehicles). Targets which are currently making, or, based upon intelligence, are about to be used to make an effective military contribution " in the circumstances ruling at the time" would fall within the first prong. All clearly military objects (*e.g.,* tanks, warships, barracks, military aircraft and so on) and combatants will be considered as making a "current" effective contribution to military action. As has been noted:

> Military purpose is deduced from the established intention of a belligerent as regards future use. As pointed out by the official ICRC commentary:
>
> > The criterion of purpose is concerned with the intended future *use* of an object, while that of the use is concerned with its present function.

38. The most controversial issue concerning the first prong relates to the scope of "effective contribution". In particular controversy exists whether the term only includes objects directly involved in war fighting (*e.g.* tanks), or directly supporting war fighting (*e.g.* military trucks delivering weapons to the front) versus those objects that are merely "war sustaining" (*e.g.* plants that make tires for the trucks).

39. This addition of "war-sustaining" capability to the potential targets has been rejected by the San Remo Round Table of Experts, which created the *San Remo Manual on Naval Warfare*. The Round Table rejected adding to the target set list "economic targets of the enemy that indirectly but effectively support and sustain the enemy's war-fighting capability". Consequently, industry and oil tankers in and of themselves would not meet the test of the first prong simply and solely for the reason that they generate revenue (or taxes) for the government that may help sustain the war fighting capability indirectly.

40. On the other hand targets which "are only indirectly related to combat action, but which nevertheless provide an effective contribution to the military part of a party's

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overall war-fighting capability" would fall within the first prong. This would usually include logistics, which directly support war-fighting capability.

41. This approach is consistent with LOAC. Potential targets, which do not effectively contribute to war fighting capabilities, but only indirectly contribute to war sustaining capability, should not meet the requirements of the first prong. Whether a proposed "hard case" target meets this legal test is ultimately decided, not with reference to an abstract list of possible first prong target sets, but upon intelligence which demonstrates the way in which a proposed target makes an effective contribution to war-fighting. The Canadian position outlined at the time of ratification of AP I is that the advantage anticipated from the attack must be considered as a whole and not from isolated or particular parts of the attack. Therefore the strategic impact on the contribution to war fighting could be considered as well as the operational and tactical impact of the destruction of the object.

42. Enemy lines of communication used for military purposes, rail yards, bridges, barges, rolling stock used for military purposes including military logistics, power generators and oil refineries which produce power used for military forces clearly fall within the first prong. Oil refineries and power generation facilities, which may produce state revenue, but are not used by a military system, would not. This determination may also be dependent upon the system of governance, as the relationship between state revenue and war fighting may be very direct in certain authoritarian regimes.

43. **Second Prong: "A Definite Military Advantage".** A potential target may make an effective contribution to military action yet not be a military objective because its destruction, capture or neutralization, in the circumstances ruling at the time, does not offer a military advantage.

44. Two key issues arise from the "second prong" of the test. Firstly, the definition given to "circumstances ruling at the time" and secondly, "military advantage". With respect to "circumstances ruling at the time," the issue turns on what context must be applied when determining whether a military advantage exists. Canada (like a number of other countries) has noted that the perspective from which an anticipated military advantage must be assessed is "the attack considered as a whole and not from isolated or particular parts of the attack".

45. It is useful to highlight at this point that "circumstances ruling at the time" refer to circumstances made at the moment of the decision, not possible future circumstances, in the context of the campaign as a whole. Consequently, any determination of whether the second prong is met is time and situation dependant.

46. The word "definite" was inserted into Article 52(2) of AP1 to create an objective standard and move away from the notion that a purely speculative military advantage would be sufficient. Commentators have stressed that a definite military advantage is one which is clear and distinct, not something which is merely possible. Related to what is meant by military advantage, is the scope of "effective contribution". The destruction

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of objects which provide an effective contribution to a party's overall war-fighting capability would provide a military advantage. Objects, which indirectly sustain the war fighting capability, and, do not produce a definite military advantage if destroyed, would not.

47. **Feasible Precautions.** Planners and commanders are required to take all feasible steps to verify that objects to be attacked are military objectives and that the means and methods of attack are chosen with a view to avoiding or minimizing incidental injury to civilians.

48. From a Canadian perspective "feasible" is understood as "that which is practicable or practicably possible taking into account all circumstances ruling at the time, including humanitarian and military considerations". Planners and commanders are expected to act reasonably and in good faith. Furthermore, with respect to the standard of decision making, "military commanders and others responsible for planning, deciding upon or executing attacks have to reach decisions on the basis of their assessment of the information reasonably available to them at the relevant time and that such decisions cannot be judged on the basis of information which has subsequently come to light". This standard is one of "reasonableness", not "perfection". Any review of a decision cannot include consideration of information not reasonably available to the decision-maker at the time the decision was taken.

49. **Collateral Damage – Non-Violation of the Proportionality Rule.** An attack must be cancelled or suspended if the civilian loss or damage "would be excessive in relation to the concrete and direct military advantage anticipated". From a Canadian perspective the "military advantage anticipated" is understood "as intended to refer to the advantage anticipated from the attack considered as a whole and not from isolated or particular parts of the attack".

50. As is evidenced by the wording of the language concerning feasible precautions as it relates to selecting the means and methods of attack, collateral damage is to be "minimized" and civilian loss is not to be "excessive". While ideally civilian loss should be eliminated, the mere fact that collateral damage does occur does not mean that the proportionality rule has been violated. Additionally, in cases where individual criminal liability may arise from an attack, the "intent" to conduct the attack with the knowledge that the attack would be "excessive in relation to the direct and concrete military advantage anticipated" would be required.

Interim Summary

51. Some of the key rules and principles applicable during armed conflict and, as a matter of policy during military operations outside armed conflict, include, as a general rule civilians and civilian objects shall not be the object of attack; targets shall be limited strictly to military objectives; in cases of doubt, a person is presumed to be a civilian until the contrary is established; there are a number of specialized regimes which

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prohibit, or severely restrict, attacks on certain objects; Planners and commanders must take all feasible precautions to verify that the target is a military objective, and not a civilian or a civilian object; planners and commanders shall refrain from launching an attack which would be excessive in relation to the concrete and direct military advantage anticipated; and planners and commanders must take all feasible precautions in the choice of means and methods of attack to avoid, and in any event to minimize, incidental civilian loss and damage.

52. While most civilians are easily identifiable the precise scope of the definition of what is a "civilian" is the subject of debate. The debate raises key questions such as if a person still a “civilian” if they take a direct part in hostilities without distinguishing himself/herself from the civilian population and if a civilian contractor who performs both military and non-military functions simultaneously or at different times still a “civilian” or an “unlawful combatant”.

53. In addition to civilians and civilian objects there are other groups of persons that are protected under specialized legal regimes. Those regimes exist for wounded, sick and shipwrecked members of the armed forces and the medical personnel and facilities used for treating them; other wounded and sick and medical facilities; PWs; religious, cultural and historic objects; objects indispensable to the survival of the civilian population; and dams, dykes and nuclear electrical generating stations, so long as these are not being used in regular, significant and direct support of military operations and an attack is the only feasible way to terminate such support.

54. The general rule is that "targets shall be limited to military objectives". However before describing parameters of a "military objective" it is important to note that a military objective includes persons such as "combatants", other "persons who take part in hostilities" as well as military objects such as weapons and vehicles, and battle space such as land and sea.

55. For targeting purposes the legal analysis involved in determining whether a potential target is a military object is carried out by what has sometimes been referred to as the "two prong test". The "first prong" of the analysis asks whether the potential target by virtue of its nature, location, purpose or use makes an effective contribution to military action. If the answer is yes, the "second prong" of the analysis asks if the total or partial destruction, capture or neutralization, in the circumstances ruling at the time, offer a definite military advantage. Only if a potential target passes the two-prong test and is considered a "military objective" would any consideration of proportionality then be undertaken.

56. In cases of doubt as to whether a person or object is protected from attack, there are certain presumptions to take into account. Thus, in the case of doubt whether a person is a civilian, that person shall be considered to be a civilian. In the case of an object which is normally dedicated to civilian purposes, such as a place of worship, a house or other dwelling or a school, is being used to make an effective contribution to military action, it shall be presumed not to be so used.

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57. Treaty LOAC does not contain an express stand-alone rule on proportionality. Expressly inserting the above quote was significant, because it codified in treaty form the notion that "collateral damage" was not unlawful *per se*. Resolution of the proportionality equation requires a determination of the relative worth of military advantage gained on one side and civilian casualties or damage to civilian objects on the other.

58. Key operational law issues have focused on the concept of "concrete and direct military advantage anticipated". Specifically, the issue is whether the advantage anticipated is viewed and assessed with respect to a particular attack (tactical and operational) in and of itself or of the attack considered as a whole from the viewpoint of the overall campaign (strategic). It is only at the proportionality stage of the analysis that a determination of whether a dual use target, which has been determined to be a military objective, can be targeted. In making the proportionality assessment a number of issues relating to command responsibility, the standard of care, sufficiency of evidence (intelligence) arise.

59. The right of the parties to the conflict to choose methods and means of warfare is not unlimited. From a targeting perspective this means that weapon selection will have to be made in a way that meets the principles of distinction and proportionality. Proportionality issues arise with respect to weapons selection and method of delivery. This is complicated in situations where one method of delivery will reduce risk to friendly forces but increase collateral damage. A method of delivery that reduces risk to friendly forces but increases collateral damage is permissible, so long as it would not be excessive in relation to the concrete and direct military advantage anticipated.

60. A potential target may be used by both the civilian population and the military. Generally, such objects appear to be civilian except they are used for military purposes. The mere fact that it has a dual use does not mean that it cannot be a military object and hence a lawful target of attack. It is necessary to carry out the two-prong analysis set out above. If the potential target, which has a dual use, is a military objective under that analysis, then its destruction is permitted provided that the proportionality test is met.

61. During international armed conflict "combatants" are military objectives. For purposes of brevity, combatants are members of the armed forces of a party to the conflict and irregular soldiers who belong to an organized group; where the group belongs to a party to the conflict; the group is commanded by a person responsible for his subordinates; the group ensures that its members have a fixed distinctive sign recognizable at a distance; the group ensures that its members carry their arms openly; and the group ensures that its members conduct their operations in accordance with the laws of war. Persons who fall into these categories are “combatants” and at all times are military objectives regardless of whether they are, or are not, actively participating in hostilities at the time they are attacked. Civilians who participate in hostilities but do not meet the above criteria may fall within the category of “unprivileged belligerents” or “unlawful combatants” and are lawful military objectives.

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62. Generally, most targets are easy to identify as military and easily meet the criteria of "military objective". Distinction and proportionality concerns aside, a number of issues do arise however either because of the characteristics of the target or from the wording used to define "military objective". Some debate exists about whether commanders can create Target Lists that identify a number of objects (*e.g.* barracks, radars, telephone lines, bridges etc.), which then automatically constitute "military objectives" requiring no further review before being engaged. In the vast majority of cases a straightforward application of a plain reading of the first prong rule will resolve the issue of whether a potential target makes an effective contribution to the military action. The application of the "doubt rule" would additionally resolve the issue in many of those few cases where uncertainty remains.

63. One issue concerns whether a proposed target has to be making an effective contribution to military action by virtue of its location, purpose or use at the time the targeting decision is made or whether the proposed target only has to have the potential or possibility to make an effective contribution at some point in the future. Potential targets which have no current, but merely "possible", "theoretical" or "potential" future ability to make an effective contribution to military action are outside the scope of the first prong and therefore do not constitute a military objective (*e.g.*, a motor vehicle production facility that could be converted to the production of military vehicles). The most controversial issue concerning the first prong relates to the scope of "effective contribution". In particular controversy exists whether the term only includes objects directly involved in war fighting (*e.g.* tanks), or directly supporting war fighting (*e.g.* military trucks delivering weapons to the front) versus those objects that are merely "war sustaining" (*e.g.* plants that make tires for the trucks).

64. A potential target may make an effective contribution to military action yet not be a military objective because its destruction, capture or neutralization, in the circumstances ruling at the time, does not offer a military advantage. Two key issues arise from the "second prong" of the test. Firstly, the definition given to "circumstances ruling at the time" and secondly, "military advantage". With respect to "circumstances ruling at the time," the issue turns on what context must be applied when determining whether a military advantage exists. Canada (like a number of other countries) has noted that the perspective from which an anticipated military advantage must be assessed is "the attack considered as a whole and not from isolated or particular parts of the attack".

65. Planners and commanders are required to take all feasible steps to verify that objects to be attacked are military objectives and that the means and methods of attack are chosen with a view to avoiding or minimizing incidental injury to civilians. From a Canadian perspective "feasible" is understood as "that which is practicable or practicably possible taking into account all circumstances ruling at the time, including humanitarian and military considerations".

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66. An attack must be cancelled or suspended if the civilian loss or damage "would be excessive in relation to the concrete and direct military advantage anticipated". From a Canadian perspective the "military advantage anticipated" is understood "as intended to refer to the advantage anticipated from the attack considered as a whole and not from isolated or particular parts of the attack".

Suggested Questions

Q. What are the key rules and principles applicable during armed conflict and, as a matter of policy during military operations outside armed conflict? (See para 2)

Q. While most civilians are easily identifiable, what key questions are raised under the principle of distinction about civilians? (Is a person still a "civilian" if they take a direct part in hostilities without distinguishing himself/herself from the civilian population? Is a civilian contractor who performs both military and non-military functions simultaneously or at different times still a "civilian" or an "unlawful combatant"?)

Q. What are the topics of specialized legal regimes about special protection? (Wounded, sick and shipwrecked members of the armed forces and the medical personnel and facilities used for treating them; other wounded and sick and medical facilities; PWs; religious, cultural and historic objects; objects indispensable to the survival of the civilian population; and dams, dykes and nuclear electrical generating stations)

Q. What is the doubt Rule? (See para 15)

Q. What are the key questions concerning the proportionality issue? (What are the relative values to be assigned to the military advantage gained and the injury to civilians and/or the damage to civilian objects? What factors are included/excluded when balancing the relative weights? What is the standard of measurement in time and space?)

Q. From a targeting perspective, what are the authorized means and methods of warfare? (The weapon selection will have to be made in a way that meets the principles of distinction and proportionality)

Q. What is weaponeering? (See paras 24, 25)

Q. What are dual use targets? (See para 26)

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Q. What are the six criteria to be considered as lawful combatants? (Belong to an organized group; where the group belongs to a party to the conflict; the group is commanded by a person responsible for his subordinates; the group ensures that its members have a fixed distinctive sign recognizable at a distance; the group ensures that its members carry their arms openly; and the group ensures that its members conduct their operations in accordance with the laws of war)

Q. Explain the First Prong: Does the potential target make "an effective contribution" to military action? (See paras 35 to 42)

Q. Explain the Second Prong: A Definite Military Advantage? (See paras 43 to 46)

Q. From a Canadian perspective, what are "feasible" precautions? (It is understood as "that which is practicable or practicably possible taking into account all circumstances ruling at the time, including humanitarian and military considerations". Planners and commanders are expected to act reasonably and in good faith. Furthermore, with respect to the standard of decision making, "military commanders and others responsible for planning, deciding upon or executing attacks have to reach decisions on the basis of their assessment of the information reasonably available to them at the relevant time and that such decisions cannot be judged on the basis of information which has subsequently come to light")

Q. What is the Non-Violation of the Proportionality Rule? (An attack must be cancelled or suspended if the civilian loss or damage "would be excessive in relation to the concrete and direct military advantage anticipated". From a Canadian perspective the "military advantage anticipated" is understood "as intended to refer to the advantage anticipated from the attack considered as a whole and not from isolated or particular parts of the attack")

Note to the Instructor: Encourage students to actively participate in the lesson and to reason through problems.

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PART 3 – BODY OF THE LESSON

Stage 3 – Key distinctions in types of targeting

Introduction

1. A well-developed, flexible targeting process is required so that NATO joint forces can successfully carry out actions authorised by the North Atlantic Council (NAC), as directed by the strategic commander (SC) and executed by the JFC. At the operational level, targeting focuses on determining specific actions to take, lethal and non-lethal, to create the desired effects and realize the JFC's operational objectives. While carrying out an action on a target remains a tactical event, the effect must be relevant to the JFC's operational objectives.

2. **Purpose.** The purpose of targeting is to provide a logical progression, as an aid to decision-making, in the development of solutions to meet operational objectives. Principles of targeting span the full range of lethal and non-lethal application of effects, are applied to multinational operation and can be applied throughout the range of military operations. Effective targeting is characterized by the ability to generate the type and extent of effects necessary to fulfil the commander's intent linking sensors, delivery systems and desired outcomes. A Joint targeting process is flexible, adaptable to a wide range of circumstances and will take account of collateral effects throughout the battlespace.

3. **Types of Targeting.** Targeting falls into three general classes: deliberate, dynamic and time-sensitive.

a. **Deliberate Targeting**. Deliberate targets are those known to exist in an operational area with actions scheduled. Examples range from targets on joint target lists in the applicable campaign plan, to targets detected in sufficient time that can be listed in the air tasking order (ATO), mission-type orders, or fire support plans.

Deliberate targets have two subcategories: scheduled or on-call.

(1) **Scheduled**. Targeting where actions are to be taken at a specific time; and

(2) **On-call**. Targeting where actions have not been specified by time.

b. **Dynamic Targeting.** Dynamic targets are those that have been identified too late, or not selected for action in time to be included in the deliberate targeting cycle1, and therefore have not been scheduled. Dynamic targets have two sub-classifications: anticipated and unanticipated.

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(1) **Anticipated**. Prosecutes targets known to exist in an operational area but are not detected, located, or selected for action in sufficient time to be included in the deliberate targeting cycle; and

(2) **Unanticipated**. Prosecutes targets that are unknown or unexpected to exist in an operational area but, when detected or located, meet criteria specific to operational objectives.

Deliberate Targets		Dynamic Targets	
Scheduled	On-Call	Anticipated Targets	Unanticipated Targets

Figure 1.1 - Target Classification

4. **Time-Sensitive Targets (TSTs)**. TSTs are defined as those targets requiring immediate response because they pose (or will soon pose) a danger to friendly operations or are highly lucrative, fleeting targets of opportunity, the engagement of which is of a high enough priority to warrant immediate action in order to support campaign objectives. A large proportion of TSTs involve cross-boundary issues and multi-component or joint force assets to find, fix, track, target, engage and assess them. The time available does not allow for the standard targeting timeline to be followed. The JFC provides specific guidance and prioritisation for TSTs within the operational area.

5. **Target Lists**. The JFC will normally task the joint targeting coordination board (JTCB) to produce a joint target list (JTL) derived from the campaign targets database that has been initially derived from the integrated database (IDB). The JTL has to be reviewed against strategic targeting guidance and national limitations and caveats. All further joint targeting activities are based upon the JTL, which is updated, as new information becomes available. Subordinate commanders will keep the JTL under constant review, and forward their own nominations and/or restrictions of targets to the

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JFC staff through the JTCB via the target nomination process/lists (TNL) and proposal of restricted targets list (RTL). Integration of proposed TNL(s) and RTL(s) with the JTL results in the production of the joint prioritized target list (JPTL). Targets that are prohibited from attack by relevant international law or for policy reasons as determined by the NAC are listed in the No-Strike target list (NSL), which forms part of the JTL3. The JTL/JPTL and all target folders will be maintained in a collaborative environment and updated by inputs from the JTCB, the JFC's assessment process any other authorised source with relevant data that requires inclusion. It is essential that an integrated command and control – joint targeting system (ICC-JTS) database manager and staff be assigned the responsibility of managing the records of the JTL, the target folders and any related target lists.

Interim Summary

6. The purpose of targeting is to provide a logical progression, as an aid to decision-making, in the development of solutions to meet operational objectives. Principles of targeting span the full range of lethal and non-lethal application of effects, are applied to multinational operation and can be applied throughout the range of military operations.

7. Targeting falls into three general classes: deliberate, dynamic and time-sensitive. Deliberate targets are those known to exist in an operational area with actions scheduled. Deliberate targets have two subcategories: scheduled or on-call. Dynamic targets are those that have been identified too late, or not selected for action in time to be included in the deliberate targeting cycle1, and therefore have not been scheduled. Dynamic targets have two sub-classifications: anticipated and unanticipated. Time-Sensitive Targets are defined as those targets requiring immediate response because they pose (or will soon pose) a danger to friendly operations or are highly lucrative, fleeting targets of opportunity, the engagement of which is of a high enough priority to warrant immediate action in order to support campaign objectives. A large proportion of TSTs involve cross-boundary issues and multi-component or joint force assets to find, fix, track, target, engage and assess them.

8. The JFC will normally task the joint targeting coordination board (JTCB) to produce a joint target list (JTL) derived from the campaign targets database that has been initially derived from the integrated database (IDB). The JTL has to be reviewed against strategic targeting guidance and national limitations and caveats. All further joint targeting activities are based upon the JTL, which is updated, as new information becomes available. Subordinate commanders will keep the JTL under constant review, and forward their own nominations and/or restrictions of targets to the JFC staff through the JTCB via the target nomination process/lists (TNL) and proposal of restricted targets list (RTL). Integration of proposed TNL(s) and RTL(s) with the JTL results in the production of the joint prioritized target list (JPTL).

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Suggested Questions

Q. What is the purpose of targeting? (The purpose of targeting is to provide a logical progression, as an aid to decision-making, in the development of solutions to meet operational objectives)

Q. What are the types of targeting? (Deliberate, dynamic and time-sensitive)

Q. What are the subcategories of deliberate targeting? (Scheduled, On-call)

Q. What are the subcategories of dynamic targeting? (Anticipated and unanticipated)

Q. What are time-sensitive targets? (Targets requiring immediate response because they pose (or will soon pose) a danger to friendly operations or are highly lucrative, fleeting targets of opportunity, the engagement of which is of a high enough priority to warrant immediate action in order to support campaign objectives)

Note to the Instructor: Encourage students to actively participate in the lesson and to reason through problems.

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PART 4 – CONCLUSION

Summary

1. The CAF Targeting Framework is a classified annex to the *Use of Force Manual.* It provides the CAF with a structure to allow effective and timely decision-making relating to targeting both prior to and during CAF participation in Canadian, coalition or alliance peace-support operations and in armed conflict. The CAF Targeting Directive for international operations reflects the CAF views on the application of domestic and international laws, particularly the LOAC on the use of force and targeting. Through the CAF Targeting Directive, the CDS may authorize commanders at the various levels with decision-making authority relating to targeting. Specified legal officers at the strategic, operational and tactical levels are responsible for advising those commanders responsible for decisions made within the targeting process.

2. The joint targeting cycle consists of six phases. The phases are built upon the principles of effective and efficient joint targeting. The cycle focuses targeting options on the JFC's objectives for operations, while diminishing the likelihood of undesirable consequences. The joint targeting cycle (JTC) has a logical progression that aids decision-making and provides the JFC with a methodology linking objectives with effects throughout the battlespace. The CDE process is required to support the proportionality test by which commanders determine whether the expected CD would, in total, be excessive in relation to the concrete and direct military advantage anticipated. To perform this test, commanders must be supported by a CDE process that predicts, within acceptable levels of accuracy, the expected levels of CD likely to be produced by the type of attack envisaged. For targets of a politico-strategic importance, authority to prosecute will often be held at the national level.

3. As for the Joint Targeting Considerations at the Strategic Level, the NAC defines military mission and issues an Initiating Directive through the MC to the SC. The SC develops a strategic-level OPLAN. This plan contains target sets by phase, including possible time sensitive targets (TST). The NAC provides the MC with the overarching military objectives and guidance for a campaign including any constraints and restraints that it wishes to impose. As for the Joint Targeting Considerations at the Operational Level, due to its importance, complexity, and potential political sensitivity, targeting policy and direction is normally retained at the highest practical joint level whilst the authority for the execution of that policy is delegated to the lowest practicable level. As for Targeting and Synchronization during operations, the Joint Coordination Process directs the JCB and under his authority the JCB assigns execution responsibilities, prioritizes, deconflicts and synchronizes all aspects of tactical activities. The JFC may establish and task an organisation to accomplish targeting oversight functions or may delegate the responsibility to a subordinate commander.

4. While most civilians are easily identifiable the precise scope of the definition of what is a "civilian" is the subject of debate. The debate raises key questions such as if a person still a “civilian” if they take a direct part in hostilities without distinguishing

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himself/herself from the civilian population and if a civilian contractor who performs both military and non-military functions simultaneously or at different times still a “civilian” or an “unlawful combatant”.

5. The general rule is that "targets shall be limited to military objectives". However before describing parameters of a "military objective" it is important to note that a military objective includes persons such as "combatants", other "persons who take part in hostilities" as well as military objects such as weapons and vehicles, and battle space such as land and sea.

6. For targeting purposes the legal analysis involved in determining whether a potential target is a military object is carried out by what has sometimes been referred to as the "two prong test". The "first prong" of the analysis asks whether the potential target by virtue of its nature, location, purpose or use makes an effective contribution to military action. If the answer is yes, the "second prong" of the analysis asks if the total or partial destruction, capture or neutralization, in the circumstances ruling at the time, offer a definite military advantage. Only if a potential target passes the two-prong test and is considered a "military objective" would any consideration of proportionality then be undertaken.

7. In cases of doubt whether a person is a civilian, that person shall be considered to be a civilian. In the case of an object which is normally dedicated to civilian purposes, such as a place of worship, a house or other dwelling or a school, is being used to make an effective contribution to military action, it shall be presumed not to be so used. Key operational law issues have focused on the concept of "concrete and direct military advantage anticipated".

8. The right of the parties to the conflict to choose methods and means of warfare is not unlimited. From a targeting perspective this means that weapon selection will have to be made in a way that meets the principles of distinction and proportionality. A potential target may be used by both the civilian population and the military. Generally, such objects appear to be civilian except they are used for military purposes. The mere fact that it has a dual use does not mean that it cannot be a military object and hence a lawful target of attack. Generally, most targets are easy to identify as military and easily meet the criteria of “military objective”. Distinction and proportionality concerns aside, a number of issues do arise however either because of the characteristics of the target or from the wording used to define “military objective

9. One issue concerns whether a proposed target has to be making an effective contribution to military action by virtue of its location, purpose or use at the time the targeting decision is made or whether the proposed target only has to have the potential or possibility to make an effective contribution at some point in the future. A potential target may make an effective contribution to military action yet not be a military objective because its destruction, capture or neutralization, in the circumstances ruling at the time, does not offer a military advantage. Two key issues arise from the "second prong"

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of the test. Firstly, the definition given to "circumstances ruling at the time" and secondly, the "military advantage".

10. Planners and commanders are required to take all feasible steps to verify that objects to be attacked are military objectives and that the means and methods of attack are chosen with a view to avoiding or minimizing incidental injury to civilians. An attack must be cancelled or suspended if the civilian loss or damage "would be excessive in relation to the concrete and direct military advantage anticipated".

11. The purpose of targeting is to provide a logical progression, as an aid to decision-making, in the development of solutions to meet operational objectives. Targeting falls into three general classes: deliberate, dynamic and time-sensitive. Deliberate targets are those known to exist in an operational area with actions scheduled. Deliberate targets have two subcategories: scheduled or on-call. Dynamic targets are those that have been identified too late, or not selected for action in time to be included in the deliberate targeting cycle1, and therefore have not been scheduled. Dynamic targets have two sub-classifications: anticipated and unanticipated. Time-Sensitive Targets are defined as those targets requiring immediate response because they pose (or will soon pose) a danger to friendly operations or are highly lucrative, fleeting targets of opportunity. The JFC will normally task the joint targeting coordination board (JTCB) to produce a joint target list (JTL) derived from the campaign targets database that has been initially derived from the integrated database (IDB).

Confirmation

The instructor may ask other confirmation questions.

Conclusion

12. International and domestic law delineates the limits, the degree, and the methods and means by which force may be used. The CAF has developed a framework to ensure that political direction and objectives as well as legal, diplomatic, policy and operational considerations are coherently conveyed in military orders so that the authorized use of force for CAF members contributes to the achievement of assigned missions.

13. The CAF Targeting Framework provides the CAF with a structure to allow effective and timely decision-making relating to targeting both prior to and during CAF participation in Canadian, coalition or alliance operations and in armed conflict. The CAF Targeting Framework focuses on the military strategy and operational requirements of targeting. The CAF Targeting Directive outlines the targeting process for the CAF. The directive reflects the CAF views on the application of international and domestic laws, especially the LOAC, to targeting. The CAF Targeting Directive is applicable to CAF naval, land and air operations. The Targeting Framework and Directive are related to ROE, but are not ROE. The Directive is used to validate persons

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and objects as legitimate targets. The ROE will set out the level of force authorized to attack a validated target. A Targeting Directive will be issued for every CAF operation in which targeting is required.

14. From the targeting perspective, an effect will change the physical or behavioral state of a target system, a target system component, a target, or a target element that results from an action, a set of actions, or another effect. A desired effect will be thought of as a condition that can support achieving an associated objective, while an undesired effect will be a condition that can inhibit progress toward an objective.

15. The Joint Force Commander's (JFC) objectives and guidance will shape the basic procedural framework for components to expedite engagement of time-sensitive targets (TST). Additionally, the JFC will establish guidance on procedures for coordination, deconfliction, and synchronization among components. Once this guidance is issued, the components establish planned and reactive procedures for engaging the prioritized TSTs. A critical aspect of successful TST engagement is to understand the level of risk acceptable to the JFC. Items to be considered in the risk assessment include risk to civilians, friendly forces, and noncombatants; possible collateral damage; and the disruption incurred by diverting assets from their deliberately planned missions.

16. During the transition phase of an operation, the joint targeting process will not end. There will be requirement to collect all available information that enables the evaluation and archiving of the full extent of target physical and functional damage, determining the true effectiveness of employed delivery systems and munitions, critiquing and improving the assessment analysis and reporting process and operations analysis and lessons identified.

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PO 025 ADVISE ON TARGETING

PART 1 -- LESSON IDENTIFICATION

TITLE: EO 025.02 Advise during the targeting process

Performance. Advise during the targeting process

Conditions.

Given: References including the CAF Targeting Framework and specific operational legal targeting issues (e.g. dual use targets, combatants, unprivileged belligerents and other persons who take part in hostilities, military objectives, target lists, collateral damages issues).

Denied: Direct supervision

Standard. The legal officer shall advise during the targeting process.

Main Teaching Points:

- The role of the legal advisor in the targeting process

Method. This EO will be accomplished by a combination of self-study and class lectures. Students will be required to read assigned materials and be prepared to respond to questions.

Duration. One 20-minute period.

References. *Convention (III) relative to the Treatment of Prisoners of War*, Geneva, 12 August 1949, article 4 a (1), (2), (3), (6)
Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977, Articles 43, 48, 49(1), 50 to 57
B-GJ-005-104/FP-024 The Operational Law Manual (Draft) Chapter 28
B-GJ-005-104/FP-021 Law of Armed Conflict at the Operational and Tactical Level, Chapter 4

Training/ Learning Aids. Standard classroom with whiteboard and projection system/handouts; CD materials; Legal Officer Qualification Course (LOQC) Instructors Handbook – Module(s) [XXX]

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Note to the instructor. The developmental lesson shall be conducted in structured manner, using a list of questions to the class. Instructors are to complement each segment of the developmental lesson by follow-up and direct questions taking into account the flow and direction of the discussion. Interim summaries shall be conducted at the end of each segment to confirm the material was learned and provide a basis from which the discussion can progress to the next segment. A review of the main teaching points will then take place at the end of the period.

PART 2 – INTRODUCTION

Objective: The instructor shall advise during the targeting process as outlined in Module [XXX] of the LOQC Instructors Handbook.

Introduction: As the international security situation continues to evolve, different responses from security alliances are required. While military operations utilizing acts of force or threat thereof to deter or coerce an adversary remain necessary, military forces may also be used to support humanitarian goals. As Canada is part of NATO forces, it must therefore be able to employ and coordinate a complex integration of lethal and non-lethal actions in the midst of a variety of threat environments in a wide range of operations. Canadian legal advisors will play a key role in the targeting process.

Outline:

Stage 1 – The role of the legal advisor in the targeting process

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PART 3 – BODY OF THE LESSON

Stage 1 – The role of the legal advisor in the targeting process

Introduction

1. A well-developed, flexible targeting process is required so that NATO joint forces can successfully carry out actions authorised by the North Atlantic Council (NAC), as directed by the strategic commander (SC) and executed by the JFC. At the operational level, targeting focuses on determining specific actions to take, lethal and non-lethal, to create the desired effects and realize the JFC's operational objectives. While carrying out an action on a target remains a tactical event, the effect must be relevant to the JFC's operational objectives.

2. **Joint targeting.** The purpose of joint targeting is to integrate and synchronize joint fires to achieve the joint commander's mission, objectives, and desired effects. Joint targeting is a process of selecting and prioritizing targets and matching the appropriate effect taking into account operational requirements and capabilities. The joint targeting process selects targets, by evaluation of military objectives and legal implications and subsequently tasks the lethal and/or non-lethal means by which action is to be taken against those targets to achieve desired effects.

3. Joint targeting is governed by international and Canadian law, by national and military strategic objectives, as well as by operational requirements and capabilities. Joint targeting is a collaborative process that occurs at all levels of command and links intelligence, plans, and the conduct of operations.

4. **Role of the Legal Advisor.** The legal advisor advises the Joint Force Commander (JFC) and other staff members on applicable international and domestic laws, legal custom and practice, multilateral and bilateral agreements with host nations, LOAC issues, compliance and interpretation of the ROE, and other pertinent issues involved in joint target recommendations and decisions. Due to the complexity and extent of international law considerations involved in the joint targeting cycle, the legal advisor must be immediately available and should be consulted at all levels of command to provide advice about LOAC compliance during planning and execution of exercises and operations. Early involvement of the legal advisor in the targeting process, such as at the Target Development, Validation and Nomination step during the targeting cycle will improve the targeting process and can prevent possible violations of international or domestic law. Target validation will be conducted to ensure compliance with the JFC's objectives, guidance, and intent, and with relevant international law. Target validation also verifies the accuracy and credibility of all source analysis used to develop a target. Once potential targets are identified and validated, they will be nominated through the proper channels for approval. The legal advisor will be involved when issues related to Geneva Conventions, AP I and AP II are considered.

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Suggested Questions

Q. What is the purpose of Joint Targeting? (See paras 2, 3)

Q. What is the role of the legal advisor during the targeting process? (See para 4)

Note to the Instructor: Encourage students to actively participate in the lesson and to reason through problems.

PART 4 – CONCLUSION

Summary

1. The purpose of joint targeting is to integrate and synchronize joint fires to achieve the joint commander's mission, objectives, and desired effects. Joint targeting is a process of selecting and prioritizing targets and matching the appropriate effect taking into account operational requirements and capabilities. Joint targeting is a collaborative process that occurs at all levels of command and links intelligence, plans, and the conduct of operations.

2. The legal advisor advises the Joint Force Commander (JFC) and other staff members on applicable international and domestic laws, legal custom and practice, multilateral and bilateral agreements with host nations, LOAC issues, compliance and interpretation of the ROE, and other pertinent issues involved in joint target recommendations and decisions. Due to the complexity and extent of international law considerations involved in the joint targeting cycle, the legal advisor must be immediately available and should be consulted at all levels of command to provide advice about LOAC compliance during planning and execution of exercises and operations.

Confirmation

The instructor may ask other confirmation questions.

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Conclusion

3. International and domestic law delineates the limits, the degree, and the methods and means by which force may be used. The CAF has developed a framework to ensure that political direction and objectives as well as legal, diplomatic, policy and operational considerations are coherently conveyed in military orders so that the authorized use of force for CAF members contributes to the achievement of assigned missions.

4. During the transition phase of an operation, the joint targeting process will not end. There will be requirement to collect all available information that enables the evaluation and archiving of the full extent of target physical and functional damage, determining the true effectiveness of employed delivery systems and munitions, critiquing and improving the assessment analysis and reporting process and operations analysis and lessons identified. It is crucial that legal advisors be involved as early as possible in the targeting process in order to provide advice about LOAC compliance during planning and execution of exercises and operations.

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PO 026 ADVISE ON CAF OPERATIONS

PART 1 -- LESSON IDENTIFICATION

TITLE: EO 026.01 Advise on international CAF operations

Performance. Advise on international CAF operations

Conditions.

Given: On international operations, references including the UN Charter Chapters VI, VII and VIII, UN Security Council Resolutions, coalition forces operations, UN peace support operations (e.g. legal bases for peacekeeping) humanitarian operations and non-combatant evacuation operations.

Denied: Direct supervision

Standard. The legal officer shall advise on international CAF operations.

Main Teaching Points:

- Legal issues common to all international CAF Operations
- Full spectrum of Operations (the Three Block War concept)
- Peace Support Operations
- Humanitarian Assistance Operations
- Non-Combatant Evacuation Operations (NEO)

Method. This EO will be accomplished by a combination of self-study and class lectures. Students will be required to read assigned materials and be prepared to respond to questions.

Duration. Three 40-minute periods.

References. *B-GJ-005-104/FP-024 The Operational Law Manual (Draft) Chapters 1, 10, 14, 15, 16, 30, 31*
B-GJ-005-307/FP-040 Humanitarian Operations and Disaster Relief Operations
B-GJ-005-307/FP-030 Peace Support Operations
B-GJ-005-307/FP-050 Non-Combatant Evacuation Operations
United Nations Charter, Chapters VI, VIII
E.-C. Gillard, "*Business goes to war: private military/security companies*" (2006), 88 Int'l Rev. Red Cross 863, at 525
A.W. Dorn and M. Varey, "T*he Rise and Demise of the Three Block War*" (2009),10 Canadian Military Journal 1, at 38

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Training/ Learning Aids. Standard classroom with whiteboard and projection system/handouts; CD materials; Legal Officer Qualification Course (LOQC) Instructors Handbook – Module(s) [XXX]

Note to the instructor. The developmental lesson shall be conducted in structured manner, using a list of questions to the class. Instructors are to complement each segment of the developmental lesson by follow-up and direct questions taking into account the flow and direction of the discussion. Interim summaries shall be conducted at the end of each segment to confirm the material was learned and provide a basis from which the discussion can progress to the next segment. A review of the main teaching points will then take place at the end of the period.

PART 2 – INTRODUCTION

Objective: The instructor shall advise on international CAF operations outlined in Module [XXX] of the LOQC Instructors Handbook.

Introduction:

Outline:

Stage 1 – Legal issues common to all international CAF Operations

Stage 2 – Full spectrum of Operations (the Three Block War concept)

Stage 3 – Peace Support Operations

Stage 4 – Humanitarian Assistance Operations

Stage 5 – Non Combatant Evacuation Operations (NEO)

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PART 3 – BODY OF THE LESSON

Stage 1 – Legal issues common to all international CAF operations

International Law

1. **Introduction.** Formal legal regulation of international military operations and armed conflict has a lengthy historical pedigree dating back to the mid-nineteenth century. International law relating to military operations expanded dramatically in both scope and complexity throughout the twentieth-century. To understand the nature of these international law obligations, and to apply them effectively in the context of military operations, requires a prior understanding of important background concepts. This chapter provides this information, addressing the sources, subjects and application of international law.

2. International law developed to regulate the conduct of states in their relations with one another, establishing binding obligations that may give rise to a legal claim against the offending states if breached. International legal obligations apply to all state organs, including the national armed forces. As a result, the CAF are bound to comply with all of Canada's international legal obligations. Failure of the CAF or its individual members to comply with these obligations may give rise to the legal responsibility of Canada for the resulting breach. Increasingly, international law also applies directly to other international actors, non-governmental organisations and even individuals. In some circumstances, members of the CAF may even bear individual responsibility for breaches of international law, particularly in the context of international criminal acts.

3. **What is International Law?** There are three generally recognized primary sources of international law: treaties, international customary law and general principles of law.

4. **Treaties.** The term 'treaty' refers to any agreement between two or more states that is intended to establish obligations as a matter of international law. It does not matter what the document itself is called, so long as this intent exists, and the treaty is adopted by persons with the authority to bind their respective states. Thus, as a matter of international law the UN Charter, the Geneva Conventions, their Additional Protocols, and the Rome Statute of the International Criminal Court all establish treaty obligations. Canada is a party to these and numerous other multilateral treaties regulating or relating to the conduct of military operations.

5. The express consent of a state is required before it is bound to comply with any treaty obligations. As a result, treaties generally create rights and obligations for some states and not others. States that are bound by a treaty are considered to be 'states parties' to the treaty regime in question, and must comply, in good faith, with all of the provisions to which they have agreed. In contrast, states that are not parties to a

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particular treaty regime are not required to comply with its provisions. Thus, in determining Canada's international legal obligations it is necessary to identify the treaties to which it is a party. In the case of many law of armed conflict (LOAC) treaties, which operate on the basis of reciprocity, it is important to determine whether other states are parties as well. In many LOAC treaties, such as Additional Protocol I, a state party would only be compelled to abide by the treaty if it was involved in an international armed conflict against another API party.

6. Furthermore, it is also important to consider Canadian state practice, as well as the practice of other states "in the application of the treaty which establishes the agreement of the parties regarding its interpretation" as well as any special meaning given to a term if the parties so intended.

7. **Customary International Law.** Unlike treaty provisions, which only bind states parties, customary international law binds all states, without requiring their prior express consent. Customary legal principles result from the evolution of state practice and attitudes rather than from the formal negotiation of binding agreements. The 'crystallisation' of a norm into a binding principle of customary international law requires that two threshold criteria be met: established state practice supporting the principle and a belief by states that this practice is legally required (*opinio juris sive necessitatis*).

8. A number of factors must be assessed to determine the sufficiency of state practice supporting the existence of a particular norm. These will include its duration, uniformity and consistency. Each factor provides evidence either supporting or undermining the existence of a customary norm, but none is necessarily determinative on its own. Rather, together, these factors must illustrate the existence of established state practice supporting the norm in question.

9. State practice alone is not, however, sufficient to establish a binding principle of customary international law. *Opinio juris* in support of the principle is also required; that is, the acceptance (express or implied) of States that the practice in question is required by law, or, in the case of a permissive rule, the assertion (again, express or implied) by the State that the practice is permitted by law. While a state may not have ratified a particular treaty, it may still be bound by its substantive content by virtue of the fact that this content reflects customary international law. For example, a number of states have not ratified Additional Protocol I but acknowledge that many articles reflect customary international law.

10. A new customary legal principle can evolve from state practice violating an existing norm, provided the new practice is justified on the basis of legal arguments and supported by other members of the international community on this basis. This is an important element of the international legal order, providing a mechanism for the evolution of legal norms to reflect changing state practice and values, without requiring lengthy and cumbersome treaty negotiations or a global legislature. However, the resulting ambiguity means that while the general process for determining customary

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international obligations is fairly simple, its application in any given situation often involves complex legal analysis.

11. Numerous customary international legal principles regulate or otherwise relate to the conduct of military operations. For example, the general legal prohibition on the threat or use of force in international relations exists as a matter of customary international law in addition to its treaty status pursuant to the UN Charter. The minimum humane treatment obligations established in Common Article 3 of the Geneva Conventions are also considered to have customary legal status applicable to all subjects of international law.

12. **General Principles of Law.** All legal systems rest upon basic principles that allow them to regulate conduct and settle disputes effectively and efficiently. The third primary source of international law, general principles of law, recognizes the importance of this foundation, permitting the incorporation of these general principles to ensure the effective functioning of the international legal order. Some of the most important general principles of law recognized in the international context are the requirements that any breach of a legal obligation gives rise to a corresponding remedy for the aggrieved party, and the obligation of all states to comply with their legal obligations in good faith.

13. **Subsidiary Sources.** Numerous subsidiary sources are available for assistance in establishing the specific content of each of the three primary sources of international law (treaties, custom and general principles). These may include judicial decisions and academic writing on international legal topics. Subsidiary sources do not establish legal obligations themselves, but rather provide helpful and often authoritative tools to discern their content.

14. **Subjects of International Law.** International law developed to regulate the conduct of states in their relations with one another. It is not surprising, therefore, that states continue to be the primary subjects of international law. Indeed, until the twentieth century it was generally believed that international law only applied to states. However, the past few decades have seen limited international legal rights and obligations arise directly for other entities, including interstate and non-governmental organisations, as well as individuals in some circumstances.

15. **States.** States remain the pre-eminent international legal entities. Indeed, most international legal obligations are owed by states to other states. Similarly, it is only the practice of states – and not other subjects of international law – which can directly create customary international law. Historically, international law has required four criteria for statehood: permanent population, defined territory, government and possession of the capacity to enter international relations. The international legal order is premised on the sovereign independence of states. Although sovereignty is not and has never been absolute, states still maintain significant legal control over activities occurring within their territory. This is protected by international legal obligations for states to refrain from interference in the domestic affairs of other states and a general

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legal prohibition on the threat or use of force in international relations. States are free to limit the exercise of their sovereignty through international legal agreements.

16. **Non-State Actors.** Recently, specific non-state actors have also acquired limited rights and obligations as a matter of international law. Some organisations, such as the UN, exist separately from their member states on the international legal plane. The UN possesses some rights, and the capacity to enforce them, at international law. This limited international legal personality is necessary for the organisation to function in the manner intended by its member states. Some other organisations (for example, the European Union and the North Atlantic Treaty Organisation) also possess limited personality while others do not. Separate legal status will depend on the intention of states when creating the organisation in question. Individuals have also attained some rights and responsibilities at international law, particularly since the mid-twentieth century. This has been most notable in the field of international human rights as well as criminal law. Under international criminal law, individuals including military commanders, face potential direct criminal sanction for violations of international law.

17. **Enforcement of International Legal Obligations.** A number of domestic and international legal mechanisms exist to facilitate and ensure compliance with international legal obligations and for international dispute resolution. The International Court of Justice (ICJ) is the principal legal organ of the UN system, although its jurisdiction is limited to cases where states expressly consent to its role. The ICJ can also provide advisory opinions when requested to do so by the General Assembly or the Security Council. Numerous other fora exist for the voluntary submission of international disputes for settlement, ranging from *ad hoc* bilateral mediation to institutionalized binding judicial mechanisms. Some human rights treaty arrangements even permit individuals to bring claims directly against their own states in an international forum.

18. Criminal prosecution of individuals before international courts is also possible, albeit unusual. In the early 1990s, the UN Security Council established two *ad hoc* criminal tribunals to address major international crimes committed in the former Yugoslavia and Rwanda. In 2002, states parties to the Rome Statute established a permanent International Criminal Court with jurisdiction over individuals accused of genocide, crimes against humanity and war crimes. Enforcement of international legal obligations may also take place pursuant to domestic legislation. In Canada, for example, legislation authorizing such enforcement includes: the *Code of Service Discipline* enacted pursuant to the *National Defence Act*, the *Geneva Conventions Act,* the *Crimes Against Humanity and War Crimes Act* and the *Criminal Code of Canada*.

Principles of *Jus in Bello*

19. The LOAC contains a number of principles and rules to ensure that only military objectives are engaged and that the adverse effects of hostilities on civilians and civilian objects are minimized. Some of the key rules and principles applicable during armed conflict and, as a matter of policy during military operations outside armed conflict and the principles of *Jus in Bello* were addressed in *PO 025 Advise on Targeting*, under EO

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025.01. Please refer to this PO/EO for further details on the following issues: principles of distinction for civilians, civilian objects and military objectives, the doubt rule, proportionality, means and methods of warfare, specific operational legal targeting issues, dual use targets, combatants, unlawful combatants and other persons taking part in hostilities, target lists, feasible precautions and collateral damages.

Refugees, Displaced Persons and Safe Heavens

20. **Introduction.** When deployed at sea or on land the CAF have frequently encountered persons who are considered "refugees", "internally displaced persons" (IDPs), and "asylum seekers", often fleeing the adverse effects of an armed conflict and often requesting the assistance of the commander and CAF members. Frequently, these encounters will occur during the conduct of operations and commanders will require immediate advice on what their legal responsibilities and obligations are towards them.

21. **Refugees.** The *1951 UN Convention on the Status of Refugees* (Refugee Convention) and its *1967 Protocol relating to the Status of Refugees* set out the specific rights of refugees and the obligations on the state in which the refugee is seeking protection. Article 1 of the Refugee Convention and its Protocol collectively define a "refugee" as:

> "[a] person who owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who not having a nationality and being outside the country of his former habitual residence as a result of such event, is unable or, owing to such fear, is unwilling to return to it".

22. The individual must subjectively believe that they will be subject to persecution upon return to their country of origin and this must be capable of being objectively supported by the prevailing circumstances. The fear of persecution must be based on the reasons of race, religion, nationality, membership of a particular social group or political opinion.

23. The Refugee Convention does not apply to an individual who is receiving protection or assistance of the United Nations other than from the United Nations High Commissioner for Refugees, to an individual who has the rights and obligations of the nationality of the host country, or to an individual who has committed a war crime, a serious non-political crime or is guilty of acts contrary to the purposes and principles of the United Nations.

24. **Non-Refoulement.** The concept of non-refoulement states that no individual should be returned to a country where they are likely to face persecution or torture. This includes the forcible removal of an individual to their country of origin without providing

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them with the opportunity to have their case decided through that country's legal system. The non-refoulement principle contained in the Refugee Convention is not absolute. National security and public order have long been recognised as potential justifications for derogation to the non-refoulement principle.

25. **Internally Displaced Persons (IDP).** IDPs are persons who are forced or compelled to flee their homes as a result of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized state border. Since IDPs remain within the territorial borders of their own state they are subject to the domestic laws of that state. National authorities have the primary responsibility to provide protection and humanitarian assistance to internally displaced persons within their jurisdiction. Under the LOAC, IDPs form part of the civilian population and as such they are accorded all the protections as any other civilian during an armed conflict.

26. **Asylum.** Asylum is the protection that a state grants on its territory, or in some other place under its control, to a person who seeks it. It can only be granted to a foreign national against the exercise of jurisdiction by another state. Once asylum has been granted a duty exists on all other states to respect the grant.

27. **Safe Haven, Asylum Seekers and Refugees.** A safe haven is a temporary form of protection provided to civilians where the life of the person seeking protection is in imminent danger. According to international law, there is no obligation on a state to provide a safe haven to an individual seeking protection. However, once protection is provided there is an obligation on the state to treat all persons humanely without any adverse distinction based on sex, religion, race, ethnic origin or similar criteria. As a safe haven is a temporary form of protection it should be removed when the immediate threat to life appears to have ceased. Persons provided with a safe haven should not be unnecessarily exposed to danger upon their release or evacuation. If possible an individual provided with a safe haven should be released to an appropriate humanitarian relief agency for assistance. Other than during the exercise of the duty to rescue at sea, there is no obligation to embark civilians onto a warship. If operationally feasible, warships may take aboard persons seeking protection, continuing their planned voyage and disembarking the civilians at the next reasonable and safe opportunity.

28. Pursuant to CFAO 99-6, a CO shall not receive on board any person who is seeking safe haven for the purpose of evading criminal law or who is seeking to leave that foreign state in a manner contrary to its laws. During a disturbance or a tumult, safe haven may be given to any person who is in imminent danger of physical harm or loss of life or liberty. However, before providing an individual with safe haven, a CO shall contact the nearest Canadian diplomatic, consular office, or a Canadian trade commissioner.

29. The principle of non-refoulement applies to rescued individuals and those to whom safe haven has been granted, and they must be taken to a safe place where they

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will not be subject to persecution or be in jeopardy of being returned to their country of origin to face persecution.

Environmental Law

30. **Introduction.** Environmental issues affect all CAF operations whether domestic or international. While the majority of environmental legal concerns relate to domestic operations, there are some international environmental legal issues that operational legal advisors and commanders must also be aware of.

31. **Peacetime International Environmental Protection Conventions.** The principles enacted in international environmental agreements should be respected, in times of peace and war alike. Operational legal advisors and commanders should be aware of the provisions of the international environmental agreements as they may apply to the conduct of CAF operations. Some of the key international agreements to which Canada is a party are described hereunder.

32. ***The Antarctic Treaty.*** This treaty expressly prohibits the use of Antarctica for military purposes, including establishing military bases or fortifications, carrying out military manoeuvres, and weapons testing. *Protocol I to the Antarctic Treaty* contains provisions regulating impact assessments, monitoring, protection and conservation of flora and fauna, waste disposal and waste management, and the prevention of marine pollution in the Antarctic region.

33. ***The Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter.*** The *London Dumping Convention* imposes restrictions on the dumping or disposal of wastes from vessels, aircraft, platforms, or other man-made structures at sea. It covers all seas and all deliberate disposals of wastes, other than that incidental to the normal operation of ships.

34. ***United Nations Convention on the Law of the Sea (UNCLOS).*** UNCLOS is a comprehensive treaty dealing with maritime environmental regulation. Under UNCLOS, states are bound to prevent and control marine pollution, and they are liable for damages caused by violations of their international obligations to combat it. Part XII of UNCLOS deals specifically with the protection and preservation of the marine environment, and contains measures to prevent, reduce, and control marine pollution from all sources. In addition to imposing obligations of a general nature, Part IX specifically addresses topics related to the natural environment. UNCLOS is the predominant source of international maritime environmental regulation. Any specific obligations assumed by signatory states under other conventions related to protection of the marine environment should be carried out in a manner consistent with the general principles and objectives of UNCLOS.

35. **Convention on Biological Diversity and the Cartagena Protocol.** The objective of the *Convention on Biological Diversity* is to conserve biological diversity, promote the sustainable use of its components, and encourage equitable sharing of the

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benefits arising out of the utilization of genetic resources. *The Convention on Biological Diversity* places a duty on state parties to conserve biological diversity within their jurisdiction, as well as outside their jurisdiction in certain circumstances. Even though it was reaffirmed that states have sovereign rights over their own biological resources, the principle of national sovereignty over domestic natural resources is subject to the rights of other states. The parties have to provide for environmental impact assessment of projects that are likely to have significant adverse effects on biological diversity. State parties are to exchange information and undertake consultation with other state parties in all cases where proposed national projects are likely to have adverse effects on biological diversity in other states. *The Cartagena Protocol on Bio-Safety to the Convention on Biological Diversity* provides an international regulatory framework to reconcile the respective needs of trade and environmental protection in a rapidly growing global industry, the biotechnology industry.

36. **Basel Convention on the Control of Trans-boundary Movements of Hazardous Wastes and their Disposal.** *The Basel Convention* is principally devoted to implementing a framework for controlling the movement of hazardous wastes across international borders. Trans-boundary movements of hazardous waste or other wastes are permissible only upon prior written notification of export by the sending state to the competent authorities of the state of import and/or transit. The movement is permissible only if the state of export does not have the capability of managing or disposing of the hazardous waste in an environmentally sound manner. *The Basel Convention* develops criteria for environmentally sound management, involving controls from the generation of a hazardous waste to its storage, transport, treatment, reuse, recycling, recovery and final disposal. States parties to the *Basel Convention* must take appropriate measures to implement and enforce its provisions. Among these, the provisions on measures to prevent and punish conduct in contravention of the *Basel Convention* are to be enforced.

37. **The environment and the LOAC.** LOAC impacts on the protection of environment with both its treaty law and customary law components. In its customary law customary dimension, there is a general principle recognized by the International Court of Justice (ICJ) to the effect that states must take environmental considerations into account when assessing what is necessary and proportionate in the pursuit of legitimate military objectives.

38. **Additional Protocols.** Environmental protection is further elaborated upon, and expanded, in the *Additional Protocols*. *Additional Protocol I* to the *Geneva Conventions* prohibit the use of methods or means of warfare, which are intended, or may be expected, to cause widespread, long-term and severe damage to the natural environment. Attacks against the natural environment by way of reprisals are also prohibited.

39. Attacking, destroying, removing or rendering useless certain objects for the specific purpose of denying them for their sustenance value to the civilian population or to the adverse Party, whatever the motive, is prohibited. The protected objects include

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agricultural areas for the production of foodstuffs, crops, livestock, drinking water installations and irrigation works. These types of objects are specifically protected against reprisals. In addition, Article 56 protects works and installations containing dangerous forces (specifically dams, dykes, and nuclear generating stations) against attack. Although the aim of these provisions is to prevent the starvation of civilians and avoid losses among the civilian population resulting from the release of dangerous forces, the protection of the environment is indirectly provided for.

40. Article 14 of *Additional Protocol II* closely mirrors Articles 54(I) and 54(2) of *Additional Protocol I* as it provides protection to objects which are indispensable to the survival of the civilian population. Here again, the protection of the environment is indirectly provided for.

41. **The *Gas Protocol of 1925.*** Due to the extensive use of chemical weapons during World War I an international agreement was reached in 1925. The *Gas Protocol of 1925* condemned the use in war of asphyxiating, poisonous and other gasses, and of all analogous liquids, materials or devices, including bacteriological methods of warfare. Nevertheless, states parties reserved the right to retaliate should such weapons be used first against them. *The Gas Protocol of 1925* makes no mention of the environment or its protection *per se.* However, a prohibition on the use of gasses and bacteriological methods of warfare has the effect of protecting the environment against the deleterious effects resulting from their use.

42. ***Biological and Toxin Weapons Convention (BTWC)***. The BTWC covers all developments in the field of microbiology and biotechnology. Biological weapons were defined in the BTWC as the deliberate use of disease against humans, animals or plants. The primary purpose of the BTWC is the destruction of existing stockpiles of biological weapons and the prevention of their proliferation. State parties have undertaken not to engage in military preparations for offensive biological warfare, regardless of whether they are faced with a similar threat. State parties, therefore, renounced the right to retaliation or deterrence. The BTWC also reiterates the obligation not to transfer, assist, encourage, or induce to manufacture or otherwise acquire any of the agents, toxins, weapons, or means of delivery specified therein. The BTWC states that nothing in it is to be construed as derogating from the obligations contained in the *1925 Protocol,* which, therefore, continues to be in effect.

43. ***Protocol to Biological and Toxin Weapons Convention.*** The *Protocol* to the BTWC was designed to strengthen the effectiveness of the BTWC and improve its implementation. Jointly, the BTWC and its *Protocol* affirm the determination to prohibit biological weapons and their use by providing for a strengthened national implementation, effective controls of the handling, use, storage and transfer of biological materials, preparedness and protective measures.

44. ***Convention on the Prohibition of Military use of Environmental Modification Techniques.*** The *Environmental Modification Convention* entered into force on October 5, 1978. The convention recognized that scientific and technical advances may open

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new possibilities with respect to the modification of the environment, and that military or any other hostile use of environmental modification techniques could have harmful effects to the welfare of humans. Environmental modification techniques are any technique for changing - through the deliberate manipulation of natural processes - the dynamics, composition or structure of the Earth, including its biota, lithosphere, hydrosphere and atmosphere, or outer space. A party to the *Environmental Modification Convention* undertakes not to engage in military or other hostile use of environmental modification techniques having widespread, long-lasting or severe effects on another state party or causing destruction, damage or injury to the latter.

45. The contracting parties must refrain from assisting, encouraging or inducing any state, group of states or international organizations to engage in the aforementioned activities. Also, each state party must take measures necessary to prohibit and prevent any activity in violation of the *Environmental Modification Convention,* in a territory under its jurisdiction or control. The use of environmental modification techniques for peaceful purposes is, however, not to be hindered.

46. The *Environmental Modification Convention* should not be read as prohibiting such commonplace and necessary activities as cutting down trees, bulldozing the earth, or digging as dictated by operational requirements. However, the alteration of atmospheric conditions affecting the environment such as affecting weather patterns, causing earthquakes and modifications to the oceans are expressly prohibited.

47. ***Convention on Conventional Weapons (CCW).*** The CCW was intended to remedy the situation arising in the 70s and 80s when it became apparent that new technologies, such as laser systems, could produce new means of suffering on the battlefield. Consequently, several Protocols were developed in order to regulate and establish international regimes applicable to conventional weapons. *Protocol III* relates to environmental concerns as it contains prohibitions and restrictions on the use of incendiary weapons on forests or plant cover. It is now strictly prohibited to make forests or any other kinds of plant cover the object of attack by incendiary weapons, except when such natural elements are used to cover, conceal or camouflage combatants or other military objectives, or are themselves military objectives.

48. ***Chemical Weapons Convention (CWC).*** The CWC complements the existing prohibition on the use of chemical weapons and does not limit or detract from the obligations assumed by any state under the *1925 Protocol.* The CWC contains detailed provisions on the definition of prohibited weapons. Each state party undertakes to never, under any circumstances, develop, produce, otherwise acquire, stockpile, retain or transfer, directly or indirectly, chemical weapons to anyone. It also forbids the use of such weapons. This obligation to never, under any circumstances, use chemical weapons applies to both international and non-international armed conflicts.

49. The prohibition against the use of chemical weapons does not apply to police-type operations such as riot control. Toxic chemicals and their precursors do not qualify as chemical weapons where their use is intended for purposes not prohibited under the

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CWC. Chemicals intended for legitimate purposes, such as agricultural use, are also not banned.

Private Security/Military Companies and International Humanitarian Law (IHL)[1]

50. **Introduction.** Recent years have witnessed an increase in the number of private security and military companies (PSMCs) operating in situations of armed conflict, as well as a change in the nature of their activities, which are now increasingly close to the heart of military operations and which often put them in close proximity to persons protected by IHL. It is often asserted that there is a vacuum in the law when it comes to their operations. In situations of armed conflict, however, there is a body of law that regulates both the activities of the staff of PSMCs and the responsibilities of the states that hire them. Moreover, other states also have a role to play in promoting respect for international humanitarian law by such companies. The following examines the status of the staff of these companies and their responsibilities under IHL.

51. **Status of the Staff under IHL.** It is sometimes stated that PSMCs have no status under international law, with the implicit consequence that neither companies nor their staff have any legal obligations. From an IHL point of view this assertion is misleading. While the companies themselves have neither status nor obligations under IHL, as this body of law does not regulate the status of legal persons, their employees do, even though they are not specifically mentioned in any treaty. Admittedly, with regard to status, there is no simple answer applicable to all PSMC employees, as it depends on the nature of any relationship they may have with a state and on the type of activities they carry out. Status is thus something that must be determined on a case-by-case basis. However, IHL contains criteria for determining this status as well as clear consequent rights and obligations.

52. **Combatants or Civilians?** A far more central question for the purposes of IHL, with immediate practical consequences for the persons involved, is the status of the staff of PSMCs: are they combatants or are they civilians? If they are combatants, they may be targeted at all times but have the right to take direct part in hostilities; if captured, they are entitled to PW status and may not be prosecuted for having participated in hostilities. Conversely, if they are civilians they may not be attacked. However, if they take direct part in hostilities, they will lose this immunity from attack during such participation. Moreover, as civilians do not have a right to take direct part in hostilities, if they do so, they will be 'unlawful combatants' who, when captured, are not entitled to PW status and may be tried for merely having participated in hostilities, even if in doing so they did not commit any violations of IHL.

53. The term "combatant" has a very specific meaning under IHL, which is not synonymous with the generic term "fighter". There are four categories of persons who

[1] E.-C. Gillard, "*Business goes to war: private military/security companies*" (2006), 88 Int'l Rev. Red Cross 863, at 525. The information about the issues on PSMCs is an abstract from Gillard's article. The views expressed by the author are not necessarily those of the Office of the Judge Advocate General.

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can be considered combatants. The following two are most pertinent for present purposes:

a. members of the armed forces of a state party to an armed conflict or members of militias or volunteer corps forming part of such forces;

b. members of other militias and of other volunteer corps, including those of organized resistance movements, belonging to a state party to an armed conflict, provided that such militias or corps fulfill the following conditions:

(1) they are commanded by a person responsible for his/her subordinates;

(2) they have a fixed distinctive sign recognizable at a distance;

(3) they carry arms openly; and

(4) they conduct their operations in accordance with the laws and customs of war.

54. **Members of the Armed Forces of a State?** It is principally members of states' armed forces who are combatants. Therefore, at risk of stating the obvious, it should be noted as a preliminary point that only the staff of PSMCs hired by states could ever be combatants. Considering that some 80% of the contracts of PSMCs are concluded with clients other than states, this in itself already precludes a large proportion of PSMC employees from being combatants. While IHL is very clear on the fact that members of the armed forces of a state are combatants, it does not provide clear and specific guidance as to who can be considered a member of the armed forces, nor as to the prerequisites to be met by militias or volunteer corps for them to "form part" of the armed forces. National law sometimes contains stipulations on these issues. Absent any national law, there is thus no clear-cut way of determining the circumstances in which an employee of a PSMC can be considered a member of the armed forces, or of militias or volunteer corps forming part thereof. The mere fact that a PSMC has been hired to provide assistance to a state's armed forces is not conclusive; a more formal affiliation than a mere contract is required. Similarly, the nature of the activities performed by such a company's staff, although determinative of whether they are taking direct part in hostilities for targeting purposes, is also not a key element for determining whether they are members of the armed forces.

55. **Civilians accompanying the Armed Forces.** The Third Geneva Convention establishes a narrow exception to the principle that it is only combatants who are entitled to PW status if captured. In addition to the aforementioned members of the armed forces and of militias and other volunteer corps belonging to a party to a conflict identified in Articles 4A(1) and (2) of the Third Geneva Convention, Article 4A(4) identifies a further class of persons entitled to PW status if captured:

> "Persons who accompany the armed forces without actually being members thereof, such as civilian members of military aircraft crews, war correspondents,

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> supply contractors, members of labour units or of services responsible for the welfare of the armed forces, provided that they have received authorization from the armed forces which they accompany, who shall provide them for that purpose with an identity card similar to the annexed model."

56. The legal position of persons falling within this category is clear: they are not members of the armed forces, nor are they combatants, but they are entitled to PW status if captured. What is not so clear is precisely who comes within this exception. Neither the *travaux préparatoires* for this provision nor the Commentary shed light on the limits of the activities that may be carried out by this category of persons. However, the non-combatant status of civilians accompanying the armed forces with the exception of civilian members of military aircraft crews would seem to indicate that the drafters intended this category not to include persons carrying out activities that amount to taking a direct part in hostilities.

57. Two further issues arise. The first is more procedural: is possession of the identity card mentioned in Article 4A(4) a prerequisite for inclusion in this category? And what is the nature of the authorization that must have been received? The question of the effect of the identity card was discussed during the negotiations, and it was ultimately agreed that possession of one was a supplementary safeguard for the persons concerned, but not an indispensable prerequisite for being granted PW status. Application of the provision was dependent on authorization to accompany the armed forces and the card was merely proof of that. There was no discussion, however, of what amounted to authorization, nor is it addressed in writings on the topic. In relation to the staff of PSMCs, it is unlikely that the mere existence of a contract would per se amount to such authorization.

58. It seems safe to conclude that the staff of PSMCs who provide services to the armed forces short of direct participation in hostilities could fall within this category on condition they have received the relevant authorization from the state in question. The matter must be determined on a case-by-case basis, depending on the nature of the activities carried out. While many of the support functions performed by contractors for the armed forces undoubtedly do fall within Article 4A(4) there are also many others, especially those closer to the heart of military operations, which probably do not.

59. **Civilians.** While the staff of PSMCs must not, as civilians, be the object of attack, if they engage in activities that amount to taking a direct part in hostilities they lose this immunity from attack for the duration of their participation. This is an important difference between them and combatants, who can be targeted at any time. The question of which activities amount to "taking a direct part in hostilities" is obviously crucial to determining the protection to which the staff of PSMCs are entitled. Although this question is central to the entirety of IHL, as it determines when civilians lose their protection from attack, treaties provide neither a definition nor precise guidance as to the nature of the activities covered. According to the Commentary, "acts which, by their nature and purpose are intended to cause actual harm to enemy personnel and equipment" amount to direct participation. Supplying food and shelter to combatants or

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generally "sympathizing" with them does not. A considerable grey zone exists between these two ends of the spectrum.

60. **Responsibilities Under IHL of the Staff of PSMCs.** Regardless of their status, be they combatants, civilians accompanying the armed forces or "ordinary" civilians, like all persons in a country experiencing armed conflict the staff of PSMCs are bound by IHL and may face individual criminal responsibility for any serious violations they may commit or have ordered to be committed. The staff of PSMCs may be prosecuted by the courts of a number of states, including the state where the alleged wrongdoing occurred, the state of nationality of the victims, the state of nationality of the alleged perpetrator and that of the PSMC employing him/her. States party to the Geneva Conventions and as there is now universal ratification of the Conventions this means all states must search for and prosecute or extradite persons suspected of having committed grave breaches of the Conventions and, for the states that have ratified it, Additional Protocol I, including, when necessary, by the exercise of universal jurisdiction. Moreover, provided their jurisdictional requirements are met, international criminal tribunals may also prosecute the staff of PSMCs and their managers. There is nothing to preclude them from being prosecuted, for example, by the International Criminal Court. To date, however, as a reflection of the traditional position that legal persons do not have responsibilities under international law, no international tribunal has been granted jurisdiction over companies.

61. Despite the existence of clear legal obligations and a well-established network of national courts with potential jurisdiction over serious violations of IHL, proceedings against the staff of PSMCs have been rare. This is due to a variety of factors, some legal, and others more practical and political. First, the companies and their staff may have been given immunity from the courts of the states where they operate. This is the case, for example, in Iraq, where the legal framework developed by the Coalition Provisional Authority (CPA) gives contractors, including PSMCs immunity from Iraqi laws and also from legal processes. Although the relevant order does not apply to all private companies operating in Iraq, it does benefit a significant number, particularly those providing services to the multi-national forces and to states with diplomatic or consular relations with Iraq. Secondly, the courts in the countries where the PSMCs are operating, the most obvious forum for instituting proceedings, may have stopped functioning because of the conflict. Thirdly, third states, including the state of nationality of the relevant PSMC or its employees and, when it is the client, the state that hired the company, may be unable to exercise extraterritorial jurisdiction over the PSMC staff because they lack the necessary national legislation. States also may be reluctant for practical and political reasons to commence prosecutions for serious violations of IHL that occurred abroad. Finally, even where third states are able and willing to commence such prosecutions, the proceedings are complicated by the fact that most of the evidence and witnesses are in the country where the violations took place.

62. An alternative approach is that adopted by the United States, which enacted the 2000 Military Extraterritorial Jurisdiction Act (MEJA) to expand US federal criminal jurisdiction to civilians accompanying the US armed forces overseas. Jurisdiction is

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granted for offences that would have been punishable by imprisonment for more than one year if committed within the jurisdiction of the United States, provided that no foreign state is prosecuting the same offence. MEJA is expressly applicable to Department of Defense contractors and subcontractors, among others. This expansion of jurisdiction was necessary for the aforementioned "ordinary crimes" and not for serious violations of IHL over which the US courts already had extraterritorial jurisdiction on the basis of the War Crimes Act. Yet, MEJA has not resolved all of the problems. In particular, it only applies to civilian contractors working directly for the Department of Defense and not to those working for other US departments or agencies, let alone those hired by other clients. Host state nationals are also excluded. It is therefore relevant to only a minority of PSMC employees.

63. **The Position of Company Managers and Senior Officers.** In addition to the criminal responsibility of employees who actually perpetrate a serious violation of IHL or order its commission, managers and possibly more senior company officers may also face legal liabilities. The responsibility of superiors for grave breaches of IHL is expressly recognized in Article 86(2) of Additional Protocol I. It can arise if a superior knew or had information that should have enabled him/her to conclude that a subordinate was committing or was going to commit a breach of IHL but failed to take all feasible measures within his/her power to prevent or repress the breach. This possible avenue for the attribution of responsibility to the managers and directors of PSMCs still needs to be explored in practice, as it has never been applied to superiors unconnected to a state or organized armed group. This being said, it appears to be generally accepted that the "superior" referred to may be a civilian, and that the required commander/subordinate relationship may be a de facto one, as opposed to one based on law.

64. **The Role of Companies. C**ompanies are not themselves bound by IHL. One possible exception to this general position would be if a PSMC could, in a non-international armed conflict, itself be considered a "party to a conflict" within the meaning of Article 3 common to the Geneva Conventions or an "organized armed group" within the meaning of Article 1(1) of Additional Protocol II. In such cases, the company would have exactly the same obligations as any other non-state party to a non-international armed conflict. Though not impossible, this is highly unlikely, in particular because it requires the PSMC to be itself a party to the conflict and not fighting on behalf of one. This being said, there is no doubt that companies have responsibilities under national law. Legal persons must respect the local law of the state where they operate, including (with particular relevance for PSMCs) criminal law as well as tax, immigration and labor law, in addition to the law of their state of nationality. Applicable national law may also impose obligations under IHL, which become binding on companies by virtue of its incorporation into national law. Even when this is not the case, acts that amount to violations of IHL are often also crimes under national law, and prosecutions may be brought on this basis both against company staff and, in the states that recognize the criminal responsibility of legal persons, against the companies themselves.

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65. **Industry Codes of Conduct.** Finally, mention must be made of voluntary codes of conduct, which companies and some commentators sometimes refer to as though they were the sole source of obligations for PSMCs. A "voluntary" approach may be appropriate in respect of human rights obligations. This is because, except for some serious violations criminalized internationally, such as torture, human rights law is binding on states and their agents but not on private entities and individuals, such as PSMCs and their staff. The position under IHL is significantly different. As already stressed several times, the staff of PSMCs are bound thereby. Accordingly it is not possible for companies to select on a voluntary basis how they and their staff should behave with regard to matters regulated by IHL. With regard to issues addressed by international law, they may be best practices for ensuring that companies and their staff perform their existing obligations under IHL, but they are not an opportunity for companies to indicate in a non-binding and generally extremely vague manner how they will conduct themselves.

Interim Summary

Introduction to International Law

66. Formal legal regulation of international military operations and armed conflict has a lengthy historical pedigree dating back to the mid-nineteenth century. International law relating to military operations expanded dramatically in both scope and complexity throughout the twentieth-century. International law developed to regulate the conduct of states in their relations with one another, establishing binding obligations that may give rise to a legal claim against the offending states if breached. International legal obligations apply to all state organs, including the national armed forces. As a result, the CAF are bound to comply with all of Canada's international legal obligations. Failure of the CAF or its individual members to comply with these obligations may give rise to the legal responsibility of Canada for the resulting breach.

67. There are three generally recognized primary sources of international law: treaties, international custom, and general principles of law. The term 'treaty' refers to any agreement between two or more states that is intended to establish obligations as a matter of international law. It does not matter what the document itself is called, so long as this intent exists, and the treaty is adopted by persons with the authority to bind their respective states. The express consent of a state is required before it is bound to comply with any treaty obligations. As a result, treaties generally create rights and obligations for some states and not others. States that are bound by a treaty are considered to be 'states parties' to the treaty regime in question, and must comply, in good faith, with all of the provisions to which they have agreed

68. Unlike treaty provisions, which only bind states parties, customary international law binds all states, without requiring their prior express consent. Customary legal principles result from the evolution of state practice and attitudes rather than from the formal negotiation of binding agreements. A number of factors must be assessed to

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determine the sufficiency of state practice supporting the existence of a particular norm. These will include its duration, uniformity and consistency. State practice alone is not, however, sufficient to establish a binding principle of customary international law. *Opinio juris* in support of the principle is also required; that is, the acceptance (express or implied) of States that the practice in question is required by law, or, in the case of a permissive rule, the assertion (again, express or implied) by the State that the practice is permitted by law. A new customary legal principle can evolve from state practice violating an existing norm, provided the new practice is justified on the basis of legal arguments and supported by other members of the international community on this basis. Numerous customary international legal principles regulate or otherwise relate to the conduct of military operations. For example, the general legal prohibition on the threat or use of force in international relations exists as a matter of customary international law in addition to its treaty status pursuant to the UN Charter.

69. All legal systems rest upon basic principles that allow them to regulate conduct and settle disputes effectively and efficiently. The third primary source of international law, general principles of law, recognizes the importance of this foundation, permitting the incorporation of these general principles to ensure the effective functioning of the international legal order. Numerous subsidiary sources are available for assistance in establishing the specific content of each of the three primary sources of international law (treaties, custom and general principles). These may include judicial decisions and academic writing on international legal topics.

70. International law developed to regulate the conduct of states in their relations with one another. It is not surprising, therefore, that states continue to be the primary subjects of international law. States remain the pre-eminent international legal entities. Indeed, most international legal obligations are owed by states to other states. Similarly, it is only the practice of states – and not other subjects of international law – which can directly create customary international law. The international legal order is premised on the sovereign independence of states. Although sovereignty is not and has never been absolute, states still maintain significant legal control over activities occurring within their territory.

71. Recently, specific non-state actors have also acquired limited rights and obligations as a matter of international law. Some organisations, such as the UN, exist separately from their member states on the international legal plane. The UN possesses some rights, and the capacity to enforce them, at international law. This limited international legal personality is necessary for the organisation to function in the manner intended by its member states. Individuals have also attained some rights and responsibilities at international law, particularly since the mid-twentieth century. This has been most notable in the field of international human rights as well as criminal law. Under international criminal law, individuals including military commanders, face potential direct criminal sanction for violations of international law.

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72. A number of domestic and international legal mechanisms exist to facilitate and ensure compliance with international legal obligations and for international dispute resolution. The International Court of Justice (ICJ) is the principal legal organ of the UN system, although its jurisdiction is limited to cases where states expressly consent to its role. Criminal prosecution of individuals before international courts is also possible, albeit unusual. In the early 1990s, the UN Security Council established two *ad hoc* criminal tribunals to address major international crimes committed in the former Yugoslavia and Rwanda. In 2002, states parties to the Rome Statute established a permanent International Criminal Court with jurisdiction over individuals accused of genocide, crimes against humanity and war crimes.

Refugees, Displaced Persons and Safe Heavens

73. When deployed at sea or on land the CAF have frequently encountered persons who are considered "refugees", "internally displaced persons" (IDPs), and "asylum seekers", often fleeing the adverse effects of an armed conflict and often requesting the assistance of the commander and CAF members. The *1951 UN* Refugee Convention and its *1967 Protocol relating to the Status of Refugees* set out the specific rights of refugees and the obligations on the state in which the refugee is seeking protection. The individual must subjectively believe that they will be subject to persecution upon return to their country of origin and this must be capable of being objectively supported by the prevailing circumstances. The concept of non-refoulement states that no individual should be returned to a country where they are likely to face persecution or torture. This includes the forcible removal of an individual to their country of origin without providing them with the opportunity to have their case decided through that country's legal system.

74. IDPs are persons who are forced or compelled to flee their homes as a result of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized state border. Since IDPs remain within the territorial borders of their own state they are subject to the domestic laws of that state. Asylum is the protection that a state grants on its territory, or in some other place under its control, to a person who seeks it. It can only be granted to a foreign national against the exercise of jurisdiction by another state.

75. A safe haven is a temporary form of protection provided to civilians where the life of the person seeking protection is in imminent danger. According to international law, there is no obligation on a state to provide a safe haven to an individual seeking protection. However, once protection is provided there is an obligation on the state to treat all persons humanely without any adverse distinction based on sex, religion, race, ethnic origin or similar criteria. Pursuant to CFAO 99-6, a CO shall not receive on board any person who is seeking safe haven for the purpose of evading criminal law or who is seeking to leave that foreign state in a manner contrary to its laws.

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Peacetime International Environmental Protection Conventions

76. The principles enacted in international environmental agreements should be respected, in times of peace and war alike. *The Antarctic Treaty* expressly prohibits the use of Antarctica for military purposes, including establishing military bases or fortifications, carrying out military manoeuvres, and weapons testing. *The Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter* imposes restrictions on the dumping or disposal of wastes from vessels, aircraft, platforms, or other man-made structures at sea. UNCLOS is a comprehensive treaty dealing with maritime environmental regulation. Under UNCLOS, states are bound to prevent and control marine pollution, and they are liable for damages caused by violations of their international obligations to combat it. Part XII of UNCLOS deals specifically with the protection and preservation of the marine environment, and contains measures to prevent, reduce, and control marine pollution from all sources.

77. The objective of the *Convention on Biological Diversity* is to conserve biological diversity, promote the sustainable use of its components, and encourage equitable sharing of the benefits arising out of the utilization of genetic resources. *The Convention* places a duty on state parties to conserve biological diversity within their jurisdiction, as well as outside their jurisdiction in certain circumstances. Even though it was reaffirmed that states have sovereign rights over their own biological resources, the principle of national sovereignty over domestic natural resources is subject to the rights of other states. *The Cartagena Protocol on Bio-Safety to the Convention on Biological Diversity* provides an international regulatory framework to reconcile the respective needs of trade and environmental protection in a rapidly growing global industry, the biotechnology industry.

78. *The Basel Convention* is principally devoted to implementing a framework for controlling the movement of hazardous wastes across international borders. Trans-boundary movements of hazardous waste or other wastes are permissible only upon prior written notification of export by the sending state to the competent authorities of the state of import and/or transit. The movement is permissible only if the state of export does not have the capability of managing or disposing of the hazardous waste in an environmentally sound manner.

79. LOAC impacts on the protection of environment with both its treaty law and customary law components. In its customary law customary dimension, there is a general principle recognized by the ICJ to the effect that states must take environmental considerations into account when assessing what is necessary and proportionate in the pursuit of legitimate military objectives. Environmental protection is further elaborated upon, and expanded, in the *Additional Protocols*. For instance, attacking, destroying, removing or rendering useless certain objects for the specific purpose of denying them for their sustenance value to the civilian population or to the adverse Party, whatever the motive, is prohibited.

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80. Due to the extensive use of chemical weapons during World War I an international agreement was reached in 1925. The *Gas Protocol of 1925* condemned the use in war of asphyxiating, poisonous and other gasses, and of all analogous liquids, materials or devices, including bacteriological methods of warfare. Nevertheless, states parties reserved the right to retaliate should such weapons be used first against them.

81. The *Biological and Toxin Weapons Convention* (BTWC) covers all developments in the field of microbiology and biotechnology. Biological weapons were defined in the BTWC as the deliberate use of disease against humans, animals or plants. The primary purpose of the BTWC is the destruction of existing stockpiles of biological weapons and the prevention of their proliferation. The *Protocol* to the BTWC was designed to strengthen the effectiveness of the BTWC and improve its implementation.

82. The *Environmental Modification Convention* entered into force on October 5, 1978. The convention recognized that scientific and technical advances may open new possibilities with respect to the modification of the environment, and that military or any other hostile use of environmental modification techniques could have harmful effects to the welfare of humans. The contracting parties must refrain from assisting, encouraging or inducing any state, group of states or international organizations to engage in the aforementioned activities.

83. *The Convention on Conventional Weapons* was intended to remedy the situation arising in the 70s and 80s when it became apparent that new technologies, such as laser systems, could produce new means of suffering on the battlefield. Consequently, several Protocols were developed in order to regulate and establish international regimes applicable to conventional weapons. The *Chemical Weapons Convention* complements the existing prohibition on the use of chemical weapons and does not limit or detract from the obligations assumed by any state under the *1925 Protocol.* The CWC contains detailed provisions on the definition of prohibited weapons.

PSMC's and IHL

84. Recent years have witnessed an increase in the number of private security and military companies (PSMCs) operating in situations of armed conflict, as well as a change in the nature of their activities, which are now increasingly close to the heart of military operations and which often put them in close proximity to persons protected by IHL. It is often asserted that there is a vacuum in the law when it comes to their operations. In situations of armed conflict, however, there is a body of law that regulates both the activities of the staff of PSMCs and the responsibilities of the states that hire them.

85. It is sometimes stated that PSMCs have no status under international law, with the implicit consequence that neither companies nor their staff have any legal obligations. From an IHL point of view this assertion is misleading. While the companies themselves have neither status nor obligations under IHL, as this body of law does not

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regulate the status of legal persons, their employees do, even though they are not specifically mentioned in any treaty.

86. A far more central question for the purposes of IHL, with immediate practical consequences for the persons involved, is the status of the staff of PSMCs: are they combatants or are they civilians? If they are combatants, they may be targeted at all times but have the right to take direct part in hostilities; if captured, they are entitled to PW status and may not be prosecuted for having participated in hostilities. Conversely, if they are civilians they may not be attacked.

87. It is principally members of states' armed forces who are combatants. Therefore, at risk of stating the obvious, it should be noted as a preliminary point that only the staff of PSMCs hired by states could ever be combatants. Considering that some 80% of the contracts of PSMCs are concluded with clients other than states, this in itself already precludes a large proportion of PSMC employees from being combatants. While IHL is very clear on the fact that members of the armed forces of a state are combatants, it does not provide clear and specific guidance as to who can be considered a member of the armed forces, nor as to the prerequisites to be met by militias or volunteer corps for them to "form part" of the armed forces.

88. While the staff of PSMCs must not, as civilians, be the object of attack, if they engage in activities that amount to taking a direct part in hostilities they lose this immunity from attack for the duration of their participation. This is an important difference between them and combatants, who can be targeted at any time. The question of which activities amount to "taking a direct part in hostilities" is obviously crucial to determining the protection to which the staff of PSMCs are entitled. Although this question is central to the entirety of IHL, as it determines when civilians lose their protection from attack, treaties provide neither a definition nor precise guidance as to the nature of the activities covered.

89. Regardless of their status, be they combatants, civilians accompanying the armed forces or "ordinary" civilians, like all persons in a country experiencing armed conflict the staff of PSMCs are bound by IHL and may face individual criminal responsibility for any serious violations they may commit or have ordered to be committed. The staff of PSMCs may be prosecuted by the courts of a number of states, including the state where the alleged wrongdoing occurred, the state of nationality of the victims, the state of nationality of the alleged perpetrator and that of the PSMC employing him/her. Despite the existence of clear legal obligations and a well-established network of national courts with potential jurisdiction over serious violations of IHL, proceedings against the staff of PSMCs have been rare. This is due to a variety of factors, some legal, and others more practical and political. First, the companies and their staff may have been given immunity from the courts of the states where they operate.

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90. In addition to the criminal responsibility of employees who actually perpetrate a serious violation of IHL or order its commission, managers and possibly more senior company officers may also face legal liabilities. The responsibility of superiors for grave breaches of IHL is expressly recognized in Article 86(2) of Additional Protocol I. It can arise if a superior knew or had information that should have enabled him/her to conclude that a subordinate was committing or was going to commit a breach of IHL but failed to take all feasible measures within his/her power to prevent or repress the breach. Companies are not themselves bound by IHL. One possible exception to this general position would be if a PSMC could, in a non-international armed conflict, itself be considered a "party to a conflict" within the meaning of Article 3 common to the Geneva Conventions or an "organized armed group" within the meaning of Article 1(1) of Additional Protocol II. In such cases, the company would have exactly the same obligations as any other non-state party to a non-international armed conflict. Though not impossible, this is highly unlikely, in particular because it requires the PSMC to be itself a party to the conflict and not fighting on behalf of one. This being said, there is no doubt that companies have responsibilities under national law.

91. Finally, mention must be made of voluntary codes of conduct, which companies and some commentators sometimes refer to as though they were the sole source of obligations for PSMCs. A "voluntary" approach may be appropriate in respect of human rights obligations. This is because, except for some serious violations criminalized internationally, such as torture, human rights law is binding on states and their agents but not on private entities and individuals, such as PSMCs and their staff. The position under IHL is significantly different. As already stressed several times, the staff of PSMCs are bound thereby.

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Suggested Questions

International Law

Q. What are the recognized primary sources of international law? (Treaties, international customary law, and general principles of law)

Q. What means the term 'treaty'? (Refers to any agreement between two or more states that is intended to establish obligations as a matter of international law)

Q. What is Customary International Law? (Customary international law binds all states, without requiring their prior express consent. Customary legal principles result from the evolution of state practice and attitudes rather than from the formal negotiation of binding agreements)

Q. What are the General Principles of Law?

Q. What are the Subsidiary Sources? (These may include judicial decisions and academic writing on international legal topics. Subsidiary sources do not establish legal obligations themselves, but rather provide helpful and often authoritative tools to discern their content)

Q. Who/What are the Subjects of International Law? (States continue to be the primary subjects of international law. However, the past few decades have seen limited international legal rights and obligations arise directly for other entities, including interstate and non-governmental organisations, as well as individuals in some circumstances)

Q. Who/What are Non-State Actors? (Some organisations, such as the UN, exist separately from their member states on the international legal plane. The UN possesses some rights, and the capacity to enforce them, at international law.Some other organisations (for example, the European Union and the North Atlantic Treaty Organisation) also possess limited personality while others do not. Individuals have also attained some rights and responsibilities at international law, in the field of international human rights as well as criminal law. Under international criminal law, individuals including military commanders, face potential direct criminal sanction for violations of international law)

Refugees, Displaced Persons and Safe Heavens

Q. Under the *1951 UN Convention on the Status of Refugees*, what is the definition of a "refugee"? (Article 1 of the Refugee Convention)

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Q. What is the concept of Non-Refoulement? (No individual should be returned to a country where they are likely to face persecution or torture. This includes the forcible removal of an individual to their country of origin without providing them with the opportunity to have their case decided through that country's legal system)

Q. Who are Internally Displaced Persons? (IDPs are persons who are forced or compelled to flee their homes as a result of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized state border)

Q. What is the concept of asylum? (Asylum is the protection that a state grants on its territory, or in some other place under its control, to a person who seeks it)

Q. What is a Safe Haven? (A safe haven is a temporary form of protection provided to civilians where the life of the person seeking protection is in imminent danger)

Peacetime International Environmental Protection Conventions

Q. What is the *Antarctic Treaty*? (Para 32)

Q. What is the *Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter*? (Para 33)

Q. What is the UNCLOS? (Para 34)

Q. What is the Convention on Biological Diversity and the Cartagena Protocol? (Para 35)

Q. What is the Basel Convention on the Control of Trans-boundary Movements of Hazardous Wastes and their Disposal? (Para 36)

Q. What is the *Gas Protocol of 1925*? (Para 41)

Q. What is the *Biological and Toxin Weapons Convention*? (Para 42)

Q. What is the *Protocol to Biological and Toxin Weapons Convention*? (Para 43)

Q. What is the *Convention on the Prohibition of Military use of Environmental Modification Techniques*? (Para 44)

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Q. What is the *Convention on Conventional Weapons (CCW)*? (Para 47)

Q. What is the *Chemical Weapons Convention (CWC)*? (Para 48)

Q. What is the Status of PSMC's Staff under IHL? (Para 51)

Q. Are PSMC's Staff considered combatants or civilians? (Para 52)

Q. What are the categories of persons who can be considered combatants? (Para 53)

Q. Are civilians accompanying the armed forces combatants? (Paras 55 to 58)

Q. What are the responsibilities under IHL of the staff of PSMCs? (Paras 60 to 62)

Q. What is the position of PMS Company Managers and Senior Officers under IHL? (Para 63)

Q. What is the role of PMS Companies under IHL? (Para 64)

Q. What are the Industry Codes of Conduct? (Para 65)

Note to the Instructor: Encourage students to actively participate in the lesson and to reason through problems.

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PART 3 – BODY OF THE LESSON

Stage 2 – Full spectrum of operations (The "Three Block War" concept)[2]

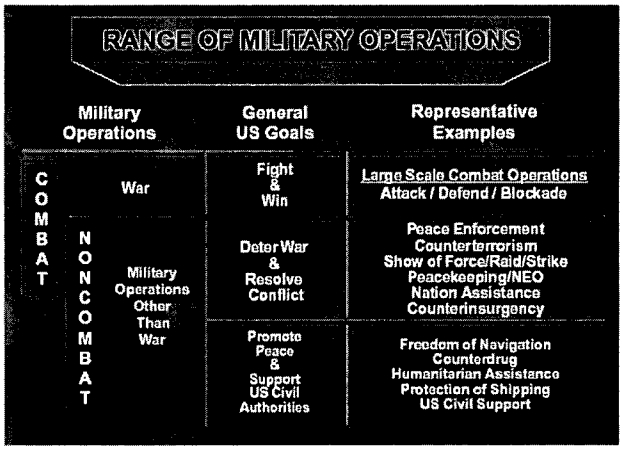
Introduction

1. The "Three Block War" concept was briefly used as a military metaphor by the US Marine Corps leadership at the end of the 20th Century. It was resurrected by the CAF in 2004-2005 and touted as the new model for Canadian field operations. The core idea is that military forces conduct humanitarian, peacekeeping/stabilization, and combat operations simultaneously on three separate city blocks, or more widely. How did Canada arrive at this concept, and what has been the Canadian experience with its application? Why do some military officers consider it a vision for the future, while others consider it tragically flawed?

2. **Description.** The Three Block War covers the spectrum of conflict from humanitarian assistance to intense combat operations short of all-out war. The military has labeled this broad spectrum of operations as Military Operations Other than War (MOOTW), which "[focuses] on deterring war, resolving conflict, promoting peace, and supporting civil authorities." The underlying idea is early involvement will reduce the potential of international crises by addressing pre-crises sources and causes. What is distinct about the Three Block War is it applies MOOTW to the urban environment. It combines the skills of Military Operations in Urban Terrain (MOUT) with MOOTW. The Three Block War places a heavy emphasis on MOUT skills in order to be prepared should deterrence, conflict resolution and peace promotion fail and crisis emerge. MOUT skills enable successful attaining of goals should the crisis lead to conflict. The concepts associated with MOUT and MOOTW are not new. They have been part of military training for some time. Previously, MOUT and MOOTW were simply other missions the military prepared for and were considered secondary to the primary mission of preparing to fight large scale maneuver wars in open terrain.

[2] A.W. Dorn and M. Varey, "T*he Rise and Demise of the Three Block War*" (2009),10 Canadian Military Journal 1, at 38. The views expressed by the authors under Stage 2 – Full spectrum of operations – are not necessarily those of the Office of the Judge Advocate General

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Spectrum of conflict

3. **From Krulak to Hillier.** The term "Three Block War" was coined by Gen Charles C. Krulak when he served as Commandant of the United States Marine Corps (1995-1999). Based upon the challenges the Marines faced in "failed states" such as Somalia and the former Yugoslavia, he offered the concept as a metaphor to describe the demands of the modern battlefield. In a 1997 speech before Washington's National Press Club, and in a 1999 issue of *Marine Corps Gazette*, Krulak imagined the future battlefield to be urban and asymmetrical, an environment with few distinctions between combatant and noncombatant, where sophisticated weaponry is readily available to all sides. A rapidly changing environment was a defining factor in his description. Such situations would require the Marines to engage in a range of activities, all more or less at the same time and within the same limited space:

> *"In one moment in time, our service members will be feeding and clothing displaced refugees …the next moment, they will be holding two warring tribes apart … and, finally, they will be fighting a highly lethal mid-intensity battle – all on the same day … all within three city blocks."*

It will be what we call the Three Block War.

4. Krulak's metaphor was not widely used in the Marine Corps after his departure in 1999; neither did it gain currency in other American service branches, nor in NATO. The Three Block War, however, was touted several years later by the Canadian Army as a key transformational concept. This was largely because of LGen Rick Hillier, then Chief of Land Staff (CLS), who had served as Deputy Commanding General of III Armoured Corps of the US Army while at Fort Hood in 1998-2000. In a 2005 interview, he said that the Three Block War concept will "…significantly alter how we structure, how we prepare, how we command, how we train, how we operate and how we sustain ourselves."; It became one of the main theoretical constructs behind his transformation policy. Army Transformation (AT), the program for restructuring the Land Forces, and the CAF Public Affairs section put the Three Block War 'front and centre.' A widely-distributed AT poster quotes the Army Chief as follows:

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> *Preparing for the three block war will be the foundation of all our training. Leaders at all levels must ensure that our soldiers are set up for success in all aspects of the three-block war.*

Similarly, the Army Transformation website described the concept as "the key" for future warriors, asserting that the army "...must be prepared to fight and win the three-block war." The Canadian Manoeuvre Training Centre in Wainwright, Alberta, greeted visitors with the sign: "Forging Masters of the Three Block War."

5. When Hillier was promoted to Chief of Defence Staff (CDS) in February 2005, he continued to champion the Three Block War concept. The Defence section of Canada's 2005 International Policy Statement (IPS), developed with strong input from General Hillier, highlighted the concept: "...the ability of our military to carry out three-block war operations will be critical to the success of Canada's efforts" to restore order in "failed and failing states," which was identified in the document as the Forces' principal future role. The IPS Overview notes that the Three Block War is "...the image that captures today's operational environment for the Canadian Forces." The concept was thus expanded from the Army to the CF as a whole. In short, through Army Transformation and the 2005 IPS, a late 1990s Marine Corps metaphor became part of the thinking of Canada's top military leadership. Surprisingly, despite its adoption by the CAF, there has been almost no scholarly literature providing critical thinking and analysis of the Three Block War. Given its significance, an appraisal of the concept's strengths and weaknesses remains needed, and it has clearly evident pros and cons.

6. **Recognizing Potential Realities.** The Three Block War helps convey, in part, the multidimensional nature of modern military missions. Soldiers must always be combat-capable, and, at times, combat is vital. Also, as a metaphor, the Three Block War seems to be a realistic description of some of the confused tactical situations confronting the Forces, notably in southern Afghanistan. An emphasis on the multidimensional nature of modern missions should, in principle, help expand the CAF' skills and expertise, including more diverse training and education in the humanitarian, reconstruction, and peace support fields. As Hillier noted in 2005, "...we have not put sufficient intellectual energy, and resources, and work toward the other two [non-combat] blocks specifically, and then all three blocks together." In other words, preparing for a Three Block War should mean that the Forces are better equipped to face the more complex challenges of 21st Century deployments. Hillier did not address the question of *when* or even *whether* the blocks can be 'put together' successfully.

7. **Simplicity: When Pros become Cons.** The concept can help simplify deeply complicated situations. The 'boiled-down,' catchy expression, "Three Block War," makes the idea of multiple tasks easy to communicate, imparting a sense of purpose and confidence in situations lacking clear rules and defined goals. However, 'sound-bite' articulation is also problematic: simplicity can readily become simplistic. While it describes some of the potential tactical situations in modern, multidimensional missions, the concept's 'one-size-fits-all' approach risks losing sight of the special and unique nature of many missions. By ignoring that some operations are primarily humanitarian, or peace support, or outright offensive combat, the concept does not allow specificity of

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mission mandate, which is critical for mission clarity – both for CAF personnel and for local populations.

8. On the opposite end of the spectrum, some missions may be far more complex, having significantly more than three elements or lines of operation. Marine Corps Lieutenant General James N. Mattis and Lieutenant Colonel Frank G. Hoffman have called for a "block" to cover the psychological and informational aspects of modern missions. Colonel John Agoglia, Director of the US Army Peacekeeping and Stability Operations Institute, suggested that US operations in Iraq are not characterized by the three blocks, but US forces are in a fourth block of "...governance, reconstruction and economic development." There is a natural tendency toward 'block inflation' as various thinkers and situations find the need for additional lines of operation to cover new tasks.

9. The Three Block War's simplicity is most problematic when the concept makes the jump from a tactical description of a reality sometimes found on the ground to a strategic vision, as it did when it was introduced in Canada. Indeed, according to Col Agoglia, the concept is ill-suited to serve as an overarching strategy, which it was never meant to be. Furthermore, it was a metaphor for one type of urban warfare that is not readily expanded to other spaces, such as the maritime and aerospace environments. Such a leap would require substantial redefinition and testing. By classifying operations as a type of 'war,' the concept pushes the mind in the direction of offensive combat. In complex modern operations, the end goal is not simply to win a war, but to establish a sustainable peace, especially with a CAF "...focus on the complex and dangerous task of restoring order" to difficult parts of the world. In other words, by emphasizing the means (warfighting), the Three Block War concept risks losing focus on the goal (peace).

10. **A Fragile Foundation.** The concept lacks a solid intellectual foundation. Briefly discussed in the US until Krulak retired as Marine Commandant in 1999, the Three Block War was not incorporated or converted into US doctrine. In Canada, there are similarly no doctrine or keystone document or case studies that test the concept objectively in different operations. Moreover, there is a lack of in-depth analyses of the concept's effectiveness, either as a description of the situation on the ground, or as a strategic objective. In lieu of detailed studies, there exists only a vague smattering of supportive language from some military personnel and the occasional politician, the latter referencing Canada's Afghan deployment. This shortage of deeper thinking leaves plenty of room for ambiguity.

11. **Undefined Blocks.** In the absence of an accepted definition of the Three Block War, the type, scale, and priority of the blocks are all unclear, as well as how they might fit together. In Krulak's articulation, each city block was linked to an activity: humanitarian assistance, peacekeeping, and mid-intensity warfighting for blocks one through three respectively. In 2005, Hillier modified the activities. He put "fighting" in block one, "helping secure, stabilize and nation build" in block two, and, most ambitiously, "helping people through disaster relief, humanitarian assistance and

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peacekeeping" in block three. Later, Hillier substituted "warfighting" with "war," suggesting the combat element is sustained.

12. Army Transformation further emphasized the combat element, keeping Hillier's block order, but changing the activities. Block one becomes "a *high-intensity* fight" against the "armies of failing states," block two deals with "stabilization or peace support operations including counter-insurgency" (though counter-insurgency is very different from peace support) and, in block three, soldiers "deliver humanitarian aid or assist others doing it." By contrast, an Army Transformation website restores Krulak's order and gives yet another spin on the block's contents. This articulation places humanitarian aid and support in block one, "stabilization and peace support operations" in block two, and a "high-intensity fight" (not the occasional mid-intensity battle of Gen Krulak) in block three. Finally, the 2005 IPS echoes Hillier's description, placing "combat against well-armed militia" in block one and "stabilization operations" in block two, but adds "reconstruction" to humanitarian aid in block three. The IPS goes even further, including naval and air force actions in adjoining areas, expanding Krulak's city blocks to an entire theatre and across vast oceans and airspace.

13. The fit of the Three Block War into Canada's declared doctrine, notably the 3D+C (Diplomacy, Development, Defence and Commerce), or, more recently, the "whole-of-government" approach, is left unresolved. The two concepts cannot be easily mapped onto each other – the Three Block War describes the roles of the military, not other government departments. This last issue is all the more pertinent, given that two of the three institutional leads in the 3D+C approach – the Department of Foreign Affairs and International Trade (DFAIT) and the Canadian International Development Agency (CIDA) at the time, never adopted the term Three Block War nor integrated the concept into their existing policies.

14. **A Return to Warfighting.** The concept's ambiguities aside, the Three Block War places a heavy emphasis upon war in contrast to the other two blocks. Beyond the 'front-and-centre' use of the word 'war' in name, the concept has been widely interpreted as a means of advancing a combat-focused agenda. Perhaps this reflected the strong desire within the forces to strengthen their combat role and capabilities after years of perceived neglect, a period Hillier disparagingly called "the decade of darkness" (until the post-911 period). The defence section of the IPS notes that to carry out a Three Block War, the CAF "...will remain, above all, combat-capable in order to deter aggression, defend themselves and civilian populations against conventional and asymmetric attacks, and fight and defeat opposing forces ...." This statement suggests that, in terms of the CAF as a whole, while the peace/stability block may be the end goal, the warfighting block has priority. The warfighting approach fosters an "enemy-centred" mentality, which can all too easily become a self-fulfilling prophecy. It favors the short-term expediency of winning battles over the ultimate goal of building a sustainable peace. The great danger is that unnecessary warfighting may be pursued in situations that mainly call for a peace support approach, where the principles of impartiality, consent, and defence (versus offence) are more appropriate. When soldiers

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default to combat in the Three Block War, they may miss opportunities to use other means to achieve the greater ends.

15. **Mixed and Confused Mandates in a Fatally Flawed Concept.** Given the concept's emphasis upon war, central problems remain. If an operation is primarily of the peace support or humanitarian kind, should it really be labeled a Three Block War? What kind of welcome will CAF receive from a host country and local population if the declared purpose is to "fight a Three Block War" in a "failed and failing state" as the IPS suggests? While support from the local populations may not be the only factor, it is an essential component to mission success. As experiences in Iraq and Afghanistan have shown, when a mission centres upon combat/warfighting, the other two activities or "blocks" become much less effective. It is doubtful that it is even possible to carry out peacekeeping and play a humanitarian role while, at the same time, fighting a war against a determined enemy who can readily threaten or sabotage such efforts. Humanitarian assistance and peacekeeping form the soft underbelly of the Three Block War.

16. The enormous difficulties carrying out reconstruction efforts in Southern Afghanistan highlight the difficulties of the Three Block War approach. When Gen Hiller urged and convinced the Martin government to assume responsibility for the Provincial Reconstruction Team (PRT) in Kandahar, he emphasized, in accordance with the Three Block War concept, that the PRT needed to be reinforced by a strong combat deployment. But he did not foresee that the conventional force component would demand so many resources and cost so many lives. The Canadian presence in the highly dangerous Kandahar province quickly became dominated by the troop deployment – there was only one civilian for every hundred soldiers. Military costs were 10 times greater than the civilian programs. When Canadian soldiers found themselves distributing aid immediately after combat, they were, in some cases, feeding those who they had just fought. It was nearly impossible to tell a Taliban 'terrorist' from a civilian 'supporter.' Most troubling for the population of Canada, which had not seen its soldiers in such combat since the Korean War, was the high rate of fatality in this "reconstruction" mission. Between 2006 and 2008, the annual Canadian fatality rate was 1.4 percent, more than double the rate of US and UK forces in Afghanistan. Ninety percent of Canadian fatalities were from hostile acts. Civilian reconstruction programs cannot proceed satisfactorily in such environments. Civilians are even easier targets.

17. Part of the problem is that the Three Block War gives rise to the very real danger of mandate confusion. Where service members try to be warfighters, peacekeepers, and humanitarian aid workers on the same day and in the same space, the distinction between operation types quickly blur, to the detriment of all. The civilian population and local fighters will find it difficult, if not impossible, to distinguish military movements (i.e., convoys) for humanitarian purposes from those deployed for offensive combat operations. Other players have voiced similar concerns. Humanitarian organizations, such as the Red Cross for example, have often asserted their need for "humanitarian space" that would allow them to work free from military domination or even influence, since even overt cooperation could jeopardize their much-needed impartiality or

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neutrality. The Three Block War approach compounds this problem. When lines of responsibility and mission types are blurred, a determined adversary will target humanitarian and reconstruction efforts, attacking the weakest elements of a multidimensional mission.

18. NATO's longstanding Peace Support Operations (PSO) doctrine provides a useful contrast to the Three Block War. PSOs are of six clear types: conflict prevention (action before a conflict has erupted in violence), peacemaking (discussions and negotiations for peace agreements), peacebuilding (developing infrastructure for peace), humanitarian assistance (keeping people alive), peacekeeping (preventing a reoccurrence of fighting), and peace enforcement (using force to apply the rules). More importantly, peace enforcement is used as a last resort in an impartial fashion to support a peace agreement, much as police officers would intervene impartially to enforce compliance with the domestic rule of law, though international enforcement obviously requires more force. Because mindsets are completely different in war and peace, US doctrine deliberately separates "War" from "Operations Other Than War" (OOTW) for good reason. The Three Block War appears to deliberately blur this distinction. The Counterinsurgency Field Manual of the US Army and Marine Corps reflects many hard lessons learned from Iraq and Afghanistan. The Manual bucks conventional US military wisdom by suggesting "Paradoxes of Counterinsurgency Operations" (p.47-51) such as: "Sometimes, the more you protect your force, the less secure you may be," "Sometimes the more force is used, the less effective it is," "Some of the best weapons for counterinsurgents do not shoot" – all lessons applied in peacekeeping operations.

19. The peace operation in the Congo is a successful example of the alternative to the Three Block War in a complex conflict requiring Chapter VII peace enforcement. The United Nations Mission in the Democratic Republic of the Congo (MONUC) makes sustainable peace its clear objective. While mid-intensity combat does occur, there is no declared enemy. Instead, an impartial attitude is taken toward breaches of the peace. Moreover, those breaches are met with a nuanced, sophisticated response. For example, MI-35 helicopter gunships have engaged renegade brigades, but the United Nations allows a graceful retreat and negotiations in lieu of ongoing battle. Moreover, the option of *brassage* (merging of rebel units with the national army) is always open, although immunity from prosecution by the International Criminal Court cannot be given. The MONUC approach is widely seen as succeeding, albeit slowly, in handling one of the most complex and difficult conflicts in Africa. The United Nations has likewise achieved success over limb-cutting rebel groups in Sierra Leone and the dictatorial Charles Taylor regime in war-wracked Liberia. It has experience with nation-building in the presence of ruthless counterinsurgents and initially lawless regions. Through specialized peace processes, the United Nations has helped end vicious conflicts and counterinsurgencies in El Salvador, Nicaragua, Guatemala, Namibia, Mozambique, Cambodia, Timor Leste, and other former trouble spots of the world.

20. **Further alternatives.** The Three Block War concept was never embraced by the Canadian navy and air force. It was eventually dropped by the army. It is not mentioned

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in the Army's force employment concept "Land Operations 2021," or in the Canada First Defence Strategy. Newer concepts are coming to the fore, including Adaptive Dispersed Operations (ADO), Full-Spectrum Operations (FSO), Joint, Interagency, Multinational and Public (JIMP) enabled forces, and the Comprehensive Approach. Compared to the Three Block War, ADO, FSO and JIMP are much broader concepts, covering not just three activities, but as many (or as few) as are needed for a mission. They call for the integration and coordination of diplomatic, defence, multinational, and commercial resources along with those of many other agencies. The newer concepts avoid many of the problems of the Three Block War concept while still emphasizing the multidimensional nature of modern operations, as does NATO's peace support doctrine and the UN's evolving peace operations doctrine. Still, there is an ongoing need to develop new thinking and doctrine to describe the complex inter-relationship between the use of force and other activities in the field.

Interim Summary

21. The "Three Block War" concept was briefly used as a military metaphor by the US Marine Corps leadership at the end of the 20th Century. It was resurrected by the CAF in 2004-2005 and touted as the new model for Canadian field operations. The core idea is that military forces conduct humanitarian, peacekeeping/stabilization, and combat operations simultaneously on three separate city blocks, or more widely. The Three Block War covers the spectrum of conflict from humanitarian assistance to intense combat operations short of all-out war. The military has labeled this broad spectrum of operations as Military Operations Other than War (MOOTW), which "[focuses] on deterring war, resolving conflict, promoting peace, and supporting civil authorities." The underlying idea is early involvement will reduce the potential of international crises by addressing pre-crises sources and causes.

22. The term "Three Block War" was coined by Gen Charles C. Krulak when he served as Commandant of the United States Marine Corps (1995-1999). Based upon the challenges the Marines faced in "failed states" such as Somalia and the former Yugoslavia, he offered the concept as a metaphor to describe the demands of the modern battlefield. Krulak's metaphor was not widely used in the Marine Corps after his departure in 1999; neither did it gain currency in other American service branches, nor in NATO. The Three Block War, however, was touted several years later by the Canadian Army as a key transformational concept. This was largely because of LGen Rick Hillier, then Chief of Land Staff (CLS), who had served as Deputy Commanding General of III Armoured Corps of the US Army while at Fort Hood in 1998-2000.

23. When Hillier was promoted to Chief of Defence Staff (CDS) in February 2005, he continued to champion the Three Block War concept. The Defence section of Canada's 2005 International Policy Statement (IPS), developed with strong input from General Hillier, highlighted the concept: "...the ability of our military to carry out three-block war operations will be critical to the success of Canada's efforts" to restore order in "failed and failing states," which was identified in the document as the Forces' principal future

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role. The Three Block War helps convey, in part, the multidimensional nature of modern military missions. Soldiers must always be combat-capable, and, at times, combat is vital. Also, as a metaphor, the Three Block War seems to be a realistic description of some of the confused tactical situations confronting the Forces, notably in southern Afghanistan. An emphasis on the multidimensional nature of modern missions should, in principle, help expand the CAF' skills and expertise, including more diverse training and education in the humanitarian, reconstruction, and peace support fields.

24. The concept can help simplify deeply complicated situations. The 'boiled-down,' catchy expression, "Three Block War," makes the idea of multiple tasks easy to communicate, imparting a sense of purpose and confidence in situations lacking clear rules and defined goals. However, 'sound-bite' articulation is also problematic: simplicity can readily become simplistic. On the opposite end of the spectrum, some missions may be far more complex, having significantly more than three elements or lines of operation. Marine Corps Lieutenant General James N. Mattis and Lieutenant Colonel Frank G. Hoffman have called for a "block" to cover the psychological and informational aspects of modern missions.

25. The Three Block War's simplicity is most problematic when the concept makes the jump from a tactical description of a reality sometimes found on the ground to a strategic vision, as it did when it was introduced in Canada. Indeed, according to Col Agoglia, the concept is ill-suited to serve as an overarching strategy, which it was never meant to be. The concept lacks a solid intellectual foundation. Briefly discussed in the US until Krulak retired as Marine Commandant in 1999, the Three Block War was not incorporated or converted into US doctrine. In Canada, there are similarly no doctrine or keystone document or case studies that test the concept objectively in different operations. In the absence of an accepted definition of the Three Block War, the type, scale, and priority of the blocks are all unclear, as well as how they might fit together. In Krulak's articulation, each city block was linked to an activity: humanitarian assistance, peacekeeping, and mid-intensity warfighting for blocks one through three respectively.

26. The fit of the Three Block War into Canada's declared doctrine, notably the 3D+C (Diplomacy, Development, Defence and Commerce), or, more recently, the "whole-of-government" approach, is left unresolved. The two concepts cannot be easily mapped onto each other – the Three Block War describes the roles of the military, not other government departments. The concept's ambiguities aside, the Three Block War places a heavy emphasis upon war in contrast to the other two blocks. Beyond the 'front-and-centre' use of the word 'war' in name, the concept has been widely interpreted as a means of advancing a combat-focused agenda. Perhaps this reflected the strong desire within the forces to strengthen their combat role and capabilities after years of perceived neglect, a period Hillier disparagingly called "the decade of darkness" (until the post-911 period).

27. The enormous difficulties carrying out reconstruction efforts in Southern Afghanistan highlight the difficulties of the Three Block War approach. When Gen Hiller urged and convinced the Martin government to assume responsibility for the Provincial

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Reconstruction Team (PRT) in Kandahar, he emphasized, in accordance with the Three Block War concept, that the PRT needed to be reinforced by a strong combat deployment. But he did not foresee that the conventional force component would demand so many resources and cost so many lives. Part of the problem is that the Three Block War gives rise to the very real danger of mandate confusion. Where service members try to be warfighters, peacekeepers, and humanitarian aid workers on the same day and in the same space, the distinction between operation types quickly blur, to the detriment of all. The civilian population and local fighters will find it difficult, if not impossible, to distinguish military movements (i.e., convoys) for humanitarian purposes from those deployed for offensive combat operations.

28. NATO's longstanding Peace Support Operations (PSO) doctrine provides a useful contrast to the Three Block War. PSOs are of six clear types: conflict prevention (action before a conflict has erupted in violence), peacemaking (discussions and negotiations for peace agreements), peacebuilding (developing infrastructure for peace), humanitarian assistance (keeping people alive), peacekeeping (preventing a reoccurrence of fighting), and peace enforcement (using force to apply the rules). More importantly, peace enforcement is used as a last resort in an impartial fashion to support a peace agreement, much as police officers would intervene impartially to enforce compliance with the domestic rule of law, though international enforcement obviously requires more force.

29. The Three Block War concept was never embraced by the Canadian navy and air force. It was eventually dropped by the army. It is not mentioned in the Army's force employment concept "Land Operations 2021," or in the Canada First Defence Strategy. Newer concepts are coming to the fore, including Adaptive Dispersed Operations (ADO), Full-Spectrum Operations (FSO), Joint, Interagency, Multinational and Public (JIMP) enabled forces, and the Comprehensive Approach.

Suggested Questions

Q. What is the core idea of the Three Block War concept? (Para 1)

Q. What is the spectrum of conflict covered by the Three Block War? (Para 2)

Q. Define the term "Three Block War" coined by Gen Charles C. Krulak? (Para 3)

Q. What are NATO's Peace Support Operations (PSO) types? (Para 18) Conflict prevention, Peacemaking, Peacebuilding, Humanitarian assistance, Peacekeeping, Peace enforcement

Note to the Instructor: Encourage students to actively participate in the lesson and to reason through problems.

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PART 3 – BODY OF THE LESSON

Stage 3 – Peace Support Operations

Introduction

1. **Introduction.** Canada has a long history of involvement in peace support operations (PSO). Establishing a PSO is one of the options available to the international community to assist in the resolution of a conflict. They are authorized in support of the political objectives of internationally recognized organisations such as the United Nations. PSOs include conflict prevention, peacemaking, traditional and complex peacekeeping, and peace building.

2. Peacekeeping has been defined in many operational, political and legal ways. Central to any legal definition are three legal characteristics or prerequisites: the consent of the states involved, the limitation of the use of force by peacekeepers to situations of self-defence, and, neutrality. Fundamentally, the traditional legal basis for peacekeeping rests on the consent of the parties to a conflict, in particular the host state, to the creation and presence of a peacekeeping force within its territory. This consent to allow a peacekeeping force to supervise a peace agreement may be facilitated by the General Assembly, the Security Council or other organs of the UN. Customary international law, based on state consent and agreement, can also support a peacekeeping operation without reliance on the UN Charter.

3. While many legal issues arise with reference to peacekeeping operations some of the more significant ones center on the nature and scope of the requisite consent and the parameters of self-defence. Other legal issues of operational significance relate to command and control, mandate ambiguity and the transformation of a peacekeeping operation into a peace enforcement operation.

4. **The Legal Characteristics of Peacekeeping.** UN peacekeeping has traditionally relied on the consent of the opposing parties and involves the deployment of neutral forces to implement an agreement approved by those parties. By contrast, in cases of enforcement action, the Security Council gives Member States the authority to take all necessary measures to achieve a stated objective. Unlike peacekeeping, consent of the parties is not necessarily required for enforcement actions.

The Legal Basis for Peacekeeping

5. **The UN Charter.** Peacekeeping is not expressly provided for in the UN Charter, nor did the drafters of the Charter ever envisage peacekeeping. Whether based in part under the authority of the UN Charter, or solely upon customary international law, the fundamentally important legal basis upon which peacekeeping rests is the consent of the parties to a conflict and the troop contributing nations. Any deployment of forces

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within the territory of the parties to a conflict for the purposes of supervising a peace agreement without their consent must rest upon some other binding legal authority (usually a Chapter VII Security Council resolution) and consequently places the international operation outside the legal definition of peacekeeping.

6. Given the legal requirement of states' and parties' consent, it would be legally incorrect to state that the UN Charter is the legal basis that creates peacekeeping. Rather, the UN Charter provides legal authority for both the General Assembly and the Security Council to facilitate (*e.g.* organize, plan or finance) the creation of a peacekeeping force when the consent of the parties involved is obtained.

7. **The General Assembly.** The General Assembly has the legal authority to consider, to discuss, and to make recommendations (but not to make decisions) "...relating to the maintenance of international peace and security...". The General Assembly may also, subject to limitations identified below, "...recommend measures for the peaceful adjustment of any situation...". These limits on the powers of recommendation are twofold: any recommendation "...on which action is necessary shall be referred to the Security Council..." and "...the General Assembly shall not make any recommendation..." on any dispute or situation while the Security Council is exercising its function with respect to that matter.

8. Within this legal framework the General Assembly passed the *Uniting For Peace Resolution,* which became the General Assembly's focal point, or outline, for facilitating the creation of peacekeeping forces and monitoring situations related to international peace and security. During its active period between 1945 and 1970 the General Assembly facilitated the creation of the United Nations Emergency Force (UNEF) and the United Nations Operation in the Congo (ONUC). The utilization of its powers to finance these forces was challenged in a case before the International Court of Justice (ICJ), which ruled in favour of the General Assembly's authority in relation to UNEF and ONUC.

9. **An Expansive Reading of General Assembly Powers.** Through a series of decisions, including the *Certain Expenses Case*, the ICJ has applied the doctrines of implied and inherent powers when interpreting the UN Charter and determining the scope and ambit of the authority of the General Assembly, as well as that of the Security Council. The effect of applying these legal doctrines is that both bodies were accorded more power than what would have been possible under a more formal reading of the UN Charter's express provisions.

10. By utilizing these two legal doctrines, the ICJ provided an expansive, rather than formalistic and textual, interpretation of the General Assembly's powers. Under the doctrine of implied powers "...the Organization must be deemed to have those powers which, though not expressly provided in the Charter, are conferred upon it by necessary implication as being essential to the performance of its duties". Consequently, the General Assembly is limited only by the principles and purposes found in the UN Charter (*e.g.* maintain international peace) and this treaty's express wording. An

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example of an expressly worded limitation is found in Articles 10 through14, which limit the General Assembly to making recommendations, and not decisions on which action is required, and not while the Security Council is exercising its functions (unless requested).

11. As a final point, the legal authority of the General Assembly to make recommendations facilitating the creation of peacekeeping, when coupled with state consent, remains. In practice, however, the powers of the General Assembly in this area have rarely been exercised, and the majority of peacekeeping operations have been created as a result of decisions of the Security Council.

12. **The Security Council's Peacekeeping Powers.** The Security Council likewise has the legal authority to issue recommendations that are non-binding but which relate to any dispute likely to endanger the maintenance of international peace and security. As with the powers of the General Assembly, this Security Council authority, contained within Chapter VI of the UN Charter, should be interpreted broadly, applying the doctrines of implied and inherent powers. Also, as is the case with the General Assembly, the legal authority to create a Chapter VI peacekeeping force is dependant on the consent of the parties.

13. The Security Council could also create a peacekeeping force under Chapter VII, Article 40, with a mandate to supervise a peace agreement between two or more parties, but without authorization to "use all necessary means". This arrangement would be consented to by the parties. It is important to note that in this Chapter VII peacekeeping scenario, two distinct legal bases would exist: first, state consent (customary international law), possibly expressed through a treaty (the peace agreement), and second, a binding decision of the Security Council. The Security Council has also authorized a peacekeeping force to supervise a peace agreement, with the consent of the parties, while giving the force Chapter VII enforcement powers for very limited purposes unrelated to monitoring the peace agreement.

14. These scenarios can be legally complex and it is important to be aware of the parameters of action permitted under each legal authority. This is particularly so in cases where the CAF is deployed under dual authorities (host state consent and a Chapter VII mandate) and there is the possibility of one legal base being removed, either through the withdrawal of state consent or in non-renewal of the mandate.

15. The key points for the purposes of this Section are threefold. First, with state consent, the Security Council has the authority to facilitate the creation of a peacekeeping force under Chapter VI. Second, it is possible for a peacekeeping force to be created under Chapter VII, if the parties consent and force is restricted to self-defence. Third, any force that is created without the consent of the parties, even if force is limited to self-defence, would not fall within the legal definition of a peacekeeping force.

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16. **The Customary International Legal Basis For Peacekeeping.** The fundamental legal requirement for peacekeeping is the consent of the parties. For conflicts between states this involves the consent of the states parties to the conflict and the peace agreement. For non-international armed conflict, this involves the consent of the parties to the conflict. Customary international law provides a distinct and separate legal basis for peacekeeping, which is independent of the UN Charter, resting on the parties' consent to accept a peacekeeping force.

17. **Contemporary Op Law Issues: Peacekeeping.** While on the surface peacekeeping appears straight forward, a number of legal issues of significance to operational planners and commanders may arise. These include issues relating to the nature and scope of consent and self-defence, mixed or dual legal authorities, mandate ambiguity, and, command and control issues.

18. **Consent.** It has been noted that the key legal requirement for a peacekeeping operation is consent. The precise scope and ambit of consent may require definition. Consequently, individual contributing countries, as well as the UN, often rely upon Status of Forces Agreements (SOFAs) that define many of the above issues. The key point to emphasize is that operational planners should identify exactly what the requirements are for a particular CAF mission and through policy advisors obtain the consent of the host state, by way of a SOFA, Memoranda of Understanding (MOU) or Diplomatic Note, in advance of arriving in theatre. At times this will be done in coordination with the UN.

19. **Self-Defence**. Traditionally, peacekeeping forces have been restricted to using force in self-defence only. Indeed, as noted above – self-defence, neutrality and consent have been the hallmarks of peacekeeping. Historically, self-defence has been viewed as being restricted to defending members of the peacekeeping forces. However, from the early 1990s onward there have been attempts to redefine "self-defence". Generally speaking, these redefinitions of self-defence have usually emerged in situations where the security situation on the ground is deteriorating but the political will to alter the mandate to an enforcement operation does not exist. An example of this occurred when the CAF was deployed in the Former Yugoslavia as part of UNPROFOR. Such an expanded self-defence concept has historically been included within UN Rules of Engagement or been expressly provided for in a Security Council resolution. At other times, self-defence may be expanded to include protecting local civilians from serious crimes or to defend the increasingly present humanitarian or civilian UN personnel. More broadly, UN peacekeeping forces at times have been authorized to simply defend the mission as a whole.

20. The authorization for the CAF to operate within an expanded concept of self-defence would require Government of Canada approval implemented by the Chief of Defence Staff. Such authority would be found in the operations order or fragmentary orders and rules of engagement. This issue may impact not only national rules of engagement but also the coordination of the use of force amongst the various troop

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contributing nations, which may very well have divergent national approaches to this issue.

21. Another continuing area of legal complexity is the potential for a peacekeeping operation to rely on dual or distinct legal authorities that will not be identical, but generally are overlapping and mutually reinforcing. As discussed in the preceding section, this occurs when consent is obtained and legal authority is also provided under a Chapter VII mandate. While in stable circumstances this would not trigger ongoing legal issues of operational consequence, it has the potential to do so if one of the legal bases (consent or the UN mandate) is revoked or modified. This has typically occurred through a legal and operational mandate shift from peacekeeping to enforcement actions. Some of the historic moments when these types of shifts occurred have involved the CAF. For example, shifts during UNPROFOR, the United Nations Assistance Mission for Rwanda (UNAMIR) and the United Nations Operation in Somalia 2 (UNOSOM2) all involved the blurring of the line (in an operational and legal sense) between traditional understandings of peacekeeping and enforcement operations.

Enforcing UN Mandates

22. **Introduction.** The Security Council, unlike the General Assembly, has the legal authority to make decisions that are binding on states. This Security Council power includes the legal ability to authorize measures up to and including the use of force against a target state or non-state actor. Consequently, the Security Council has the legal authority not only to impose non-coercive sanctions on a target state, but also to authorize the use of force in a variety of scenarios. For example, this could include authorizing force to enforce sanctions, provide a secure environment to deliver humanitarian aid, enforce the terms of a peace agreement, or restore international peace and security in a particular region. Sometimes these operations have been referred to as "complex peace support and stabilization missions" and, within the context of naval operations, "maritime interdiction operations".

23. **The Distinction Between UN Enforcement Operations and Peacekeeping Operations.** The two key legal points distinguishing UN enforcement operations from peacekeeping are that in enforcement states are expressly authorized to use force beyond self-defence to enforce a particular Security Council mandate and that the use of this force within, or against the "target" state is not based on the specific consent of that state. In short, enforcement operations are coercive while peacekeeping operations are consensual. As noted, peacekeeping and peace enforcement are separate concepts: The two should not be confused. UN peacekeeping has traditionally relied on the consent of the opposing parties and involves the deployment of peacekeepers to implement agreements approved by those parties. In the case of enforcement action, the Security Council gives Member States the authority to take all necessary measures to achieve a stated objective. Consent of the parties is not necessarily required.

24. **The Legal Basis for UN Enforcement Operations.** As the title of Chapter VII of the UN Charter suggests – *"Action With Respect To Threats To The Peace, Breaches of the Peace and Acts of Aggression"* – decisions of the Security Council pursuant to

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the Chapter deal with measures to restore international peace and security, including resort to the use of force in certain circumstance.

25. **Binding Authority.** Pursuant to Article 25 of the UN Charter, *"Members of the United Nations agree to accept and carry out the decisions of the Security Council".* Consequently, when the Security Council makes a decision in the form of a Security Council resolution that obliges Member States to act, or to refrain from acting, that decision is "binding".

26. **Article 39 – The Existence of Any Threat to the Peace.** Under the authority of Chapter VII, the Security Council has the legal ability to take decisions involving coercive and non-coercive measures once it makes an "Article 39 determination".

27. Article 39 states:

> *The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security.*

28. Consequently, an Article 39 determination that a particular situation constitutes a threat to or breach of the peace, or an act of aggression, is the legal "tripwire" or "trigger" that allows the Security Council to authorize coercive action. While "aggression" is a concept which is defined by law (albeit that that definition is not without controversy), there is no accepted definition of "threat to the peace" or "breach of the peace" and the SC enjoys a wide discretion in the application of those terms. In recent years it has treated international terrorism and situations of violence inside certain countries as constituting threats to the peace.

29. **Article 41 – Measures Not Involving The Use of Force.** Pursuant to Article 41 the Security Council is authorized to:

> *Decide what measures not involving the use of armed force are to be employed to give effect to its decisions, and it may call upon Members of the United Nations to apply such measures. These may include complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio and other means of communication, and the severance of diplomatic relations.*

30. Article 41 decisions, therefore, may include binding decisions for all or some Member States to impose trade restrictions or economic sanctions with respect to a particular target state or entity. It is important to note that while Article 41 is binding on all States, it expressly precludes the use of military force to ensure compliance with the measures adopted. Consequently, in the context of a resolution imposing economic sanctions, Member States are expected to self-regulate through import and export restrictions.

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31. **Article 42 – Measures Involving The Use of Force.** By contrast, Article 42 does create a legal basis for the Security Council to authorize the use of force. Article 42 states:

> *Should the Security Council consider that measures provided for in Article 41 would be inadequate or have proved to be inadequate, it may take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security. Such action may include demonstrations, blockade, and other operations by air, sea, or land forces of Members of the United Nations.*

32. Article 42, therefore, authorizes "action... as may be necessary to maintain or restore international peace and security". The action may include "operations by air, sea, or land forces". In short, Article 42 is the legal basis upon which the UN Security Council can authorize the use of force against a state or other entity. In this sense the force used is coercive in that it is applied without the specific consent of the target state and is not limited to self-defence. Rather, a level of force that is "necessary to maintain or restore international peace and security" may be authorized.

Authorizing UN Enforcement Operations

33. **Authorizing the Use of Force.** The collective security structure envisaged by the UN Charter did not fully develop. Rather than having armed forces at its disposal, pursuant to "Article 43 Agreements", and commanding them through the Military Staff Committee, the Security Council has instead authorized enforcement activity by "coalitions of the willing" or "regional agencies", which have retained authority for planning as well as strategic direction. The current practice is for the Security Council to authorize Member States to carry out enforcement actions against target states or entities by way of resolutions issued under the authority of Chapter VII.

34. Generally, the practice of the Security Council since Resolution 661 (1990 – Gulf War) is to make an express "Article 39 determination" of the existence of a threat or breach of the peace in the preamble of a resolution, usually in the penultimate paragraph. This is generally followed by an express statement in the last paragraph of the preamble of the resolution that the Security Council is acting under the authority of Chapter VII. In the subsequent numbered and operative paragraphs of the resolution, the Security Council "calls upon all Member States", or authorizes designated states or regional agencies, to carry out a specific mandate or mission, often within a specified geographic area or region, against a designated state or entity. Finally, and importantly, the Security Council may additionally authorize Member States to enforce the mandate using up to and including "all necessary means" or "all means necessary". It is the authorization of "all necessary means", or some variation thereof, that usually provides international legal authority for the coalition or regional agency to use force beyond that required for self-defence. Consequently, when relying upon a Chapter VII mandate to deploy the CAF for the purposes of enforcing a Security Council mandate, legal advisors must study the relevant resolution(s) to determine who is authorized to do what, against whom, and with what level of force.

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35. Historically, the CAF has participated in a number of international operations that have enforced UN mandates. These included the use of naval power to enforce sanctions in the Arabian Sea and Gulf Region and off the Yugoslavian and Haitian coasts. CF-18s have been involved with enforcement actions over Bosnia, and later Kosovo, while other CAF air assets have been involved with enforcement activities in Haiti, Bosnia, Somalia, East Timor, and Afghanistan, to name a few. CAF land forces have conducted enforcement operations in Bosnia, Kosovo, East Timor, Haiti, Somalia and Afghanistan.

36. **The Transformation of UN Practice.** Between 1945 and the end of the Cold War, it has been estimated that over 160 internal or international armed conflicts occurred leaving over 20 million dead. During this period, there were only two express findings of a "breach of the peace". There were no more than 7 findings of a "threat to the peace", and "aggression" was determined to exist in 3 situations. Article 41 was expressly relied upon on only 2 occasions. Peacekeeping operations were organized 18 times, only on one occasion with an express Article 39 determination. Operations in Korea may, arguably, be the only example of an enforcement action. Between 1945 and 1985 the veto was used 279 times often in relation to drafted SCRs which were calling for action within the purview of Chapter VII.

37. Clearly, this political context shaped and defined not only the role and activity of the General Assembly and Security Council, but also the way in which states have interpreted and applied key provisions of the Charter. This has not only produced new practices such as the emergence of peacekeeping and enforcement actions, but, as will be seen below, it has also expanded the circumstances in which enforcement actions can arise.

38. The Security Council had issued 659 resolutions prior to the 1990 invasion of Kuwait by Iraq. By the end of 2005, over 1590 resolutions had been issued. Over 36 peacekeeping missions were formed between 1990 and 2001. Express Article 39 determinations leading to enforcement actions occurred in more than 25 different situations from 1990 to 2001. Contrary to the Charter's drafters' expectations, most of these measures have related to situations occurring within, rather than between, states.

39. **Key Legal Developments.** A number of key legal developments have occurred following the Cold War. One was the development by the International Court of Justice of the doctrines of implied and inherent powers in respect of Security Council authority. These doctrines do not limit the potential powers of the Security Council to what is expressly provided for in the Articles of the UN Charter. Rather, these doctrines have the combined effect of presuming that the Security Council is operating within its authority (*intra vires*), as long as its actions fall within the purposes of the UN and the express provisions of the UN Charter do not prohibit the actions.

40. Two other interrelated factors contributing to the expansion of the legal authority for enforcement action have been the narrowing of Article 2(7)'s definition of "domestic jurisdiction" and the broadening of what constitutes a threat to international peace and

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security under Article 39. Article 2(7) supports state sovereignty by requiring that the UN not "intervene in matters which are essentially within the domestic jurisdiction of any state", subject to Chapter VII enforcement measures. Article 39 requires a determination of a threat or breach of the peace before Chapter VII enforcement action can occur. However, driven primarily by political concerns, human rights matters, which were once considered solely within the domestic jurisdiction of a state, are now routinely considered to be of international concern. Likewise the definition of what constitutes a threat or breach of the peace is no longer conceived of as requiring a threat or use of force between states. As a result, the violation of human rights within a state now routinely triggers an Article 39 determination.

41. **Main Types of UN Enforcement Operations.** While there are a variety of ways in which enforcement of a UN mandate may be authorized some of the most common types are canvassed in the following paragraphs, including enforcing sanctions, restoring international peace and security in a geographic area, implementing a peace agreement, and, enforcement for specific tasks.

42. **Enforcing Sanctions.** Under Article 41, which relates to "measures not involving the use of force", the Security Council may adopt a binding resolution that requires all Member States to refrain from importing or exporting particular items (such as military equipment) from or to a target state. The creation of a sanctions regime or embargo within the context of Article 41 requires Member States to regulate their own conduct and that of their citizens. There is no authority under Article 41 itself to enforce the compliance of other Member States. However, if Member States are subsequently authorized under Article 42 to "use all necessary means" to enforce sanction compliance, they could use force, typically either through a "coalition of the willing" or through a regional agency (such as NATO). The CAF naval forces have been actively involved in a number of maritime interdiction operations that have been designed to ensure that all Member States comply with sanctions imposed by the Security Council. These include naval operations off the coast of Haiti, the former Yugoslavia and Iraq.

43. **Restoring International Peace and Security in a Geographic Area.** The Security Council has at times authorized the use of force to "restore international peace and security in the area" or to "create a secure environment" in a designated geographical area, "for a humanitarian relief operation".

44. **To Implement A Peace Plan or Agreement.** More common is an authorization to use force to implement the military aspects of a peace plan. This type of operation is legally distinct from a peacekeeping operation in which force is limited to self-defence and the mission is typically to monitor and survey the implementation of a peace agreement by consenting parties. In this type of enforcement operation, force is authorized beyond that necessary for self-defence to ensure that relevant portions of a peace agreement identified in the resolution are implemented and completed. The creation of a peace agreement consented to by the parties, subsequently backed by a Chapter VII mandate, has occurred in the Balkans48 (the Dayton Accord), Kosovo, East

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Timor and Afghanistan. The CAF has participated in all of these enforcement operations.

45. **Enforcement for Specific Tasks.** At times a military operation will only be authorized to use force beyond that required for self-defence for precisely defined purposes, rather than through a broader mandate (such as creating a "secure environment"). These types of authorizations can sometimes be added to a previously mandated peacekeeping operation through Chapter VII. In such situations the nature of the international operation begins to legally transform from a peacekeeping to a peace enforcement operation. Alternatively, an enforcement operation can be created initially with precisely defined parameters that clearly identify the circumstances within which "all necessary means" may be employed.

46. **Key Op Law Issues: Enforcement Operations.** A Security Council authorization to conduct international operations to enforce a particular mandate often raises legal issues that impact on the way in which the Canadian Government defines the Strategic Objectives for a CAF deployment, the content of OPLANS and, ultimately, ROEs.

47. **Enforcing Sanctions Without An "Article 42 Authorization".** At times an issue will arise concerning whether a particular Article 41 sanction or embargo can be enforced against other States, or the territorial integrity of the target state can be violated, in the absence of an Article 42 authorization. As a general statement, a Security Council resolution only authorizes the use of force to enforce a sanction if it expressly provides such authorization or refers to a previously existing mandate that authorizes the use of force.

48. **Self-defence or Enforcement Action - Articles 42 and 51.** At times the use of force may be expressly authorized in a situation where some states are already using force as an exercise of their right of self-defence. In this type of situation legal issues can arise relating to the scope of the legal authorizations to use force, particularly if the threat that triggered the right of self-defence is eliminated but a threat to international peace and security continues. The existence of both the exercise of the right of self-defence and an enforcement mandate has arisen, for example, in 1950 in Korea, the 1991 Gulf War and the post 11 September 2001 Afghanistan conflict. The CAF has participated in all these missions.

49. When an enforcement mandate is authorized within the same context that sustains the legal right of self-defence care must be taken to ensure that the proposed military operations can be supported on one of the two legal bases. While force used in self-defence is directed to eliminating a continuing threat, the use of force to restore international peace and security may go beyond what is permitted in self-defence. The importance of precisely analyzing the level of authorized force and its relationship to each distinct legal basis is crucial, particularly when operating within a coalition if some participating states are only authorized to act on one legal basis but not the other.

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50. **Host Nation Consent and a Binding Authorization.** Since the signing of the Dayton Accord it has become more common for parties to an armed conflict to create a peace plan and consent to having it enforced by third-party states. This has occurred in the Balkans, Kosovo, East Timor and Afghanistan. Legal issues relating to the authority to enter the state and the ability to use force to implement, and if need be enforce, the peace plan is based not only on the consent of the parties but also on a resolution. At times the resolution may incorporate all, or a portion of the peace plan, and expressly refer to the consent of the parties. As a matter of law, these types of operations may possibly rest on two distinct legal bases: the consent of the parties, perhaps expressed through treaty (a peace agreement), and the Chapter VII resolution. The details of such an arrangement may be further elaborated in a variety of other instruments such as SOFAs, Military Technical Arrangements (MTAs) or MOUs. Precisely identifying the nature and scope of authority provided by each legal basis will be particularly important should one of the two authorities change in nature or be completely revoked.

51. **Ambiguous Mandates.** Generally, Chapter VII resolutions will not provide detailed and precise authorizations on the exact parameters within which force is to be used. This is not surprising given the complex subject matter and the fact that often the content of resolutions are a matter of political negotiation requiring constructive ambiguity. While the exact parameters of a mandate may sustain a variety of interpretations, the scope of the CAF mandate will often be further defined by the Strategic Objectives provided to the CAF by the Government of Canada, and further refined by the CDS-approved OPLAN.

52. **Implied, Retroactive and Re-Triggered Authorizations.** In the case of the Kosovo air campaign and the 2003 US-led intervention into Iraq, some debate has focused on whether a clear express authorization to use "all necessary means" is required for each specific intervention. It has been suggested that Chapter VII resolutions that do not expressly authorize "all necessary means" may still authorize the use of force by implying such a right given the context within which the resolution was passed, retroactively authorizing the use of force, or, by "re-triggering" a previous resolution and applying it to the current situation. None of these arguments have been adopted by the Government of Canada, and from a legal perspective this line of argument is questionable.

53. Generally, the current practice of the Security Council requires a Chapter VII resolution that expressly authorizes all necessary means or measures to carry out a specific mandate. At times a mandate can be renewed, expressly invoking or relying upon a previous resolution that had authorized force. As it is the Security Council that has created the current process for how force is authorized, it is legally possible and within its authority to modify the current practice.

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Interim Summary

54. Canada has a long history of involvement in peace support operations (PSO). Establishing a PSO is one of the options available to the international community to assist in the resolution of a conflict. They are authorized in support of the political objectives of internationally recognized organisations such as the United Nations. Peacekeeping has been defined in many operational, political and legal ways. Central to any legal definition are three legal characteristics or prerequisites: the consent of the states involved, the limitation of the use of force by peacekeepers to situations of self-defence, and, neutrality. Fundamentally, the traditional legal basis for peacekeeping rests on the consent of the parties to a conflict, in particular the host state, to the creation and presence of a peacekeeping force within its territory.

55. While many legal issues arise with reference to peacekeeping operations some of the more significant ones center on the nature and scope of the requisite consent and the parameters of self-defence. UN peacekeeping has traditionally relied on the consent of the opposing parties and involves the deployment of neutral forces to implement an agreement approved by those parties. By contrast, in cases of enforcement action, the Security Council gives Member States the authority to take all necessary measures to achieve a stated objective. Peacekeeping is not expressly provided for in the UN Charter, nor did the drafters of the Charter ever envisage peacekeeping. Whether based in part under the authority of the UN Charter, or solely upon customary international law, the fundamentally important legal basis upon which peacekeeping rests is the consent of the parties to a conflict and the troop contributing nations.

56. Given the legal requirement of states' and parties' consent, it would be legally incorrect to state that the UN Charter is the legal basis that creates peacekeeping. The General Assembly has the legal authority to consider, to discuss, and to make recommendations (but not to make decisions) "...relating to the maintenance of international peace and security...". The General Assembly may also, subject to limitations identified below, "...recommend measures for the peaceful adjustment of any situation...". Within this legal framework the General Assembly passed the *Uniting For Peace Resolution,* which became the General Assembly's focal point, or outline, for facilitating the creation of peacekeeping forces and monitoring situations related to international peace and security. During its active period between 1945 and 1970 the General Assembly facilitated the creation of the United Nations Emergency Force (UNEF) and the United Nations Operation in the Congo (ONUC). Through a series of decisions, including the *Certain Expenses Case*, the ICJ has applied the doctrines of implied and inherent powers when interpreting the UN Charter and determining the scope and ambit of the authority of the General Assembly, as well as that of the Security Council.

57. By utilizing these two legal doctrines, the ICJ provided an expansive, rather than formalistic and textual, interpretation of the General Assembly's powers. Under the doctrine of implied powers "...the Organization must be deemed to have those powers which, though not expressly provided in the Charter, are conferred upon it by necessary

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implication as being essential to the performance of its duties". The Security Council likewise has the legal authority to issue recommendations that are non-binding but which relate to any dispute likely to endanger the maintenance of international peace and security. As with the powers of the General Assembly, this Security Council authority, contained within Chapter VI of the UN Charter, should be interpreted broadly, applying the doctrines of implied and inherent powers. The Security Council could also create a peacekeeping force under Chapter VII, Article 40, with a mandate to supervise a peace agreement between two or more parties, but without authorization to "use all necessary means". This arrangement would be consented to by the parties. It is important to note that in this Chapter VII peacekeeping scenario, two distinct legal bases would exist: first, state consent (customary international law), possibly expressed through a treaty (the peace agreement), and second, a binding decision of the Security Council.

58. The key points for the purposes of this Section are threefold. First, with state consent, the Security Council has the authority to facilitate the creation of a peacekeeping force under Chapter VI. Second, it is possible for a peacekeeping force to be created under Chapter VII, if the parties consent and force is restricted to self-defence. Third, any force that is created without the consent of the parties, even if force is limited to self-defence, would not fall within the legal definition of a peacekeeping force. The fundamental legal requirement for peacekeeping is the consent of the parties. For conflicts between states this involves the consent of the states parties to the conflict and the peace agreement. For non-international armed conflict, this involves the consent of the parties to the conflict. While on the surface peacekeeping appears straight forward, a number of legal issues of significance to operational planners and commanders may arise. These include issues relating to the nature and scope of consent and self-defence, mixed or dual legal authorities, mandate ambiguity, and, command and control issues. It has been noted that the key legal requirement for a peacekeeping operation is consent. The precise scope and ambit of consent may require definition. Consequently, individual contributing countries, as well as the UN, often rely upon Status of Forces Agreements (SOFAs) that define many of the above issues.

59. Traditionally, peacekeeping forces have been restricted to using force in self-defence only. Indeed, as noted above – self-defence, neutrality and consent have been the hallmarks of peacekeeping. Historically, self-defence has been viewed as being restricted to defending members of the peacekeeping forces. However, from the early 1990s onward there have been attempts to redefine "self-defence". Generally speaking, these redefinitions of self-defence have usually emerged in situations where the security situation on the ground is deteriorating but the political will to alter the mandate to an enforcement operation does not exist. The authorization for the CAF to operate within an expanded concept of self-defence would require Government of Canada approval implemented by the Chief of Defence Staff. Such authority would be found in the operations order or fragmentary orders and rules of engagement.

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60. Another continuing area of legal complexity is the potential for a peacekeeping operation to rely on dual or distinct legal authorities that will not be identical, but generally are overlapping and mutually reinforcing. As discussed in the preceding section, this occurs when consent is obtained and legal authority is also provided under a Chapter VII mandate. The Security Council, unlike the General Assembly, has the legal authority to make decisions that are binding on states. This Security Council power includes the legal ability to authorize measures up to and including the use of force against a target state or non-state actor. Consequently, the Security Council has the legal authority not only to impose non-coercive sanctions on a target state, but also to authorize the use of force in a variety of scenarios. The two key legal points distinguishing UN enforcement operations from peacekeeping are that in enforcement states are expressly authorized to use force beyond self-defence to enforce a particular Security Council mandate and that the use of this force within, or against the "target" state is not based on the specific consent of that state.

61. Pursuant to Article 25 of the UN Charter, *"Members of the United Nations agree to accept and carry out the decisions of the Security Council"*. Consequently, when the Security Council makes a decision in the form of a Security Council resolution that obliges Member States to act, or to refrain from acting, that decision is "binding". Under the authority of Chapter VII, the Security Council has the legal ability to take decisions involving coercive and non-coercive measures once it makes an "Article 39 determination

62. Article 41 decisions, therefore, may include binding decisions for all or some Member States to impose trade restrictions or economic sanctions with respect to a particular target state or entity. By contrast, Article 42 does create a legal basis for the Security Council to authorize the use of force. The collective security structure envisaged by the UN Charter did not fully develop. Rather than having armed forces at its disposal, pursuant to "Article 43 Agreements", and commanding them through the Military Staff Committee, the Security Council has instead authorized enforcement activity by "coalitions of the willing" or "regional agencies", which have retained authority for planning as well as strategic direction.

63. Generally, the practice of the Security Council since Resolution 661 (1990 – Gulf War) is to make an express "Article 39 determination" of the existence of a threat or breach of the peace in the preamble of a resolution, usually in the penultimate paragraph. This is generally followed by an express statement in the last paragraph of the preamble of the resolution that the Security Council is acting under the authority of Chapter VII. Historically, the CAF has participated in a number of international operations that have enforced UN mandates. These included the use of naval power to enforce sanctions in the Arabian Sea and Gulf Region and off the Yugoslavian and Haitian coasts. CF-18s have been involved with enforcement actions over Bosnia, and later Kosovo, while other CAF air assets have been involved with enforcement activities in Haiti, Bosnia, Somalia, East Timor, and Afghanistan, to name a few.

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64. Between 1945 and the end of the Cold War, it has been estimated that over 160 internal or international armed conflicts occurred leaving over 20 million dead. During this period, there were only two express findings of a "breach of the peace". There were no more than 7 findings of a "threat to the peace", and "aggression" was determined to exist in 3 situations. Article 41 was expressly relied upon on only 2 occasions. Clearly, this political context shaped and defined not only the role and activity of the General Assembly and Security Council, but also the way in which states have interpreted and applied key provisions of the Charter. The Security Council had issued 659 resolutions prior to the 1990 invasion of Kuwait by Iraq. By the end of 2005, over 1590 resolutions had been issued.

65. A number of key legal developments have occurred following the Cold War. One was the development by the International Court of Justice of the doctrines of implied and inherent powers in respect of Security Council authority. Two other interrelated factors contributing to the expansion of the legal authority for enforcement action have been the narrowing of Article 2(7)'s definition of "domestic jurisdiction" and the broadening of what constitutes a threat to international peace and security under Article 39. Article 2(7) supports state sovereignty by requiring that the UN not "intervene in matters which are essentially within the domestic jurisdiction of any state", subject to Chapter VII enforcement measures. Under Article 41, which relates to "measures not involving the use of force", the Security Council may adopt a binding resolution that requires all Member States to refrain from importing or exporting particular items (such as military equipment) from or to a target state. The Security Council has at times authorized the use of force to "restore international peace and security in the area" or to "create a secure environment" in a designated geographical area, "for a humanitarian relief operation".

66. More common is an authorization to use force to implement the military aspects of a peace plan. This type of operation is legally distinct from a peacekeeping operation in which force is limited to self-defence and the mission is typically to monitor and survey the implementation of a peace agreement by consenting parties. At times a military operation will only be authorized to use force beyond that required for self-defence for precisely defined purposes, rather than through a broader mandate (such as creating a "secure environment"). These types of authorizations can sometimes be added to a previously mandated peacekeeping operation through Chapter VII.

67. A Security Council authorization to conduct international operations to enforce a particular mandate often raises legal issues that impact on the way in which the Canadian Government defines the Strategic Objectives for a CAF deployment, the content of OPLANS and, ultimately, ROEs. At times the use of force may be expressly authorized in a situation where some states are already using force as an exercise of their right of self-defence. In this type of situation legal issues can arise relating to the scope of the legal authorizations to use force, particularly if the threat that triggered the right of self-defence is eliminated but a threat to international peace and security continues.

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68. When an enforcement mandate is authorized within the same context that sustains the legal right of self-defence care must be taken to ensure that the proposed military operations can be supported on one of the two legal bases. While force used in self-defence is directed to eliminating a continuing threat, the use of force to restore international peace and security may go beyond what is permitted in self-defence. Legal issues relating to the authority to enter the state and the ability to use force to implement, and if need be enforce, the peace plan is based not only on the consent of the parties but also on a resolution. Generally, Chapter VII resolutions will not provide detailed and precise authorizations on the exact parameters within which force is to be used. This is not surprising given the complex subject matter and the fact that often the content of resolutions are a matter of political negotiation requiring constructive ambiguity.

Suggested Questions

Q. What are the legal characteristics of Peacekeeping? (Para 4)

Q. What is the legal basis for Peacekeeping?
(UN Charter, General Assembly, Paras 5 to 8)

Q. What are the General Assembly powers? (Paras 9 to 11)

Q. What are the Security Council's Peacekeeping powers? (Paras 12 to 15)

Q. What is the Customary International Legal Basis for Peacekeeping?
(Para 16)

Q. What are the contemporary Op Law Issues for Peacekeeping?
(Consent, Self-defence, paras 17 to 21)

Q. What is the distinction between UN Enforcement Operations and Peacekeeping Operations? (Para 23)

Q. What is the legal basis for UN Enforcement Operations?
(Chapter VII of the UN Charter, para 24)

Q. Which key legal developments have occurred following the Cold War?
(Pars 39, 40)

Q. What are the main types of UN Enforcement Operations? (Para 41)

Note to the Instructor: Encourage students to actively participate in the lesson and to reason through problems.

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PART 3 – BODY OF THE LESSON

Stage 4 – Humanitarian Assistance Operations

Introduction

1. Natural disasters - floods, droughts, storms and earthquakes -, as well as human-made ones, kill many people and cause great economic losses each year. More than 90 per cent of all disaster victims live in developing countries - an indicator of the degree to which poverty, population pressures and environmental degradation exacerbate suffering and destruction – but disasters occur domestically too. Disasters are termed *natural* if caused by uncontrollable forces of nature and *human-made* if brought about by human interference or are the consequences of technological failures, such as Toxic Industrial Material (TIM) release. The lines of demarcation often overlap. For example, an earthquake can easily shake loose canisters of toxic chemicals and cause them to spill complicating the overall disaster response required. Although the same processes normally apply to both types of disaster the posture of military forces varies depending on the threat environment. Throughout this manual the term emergency and disaster will be used interchangeably.

2. Complex emergencies, resulting from conflict induced conditions and often compounded by natural disasters, have intensified in many regions of the world. In complex emergencies, affected populations often have little or no access to their traditional sources of income for long periods of time, owing to displacement and insecurity. As a result, the economic opportunities needed to sustain a dignified livelihood become more acute, particularly in protracted emergencies where populations are frequently on the move. If natural disaster has also struck, the ability of local communities to support displaced populations becomes severely limited, making large segments of these populations dependent on humanitarian assistance.

3. The Government of Canada responds to emergencies and disasters in foreign countries in order to promote international peace and stability. The procedures describe below conform with the Government of Canada's *Standard Operating Procedures for Response to International Natural Disasters*, May 2003. The response to a complex emergency, due to the uncertainty of the security environment, requires more comprehensive military planning and inter-departmental coordination before the commitment of CAF elements.

General Departmental Responsibilities

4. **Foreign Affairs Canada (FAC).** FAC's role in disaster response is to act as the inter-departmental coordinator of the federal government's response; to provide consular services; and to liaise with the governments of both the affected countries and other donor countries. Internally FAC has the following mechanisms:

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a. **Canadian Diplomatic Posts**. Canadian Embassies, High Commissions and Country Offices play a key role in providing early information of emerging crises and situation assessments following disasters. Their links with host Governments and in-country humanitarian agencies makes them an important information source and part of the co-ordination system in the affected country. They may also be able to facilitate some Canadian disaster response activities, including local procurement of relief goods. The Canadian diplomatic post accredited to the country/region affected is responsible for implementing its emergency contingency plan(s), including: contacting Canadians in-country who might be affected by the emergency; providing (based on information obtained from the consular warden network, among other sources) an assessment of the situation on the ground; serving as a focal point when a Canadian Humanitarian Assessment and Response Team (CHART) is deployed; and providing logistical support for the delivery of Canadian humanitarian assistance. The post also serves as the point of contact with local authorities, embassies, media, donor agencies and other organizations present in the field, including UNHCR, OCHA, PAHO, WFP and the IFRC and provide regular updates on the evolving situation.

b. **Consular Affairs/ Emergency Services (JPE)**. JPE is responsible for the safety and security of Canadians living abroad. They receive regular reports on damage, weather, etc, from posts and other sources, serve as the focal point for Canadians seeking information on their relatives/friends in the affected nation, oversee the preparation and the regular updating of Mission Consular Contingency Plans, and during a crisis, coordinate the consular response.

c. **Communication Strategy/Media Relations Divisions (BCAF/BCM)**. This division's objective is to ensure that all interested domestic and international audiences (government, media and others) are informed of Canada's preparation and response to disaster situations. They are responsible for coordination among relevant communications divisions of the Government of Canada (PCO, DND etc.), responding to media enquiries and preparing communication material for timely announcement of Canadian response to disasters for use by Government officials.

d. **Geographic Divisions**. These serve as FAC's primary point of contact with the post and ensure that information from the field is made available to all relevant partners. They monitor developments and initiate follow-up activities after a disaster has occurred.

e. **The Regional Security and Peacekeeping Division (IDC)**. This Division serves as the point of contact with DND's Directorate of Peacekeeping Policy (DPK Pol). Should a Canadian military response to the crisis be

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necessary (anything from airlift/sealift of relief supplies to deployment of CAF personnel), IDC will liaise with DPK Pol on behalf of FAC.

f. **The Human Rights, Humanitarian Affairs, and International Women's Equality Division (AGH)**. This division is responsible for humanitarian assistance policy, including disasters and serves as the inter-departmental coordinator for DFAIT. AGH also serves as the point of contact on policy issues with IHA, the Office of Critical Infrastructure Protection and Emergency Preparedness - International Relations (OCIPEP) and the Emergency Programs and Exercises Divisions, Health Canada and other relevant Government Departments and other Canadian actors. It also serves as the FAC point of contact with UNHCR, UNHCHR, OCHA, ICRC and WFP. AGH nsures that all relevant Government actors are involved in Canada's response to a disaster and informed of developments, including what multilateral institutions (particularly OCHA and the Red Cross) and other donors are doing in response to a disaster.

5. **Department of National Defence (DND)**. In a disaster situation, the Directorate of Peacekeeping Policy (DPK Pol) is the primary focal point for DND and is responsible for liaising with government departments and other stakeholders through the Regional Security and Peacekeeping Division/FAC and the Interdepartmental Task Force process. When a military response (deployment of CAF personnel, airlift, sealift, engineering support, DART, etc.) to a disaster is contemplated, DPK Pol defines the requirement in consultation with other Task Force representatives and liaises with CAF operational staff to ascertain precise timings, capabilities, costs and operational constraints. DPK Pol is then responsible for coordinating these options with other stakeholders and securing the requisite Ministerial approval to deploy military assets. DPK Pol is responsible for liaising with other actors within DND.

6. **Public Safety and Emergency Preparedness Canada (PSEPC)**. While the primary focus of PSEPC's Critical Infrastructure and Emergency Preparedness (CIPEP) directorates is critical infrastructure protection and disaster and emergency management in Canada, it serves as an interface between Task Force members and Canadian expertise in humanitarian assistance, including by: providing summaries of media reports monitored by the Government Emergency Operations Coordination Centre (GEOCC); contributing lists of Canadian volunteer, deployable expert; requesting where appropriate the deployment of skilled provincial and municipal emergency response or recovery teams; ensuring coordination with assistance efforts being facilitated by NATO's Euro-Atlantic Disaster Response Coordination Centre (EADRCC); and coordinating or delivering emergency training and mitigation awareness to disaster-prone countries.

7. **Other Government Departments (OGDs)**. Other departments such as Citizenship and Immigration Canada, Health Canada, Solicitor General and Environment Canada may be invited to participate to Canada's response to an international natural disaster as required.

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The CAF and Humanitarian Operations

8. **Civil Lead**. The provision of humanitarian relief is primarily the domain of civilian agencies. When undertaken, HOs will generally be conducted to supplement or complement the relief efforts of the host nation and supporting international community. The task force (TF) will thus provide specific support to particular requirements in response to a request to fill an acknowledged humanitarian gap – the difference between the humanitarian emergency/disaster needs and relief community resources available to meet them. HOs will therefore normally be limited in both scope and duration.

9. **The Role of the Military**. All those involved when planning and executing such operations should understand the balance of responsibilities between military and disaster response staffs. In general the following points should be considered when considering the use of CAF assets on a HO:

a. The CAF is not specifically designed for humanitarian operations (HO) or disaster relief operations (DRO). However, military forces have an ability to quickly task-organise to perform such operations and have unique capabilities that can complement the overall relief effort. Employing military capabilities may not be the most efficient or cost effective means of response, but in certain situations they may be the only actor capable of bringing a particular capability to bear rapidly.

b. In principle, military assets should be considered only when civilian capacities have been or will become over-stretched, and in certain circumstances, where the use of military assets may be more cost-effective in overall terms. The composition of forces committed in support of humanitarian operations will vary depending on the circumstances of the disaster, the state of civilian coping mechanisms and on the stage of the disaster. The military will be requested to carry out direct, indirect or infrastructure support tasks to fill humanitarian gaps as identified by the main humanitarian coordinator. These tasks will be handed-over as soon as possible to competent, responsible civil actors.

c. Disaster relief can be broadly divided into three stages, namely Immediate Life Saving, Stabilisation and General Recovery. It will normally be the first two stages that may warrant the involvement of military forces.

Key Tenets of Military Support

10. **Scope of the Military Role**. Notwithstanding specific missions, under all but exceptional circumstances CAF will be deployed in support of disaster relief efforts and should therefore not assume leadership of the overall disaster relief. This does not preclude supporting civil Command and Control (C2) or providing C2 infrastructure when necessary. However, wherever possible, maximum use of established

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infrastructure should be made in order to preclude the Canadian TF becoming a hub upon which other responding agencies become reliant, thereby creating the potential for longer-term dependency and making it more difficult to redeploy at the appropriate moment. The generic military role is to support and enable the effort to relieve emergency needs until such time as disaster coping capacities no longer require military support.

11. **Information Campaign**. In disaster situations there may well be underlying tensions that may be exacerbated by the presence of intervention forces. To reduce this potential effect it will be necessary to communicate a clear, simple and repeated intent for the Task Force (TF) which will ensure that the purpose and scope of Canadian actions are understood by all actors involved, ranging from the stricken state government through humanitarian actors to TF personnel. Transparency of intent and operation will be crucial to a successful co-ordination process.

12. **Continuum of Effort**. Within the international relief response there will be a continuum of effort throughout the three stages of a humanitarian emergency/disaster. The objective of military support should be to move this continuum forward from immediate life saving towards conditions that may allow for reconstruction, enabling 'marginal self-sufficiency' but not becoming entangled in long-term infrastructure projects. The aim should be to assist but not create dependency or false expectations.

13. **Unity of Effort**. Unity of effort recognises the need for a coherent approach to the common objective of relieving human suffering, between military and civilian actors and between various military contingents, in response to a humanitarian emergency/disaster situation. FAC and the DND will jointly determine how to most effectively respond to identified needs with the resources available. Military assistance will tailored to the operational environment.

14. **Operational Planning.** The Operational Planning Process as described in B-GJ-005-500/FP-000, *CAF Operational Planning Process*, applies to the planning of both HO and DRO. The cornerstone of planning will be the mandate received to conduct the operation and the authority provided to conduct the mandate.

15. **Command and Control.** Once a humanitarian operation is authorized a Canadian Task Force will be deployed to conduct the operation. Normal command and control relationships as described in Chapters 7 and 8 of B-GJ-005-300/FP-000, *CAF Operations* will apply. The Task Force will either be operating independently or will be part of a combined force. See figures below for generic command structures.

Legal Issues

16. The main legal issue in the conduct of HO is the authority to conduct the operation. HO are likely to be at the invitation of a Host Nation or pursuant to a United Nations Security Council Resolution. In all cases, the decision to deploy the CAF to conduct a HO rests with the Government of Canada.

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17. **Status of Forces Agreement (SOFA)**. It is most likely that no Status of Forces (SOFA) or other arrangements will be in place between Canada and the government of a stricken state. In such circumstances, FAC is responsible to seek appropriate jurisdictional authority over deployed CAF and DND personnel. Given the limited warning time associated with disaster response and the imperative of timely reaction, arrangements will normally be achieved, in the first instance, by means of an Exchange of Letters with the government of the stricken state. These arrangements shall be in place before deployment commences at least to authorize the deployment of CAF personnel into a foreign state. If it is anticipated that there are likely to be Forward Mounting bases (FMBs), or other staging areas, which are in another country, separate arrangements will need to be made with each such country.

18. Such arrangements between Canada and the host state could include:

a. Status of personnel including privileges and immunities.

b. Jurisdictional arrangements.

c. Exemption from taxes and duties.

d. Exemption from immigration controls and import regulations, including the need for visas or other forms of entry authorization.

e. Wearing of uniforms.

f. Issues and carriage of personal weapons and use of force.

g. Use of Canadian vehicles and validity of Canadian driving permits.

h. Freedom of movement in connection with the conduct of HO.

i. Understanding on the resolution of claims and liabilities.

j. Investigation of accidents.

k. Notwithstanding the potential negotiations on the status of CAF, which may take some time, the early identification of visa requirements is essential. FAC guidance should be sought at the first indication of the potential conduct of an HO. This is particularly important if using a 'third country' FMB or other staging area.

19. **Rules of Engagement (ROE)**. Without further written or oral direction CAF personnel are entitled to use force in self-defence (up to and including deadly force) to protect oneself, other members of the CAF, and non-Canadian military personnel who are attached or seconded to a Canadian force against hostile act or hostile intent, with

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the exception of self-defence, CDS authorized ROE provide the sole authority for CAF personnel to use force.

The Disaster Assistance Response Team (DART)

20. The Disaster Assistance Response Team (DART) is part of the Government of Canada's response options to meet international and domestic requests for help and underscores Canada's resolve to support disaster victims anywhere in the world. In the case of humanitarian operations (HO), the DART may be activated in response to a request by either an individual country or by the United Nations (UN). The decision to commit the DART rests with the Canadian government based on advice from the Foreign Affairs Canada (FAC) and the Department of National Defence (DND).

21. The DART is not a formed unit as such, but rather a high readiness organization composed of a permanently established HQ cadre - who are members of the CAF JOG - with the balance of personnel tasked on an ongoing basis from various contributing units across the CAF but primarily the Land Force. It gives Canada the capability to quickly launch and participate in humanitarian operations (HO) or disaster relief operations (DRO). The DART can:

a. Provide rapid assistance, in conjunction with national and regional governments, inter-governmental organizations (IGOs), and non-governmental organizations (NGOs), to stabilize the primary effects of an emergency or disaster;

b. Prevent the rapid onset of any secondary effects of a disaster; and

c. Gain time to deploy national or international humanitarian aid to facilitate long-term recovery in the community.

22. The DART fulfills four critical needs in emergency situations, namely:

a. Primary medical care – 250 to 300 pers/day;

b. Production of purified drinking water – 50,000 litres/day per ROWPU deployed;

c. Limited specialist engineer capability; and

d. A command and control structure, which allows for effective communications between the DART, the host nation, in-theatre inter-governmental organizations (IGOs), non-government organizations (NGOs), UN agencies and DND/CAF.

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23. **DART Composition.** The DART is comprised of two main elements:

a. **Operational Level Element**. This element consists of the DART HQ and is largely embedded in the CAF Joint Operations Group (CAF JOG). It is responsible for liaison with Canadian and host nation officials, IGOs and NGOs in order to determine and co-ordinate the DART's humanitarian response in theatre once authorized. While on stand-by it maintains the day-to-day readiness of operational stores, works to enhance and optimize DART capabilities and plans and executes DART related individual and collective training.

b. **Tactical Level Element**. This consists of the DART Company HQ and four subordinate elements. The HQ co-ordinates on-site tasking priorities and provides for a command capability for split operations.

24. The DART Company is composed of the following:

a. **Defence & Security (D&S) Platoon**. This platoon provides security and general labour to support the DART operations;

b. **Engineer Troop**. This troop includes both field and construction engineers. The field engineer element consists of a water supply section, a field engineer section and a heavy equipment section. The construction engineer element provides limited vertical construction and utilities capabilities. This troop produces bulk and bagged water from its Reverse Osmosis Water Purification Unit (ROWPU) with a 50,000 litre daily production capacity. The troop provides water for the medical aid station and for distribution to victims of the disaster. Once the DART's austere camp is established, it can undertake limited basic construction and engineer tasks in support of the host nation and/or humanitarian aid agencies;

c. **Logistics Platoon**. This platoon is responsible for support services: maintenance, transport, and supply.

d. **Medical Platoon**. This platoon establishes a small medical aid station. This tented facility is capable of providing emergency medical care for up to 250 outpatients per day including uncomplicated obstetric, pediatric conditions and post-partum care, 24/7 limited holding and basic level nursing care for up to 10 patients for a maximum of 48 hours each and an emergency expanded holding and basic level nursing care for an additional 10 patients for a maximum of 48 hours each. There are also laboratory, pharmacy, re-hydration, limited obstetrics, and preventive medicine sections. There is no surgical/trauma capability.

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Concept of Operations

25. **Activation**. The activation process starts with a pre-warning based on FAC receipt of a request for support. The CAF JOG ensures DART readiness for the operation while the DCDS Gp conducts appropriate staff checks and issues the necessary orders. After inter-departmental consultation, a government decision to deploy the DART will be made. Any of the following events may trigger the activation of this process:

a. A United Nations Security Council Resolution is passed creating a force to respond to an international emergency situation and setting out the mandate of the force, and a request is received by Canada from the UN to provide forces to implement the mandate;

b. Any international or regional organization of states such as NATO, the Organization of American States (OAS) or the Commonwealth creates a collective response to a humanitarian emergency and invites Canada to participate;

c. An individual national or international appeal by a lone state; or

d. The DART may also be required at the request of the federal/ provincial government under a domestic deployment scenario.

26. **Time Constraints**. The following time factors must be considered in planning the use of the DART:

a. **Durability**. Once it is declared operationally ready the DART can conduct operations for up to, but not beyond, 40 days; and

b. **Notice to Move (NTM)**. The DART is not a formed unit as such, but its members are all on a degree of notice to move in accordance with operational plans which enables them to mobilize quickly in support of short notice DART deployments. DART personnel will be held at the degree of NTM, from their garrison locations, as follows:

(1) **DART Recce – 12 hrs NTM**. Force generators should have 12 hours to prepare their personnel before their deployment. These 12 hours will be divided between departure assistance processing and individual preparations, and

(2) **Remainder of DART – 48 hrs NTM**. Force generators should have 48 hours to prepare their personnel before their deployment. DART personnel can expect to be in motion from their respective home units immediately following the completion of these 48 hours.

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27. **Organization**. The following limiting factors must be taken into account:

a. **Environment**. The DART is organized for deployment in a permissive environment where there is no organized resistance or threat to it. Deployment to a non-permissive environment is only feasible if sufficient security forces are available from outside the unit's resources.

b. **Equipment**. Most of the DART's equipment is pre-positioned at 8 Wing Trenton in a specially constructed, dedicated warehouse to allow a rapid deployment capability. DART equipment is designed to be transportable by the CC-130.

28. **Strategic Lift**. CAS is responsible for the strategic lift of the DART from Canada to a suitable location near the disaster site. Use is made of the CC-130 *Hercules* aircraft and, when possible, CC-150 *Polaris* (Airbus) aircraft. Commercial lift obtained through NDHQ J4 Mov may be used if other means are not available.

29. **Deployment Guidelines**. The Canadian government decides if the DART is an appropriate response to a particular complex emergency. For a humanitarian operation, it is normally deployed as part of a multinational response or where it is specifically requested by a host nation. Ultimately, the government's decision would be based on a number of factors, including the needs assessment, local capacity, assistance effort by the UN and other agencies, higher priority commitments, DART availability, airlift availability, resources issues, relationship with the host government including visiting forces agreements, climatology, geography, and accessibility at the destination before activation. If a civilian organization can accomplish the same tasks and is considered a more cost-effective option the DART will not likely be deployed.

Planning Factors

30. The following factors will be considered when deciding upon the deployment of the DART.

31. **Permissive Environment**. A permissive environment must exist so as not to place CAF personnel at undue risk while providing humanitarian aid. The most serious threat that the DART should encounter is looting and theft.

32. **Use of Force and Rules of Engagement (ROE).** In accordance with the duties and responsibilities of sovereign states under customary international law and practice, and subject to the provision of any Host Nation agreement or Status of Forces Agreement (SOFA), the primary responsibility for the security of DART personnel, while deployed in a foreign country, is that of the government of that country. Accordingly, the authority to carry and use arms for the protection of the DART personnel is a matter expressly dealt with in any agreement or SOFA that may be in place between Canada and the host state. However, without further written or oral direction CAF personnel are

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entitled to use force in self-defence (up to and including deadly force) to protect oneself, other members of the CAF, and non-Canadian military personnel who are attached or seconded to a Canadian force against hostile act or hostile intent. With the exception of self-defence, CDS authorized ROE provide the sole authority for CAF personnel to use force.

33. **Public Affairs**. It is in the best interest of the CAF to provide positive information to media whenever possible. Public Affairs (PA) is a force-multiplier and will have a direct impact on the level of public and political support given to a humanitarian operation, as well as on the morale of the troops and their families back home. Joint PA staffs will write and implement a pro-active PA Plan to keep Canadians and international audiences aware of the CAF's contribution to the disaster ensuring that it is coordinated with other government departments as necessary.

34. **Medical**. The intent of the DART Medical Platoon (Med Pl) is to bridge the gap between when a disaster occurs and when Host Nation (HN), Non-Governmental Organizations (NGOs) and Inter-Governmental Organizations (IGOs) can begin providing med aid to the affected population. The DART Med Pl will attempt to prevent the scope of the disaster from escalating, by providing timely, though limited med support. The end-state will be achieved when the health effects of the disaster have been mitigated or when the HN government, other Canadian government agencies or IGOs are in place and are capable of providing the necessary relief.

35. **Protective Security Measures**. Personnel security and information security measures must be in place prior to deployment. All personnel must hold the requisite security clearance and be verified during the screening process. Regardless of the ROE measures in place, every effort will be made to protect establishments and property using preventative measures. The DART can expect to employ mobile barriers, alarm systems, personnel access control, physical access control (i.e. approved locks) and any other approved security system which limits the risk to equipment, installations, materiel and documents. Through police liaison with local police authorities and allied MP, and in co-operation with available intelligence sources, the senior MP shall ensure that the Commanding Officer has a clear and detailed criminal threat picture in order to allow for the employment of appropriate security measures. The components of Protective Security Measures include:

a. **Physical Security**. These are physical measures designed to safeguard personnel, as well as to prevent unauthorised access to equipment, installations, materiel and documents.

b. **Information Security**. This includes the identification and marking of information (paper and electronic) that requires protection, physical segregation and limitation of access.

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c. **Organisational Security**. This includes the authorisation of selected personnel to have access to classified or designated information, assets and restricted areas.

d. **Personnel Security**. Personnel employed with the DART must possess the requisite security clearances for their assigned tasks. Personnel will be assigned the appropriate security clearance prior to deployment.

e. **Operational Security**. While the DART will likely be deployed under peacetime conditions where the primary threat will be criminals and organised crime, hostile intelligence forces and terrorist organisations may utilise a DART deployment to act against Canadian interests. While the DART is primarily meant to be employed within humanitarian situations, the unit is an instrument by which the government of Canada may wish to project its interests abroad. Forces or elements hostile to Canada may seek advantage in thwarting Canada's national interests through knowledge gained regarding Canadian intentions as they pertain to the DART's employment. Therefore, security planning must include the examination of the factors surrounding any possible political-military threat and incorporate adequate defensive measures. When employed in a peaceful environment, adherence to sound physical and information security policies, while establishing and maintaining the popular support of the Host Nation, will deny hostile forces from taking action.

36. **Police Liaison**. The senior MP within the DART is responsible for police liaison with local civil and military police authorities. All police support arrangements with local authorities must be developed in conjunction with DART protective security measures and all such arrangements should be formally made in writing wherever possible.

37. **Logistics**. The DART will be a self-sufficient unit for a period of 14 days following initial deployment. The DART will deploy with 14 days of IMPs and medical supplies, and seven days of bottled water, sufficient start-up POL products, and forty days of first line spare parts and general and technical supplies. Supplies in addition to the aforementioned will need to be sourced in theatre or delivered on the weekly sustainment flight. It is impractical to equip and plan for the deployment of the DART for every possible disaster related scenario; therefore, the general planning and design of the DART has been done under the following assumptions:

a. The DART shall always be prepared and suitably equipped to be airlifted using the CC-130 Hercules aircraft.

b. 3 CSG will provide National logistics support to the DART when deployed outside Canada IAW DCDS Direction to Commanders of Deployed Operations.

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c. With the exception of initial air transportable supplies required to set up the DART, Host Nation Support (HNS) will be contracted for bulk fuel, and other commodities as necessary/available.

d. Weekly sustainment flights to support the DART will commence no later than 7 days after the declaration of OPRED.

e. DART personnel will consume IMPs for the duration of the mission; however, fresh rations will be served as supplements where available and deemed adequate by the Preventive Medicine Technician (PMed Tech).

38. **Legal Considerations.** As a matter of policy, all international missions conducted by DART personnel shall comply with the main principles of the Laws of Armed Conflict. Military planners must be aware of the legal framework within which a DART operation will be conducted. International operations are subject to applicable international and Canadian law and strategic level orders and policies. In addition and as applicable, they must be conducted in compliance with alliance and coalition agreements, United Nations resolutions and mandates, and the laws of the Host Nation. Legal advice shall be sought to clarify the implications of laws and agreements that will affect an operation and whether or not Canadian law or policy takes precedence. DART personnel will be operating in the sovereign territory of a foreign Host Nation. As agreements with Host Nations may vary from one operation to another, and since such agreements usually require the CAF personnel to respect local laws and customs, guidance on conduct shall be developed when preparing forces for a deployment. Pre-deployment training and briefing must include familiarization with Host Nation and customs. In case of uncertainty, the DART legal officer should be consulted.

39. **Relations with Humanitarian Relief Organizations and NGOs.** Close cooperation should be established with humanitarian relief organizations and other non-governmental organizations (NGOs). Subject to reasonable security restrictions, coordination of the performance of humanitarian functions with governmental and NGOs is to be encouraged, and the special status of the International Committee of the Red Cross (ICRC) should be recognized and respected by DART personnel. The Legal Advisor should be consulted in respect of any inter-agency cooperation arrangements, or in respect of any questions concerning the status of the ICRC or any other NGO.

40. **Command and Control.** As the Mounting HQ, the CAF JHQ will coordinate all DART mounting activity, supported by 8 Wing, Trenton. J4 Mov will coordinate the movement of the DART to the theatre of operations and the DART Company to the mounting base if required (i.e. should the DART Company require air transport to the APOE). The DART reports to the DCDS during the Employment Phase and receives direction through COS J3. The CAF JOG will conduct reconstitution with support from CAS and CLS.

41. Full-time elements of the DART HQ are resident in the CAF JOG. Other elements are part of the other Environments. In the preparation phase of the operation

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all element deploy to 8 Wing, Trenton. Upon arrival at the APOE, DART elements TOA to Comd CAF JOG and subsequently to DART. DART transfer of command authority under OPCOM of DCDS upon the OPRED for deployment declaration. Once in theatre the DART CO declares 'OPRED for employment.' The DART is under OPCOM of the DCDS throughout the employment phase.

42. The DART conducts humanitarian assistance tasks in-theatre in accordance with DCDS Op O and in cooperation with the local humanitarian relief coordinator, and at the end of the operation hands over these tasks to humanitarian agencies or the commander of a CAF follow-on force if applicable.

Interim Summary

43. Natural disasters - floods, droughts, storms and earthquakes -, as well as human-made ones, kill many people and cause great economic losses each year. More than 90 per cent of all disaster victims live in developing countries - an indicator of the degree to which poverty, population pressures and environmental degradation exacerbate suffering and destruction – but disasters occur domestically too. Complex emergencies, resulting from conflict induced conditions and often compounded by natural disasters, have intensified in many regions of the world. In complex emergencies, affected populations often have little or no access to their traditional sources of income for long periods of time, owing to displacement and insecurity.

44. The Government of Canada responds to emergencies and disasters in foreign countries in order to promote international peace and stability. The response to a complex emergency, due to the uncertainty of the security environment, requires more comprehensive military planning and inter-departmental coordination before the commitment of CAF elements. Foreign Affairs Canada's (FAC) role in disaster response is to act as the inter-departmental coordinator of the federal government's response; to provide consular services; and to liaise with the governments of both the affected countries and other donor countries. Internally FAC has the following mechanisms: Canadian Diplomatic Posts, Consular Affairs/ Emergency Services (JPE), Communication Strategy/Media Relations Divisions (BCAF/BCM), Geographic Divisions, the Regional Security and Peacekeeping Division (IDC), and the Human Rights, Humanitarian Affairs, and International Women's Equality Division (AGH).

45. In a disaster situation, the Directorate of Peacekeeping Policy (DPK Pol) is the primary focal point for DND and is responsible for liaising with government departments and other stakeholders through the Regional Security and Peacekeeping Division/FAC and the Interdepartmental Task Force process. When a military response (deployment of CAF personnel, airlift, sealift, engineering support, DART, etc.) to a disaster is contemplated, DPK Pol defines the requirement in consultation with other Task Force representatives and liaises with CAF operational staff.

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46. While the primary focus of Public Safety and Emergency Preparedness Canada's Critical Infrastructure and Emergency Preparedness (CIPEP) directorates is critical infrastructure protection and disaster and emergency management in Canada, it serves as an interface between Task Force members and Canadian expertise in humanitarian assistance. Other departments such as Citizenship and Immigration Canada, Health Canada, Solicitor General and Environment Canada may be invited to participate to Canada's response to an international natural disaster as required.

47. The provision of humanitarian relief is primarily the domain of civilian agencies. When undertaken, HOs will generally be conducted to supplement or complement the relief efforts of the host nation and supporting international community. All those involved when planning and executing such operations should understand the balance of responsibilities between military and disaster response staffs. In general the following points should be considered when considering the use of CAF assets on a HO. Notwithstanding specific missions, under all but exceptional circumstances CAF will be deployed in support of disaster relief efforts and should therefore not assume leadership of the overall disaster relief. This does not preclude supporting civil Command and Control (C2) or providing C2 infrastructure when necessary.

48. In disaster situations there may well be underlying tensions that may be exacerbated by the presence of intervention forces. To reduce this potential effect it will be necessary to communicate a clear, simple and repeated intent for the Task Force (TF) which will ensure that the purpose and scope of Canadian actions are understood by all actors involved. Within the international relief response there will be a continuum of effort throughout the three stages of a humanitarian emergency/disaster. The objective of military support should be to move this continuum forward from immediate life-saving towards conditions that may allow for reconstruction, enabling 'marginal self-sufficiency' but not becoming entangled in long-term infrastructure projects. Unity of effort recognises the need for a coherent approach to the common objective of relieving human suffering, between military and civilian actors and between various military contingents, in response to a humanitarian emergency/disaster situation. Once a humanitarian operation is authorized a Canadian Task Force will be deployed to conduct the operation.

49. The main legal issue in the conduct of HO is the authority to conduct the operation. HO are likely to be at the invitation of a Host Nation or pursuant to a United Nations Security Council Resolution. In all cases, the decision to deploy the CAF to conduct a HO rests with the Government of Canada. It is most likely that no Status of Forces (SOFA) or other arrangements will be in place between Canada and the government of a stricken state. In such circumstances, FAC is responsible to seek appropriate jurisdictional authority over deployed CAF and DND personnel. Given the limited warning time associated with disaster response and the imperative of timely reaction, arrangements will normally be achieved, in the first instance, by means of an Exchange of Letters with the government of the stricken state. Without further written or oral direction CAF personnel are entitled to use force in self-defence (up to and including deadly force) to protect oneself, other members of the CAF, and non-

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Canadian military personnel who are attached or seconded to a Canadian force against hostile act or hostile intent, with the exception of self-defence, CDS authorized ROE provide the sole authority for CAF personnel to use force.

50. The DART is part of the Government of Canada's response options to meet international and domestic requests for help and underscores Canada's resolve to support disaster victims anywhere in the world. In the case of humanitarian operations (HO), the DART may be activated in response to a request by either an individual country or by the United Nations (UN). The decision to commit the DART rests with the Canadian government based on advice from the Foreign Affairs Canada (FAC) and the Department of National Defence (DND). The DART fulfills critical needs in emergency situations and is comprised of operational and tactical level elements. The DART Company is composed of the following: Defence & Security (D&S) Platoon, Engineer Troop, Logistics Platoon and a Medical Platoon. The activation process starts with a pre-warning based on FAC receipt of a request for support. The CAF JOG ensures DART readiness for the operation while the DCDS Gp conducts appropriate staff checks and issues the necessary orders. After inter-departmental consultation, a government decision to deploy the DART will be made. Time Constraints must be considered in planning the use of the DART.

51. The Canadian government decides if the DART is an appropriate response to a particular complex emergency. For a humanitarian operation, it is normally deployed as part of a multinational response or where it is specifically requested by a host nation. In accordance with the duties and responsibilities of sovereign states under customary international law and practice, and subject to the provision of any Host Nation agreement or SOFA, the primary responsibility for the security of DART personnel, while deployed in a foreign country, is that of the government of that country. Accordingly, the authority to carry and use arms for the protection of the DART personnel is a matter expressly dealt with in any agreement or SOFA that may be in place between Canada and the host state.

52. It is in the best interest of the CAF to provide positive information to media whenever possible. Public Affairs (PA) is a force-multiplier and will have a direct impact on the level of public and political support given to a humanitarian operation, as well as on the morale of the troops and their families back home. The intent of the DART Medical Platoon (Med Pl) is to bridge the gap between when a disaster occurs and when Host Nation (HN), Non-Governmental Organizations (NGOs) and Inter-Governmental Organizations (IGOs) can begin providing med aid to the affected population. The DART Med Pl will attempt to prevent the scope of the disaster from escalating, by providing timely, though limited med
support.

53. Personnel security and information security measures must be in place prior to deployment. All personnel must hold the requisite security clearance and be verified during the screening process. Regardless of the ROE measures in place, every effort will be made to protect establishments and property using preventative measures.

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The components of Protective Security Measures concerns issues of physical, information, organisation, personnel and operational matters. The senior MP within the DART is responsible for police liaison with local civil and military police authorities. All police support arrangements with local authorities must be developed in conjunction with DART protective security measures and all such arrangements should be formally made in writing wherever possible. The DART will be a self-sufficient unit for a period of 14 days following initial deployment. The DART will deploy with 14 days of IMPs and medical supplies, and seven days of bottled water, sufficient start-up POL products, and forty days of first line spare parts and general and technical supplies.

54. As a matter of policy, all international missions conducted by DART personnel shall comply with the main principles of the LOAC. Military planners must be aware of the legal framework within which a DART operation will be conducted. International operations are subject to applicable international and Canadian law and strategic level orders and policies. In addition and as applicable, they must be conducted in compliance with alliance and coalition agreements, United Nations resolutions and mandates, and the laws of the Host Nation. Legal advice shall be sought to clarify the implications of laws and agreements that will affect an operation and whether or not Canadian law or policy takes precedence. In case of uncertainty, the DART legal officer should be consulted.

55. Close cooperation should be established with humanitarian relief organizations and other non-governmental organizations (NGOs). Subject to reasonable security restrictions, coordination of the performance of humanitarian functions with governmental and NGOs is to be encouraged, and the special status of the International Committee of the Red Cross (ICRC) should be recognized and respected by DART personnel. The Legal Advisor should be consulted in respect of any inter-agency cooperation arrangements, or in respect of any questions concerning the status of the ICRC or any other NGO.

Suggested Questions

Q. What are the responsibilities of Foreign Affairs Canada (FAC) during Humanitarian Operations? (Para 3)

Q. What are FAC internal mechanisms? (Para 4)
(Canadian Diplomatic Posts, Consular Affairs/ Emergency Services, Communication Strategy/Media Relations Divisions (BCAF/BCM), Geographic Divisions, The Regional Security and Peacekeeping Division (IDC), The Human Rights, Humanitarian Affairs, and International Women's Equality Division (AGH)

Q. What are the responsibilities of Department of National Defence (DND) during Humanitarian Operations? (Para 5)

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Q. What are the responsibilities of Public Safety and Emergency Preparedness Canada (PSEPC) during Humanitarian Operations? (Para 6)

Q. What is the role of the CAF during Humanitarian Operations? (Para 9)

Q. What are the Key Tenets of Military Support during Humanitarian Operations? (Scope of the Military Role, Information Campaign, Continuum of Effort, Unity of Effort, Operational Planning, Command and Control) (Paras 10 to 15)

Q. Which arrangements between Canada and the host state could be included in the SOFA? (Para 18)

Q. Which needs the DART fulfills in emergency situations? (Para 22)

Q. Which elements the DART is comprised? (Operational Level Element, Tactical Level Element) (Para 23)

Q. Which elements composed the DART Company? (Defence & Security (D&S) Platoon, Engineer Troop, Logistics Platoon, Medical Platoon) (Para 24)

Q. Which events may trigger the activation of the DART? (Para 25)

Q. Which time factors must be considered in planning the use of the DART? (Durability, Notice to Move (NTM), DART Recce – 12 hrs NTM, (2) Remainder of DART – 48 hrs NTM) (Para 26)

Q. Which factors will be considered when deciding upon the deployment of the DART? (Permissive Environment, Use of Force and ROE, Public Affairs, Medical) (Para 31 to 34)

Q. Which components the Protective Security Measures include? (Physical Security, Information Security, Organisational Security, Personnel Security, Operational Security) (Para 35)

Q. Which legal considerations DART personnel shall comply with? (Para 38)

Note to the Instructor: Encourage students to actively participate in the lesson and to reason through problems.

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PART 3 – BODY OF THE LESSON

Stage 5 – Non Combatant Evacuation Operations (NEO)

Introduction

1. The Government of Canada bears a fundamental responsibility for the safety and well-being of all Canadians. Abroad, this responsibility is assumed by the Department of Foreign Affairs, Trade and Development (DFATD). Canadian diplomatic missions are responsible for planning for the evacuation of Canadians in their areas of responsibilities. Due to the uncertainties under which evacuations are normally conducted the Canadian mission may require assistance from the CAF to conduct an evacuation. This "military assisted" operation is termed a non-combatant evacuation operation (NEO). In most instances the CAF contribution will be in the form of an appropriate tailored task force to provide security so the DFATD conducted evacuation can proceed at minimum risk to the evacuees. In extreme circumstances the CAF may have to accept full responsibility for the evacuation. NEO may be conducted with ad-hoc coalitions.

2. Life threatening circumstances can arise for a variety of reasons. They may be caused by natural disasters – in particular, rapid onset disasters like volcanic eruptions or they may erupt during civil strife. In whatever instance, the Canadian Diplomatic Mission accredited to an area where risks are developing is responsible to monitor conditions, advise in-country Canadians and plan the safe evacuation of Canadian Entitled Personnel (CEP).

3. NEO are fundamentally defensive in nature. They are conducted to reduce to a minimum the number of Canadian citizens at risk and to protect them during the evacuation process. They are not an intervention in the issues in the host nation. The end-state for a NEO is when all CEP who wish to be evacuated arrive at the safe haven and the CAF task force (TF) has withdrawn from the host nation. No evacuee is forced to accept an offer of evacuation.

4. **Threat Environment.** A NEO is only launched when there is a threat posed to the safety of Canadians in the host nation. This threat is a function of the hazard, or the dangers directly posed to the personal safety of Canadians, and the ability of the host nation government to contain that hazard and thereby safeguard Canadians. The NEO environment is characterized as being permissive, uncertain or hostile:

   a. **Permissive.** The host nation government has control such that law and order are upheld in the intended area of operations, and the government has both the intent and capability to assist the NEO. Therefore, no obstruction of or interference with evacuation operations is expected. Host nation support in administrative terms will be made available;

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b. **Uncertain.** The host nation government, whether opposed to or supportive of the NEO, does not have total effective control of the territory and population in the intended area of operations. Host nation governmental co-operation and host nation support may be limited or non-existent. There is a possibility of obstruction and interference on the part of individuals, crowds or mobs, or organized factions. The possibility of escalation leading to a hostile environment must be considered in planning; and

c. **Hostile.** Hostile forces have control and the intent and capability to effectively obstruct and interfere with a NEO for the purpose of embarrassing Canada or the host nation government, or to prevent a successful evacuation. Evacuees will be removed under conditions ranging from civil disorder or terrorist action to full-scale combat.

5. The importance of the NEO environment in planning is critical, particularly with respect to force structure, force capabilities, rules-of-engagement (ROE), and logistics: in a permissive environment - a TF can focus mainly on the evacuation with fewer security and logistics concerns; in an uncertain environment – there is an increased need for security and logistics elements, and a properly structured reaction/reserve force maybe required and more contingency planning will be required; in a hostile environment – force structures, ROE and reaction forces will have to be more robust and other tasks, such as crowd confrontation, may be required to be executed. In a hostile environment when opposing forces are well organized a NEO may not be feasible and a rescue operation may be required.

Related Operations

6. **Complex Peacekeeping Operations (CPKO).** These operations are characterized by their impartial conduct, the low or uncertain level of consent of the parties to the dispute and the implementation force's broader authorization to use force. These operations are often initiated after a peace accord has been signed and the parties have consented to the operation. The consent and compliance of the actors may be uneven and inconsistently observed throughout their chain of command. The implementation force maintains its impartiality by applying the terms of the mandate equally to all parties. Commonly, these operations are launched in failed states or where intra-state conflict has weakened central authority and caused a humanitarian emergency. NEOs may be conducted within CPKO when a region of the host nation becomes overtly hostile or form part of a contingency plan when monitoring potentially contentious elections in the host nation.

7. **Extraction Operation.** If the situation in a mission area deteriorates beyond the point that a peace support operation can make a useful contribution, it may be withdrawn. Depending on its structure and deployment the mission may require a

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combat capable force to assist in its withdrawal. The military assisted withdrawal of a military force is called an extraction.

8. **Humanitarian Intervention.** Humanitarian interventions are launched to gain humanitarian access to an "at risk" population when the responsible actors refuse to take action to alleviate human suffering or are incapable of doing so and where actors internal to a state are engaging in gross abuses of human rights. Intervention is a combat operation intended to provide protection to the at risk population and aid workers by imposing stable security conditions that permit humanitarian access. These operations can be precursors to complex peacekeeping operations. A NEO may be conducted prior to a humanitarian intervention in order to remove Canadians from a potential combat zone.

9. **Humanitarian Operation.** Humanitarian operations involve the use of military resources to assist in the alleviation of human suffering. They may be conducted independently or during a PSO. The prime responsibility for the provision of humanitarian aid and assistance rests with specialized civilian, national, international, government or non-government organizations and agencies. Military forces are often employed on humanitarian operations because of their rapid response capability, sealift and airlift assets, ability to co-ordinate and plan, unique skills and structure, and where entry/delivery points may be contested. In many host nations, where risks are high, a large number of intergovernmental organization (IGO) and nongovernmental organization (NGO) will likely be involved in delivering humanitarian aid, relief and development. Their operations are typically widely dispersed complicating the ability to provide them an easy opportunity for evacuation.

10. **Rescue Operations.** In some parts of the area of operations well-organized hostile forces may be completely occupying and controlling a region and this could include holding Canadians hostage. In these cases, a NEO proper is inappropriate and a rescue operation will have to be conducted to save the hostages. Rescue operations may form part of a broader NEO campaign plan where select areas of a host nation are dominated by hostile forces and Canadians are hostage to these forces.

11. **The Department of Foreign Affairs, Trade and Development (DFATD).** DFATD (former DFAIT) has 7,000 employees in Canada and around the world, operating under three ministers:

a. Minister of Foreign Affairs. Lead minister in the event of an evacuation operation;

b. Minister for International Trade; and

c. Minister for International Development.

12. DFATD's primary role is to manage Canada's day-to-day relations with the governments and peoples of other nations, both bilaterally and within the many

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international organizations in which Canada participates. Under the direction of its Ministers, DFATD develops and implements policies governing the Canadian Government's international relations and response to international crisis. The Department's legal mandate, as set out in the *Department of Foreign Affairs, Trade and Development Act*, SC 2013, c. 33, is to:

a. conduct all diplomatic and consular relations on behalf of Canada;

b. conduct all official communication between the Government of Canada and the government of any other country and between the Government of Canada and any international organization;

c. conduct and manage international negotiations as they relate to Canada;

d. coordinate Canada's international economic relations;

e. foster the expansion of Canada's international trade and commerce;

f. foster sustainable international development and poverty reduction in developing countries and provide humanitarian assistance during crises;

g. coordinate the direction given by the Government of Canada to the heads of Canada's diplomatic and consular missions;

h. have the management of Canada's diplomatic and consular missions;

i. administer the foreign service of Canada;

j. foster the development of international law and its application in Canada's external relations; and

k. carry out any other duties and functions that are by law assigned to him or her.

13. **Diplomatic Missions.** DFATD represents the Canadian Government abroad through the medium of the diplomatic mission. A Canadian diplomatic mission assumes one of two forms: an embassy or high commission. An embassy is the charge of an ambassador, a diplomatic minister of the highest order and the senior-ranking Canadian diplomatic official accredited to a state. A high commission and high commissioner have this same status, a high commission being the embassy of one member of the Commonwealth to another. The ambassador or high commissioner is the head-of-mission (HOM). In addition to the embassy and high commission, consulates, honorary consulates, trade offices and development offices facilitate diplomatic efforts. The authority and privileges of these offices are more limited than those of the embassy or high commission.

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14. Resident embassies and high commissions are not maintained in all countries with which Canada maintains diplomatic relations. An ambassador resident in one country may be accredited, along with some or all of the embassy staff (including the CAF Defence Attaché (CDA)) to another or several other countries. A country without a resident Canadian embassy or high commission may have consular-type representation or Canadian interests may be represented by a third country diplomatic mission or consular office. Whether resident or not, the ambassador or high commissioner accredited to the HN remains the senior Canadian Government representative in-country, and the senior DFATD official in the evacuation.

15. One of the functions of a diplomatic mission is consular services; the services that a country provides for its citizens abroad. Canada's consular services operate 24 hours a day, seven days a week, through a network of more than 270 offices in over 180 countries. The network includes embassies, high commissions, consulates, honorary consulates and development offices. In some places, Australian diplomatic officers provide consular services to Canadians. Registration of Canadian citizens resident in other countries and the warden system, both matters of critical importance to an evacuation operation, are the responsibility of the consular service.

16. DFATD in Canada and all diplomatic missions and consular offices abroad maintain an active public information programme for the benefit of Canadians travelling abroad. Public web sites are maintained by DFATD both in Ottawa and at most diplomatic missions.

17. No two diplomatic missions are organized the same. The roles and responsibilities of personnel in planning and implementing the consular emergency contingency plan will vary depending on the mission's structure. The current structure of a mission and its responsibilities will have to be confirmed through DFATD, the mission or CDA when planning for a NEO begins in earnest.

18. **Legal Issues and Directives.** When conducting NEOs, the following general legal issues need to be considered:

a. **Status of Forces Agreement (SOFA).** SOFA is a document that defines the legal authority and responsibilities of a TF. The SOFA may be a treaty or an international agreement, depending on the degree of accord obtained. It establishes the detailed legal status of the TF. The SOFA will normally be negotiated with the host nation, as well as with the nation(s) that provides part of its (their) territory for use as Lines of Communication (LOC) or Forward Mounting Bases. These negotiations will normally also involve close co-ordination between Task Force Commanders (TFC), DND, DFATD and COS J3. Authority to negotiate and conclude international agreements is held at the national level.

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b. **Memorandum of Understanding (MOU).** These arrangements may be reached between Canada and the host nation. Such memoranda are primarily concerned with administrative matters such as the use of airports for rotation, national visitors, rest & recreational (R&R) activities, etc. MOU do not have the same legal status as SOFAs and are not regarded as treaties.

c. **National Law.** In regard to discipline and disciplinary action, TF members remain subject to national and military law. CAF personnel continue to be subject to the Code of Service Discipline.

d. **LOAC.** The LOAC is the body of international law that governs the conduct of hostilities during an armed conflict. Though not party to the conflict, the spirit and principles of the LOAC will be applied by the TF Commander.

19. **Key Legal Issues in Theatre.** The following areas require particular legal scrutiny in theatre:

a. **Special Cases among Evacuees**

(1) **Diplomatic Personnel.** It is likely members of the Canadian diplomatic mission and their families and household will be amongst the evacuees. If designated, foreign diplomatic personnel may also be evacuated under Canadian auspices. Certain privileges and protocol attach to such persons and their families, and must be respected. The Operation Order (Op O) must identify these privileges and immunities, and specify special handling measures to members of the TF;

(2) **Persons Seeking Asylum or Refuge.** The circumstances of a NEO make it likely that there will be persons seeking political asylum in Canada or temporary refuge. CAF commanders may not grant asylum, and any such requests must be directed to the diplomatic mission or to higher headquarters for referral to the appropriate authority in Canada. Nonetheless, procedures must be specified for the handling of such requests by the TF, including the disposition of the applicant pending a response or referral. CAF commanders may grant temporary refuge under emergency conditions when there is imminent danger to the safety, health or life of any person. However, the criteria for granting such refuge and the procedure for termination of refuge and disposition of the applicant must be specified;

(3) **Evacuee Order and Discipline.** The legal authority of the Canadian Government, particularly the TF, over evacuees in its safekeeping during the evacuation must be clearly understood and articulated. This is important to such concerns as maintaining order amongst evacuees in the evacuation chain or in transports; detention of troublemakers or suspicious

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persons; and the final disposition of persons held in custody (for example, handing over to the follow-on authority);

b. **Critical Matters Regarding the TF**

(1) Status of Forces. The default premise for a NEO is a permissive environment and the cooperation of the HN government, which remains in effective control of the area of operations. Therefore, members of the TF are accountable under the law of the HN, subject to any immunity granted by a Status of Forces Agreement (SOFA) or Memorandum of Understanding (MOU). The legal basis for the deployment of the TF into the HN must be determined. In the event a SOFA or MOU is negotiated, the following items should be considered:

(a) Undertakings by the Host Nation

i. that there is protection for TF members (and any auxiliaries such as Citizenship and Immigration Canada or RCMP personnel) from foreign criminal jurisdiction, proceedings, and imprisonment in the HN;

ii. that there is explicit acknowledgment from the HN that any activities undertaken by the TF in carrying out their assigned tasks will be regarded by that HN as being respectful of, and in conformity with, the laws and customs of that HN;

iii. that the host country grants all ships and aircraft operating as part of or in support of the TF all necessary diplomatic clearances to enter sovereign waters and airspace of the HN for the purpose of undertaking their assigned tasks;

iv. that the HN accepts that the TF while on its sovereign territory may possess and carry arms for the purpose of undertaking their assigned tasks;

v. that the HN agrees to waive all customs and immigration requirements which would otherwise apply to both the entry and departure of the members of the TF and to their weapons, vehicles, and equipment. That the HN will accept as valid, without driving test or fee, the driving licences (and CAF equivalents) of members of the TF;

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vi. that the HN agrees to waive any claim it may have against the Canadian Government or members of the TF for damage or injury (including injury resulting in death) caused by acts or omissions of members of the Canadian TF in the course of official duty. The HN government will deal with and, if necessary, settle at its own cost any claim which may be brought by any person or government in respect of damage or injury so caused;

vii. that members of the TF will remain under Canadian command and be subject to Canadian military law in all matters;

viii. that members of the TF are authorized to wear their uniforms;

ix. that no civil proceedings will be entertained by any court of the HN with respect to any act or omission of a member of the TF done in the performance of their assigned duties;

x. that where a member of the TF is arrested under the law of the HN for any offence committed or alleged to have been committed against the law of the HN, that member will be handed over to the Canadian authorities without delay;

xi. that any HN coroner with the jurisdiction in the HN to hold an inquest will not hold that inquest into the death of a member of the TF unless so authorized in extraordinary circumstances by the commander of the CAF in that country;

xii. that the HN government will provide where possible any material assistance required by the TF in the performance of its official duties. That a regime is (or can be readily) established to ratify irregular acquisition of supplies from HN sources;

(b) **Canadian Government Undertakings**

i. that members of the TF force will comply with Canadian and international law; and

ii. Canada will prosecute any breach of that law by TF members.

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20. We have seen that threats may develop so rapidly or be of such a violent nature that it becomes beyond the capabilities of the Canadian Mission staff to ensure the safe evacuation of Canadians. In such situations DFATD will request the assistance of the CAF to conduct the evacuation. The CAF has select assets and resources that can both assist in the overall evacuation and provide it appropriate security.

Interim Summary

21. The Government of Canada bears a fundamental responsibility for the safety and well-being of all Canadians. Abroad, this responsibility is assumed by the Department of Foreign Affairs, Trade and Development (DFATD). Canadian diplomatic missions are responsible for planning for the evacuation of Canadians in their areas of responsibilities. Due to the uncertainties under which evacuations are normally conducted the Canadian mission may require assistance from the CAF to conduct an evacuation. NEOs are fundamentally defensive in nature. They are conducted to reduce to a minimum the number of Canadian citizens at risk and to protect them during the evacuation process. They are not an intervention in the issues in the host nation. A NEO is only launched when there is a threat posed to the safety of Canadians in the host nation. This threat is a function of the hazard, or the dangers directly posed to the personal safety of Canadians, and the ability of the host nation government to contain that hazard and thereby safeguard Canadians. The NEO environment is characterized as being permissive, uncertain or hostile.

22. The importance of the NEO environment in planning is critical, particularly with respect to force structure, force capabilities, rules-of-engagement (ROE), and logistics: in a permissive environment - a TF can focus mainly on the evacuation with fewer security and logistics concerns; in an uncertain environment – there is an increased need for security and logistics elements, and a properly structured reaction/reserve force maybe required and more contingency planning will be required; in a hostile environment – force structures, ROE and reaction forces will have to be more robust and other tasks, such as crowd confrontation, may be required to be executed. In a hostile environment when opposing forces are well organized a NEO may not be feasible and a rescue operation may be required.

23. Complex Peacekeeping Operations are characterized by their impartial conduct, the low or uncertain level of consent of the parties to the dispute and the implementation force's broader authorization to use force. These operations are often initiated after a peace accord has been signed and the parties have consented to the operation. The consent and compliance of the actors may be uneven and inconsistently observed throughout their chain of command. If the situation in a mission area deteriorates beyond the point that a peace support operation can make a useful contribution, it may be withdrawn. Depending on its structure and deployment the mission may require a combat capable force to assist in its withdrawal. Humanitarian interventions are launched to gain humanitarian access to an "at risk" population when the responsible

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actors refuse to take action to alleviate human suffering or are incapable of doing so and where actors internal to a state are engaging in gross abuses of human rights

24. Humanitarian operations involve the use of military resources to assist in the alleviation of human suffering. They may be conducted independently or during a PSO. The prime responsibility for the provision of humanitarian aid and assistance rests with specialized civilian, national, international, government or non-government organizations and agencies. In some parts of the area of operations well-organized hostile forces may be completely occupying and controlling a region and this could include holding Canadians hostage. In these cases, a NEO proper is inappropriate and a rescue operation will have to be conducted to save the hostages.

25. The Department of Foreign Affairs, Trade and Development (DFATD) has 7,000 employees in Canada and around the world, operating under the Minister of Foreign Affairs, the Minister for International Trade and the Minister for International Development. DFATD's primary role is to manage Canada's day-to-day relations with the governments and peoples of other nations, both bilaterally and within the many international organizations in which Canada participates. DFATD represents the Canadian Government abroad through the medium of the diplomatic mission. One of the functions of a diplomatic mission is consular services; the services that a country provides for its citizens abroad. Canada's consular services operate 24 hours a day, seven days a week, through a network of more than 270 offices in over 180 countries.

26. When conducting NEOs, legal issues such as SOFAs, MOUs, national law and LOAC will be considered. Key legal issues in theatre such as special cases among evacuees (diplomatic personnel, persons seeking asylum or refuge, evacuee order and discipline), critical matters regarding the Task Force (TF) will require particular legal scrutiny in theatre. The legal basis for the deployment of the TF into the HN must be determined. In the event a SOFA or MOU is negotiated, undertakings by the host nation and Canadian government undertakings will be considered.

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Suggested Questions

Q. What are the characteristics of the NEO environment? (Permissive, Uncertain, Hostile) (Para 4)

Q. What are the related operations in the NEO environment? (Complex Peacekeeping Operations, Extraction Operation, Humanitarian Intervention, Humanitarian Operation, Rescue Operations) (Paras 6 to 10)

Q. Which Ministers operate the Department of Foreign Affairs, Trade and Development (DFATD)? (Minister of Foreign Affairs (lead minister in the event of a NEO), Minister for International Trade and Minister for International Development) (Para 11)

Q. What is DFATD's primary role? (Para 12)

Q. What is DFATD's legal mandate under the Act? (Para 12)

Q. When conducting NEOs, which general legal issues need to be considered? (SOFA, MOU, national law, LOAC) (Para 18)

Q. Which key legal issues require particular scrutiny in theatre? (Diplomatic Personnel, Persons Seeking Asylum or Refuge, Evacuee Order and Discipline, Critical Matters Regarding the TF) (Para 19)

Q. In the event a SOFA or MOU is negotiated, which items should be considered? (12 items) (Para 19 b))

Note to the Instructor: Encourage students to actively participate in the lesson and to reason through problems.

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PART 4 – CONCLUSION

Summary

Legal issues common to all international CAF operations

1. Formal legal regulation of international military operations and armed conflict has a lengthy historical pedigree dating back to the mid-nineteenth century. International law relating to military operations expanded dramatically in both scope and complexity throughout the twentieth-century. International law developed to regulate the conduct of states in their relations with one another, establishing binding obligations that may give rise to a legal claim against the offending states if breached. There are three generally recognized primary sources of international law: treaties, international custom, and general principles of law. The term 'treaty' refers to any agreement between two or more states that is intended to establish obligations as a matter of international law. It does not matter what the document itself is called, so long as this intent exists, and the treaty is adopted by persons with the authority to bind their respective states.

2. Unlike treaty provisions, which only bind states parties, customary international law binds all states, without requiring their prior express consent. Customary legal principles result from the evolution of state practice and attitudes rather than from the formal negotiation of binding agreements. A number of factors must be assessed to determine the sufficiency of state practice supporting the existence of a particular norm. The third primary source of international law, general principles of law, recognizes the importance of this foundation, permitting the incorporation of these general principles to ensure the effective functioning of the international legal order. International law developed to regulate the conduct of states in their relations with one another. It is not surprising, therefore, that states continue to be the primary subjects of international law. States remain the pre-eminent international legal entities. A number of domestic and international legal mechanisms exist to facilitate and ensure compliance with international legal obligations and for international dispute resolution. The International Court of Justice (ICJ) is the principal legal organ of the UN system, although its jurisdiction is limited to cases where states expressly consent to its role. Criminal prosecution of individuals before international courts is also possible, albeit unusual.

3. When deployed at sea or on land the CAF have frequently encountered persons who are considered "refugees", "internally displaced persons" (IDPs), and "asylum seekers", often fleeing the adverse effects of an armed conflict and often requesting the assistance of the commander and CAF members. The *1951 UN* Refugee Convention and its *1967 Protocol relating to the Status of Refugees* set out the specific rights of refugees and the obligations on the state in which the refugee is seeking protection.

4. IDPs are persons who are forced or compelled to flee their homes as a result of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized

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state border. A safe haven is a temporary form of protection provided to civilians where the life of the person seeking protection is in imminent danger. According to international law, there is no obligation on a state to provide a safe haven to an individual seeking protection.

5. The principles enacted in international environmental agreements should be respected, in times of peace and war alike. *The Antarctic Treaty* expressly prohibits the use of Antarctica for military purposes, including establishing military bases or fortifications, carrying out military manoeuvres, and weapons testing. *The Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter* imposes restrictions on the dumping or disposal of wastes from vessels, aircraft, platforms, or other man-made structures at sea. UNCLOS is a comprehensive treaty dealing with maritime environmental regulation.

6. The objective of the *Convention on Biological Diversity* is to conserve biological diversity, promote the sustainable use of its components, and encourage equitable sharing of the benefits arising out of the utilization of genetic resources. *The Convention* places a duty on state parties to conserve biological diversity within their jurisdiction, as well as outside their jurisdiction in certain circumstances. *The Basel Convention* is principally devoted to implementing a framework for controlling the movement of hazardous wastes across international borders. Trans-boundary movements of hazardous waste or other wastes are permissible only upon prior written notification of export by the sending state to the competent authorities of the state of import and/or transit. LOAC impacts on the protection of environment with both its treaty law and customary law components. In its customary law customary dimension, there is a general principle recognized by the ICJ to the effect that states must take environmental considerations into account when assessing what is necessary and proportionate in the pursuit of legitimate military objectives

7. Due to the extensive use of chemical weapons during World War I an international agreement was reached in 1925. The *Gas Protocol of 1925* condemned the use in war of asphyxiating, poisonous and other gasses, and of all analogous liquids, materials or devices, including bacteriological methods of warfare. The *Biological and Toxin Weapons Convention* (BTWC) covers all developments in the field of microbiology and biotechnology. Biological weapons were defined in the BTWC as the deliberate use of disease against humans, animals or plants. The *Environmental Modification Convention* entered into force on October 5, 1978. The convention recognized that scientific and technical advances may open new possibilities with respect to the modification of the environment, and that military or any other hostile use of environmental modification techniques could have harmful effects to the welfare of humans. *The Convention on Conventional Weapons* was intended to remedy the situation arising in the 70s and 80s when it became apparent that new technologies, such as laser systems, could produce new means of suffering on the battlefield.

8. Recent years have witnessed an increase in the number of private security and military companies (PSMCs) operating in situations of armed conflict, as well as a

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change in the nature of their activities, which are now increasingly close to the heart of military operations and which often put them in close proximity to persons protected by IHL. It is sometimes stated that PSMCs have no status under international law, with the implicit consequence that neither companies nor their staff have any legal obligations. It is principally members of states' armed forces who are combatants. Therefore, at risk of stating the obvious, it should be noted as a preliminary point that only the staff of PSMCs hired by states could ever be combatants. Considering that some 80% of the contracts of PSMCs are concluded with clients other than states, this in itself already precludes a large proportion of PSMC employees from being combatants.

9. While the staff of PSMCs must not, as civilians, be the object of attack, if they engage in activities that amount to taking a direct part in hostilities they lose this immunity from attack for the duration of their participation. This is an important difference between them and combatants, who can be targeted at any time. Regardless of their status, be they combatants, civilians accompanying the armed forces or "ordinary" civilians, like all persons in a country experiencing armed conflict the staff of PSMCs are bound by IHL and may face individual criminal responsibility for any serious violations they may commit or have ordered to be committed.

10. In addition to the criminal responsibility of employees who actually perpetrate a serious violation of IHL or order its commission, managers and possibly more senior company officers may also face legal liabilities. The responsibility of superiors for grave breaches of IHL is expressly recognized in Article 86(2) of Additional Protocol I. Finally, mention must be made of voluntary codes of conduct, which companies and some commentators sometimes refer to as though they were the sole source of obligations for PSMCs. A "voluntary" approach may be appropriate in respect of human rights obligations.

Full spectrum of operations (the Three Block War concept)

11. The "Three Block War" concept was briefly used as a military metaphor by the US Marine Corps leadership at the end of the 20th Century. It was resurrected by the CAF in 2004-2005 and touted as the new model for Canadian field operations. The core idea is that military forces conduct humanitarian, peacekeeping/stabilization, and combat operations simultaneously on three separate city blocks, or more widely. The term "Three Block War" was coined by Gen Charles C. Krulak when he served as Commandant of the United States Marine Corps (1995-1999). Based upon the challenges the Marines faced in "failed states" such as Somalia and the former Yugoslavia, he offered the concept as a metaphor to describe the demands of the modern battlefield.

12. When Hillier was promoted to Chief of Defence Staff (CDS) in February 2005, he continued to champion the Three Block War concept. The Defence section of Canada's 2005 International Policy Statement (IPS), developed with strong input from General Hillier, highlighted the concept: "...the ability of our military to carry out three-block war operations will be critical to the success of Canada's efforts" to restore order in "failed

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and failing states," which was identified in the document as the Forces' principal future role.

13. The concept can help simplify deeply complicated situations. The 'boiled-down,' catchy expression, "Three Block War," makes the idea of multiple tasks easy to communicate, imparting a sense of purpose and confidence in situations lacking clear rules and defined goals. The Three Block War's simplicity is most problematic when the concept makes the jump from a tactical description of a reality sometimes found on the ground to a strategic vision, as it did when it was introduced in Canada. In Canada, there is no doctrine or keystone document or case studies that test the concept objectively in different operations. In the absence of an accepted definition of the Three Block War, the type, scale, and priority of the blocks are all unclear, as well as how they might fit together.

14. The fit of the Three Block War into Canada's declared doctrine, notably the 3D+C (Diplomacy, Development, Defence and Commerce), or, more recently, the "whole-of-government" approach, is left unresolved. The enormous difficulties carrying out reconstruction efforts in Southern Afghanistan highlight the difficulties of the Three Block War approach. NATO's longstanding Peace Support Operations (PSO) doctrine provides a useful contrast to the Three Block War. The Three Block War concept was never embraced by the Canadian navy and air force. It was eventually dropped by the army. It is not mentioned in the Army's force employment concept "Land Operations 2021," or in the Canada First Defence Strategy. Newer concepts are coming to the fore, including Adaptive Dispersed Operations (ADO), Full-Spectrum Operations (FSO), Joint, Interagency, Multinational and Public (JIMP) enabled forces, and the Comprehensive Approach.

Peace Support Operations

15. Canada has a long history of involvement in peace support operations (PSO). Establishing a PSO is one of the options available to the international community to assist in the resolution of a conflict. They are authorized in support of the political objectives of internationally recognized organisations such as the United Nations. While many legal issues arise with reference to peacekeeping operations some of the more significant ones center on the nature and scope of the requisite consent and the parameters of self-defence. UN peacekeeping has traditionally relied on the consent of the opposing parties and involves the deployment of neutral forces to implement an agreement approved by those parties.

16. Given the legal requirement of states' and parties' consent, it would be legally incorrect to state that the UN Charter is the legal basis that creates peacekeeping. The Security Council could also create a peacekeeping force under Chapter VII, Article 40, with a mandate to supervise a peace agreement between two or more parties, but without authorization to "use all necessary means". This arrangement would be consented to by the parties. It is important to note that in this Chapter VII peacekeeping scenario, two distinct legal bases would exist: first, state consent (customary

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international law), possibly expressed through a treaty (the peace agreement), and second, a binding decision of the Security Council.

17. While on the surface peacekeeping appears straight forward, a number of legal issues of significance to operational planners and commanders may arise. These include issues relating to the nature and scope of consent and self-defence, mixed or dual legal authorities, mandate ambiguity, and, command and control issues. It has been noted that the key legal requirement for a peacekeeping operation is consent. Traditionally, peacekeeping forces have been restricted to using force in self-defence only. Indeed, as noted above – self-defence, neutrality and consent have been the hallmarks of peacekeeping. Historically, self-defence has been viewed as being restricted to defending members of the peacekeeping forces. However, from the early 1990s onward there have been attempts to redefine "self-defence".

18. Another continuing area of legal complexity is the potential for a peacekeeping operation to rely on dual or distinct legal authorities that will not be identical, but generally are overlapping and mutually reinforcing. As discussed in the preceding section, this occurs when consent is obtained and legal authority is also provided under a Chapter VII mandate. Article 41 decisions may include binding decisions for all or some Member States to impose trade restrictions or economic sanctions with respect to a particular target state or entity. By contrast, Article 42 does create a legal basis for the Security Council to authorize the use of force. A number of key legal developments have occurred following the Cold War. One was the development by the International Court of Justice of the doctrines of implied and inherent powers in respect of Security Council authority. Two other interrelated factors contributing to the expansion of the legal authority for enforcement action have been the narrowing of Article 2(7)'s definition of "domestic jurisdiction" and the broadening of what constitutes a threat to international peace and security under Article 39.

19. A Security Council authorization to conduct international operations to enforce a particular mandate often raises legal issues that impact on the way in which the Canadian Government defines the Strategic Objectives for a CAF deployment, the content of OPLANS and, ultimately, ROEs. When an enforcement mandate is authorized within the same context that sustains the legal right of self-defence care must be taken to ensure that the proposed military operations can be supported on one of the two legal bases. Generally, Chapter VII resolutions will not provide detailed and precise authorizations on the exact parameters within which force is to be used. This is not surprising given the complex subject matter and the fact that often the content of resolutions are a matter of political negotiation requiring constructive ambiguity.

Humanitarian Operations

20. Natural disasters - floods, droughts, storms and earthquakes -, as well as human-made ones, kill many people and cause great economic losses each year. More than 90 per cent of all disaster victims live in developing countries - an indicator of the degree to which poverty, population pressures and environmental degradation

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exacerbate suffering and destruction – but disasters occur domestically too. The Government of Canada responds to emergencies and disasters in foreign countries in order to promote international peace and stability. The response to a complex emergency, due to the uncertainty of the security environment, requires more comprehensive military planning and inter-departmental coordination before the commitment of CAF elements.

21. In a disaster situation, the Directorate of Peacekeeping Policy (DPK Pol) is the primary focal point for DND and is responsible for liaising with government departments and other stakeholders through the Regional Security and Peacekeeping Division/FAC and the Interdepartmental Task Force process. The provision of humanitarian relief is primarily the domain of civilian agencies. When undertaken, HOs will generally be conducted to supplement or complement the relief efforts of the host nation and supporting international community. All those involved when planning and executing such operations should understand the balance of responsibilities between military and disaster response staffs. In disaster situations there may well be underlying tensions that may be exacerbated by the presence of intervention forces. To reduce this potential effect it will be necessary to communicate a clear, simple and repeated intent for the Task Force (TF) which will ensure that the purpose and scope of Canadian actions are understood by all actors involved.

22. The DART is part of the Government of Canada's response options to meet international and domestic requests for help and underscores Canada's resolve to support disaster victims anywhere in the world. In the case of humanitarian operations (HO), the DART may be activated in response to a request by either an individual country or by the United Nations (UN). The Canadian government decides if the DART is an appropriate response to a particular complex emergency. For a humanitarian operation, it is normally deployed as part of a multinational response or where it is specifically requested by a host nation. Personnel security and information security measures must be in place prior to deployment. All personnel must hold the requisite security clearance and be verified during the screening process. Regardless of the ROE measures in place, every effort will be made to protect establishments and property using preventative measures.

23. The main legal issue in the conduct of HO is the authority to conduct the operation. HOs are likely to be at the invitation of a Host Nation or pursuant to a United Nations Security Council Resolution. In all cases, the decision to deploy the CAF to conduct a HO rests with the Government of Canada. As a matter of policy, all international missions conducted by DART personnel shall comply with the main principles of the LOAC. Military planners must be aware of the legal framework within which a DART operation will be conducted. In case of uncertainty, the DART legal officer should be consulted. The Legal Advisor should be consulted in respect of any inter-agency cooperation arrangements, or in respect of any questions concerning the status of the ICRC or any other NGO.

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NEO

24. The Government of Canada bears a fundamental responsibility for the safety and well-being of all Canadians. Abroad, this responsibility is assumed by the Department of Foreign Affairs, Trade and Development (DFATD). Canadian diplomatic missions are responsible for planning for the evacuation of Canadians in their areas of responsibilities. Complex Peacekeeping Operations are characterized by their impartial conduct, the low or uncertain level of consent of the parties to the dispute and the implementation force's broader authorization to use force. Humanitarian interventions are launched to gain humanitarian access to an "at risk" population when the responsible actors refuse to take action to alleviate human suffering or are incapable of doing so and where actors internal to a state are engaging in gross abuses of human rights. Humanitarian operations involve the use of military resources to assist in the alleviation of human suffering. They may be conducted independently or during a PSO.

25. DFATD's primary role is to manage Canada's day-to-day relations with the governments and peoples of other nations, both bilaterally and within the many international organizations in which Canada participates. DFATD represents the Canadian Government abroad through the medium of the diplomatic mission. When conducting NEOs, legal issues such as SOFAs, MOUs, national law and LOAC will be considered. Key legal issues in theatre such as special cases among evacuees (diplomatic personnel, persons seeking asylum or refuge, evacuee order and discipline), critical matters regarding the Task Force (TF) will require particular legal scrutiny in theatre. The legal basis for the deployment of the TF into the HN must be determined.

Confirmation

The instructor may ask other confirmation questions.

Conclusion

Legal issues common to all international CAF operations

26. Extensive international legal principles apply to the conduct of military operations by the CAF. These obligations result from Canada's international treaty commitments, the 'crystallisation' of customary international legal norms, and the application of general principles of law. As noted, while numerous mechanisms exist to address breaches of international law, most compliance with international legal obligations results from their voluntary acceptance by states, organisations and individuals.

27. During CAF international operations, commanders and units may encounter refugees, displaced persons and persons seeking safe haven. Operational legal advisors and commanders must, therefore, be aware of domestic and international laws dealing with such persons. Essentially, there is no obligation for a CAF commander to

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acknowledge or grant any legal status, such as refugee status, or to grant safe haven. Commanders may provide assistance to a person in distress but any determination of the person's legal status (refugee, asylum seeker and so on) must be referred to NDHQ. In today's complex operational and security environment, the manner in which the CAF treats and handles those claiming refugee status, asylum or those seeking safe haven will likely have an important impact on the successful completion of the mission. Commanders and operational legal advisors must be prepared to deal with such issues, often on short notice, and often under the scrutiny of the media. Both domestically and internationally, environmental issues are gaining prominence and increasing in complexity. CAF operations are effected by such issues. Accordingly, operational legal advisors and commanders must be aware of applicable Canadian and international environmental laws.

28. A binding legal framework that regulates the operations of Private Security and Military Companies staff in situations of armed conflict does exist. There is therefore no need to develop new rules at the international level. This is not to say that the position is straightforward as a matter of law or that there are no challenges in implementing the obligations in practice. In order to determine the status and consequent obligations of the staff of PSMCs, some of the most complex questions of IHL have to be tackled, such as who are combatants and what amounts to taking direct part in hostilities. These are questions that have to be answered on a case-by-case basis. In terms of enforcement of the law, although clear obligations do exist for bringing persons suspected of serious violations of IHL to justice, prosecutions are rare. This is unfortunate. It promotes impunity, deprives victims of redress, provides no deterrence against future violations and may give the impression that there is no applicable law, thus fuelling the risk of further violations.

29. IHL will only apply in times of armed conflict. Whenever companies operate in other contexts, this body of law is not relevant to their activities, which are then regulated by the local criminal law and possibly human rights law. Also, even when they operate in states experiencing armed conflict, IHL will be pertinent only to acts committed in the context of and associated with the conflict. Many of the activities of companies do not have this connection and are thus only regulated by local law and, again, possibly human rights law. The extent to which human rights law applies to the activities of PSMCs is a far more complex legal issue than the position under IHL and is still in need of detailed analysis.

Full spectrum of operations (the Three Block War concept)

30. Given the difficulties in implementing the Three Block War idea at the operational and strategic levels, its demise is not to be mourned. While Krulak's metaphor may be a good *description* of some situations faced by modern forces, it falls far short as a *prescription* or strategic guide because it directs soldiers to carry out incompatible tasks. Personnel *cannot* and *should not* be expected to serve as humanitarian workers, peacekeepers, and warfighters all at the same time, and within a small area. Combat should be separated as much as possible from other functions, which should,

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preferably, be done by distinct organizations, including UN agencies, police, and peacekeepers. The concept's lack of a firm intellectual foundation is also challenging, but not so much as the contradiction at its heart – warfighting cannot mix with peace support and other missions. The Three Block War exacerbates this problem by making it look tidy, simple, and easy. The result is that military forces may all-to-easily be sent to fight an unwinnable Three Block War. Instead of embracing Three Block War operations, militaries should try to avoid them. The construct deserves to be discarded to make way for new concepts, and the further development of doctrines that have long proven their worth in scores of operations over decades, such as the peacekeeping/stabilization operations in complex conflict environments, for which Canada has a strong reputation and much valuable experience upon which to build.

Peace Operations

31. UN enforcement operations or complex peace support and stabilization missions have been the most common type of international operation carried out by the CAF since the end of the Cold War. These include enforcement operations involving land, sea and air assets in a variety of geographic locations including Bosnia, Cambodia, the Central African Republic, Sudan, Rwanda, East Timor, Afghanistan and Haiti to name a few.

32. When planning and seeking governmental authorization to deploy, CAF planners, policy advisors, operators and legal advisors must pay particular attention to the authorizing Security Council resolutions(s) that establish the mission mandate. Usually the mandate will define the mission goals, establish its geographic and temporal parameters, expressly authorize the level of force to be used, and outline command or reporting relationships. It is the authorizing Security Council resolution(s) that will form the parameters for defining the scope of operations, any strategic objectives set by the Government of Canada, the OPLAN, ROE and possibly targeting restrictions.

33. It is not unusual for the scope of the mission's mandate to be imprecisely defined. In such a case, both governmental direction and CDS direction through an OPLAN will give further precision. In this regard, within the context of coalition operations, it is not uncommon for various troop-contributing nations to have slightly divergent approaches to defining the mission and the nature of force to be used, given national policy and domestic legal considerations.

34. Additionally, an added layer of complexity may exist during the planning authorization and execution of a UN enforcement operation if the international deployment is based on more than one legal basis (*e.g.* a Chapter VII mandate as well as the collective right of self-defence, or host state consent). In such circumstances, operations may be expanded or narrowed beyond what would otherwise be authorized in a Security Council resolution. This may impact ROE and targeting parameters, and also the way the operation is carried out, particularly if it occurs within a coalition where not all nations will choose to rely on all possible legal basis.

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Humanitarian operations

35. Complex emergencies, resulting from conflict induced conditions and often compounded by natural disasters, have intensified in many regions of the world. In complex emergencies, affected populations often have little or no access to their traditional sources of income for long periods of time, owing to displacement and insecurity. As a result, the economic opportunities needed to sustain a dignified livelihood become more acute, particularly in protracted emergencies where populations are frequently on the move. If natural disaster has also struck, the ability of local communities to support displaced populations becomes severely limited, making large segments of these populations dependent on humanitarian assistance.

36. Also, prolonged conflict can lead to vulnerability in food, economic and health conditions. The damage to health and sanitation infrastructure and serious reduction in services also has a profound effect on the community. Vaccination cycles break down, quickening the spread of disease. Worse still, the violence enacted on communities during conflict actually increases the demand for health services and medical treatment, meaning that capacity is overstretched at exactly the time when the fewest resources are available. In addition to the obvious shorter-term damage, there is increasing awareness that both natural disasters and complex emergencies have significant environmental consequences, which may have important long-term implications for those affected. It is then very important that key actors in humanitarian relief are able to respond in a timely fashion, deploying the DART assets anywhere in the world.

NEO

37. The success of a NEO depends on timely decision making in a crisis situation, well-conceived and up-to-date NEO plans, and accurate information and intelligence on the situation in the AO. DFATD has the interdepartmental lead for NEO planning. The CAF, in close liaison with DFATD, will develop and maintain contingency operations plans for the deployment of a CAF-led JTF to support a NEO, in both permissive and non-permissive environments. Additionally, the CAF will maintain situational awareness of countries that have significant numbers of Canadian citizens residing in them; earmark and scale logistic assets and other resources required for the most likely NEO contingencies; and conduct, on a routine basis, exercises and training for CAF elements and headquarters staffs that may be involved in a NEO.

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PO 026 ADVISE ON CAF OPERATIONS

PART 1 -- LESSON IDENTIFICATION

TITLE: EO 026.02 Advise on domestic CAF operations

Performance. Advise on domestic CAF operations

Conditions.

Given: On domestic operations, references including legal principles on defence of Canada, on sovereignty operations, on aid to the civil power, on peace officer status, on public service under 273.6(1) of NDA, on CF Armed Assistance Directives (CFAAD), on Provision of Service (POS), on search and rescue operations and on other governmental department (OGD) operations.

Denied: Direct supervision

Standard. The legal officer shall advise on domestic CAF operations.

Main Teaching Points:

- Legal issues common to all domestic CAF operations
- Defence of Canada
- Sovereignty Operations
- Aid of the Civil Power
- Aid to Law Enforcement Agencies (ALEA)
- Public service under NDA
- Provision of Service (POS)
- Search and Rescue Operations
- Operations involving Other Governmental Departments (OGD)

Method. This EO will be accomplished by a combination of self-study and class lectures. Students will be required to read assigned materials and be prepared to respond to questions.

Duration. Four 40-minute periods.

References. *National Defence Act*, R.S.C. 1985, Section 273.6
B-GJ-005-104/FP-024 The Operational Law Manual (Draft) Chapters 3, 5, 6, 7, 8, 9, 22, 25
B-GJ-005-300/FP-001 Operations, Chapter 6
B-GJ-005-000/FP-001 Canadian Military Doctrine, Chapters 3, 6
B–GA–209–001/FP–001 National Search and Rescue Manual, Chapters 1, 2, 4, 9
B-GS-055-000/AG-001, DND Provision of Services Manual

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Training/ Learning Aids. Standard classroom with whiteboard and projection system/handouts; CD materials; Legal Officer Qualification Course (LOQC) Instructors Handbook – Module(s) [XXX]

Note to the instructor. The developmental lesson shall be conducted in structured manner, using a list of questions to the class. Instructors are to complement each segment of the developmental lesson by follow-up and direct questions taking into account the flow and direction of the discussion. Interim summaries shall be conducted at the end of each segment to confirm the material was learned and provide a basis from which the discussion can progress to the next segment. A review of the main teaching points will then take place at the end of the period.

PART 2 – INTRODUCTION

Objective: The instructor shall advise on the status pertaining to PWs & detainees as outlined in Module [XXX] of the LOQC Instructors Handbook.

Introduction:

Outline:

Stage 1 – Legal issues common to all domestic CAF operations

Stage 2 – Defence of Canada

Stage 3 – Sovereignty operations

Stage 4 – Aid of the civil power

Stage 5 – Aid to Law Enforcement Agencies (ALEA)

Stage 6 – Public service under NDA

Stage 7 – Provision of Service (POS)

Stage 8 – Search and rescue operations

Stage 9 – Operations involving other governmental departments (OGD)

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PART 3 – BODY OF THE LESSON

Stage 1 – Legal issues common to all domestic CAF operations

Legal Framework for Domestic Operations

1. **Introduction.** Domestic operations are conducted within the confines of Canadian territory and exclusive economic zones and take many different shapes and forms: assistance during civil emergencies; support to national development goals; support to the maintenance of public order and security, and/or their restoration; and conduct of surveillance-and-control operations. Canada must be able to respond to potential transnational threats whether they are natural disasters (such as hurricanes and floods), terrorist attacks, or pandemic health crises. To do so, the Government of Canada has made the defence and provision of assistance to the citizens of Canada the number one priority of the Defence mission.

2. In domestic operations, DND and the CAF play a supporting role to, and only at the request of, federal, provincial/territorial or municipal lead civil authorities, with the exception of the defence-of-Canada role. This recognizes the jurisdictional boundaries and responsibilities established in various federal statutes such as the *Constitution Act of 1867*,the *Emergencies Act*, *the Emergency Management Act*, and the *National Defence Act* (*NDA*).

3. Under the *Constitution Act of 1867*, a division of legislative jurisdiction was made between the federal and provincial governments. At Section 91, the federal government was given exclusive jurisdiction for emergencies that span two or more provincial or territorial government jurisdictions. The *Emergency Management Act* sets out clear roles and responsibilities for all federal ministers across the full spectrum of emergency management. This includes prevention/mitigation, preparedness, response and recovery, and critical infrastructure protection. The *Emergency Management* Act:

a. mandates responsibility to the Minister of Public Safety (MPS) to provide national leadership and to set a clear direction for emergency management and critical infrastructure protection for the Government of Canada;

b. establishes concisely the roles and responsibilities of federal ministers and enhances the Government of Canada's readiness to respond to all types of emergencies;

c. enhances collaborative emergency management and improves information sharing with other levels of government as well as the private sector; and

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d. grants authority to the MPS, in consultation with the Minister of Foreign Affairs, to coordinate Canada's response to an emergency in the US.

4. The primary responsibility for emergency preparedness activities lies with provincial and territorial governments. The provincial minister responsible for emergency preparedness or the Lieutenant-Governor in Council of a province or territory may require provincial or municipal government departments to formulate emergency plans. CAF commanders at all levels must become familiar with the responsibilities of civilian emergency planning authorities as well as the limitations and constraints under which they operate and must be prepared to provide assistance when/as requested.

Use of Force in Domestic Operations

5. **Introduction.** CAF operations must be conducted in accordance with the rule of law. During law enforcement assistance operations it may become necessary to take action for the maintenance of law and order. This could put members of the CAF in a position where they may have to use force against their fellow citizens. Even during humanitarian assistance operations circumstances may arise during which civilian police are not present when crimes might be committed in the presence of CAF members. An expectation may exist in the minds of the Canadian public that in such circumstances the CAF members will take action to prevent or stop the commission of crimes. How CAF members respond to circumstances where force may be necessary during domestic operations will reflect how well they understand the principles underlying the rule of law, and how well they understand the limits that the law imposes on the permissible use of force.

6. The basis for the use of force in domestic operations is statute law, primarily the *Criminal Code*. This legal foundation has been incorporated into procedures developed to allow the military chain of command to control the use of force. This has been accomplished through the creation of guidance in policy and doctrine such as the CAF manual, the *Use of Force in CF Operations.* CAF policy and doctrine provide the following start points for considering the use of force in domestic operations:

a. the use of force is controlled by the chain of command through implementation of CDS authorized rules of engagement (ROE) or similar use of force directions;

b. self-defence is related to, but separate from ROE and applies no matter what other factors are present;

c. self-defence is not controlled by ROE but may be restricted for operational or policy reasons;

d. self-defence includes defending oneself and any other member of the CAF from a hostile act or demonstrated hostile intent; and

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e. all other uses of force are controlled by ROE.

7. The *Criminal Code* authorizes the use of force in defence of persons and property or to prevent the commission of certain serious crimes in separate but related categories that at times overlap. As a result, the use of force may at times be justified under more than one section of the *Criminal Code.*

8. **Self-Defence.** The *Criminal Code* sections dealing with self-defence have in common a concept of "justified use of force". This reflects the influence of a common law principle that in circumstances where the use of force is necessary, the harm sought to be prevented could not be prevented by less violent means and the injury done, or reasonably expected to be done, is not disproportionate to the harm it is intended to prevent. Thus, the law authorizes the use of force in circumstances where it is necessary and justifiable, but absent necessity and the justification prescribed in the law, the use of force would be unlawful.

9. Section 34 of the *Criminal Code* requires that to justify the use of force to repel an unprovoked assault the force used cannot be intended to cause death or serious bodily harm and it cannot exceed that which is necessary to defend oneself. Anyone who is unlawfully assaulted and who causes death or serious bodily harm in repelling the assault is justified in having used force but only if the use of such force to repel the attack is based on a reasonable apprehension of death or serious injury from the violence of the assault, and if the person attacked had a reasonable belief that there was no other way to protect oneself from death or serious injury.

10. Similarly, section 37 of the *Criminal Code* sets out the conditions under which it is justified to use force to prevent an assault on oneself or anyone under one's protection. To be justified, the force used must be no more than is necessary to prevent the assault or the repetition of the assault. The *Criminal Code* does not define the term "under protection" but it would likely include members of one's immediate family and anyone whom the person has a legal duty to protect, such as a person detained by a CAF member.

11. **Use of Force to Protect Property.** Under Canadian law there is no legal basis to defend property with deadly force unless there also exists a coincident threat of death or serious bodily harm to a person. Section 27 of the *Criminal Code* provides justification for the use of as much force as is reasonably necessary to prevent the commission of serious offences that would likely cause immediate and serious injury to any person or their property. What is reasonable and necessary force is a question of fact that will vary depending on the prevailing circumstances at the time the force is used. Section 27 should be read together with other *Criminal Code* sections relating to the protection of property as the amount of permissible force that may be used varies with the class of property in question and whether the harm to the property poses a danger to any person.

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12. The right to protect different classes of property is expressly provided for in sections 38 to 42 of the *Criminal Code*. Subject always to the requirement that no more force than necessary be used, as a general rule, progressively more force may be used as one moves from defending personal (movable) property in one's possession to defending real property or a dwelling house. The greatest level of force may be justified when the defence of property is inextricably linked to defending persons from a threat of death or grievous bodily harm. The extent to which force may be used also varies with the situation. In all cases, the legal justification to use force to protect property is based upon the threat to the individual attempting to prevent the trespassing, theft, damage or destruction of the property, or the threat to other persons that would be caused by the trespassing, theft, damage or destruction of the property. During some domestic operations, CDS approved ROE may authorize CAF members to use non-deadly force to defend specified property. This would not prevent CAF members from using reasonable and justified force, up to and including deadly force, in self-defence should the trespassing, theft, damage or destruction of the property likely cause the death or serious injury to CAF members or any person.

13. **Use of Force and Maintenance of Law and Order.** The maintenance of law and order is primarily the responsibility of the civilian police authorities. Except in those cases where they are employed in a law enforcement assistance role, or when performing aid of the civil power duties, CAF members have no special status or obligation to enforce the law. When employed in a law enforcement assistance or aid of the civil power role CAF members will be issued ROE specifically designed to enable them to carry out authorized law enforcement tasks. When employed on other domestic operations such as humanitarian assistance missions, the law permits, but does not require, CAF members to intervene to stop the commission of an offence that might occur in their presence. In these circumstances it would not be possible to issue ROE authorizing the use of force as the chain of command cannot lawfully require CAF members to take action. However, in these circumstances the CAF members would have the same right as ordinary Canadians to intervene to stop the crime.

14. Although the *Criminal Code* contains specific provisions empowering police officers and others with peace officer status to use reasonable force to do what they are authorized or required to do to enforce or administer the law, the *Criminal Code* also contains a number of provisions that provide justification for ordinary persons, including CAF members not engaged in law enforcement assistance operations, to use force when taking action to prevent the commission of an offence. The most common circumstances under which ordinary persons may be legally justified in using force to uphold the law and restore order include the prevention of a breach of the peace or the commission of an indictable offence; *i.e.*, a serious offence for which the offender could be arrested without a warrant. As noted earlier, section 27 of the *Criminal Code* provides that anyone is justified in using as much force as is reasonably necessary to prevent the commission of an indictable offence. Section 30 provides that anyone who witnesses a breach of the peace may use as much force as is reasonably necessary to stop the breach and to detain the person breaching the peace in order to place him or her into the custody of a peace officer.

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15. CAF members who are authorized to assist law enforcement agencies will receive specific orders to carry out their assigned duties, including ROE and direction on which weapons they will be allowed for use during the law enforcement assistance operation. In addition, while performing their assigned duties they will have peace officer status, providing them with protection from criminal and civil liability.

16. **Unlawful Use of Force.** CAF members are individually liable for the force used by them. A CAF member who acts outside the scope of what the law authorizes to be done, or who acts on a belief or grounds that are not reasonable in the circumstances, or who uses more force than is reasonable and justifiable as necessary in the circumstances to achieve the purpose for using the force, may be held to have used excessive force. This may result in charges under either the *Criminal Code* or the *Code of Service Discipline.* Pursuant to section 26 of the *Criminal Code* everyone authorized by law to use force is criminally responsible for using excessive force according to the nature and quality of the act that constitutes the excess.

Peace Officer Status

17. **Introduction.** Peace officer status is a term most often associated with police officers. However, historically the classes of officials charged with responsibility to protect the peace included persons other than police officers. This continues today. The historical roots of the term are reflected in the definition of "peace officer" in section 2 of the *Criminal Code* which sets out an extensive list of public authorities responsible for preservation and maintenance of the public peace, or who are authorized to perform duties and functions related to enforcing Canadian law. The list includes mayors, designated Correctional Service officers, prison guards, police officers, customs officers, fisheries officers, pilots, sheriffs, and constables, as well as officers and non-commissioned members of the CAF under certain conditions or in certain circumstances.

18. The *Criminal Code* also refers to the term “public officers”, the definition of which includes officers of the CAF. In the past these terms were interchangeable; all peace officers were public officers. This is reflected in a number of sections of the *Criminal Code* where reference is made to both peace officers and public officers having certain authority to enforce the law. While the status and protection afforded to public officers in the *Criminal Code* may be significant in some circumstances, peace officer status provides the broadest protection under the law.

19. Peace officer status is important for CAF members tasked with domestic law enforcement duties from two perspectives. First, the status provides lawful justification for the use of force in upholding the law or when executing tasks in the administration of the law. Second, peace officer status provides CAF members with protection from criminal and civil liability for actions taken when they are employed on law enforcement duties.

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20. **Protections Provided by Law.** CAF personnel may benefit from a number of protections provided by the law. The *Criminal Code* provisions relating to self-defence or the use of reasonable force to prevent the commission of serious crimes, both of which are available to all Canadians, may provide CAF members legal protection in circumstances where it is not entirely clear that they are entitled to the protections arising from peace officer status. In addition, CAF members can and should rely on their public officer status under section 25 of the *Criminal Code* to provide them with protection from personal liability when they are acting under authority of the law to do what they are required to do in the administration or enforcement of the law. However, as noted above, peace officer status provides the broadest protection under the law.

21. The *Criminal Code* provides specific powers to peace officers in a number of important areas that involve duties for which CAF personnel may be tasked during law enforcement assistance operations. Generally, these tasks arise in circumstances where CAF personnel are employed in roles that require them to perform essentially the same functions as police officers (*e.g.*, when civilian law enforcement resources are inadequate), or in circumstances where the civilian police are incapable of restoring and maintaining public order (*i.e.*, the CAF acts as a force of last resort). In either circumstance, for both moral and legal reasons, CAF personnel so deployed should have the same lawful authority to conduct their assigned duties as do the civilian police officers, and they should have the same legal protection when performing those duties as is provided to the civilian police officers.

22. **Duties and Obligations of Peace Officers.** At common law peace officers had a duty to uphold the peace. This duty was greater than the duty imposed on ordinary citizens to keep the peace. The duty of the citizen to take reasonable steps to prevent or stop a breach of the peace was but an imperfect obligation. The citizen did not have to risk life or limb to do so. Peace officers on the other hand were obliged to intervene and were liable to prosecution for the common law offence of neglect of duty. The duty of peace officers is not as broadly defined under Canadian law as it was under the common law. The only duty to act appears in relation to enforcement actions associated with dispersing riots following the reading of a proclamation. The failure of a peace officer to take reasonable steps to suppress a riot is an offence.

23. The majority of references to peace officer in the *Criminal Code* are in the context of authority to act and the justification for using reasonable force when taking required action. The *Criminal Code* is not the principal basis for holding police officers accountable for failures or neglect in the performance of their duties, although criminal liability could arise in cases involving, for example, criminal negligence. Police officers are most likely to be held to account under provincial police statutes and the disciplinary codes governing the police that are created pursuant to those provincial statutes.

24. The liabilities of members of the CAF when performing law enforcement assistance duties approximate those of the civilian police. However, apart from the specific statutory duty to take reasonable steps to suppress a riot, there is no broad common law duty to enforce the law and CAF members cannot be expected to perform

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general law enforcement duties as would be expected of civilian police officers. The actions and conduct of CAF members will be subject to the same *Criminal Code* provisions as applies to police officers, but while the police officers' conduct is governed by police disciplinary codes, CAF members remain subject to the *Code of Service Discipline*.

25. The *Criminal Code* contains many provisions setting out specific powers unique to peace officers and the actions they are authorized to take in maintaining the peace. Generally these powers relate to the use of reasonable force to suppress breaches of the peace, powers of arrest, and authority to conduct searches. CAF members, other than Military Police, receive little or no training regarding offences and the scope of powers to arrest and search. Therefore, the duties of military personnel during law enforcement assistance operations must be governed by their military tasking, and the use of force must be controlled by the chain of command through the application of CDS authorized rules of engagement.

26. **Peace Officer Status.** Peace officer status arises by operation of law. There is no additional formality such as the taking of an oath or an official appointment before the status comes into effect. Rather, the law confers the status when certain facts are present. For CAF personnel deployed on domestic operations, peace officer status is time, situation and duty dependent. CAF personnel do not assume peace officer status simply because they are employed on a domestic operation.

27. Generally speaking, members of the CAF have the status of a peace officer only at those times during a law enforcement assistance operation when they are performing duties related to enforcing the law. Examples of such duties include assisting a civilian police officer in arresting a person suspected of having committed a crime, providing security or protection to certain designated persons or property, or performing general patrol duties or traffic control ordinarily performed by civilian police officers. The status ceases to have effect when the CAF members are no longer engaged in duties related to law enforcement and the status may not attach to those deployed on the operation in a role that does not require them to perform law enforcement duties.

28. CAF members called out for service in aid of the civil power pursuant to Part VI of the *NDA* retain peace officer status throughout the time that they are called out. Section 282 of the *NDA* provides in part that CAF members called out for service in aid of the civil power have, "... in addition to their powers and duties as officers and non-commissioned members, all of the powers and duties of constables, so long as they remain so called out, but they shall act only as a military body ...". The effect of being deemed constables pursuant to this provision is two-fold. First, constables are peace officers as defined in section 2 of the *Criminal Code.* Second, the stipulation that they continue to act as a military body means that while they may have the powers and duties of constables, CAF members are not to be considered constables in the service of the civil authorities and they are not required to exercise the powers and duties associated with that status at all times. They continue to be governed by service discipline and must obey the orders of their military superiors.

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29. Article 22.01(2) of *Queen's Regulations and Orders* circumscribes those circumstances in which CAF members with peace officer status are performing duties that actually require them to have the powers and duties of peace officers. The article provides that CAF members will have the powers of peace officers when performing lawful duties resulting from a specific order or established military custom or practice related to any of the following matters: the maintenance or restoration of law and order, the protection of property, the protection of persons, the arrest or custody of persons, or the apprehension of persons who have escaped from lawful custody or confinement. Article 22.01(3) further provides that, for purposes of the definition of peace officer in the *Criminal Code*, when CAF members are enforcing Canadian law during law enforcement assistance operations the duties they perform are to be considered as duties requiring them to have the powers and duties of peace officers.

30. Examples of when CAF members are enforcing Canadian law include a wide range of law enforcement assistance operations authorized pursuant to statute, orders in council or other legal instruments. For instance, CAF law enforcement support is provided to the Department of Fisheries and Oceans pursuant to an interdepartmental memorandum of understanding and involves enforcement of Canadian fisheries legislation. Coincidentally, pursuant to that legislation CAF members are also named as fisheries officers, another category of peace officer recognized in the *Criminal Code*. Similarly, the CAF provides law enforcement assistance to the RCMP counter drug program in accordance with the provisions of a memorandum of understanding. Pursuant to Article 22.01(3) the duties performed by CAF members under these legal instruments are such that they would be considered duties requiring the CAF members to have the powers and duties of peace officers.

31. CAF personnel employed on other than law enforcement assistance operations, such as humanitarian assistance operations, do not have peace officer status and the law provides them with no additional authority or status. In effect, their status is no different from any ordinary Canadian citizen. In certain situations ordinary citizens are justified in taking action to enforce the law, particularly when it is necessary to act immediately to preserve the life of a victim of crime, or to come to the aid of a police officer in need of assistance. During operations other than law enforcement operations CAF members are not obliged to intervene to stop the commission of an offence and their chain of command may lawfully order them not to intervene to stop a criminal offence in a particular circumstance.

32. **Disclosure of Information and Civil Claims.** When the CAF provides support to law enforcement authorities a consequence can be that CAF members may be required to provide evidence or testify as witnesses in criminal trials. In criminal prosecutions all relevant witnesses will likely receive a subpoena to appear as a witness in the case. Accurate and complete records of all CAF law enforcement assistance operations must be kept, including descriptions of contact with suspects and the identities of CAF members involved in enforcement activities.

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33. CAF support to law enforcement authorities imposes obligations upon the CAF to ensure the proper logging of information and the retention of evidence. In Canada there is a legal obligation on the prosecution to disclose all relevant evidence to the accused. In cases when the CAF assists law enforcement, care must be taken to retain original documents and records. This material may be required to be disclosed to an accused by the prosecution.

34. The disclosure of information collected by the CAF during any domestic operations may cause some concern. In particular, there may be a request made by the prosecution or a civil litigant to gain access to information related to national security, or the possibility may arise of having to disclose intelligence information obtained from foreign sources that are subject to non-disclosure agreements. Before any documents or records are provided to the prosecution or disclosed in a civil proceeding, a review of the material shall be made to ensure that classified information is not disclosed without proper safeguards. For cases involving the disclosure of potentially injurious information, legal assistance should be sought from the Office of the Judge Advocate General. In some cases "potentially injurious information" or "sensitive information" (*i.e.* information relating to international relations, national defence, or national security) may be protected from disclosure. There is a specific procedure for obtaining judicial authorization for the non-disclosure of such information. This procedure is handled by the federal Department of Justice. The application for non-disclosure must be made as soon as possible once such information is identified.

35. A claim against the Crown may arise as a result of CAF actions during domestic operations. CAF members participating in domestic operations may be subpoenaed to appear as witnesses in a civil claims proceeding or lawsuit. Members may only respond to such subpoena after obtaining direction from their chain of command. Incidents involving damage or harm done to third parties by the CAF during an operation must be thoroughly investigated and a complete report provided to the Director, Civil Claims and Litigation. No admission of liability may be made by any CAF member unless authorized to do so. In some cases, legal representation may be provided to CAF members pursuant to a Treasury Board policy.

36. **Treatment of Detainees during Domestic Operations.** During assistance to law enforcement operations the supported civilian law enforcement authorities will retain responsibility for the arrest of any persons that may be detained by CAF members. CAF members may be required to assist civilian police to arrest or detain persons suspected of having committed an offence or to prevent a breach of the peace. In some circumstances the CAF members may arrest or detain persons in the absence of civilian police when doing so is necessary to preserve life or prevent property damage.

37. With the exception of Military Police personnel, CAF members are not trained on arrest procedures, including the requirement to caution individuals of their rights under the *Charter of Rights and Freedoms* when an arrest is made. While CAF members normally should not be required to deal directly with detained persons, they must be aware that the act of arrest or detention imposes legal obligations on the persons

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making the arrest. As a minimum, any person apprehended or detained by CAF members must be advised of the reason for their arrest or detention, and told that they will be advised of their legal rights by a civilian police officer upon delivery to the civilian police authorities. Detained persons shall be handed over to civilian authorities as soon as possible.

38. The force that may be employed by the CAF member when making arrests will be as provided for in CDS authorized rules of engagement. When CAF personnel arrest or detain anyone they become responsible to protect the person detained from any harm. To ensure the safety of the detainee as well as themselves, CAF members may search a detainee for weapons or other means of inflicting harm on themselves or the CAF members. At all times detained persons are to be treated humanely and with respect.

Interim Summary

Legal framework for Domestic Operations

39. Domestic operations are conducted within the confines of Canadian territory and exclusive economic zones and take many different shapes and forms: assistance during civil emergencies; support to national development goals; support to the maintenance of public order and security, and/or their restoration; and conduct of surveillance-and-control operations. In domestic operations, DND and the CAF play a supporting role to, and only at the request of, federal, provincial/territorial or municipal lead civil authorities, with the exception of the defence-of-Canada role.

40. Under the *Constitution Act of 1867*, a division of legislative jurisdiction was made between the federal and provincial governments. At Section 91, the federal government was given exclusive jurisdiction for emergencies that span two or more provincial or territorial government jurisdictions. The *Emergency Management Act* sets out clear roles and responsibilities for all federal ministers across the full spectrum of emergency management. The primary responsibility for emergency preparedness activities lies with provincial and territorial governments. The provincial minister responsible for emergency preparedness or the Lieutenant-Governor in Council of a province or territory may require provincial or municipal government departments to formulate emergency plans.

Use of Force in Domestic Operations

41. CAF operations must be conducted in accordance with the rule of law. During law enforcement assistance operations it may become necessary to take action for the maintenance of law and order. This could put members of the CAF in a position where they may have to use force against their fellow citizens. Even during humanitarian assistance operations circumstances may arise during which civilian police are not present when crimes might be committed in the presence of CAF members. The basis

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for the use of force in domestic operations is statute law, primarily the *Criminal Code.* This legal foundation has been incorporated into procedures developed to allow the military chain of command to control the use of force. The *Criminal Code* authorizes the use of force in defence of persons and property or to prevent the commission of certain serious crimes in separate but related categories that at times overlap.

42. The *Criminal Code* sections dealing with self-defence have in common a concept of "justified use of force". This reflects the influence of a common law principle that in circumstances where the use of force is necessary, the harm sought to be prevented could not be prevented by less violent means and the injury done, or reasonably expected to be done, is not disproportionate to the harm it is intended to prevent. Section 34 of the *Criminal Code* requires that to justify the use of force to repel an unprovoked assault the force used cannot be intended to cause death or serious bodily harm and it cannot exceed that which is necessary to defend oneself. Similarly, section 37 of the *Criminal Code* sets out the conditions under which it is justified to use force to prevent an assault on oneself or anyone under one's protection.

43. Under Canadian law there is no legal basis to defend property with deadly force unless there also exists a coincident threat of death or serious bodily harm to a person. Section 27 of the *Criminal Code* provides justification for the use of as much force as is reasonably necessary to prevent the commission of serious offences that would likely cause immediate and serious injury to any person or their property. The right to protect different classes of property is expressly provided for in sections 38 to 42 of the *Criminal Code.* Subject always to the requirement that no more force than necessary be used, as a general rule, progressively more force may be used as one moves from defending personal (movable) property in one's possession to defending real property or a dwelling house. The greatest level of force may be justified when the defence of property is inextricably linked to defending persons from a threat of death or grievous bodily harm.

44. The maintenance of law and order is primarily the responsibility of the civilian police authorities. Except in those cases where they are employed in a law enforcement assistance role, or when performing aid of the civil power duties, CAF members have no special status or obligation to enforce the law. When employed in a law enforcement assistance or aid of the civil power role CAF members will be issued ROE specifically designed to enable them to carry out authorized law enforcement tasks. Although the *Criminal Code* contains specific provisions empowering police officers and others with peace officer status to use reasonable force to do what they are authorized or required to do to enforce or administer the law, the *Criminal Code* also contains a number of provisions that provide justification for ordinary persons, including CAF members not engaged in law enforcement assistance operations, to use force when taking action to prevent the commission of an offence. CAF members are individually liable for the force used by them. A CAF member who acts outside the scope of what the law authorizes to be done, or who acts on a belief or grounds that are not reasonable in the circumstances, or who uses more force than is reasonable and justifiable as necessary

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in the circumstances to achieve the purpose for using the force, may be held to have used excessive force.

Peace Officer Status

45. Peace officer status is a term most often associated with police officers. However, historically the classes of officials charged with responsibility to protect the peace included persons other than police officers. This continues today. The historical roots of the term are reflected in the definition of "peace officer" in section 2 of the *Criminal Code* which sets out an extensive list of public authorities responsible for preservation and maintenance of the public peace, or who are authorized to perform duties and functions related to enforcing Canadian law. Peace officer status is important for CAF members tasked with domestic law enforcement duties from two perspectives. First, the status provides lawful justification for the use of force in upholding the law or when executing tasks in the administration of the law. Second, peace officer status provides CAF members with protection from criminal and civil liability for actions taken when they are employed on law enforcement duties.

46. CAF personnel may benefit from a number of protections provided by the law. The *Criminal Code* provisions relating to self-defence or the use of reasonable force to prevent the commission of serious crimes, both of which are available to all Canadians, may provide CAF members legal protection in circumstances where it is not entirely clear that they are entitled to the protections arising from peace officer status. The *Criminal Code* provides specific powers to peace officers in a number of important areas that involve duties for which CAF personnel may be tasked during law enforcement assistance operations. At common law peace officers had a duty to uphold the peace. This duty was greater than the duty imposed on ordinary citizens to keep the peace. The duty of the citizen to take reasonable steps to prevent or stop a breach of the peace was but an imperfect obligation.

47. The liabilities of members of the CAF when performing law enforcement assistance duties approximate those of the civilian police. However, apart from the specific statutory duty to take reasonable steps to suppress a riot, there is no broad common law duty to enforce the law and CAF members cannot be expected to perform general law enforcement duties as would be expected of civilian police officers. Peace officer status arises by operation of law. There is no additional formality such as the taking of an oath or an official appointment before the status comes into effect. Generally speaking, members of the CAF have the status of a peace officer only at those times during a law enforcement assistance operation when they are performing duties related to enforcing the law. CAF members called out for service in aid of the civil power pursuant to Part VI of the *NDA* retain peace officer status throughout the time that they are called out. They continue to be governed by service discipline and must obey the orders of their military superiors.

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48. Article 22.01(2) of *Queen's Regulations and Orders* circumscribes those circumstances in which CAF members with peace officer status are performing duties that actually require them to have the powers and duties of peace officers. The article provides that CAF members will have the powers of peace officers when performing lawful duties resulting from a specific order or established military custom or practice related to any of the following matters: the maintenance or restoration of law and order, the protection of property, the protection of persons, the arrest or custody of persons, or the apprehension of persons who have escaped from lawful custody or confinement. Examples of when CAF members are enforcing Canadian law include a wide range of law enforcement assistance operations authorized pursuant to statute, orders in council or other legal instruments. CAF personnel employed on other than law enforcement assistance operations, such as humanitarian assistance operations, do not have peace officer status and the law provides them with no additional authority or status.

49. When the CAF provides support to law enforcement authorities a consequence can be that CAF members may be required to provide evidence or testify as witnesses in criminal trials. CAF support to law enforcement authorities imposes obligations upon the CAF to ensure the proper logging of information and the retention of evidence. The disclosure of information collected by the CAF during any domestic operations may cause some concern. In particular, there may be a request made by the prosecution or a civil litigant to gain access to information related to national security, or the possibility may arise of having to disclose intelligence information obtained from foreign sources that are subject to non-disclosure agreements. A claim against the Crown may arise as a result of CAF actions during domestic operations. CAF members participating in domestic operations may be subpoenaed to appear as witnesses in a civil claims proceeding or lawsuit. Members may only respond to such subpoena after obtaining direction from their chain of command.

50. During assistance to law enforcement operations the supported civilian law enforcement authorities will retain responsibility for the arrest of any persons that may be detained by CAF members. With the exception of Military Police personnel, CAF members are not trained on arrest procedures, including the requirement to caution individuals of their rights under the *Charter of Rights and Freedoms* when an arrest is made. While CAF members normally should not be required to deal directly with detained persons, they must be aware that the act of arrest or detention imposes legal obligations on the persons making the arrest. The force that may be employed by the CAF member when making arrests will be as provided for in CDS authorized rules of engagement.

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Suggested Questions

Q. In what shapes and forms domestic operations are? (Para 1)
(Assistance during civil emergencies; support to national development goals; support to the maintenance of public order and security, and/or their restoration; and conduct of surveillance-and-control operations)

Q. What are the characteristics of the *Emergency Management* Act? (Para 3)

Q. What are the start points for considering the use of force in domestic operations? (Para 6)

Q. On which occasions the law authorizes the use of force? (Para 8)
(In circumstances where it is necessary and justifiable, but absent necessity and the justification prescribed in the law, the use of force would be unlawful)

Q. Who authorizes ROE during domestic operations? (CDS, para 12)

Q. Who is responsible for unlawful use of force during domestic operations? (CAF members are individually liable for the force used by them, para 16)

Q. Why Peace officer status is important for CAF members tasked with domestic law enforcement duties? (Para 19)
(First, the status provides lawful justification for the use of force in upholding the law or when executing tasks in the administration of the law. Second, peace officer status provides CAF members with protection from criminal and civil liability for actions taken when they are employed on law enforcement duties)

Q. Which matters under QR&O 22.01 are covered related to peace officer status? (The maintenance or restoration of law and order, the protection of property, the protection of persons, the arrest or custody of persons, or the apprehension of persons who have escaped from lawful custody or confinement) (Para 29)

Note to the Instructor: Encourage students to actively participate in the lesson and to reason through problems.

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PART 3 – BODY OF THE LESSON

Stage 2 – Defence of Canada

Introduction

1. The *Canada First Defence Strategy* of the Government of Canada identifies the primary role of the CAF as ensuring the security of our citizens and helping exercise Canada's sovereignty. The CAF, as a professional military body, remains under the control of the elected federal government at all times. In accordance with section 14 of the NDA, command of the CAF is vested in the Sovereign, who, through Letters Patent Constituting the Office of Governor General of Canada, has authorized the Governor General to exercise this command on behalf of the Sovereign. As a matter of political convention however, the political executive, being the Prime Minister of Canada and the federal Cabinet, exercises control over the CAF. Furthermore, section 4 of the *NDA* stipulates that "the management and direction of the Canadian Forces and of all matters relating to national defence" is assigned to the Minister of National Defence, a member of Cabinet. This control over the CAF exercised by the government occurs within the legal framework defined by statutes and regulations and also, in part, by means of the Crown prerogative. This prerogative power enables the government to exercise certain executive powers in the absence of specific statutory authority, and to react quickly to complex situations. Within the military context, the general authority to defend Canada using the CAF, and the authority to deploy the CAF internationally, and in some cases domestically, is found in the Crown prerogative.

2. **Domestic**. Canada's geographic size, the harsh nature of its climate, and the nature of its ocean approaches, require a military force structure that is joint, robust, sustainable, and able to operate in a multi-faceted environment. The Canadian domestic theatre of operations, known as the Canadian AOR, is considered as a single theatre with three distinctive zones of operation. The CAF must have the capabilities to effectively command, plan, lead, and sustain any military operation in the Canadian AOR.

3. The Canadian AOR's three distinct zones are:

   a. **Maritime Regions**. The CAF must be capable of conducting 24/7, all weather, sea- and shore based surface, subsurface, and air-based defence-of-Canada operations in the Atlantic and Pacific approaches. To achieve this, the CAF requires military capabilities that can effectively exercise command and control of joint forces in the Canadian AOR as well as being capable of integration with whole-of-government (WoG) activities in order to:

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(1) respond to military- and terrorist-based threats to defence and security both within the Canadian maritime zones and in their adjacent approaches;

(2) respond to jurisdictional and commercial incursions to Canadian sovereignty;

(3) respond to environmental and economic interests inside the Canadian Exclusive Economic Zone; and

(4) support Canadian other government departments and agencies (OGDA), and partners in industry engaged in disaster relief, humanitarian aid, and search-and rescue operations throughout the Canadian AOR.

b. **Arctic Region**. The challenging environmental conditions found in the Arctic region require forces capable of carrying out operations in an austere environment with limited or no local support. The forces must be capable of commanding, coordinating, and sustaining operations as well as supporting OGDA. This is particularly important given the increased emphasis on potential northern operations due to climate change and increased international interest.

c. **Internal Territory**. Given the jurisdictional responsibilities of various federal, provincial, and municipal government departments, the CAF should not, typically, be the first responder to terrorist incidents, natural disasters, major accidents, or humanitarian relief within Canada. In these situations, the CAF response desired by those civilian government organizations with leadership jurisdictions, are likely to involve the provision of: coordinated command and control; significant human resources; deployable medical support; SOF; or chemical, biological, radiological, and nuclear (CBRN) response. A notable exception to this is CAF domestic search-and-rescue (SAR) forces who are the first responders for domestic maritime or aviation accidents and incidents.

4. **Continental Operations**. Continental operations are carried out within the North American AOR in support of Canada-United States (US) shared strategic objectives. To accomplish this, the CAF has established memoranda of understanding (MOUs) with the appropriate US military and selected government departments and agencies (e.g., the Department of Homeland Security) and participates in binational planning forums. Specific continental operations missions include: the defence of North America in conjunction with the United States; the continuous surveillance of North America and its approaches from sea, land, air, and space; SAR operations; disaster-relief operations; counter-narcotics operations; counter-proliferation operations; and counterterrorism operations.

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5. **International Operations**. The CAF is responsible for the conduct of operations and campaigns on a global scale encompassing the full spectrum of operations in response to Government of Canada direction. Unlike domestic operations, there are no predefined distinct zones of operation for international operations. Specifically, the CAF is responsible for the planning, the conduct, and the sustainment of international operations including major combat operations (MCOs), maritime-interdiction operations (MIOs), counter-insurgency operations (COINOPs), peace-support operations (PSOs), humanitarian assistance operations, NEOs, operations for the prevention of proliferation of weapons of mass destruction (WMD), and training-assistance operations (such as those provided under the Military Training Assistance Program).

6. **Canada-United States Defence Cooperation**. The US is Canada's most important ally and defence partner. The relationship between the two countries goes beyond security issues and is underpinned by close economic interdependence and shared values. Canada and the US have more than 80 treaty-level defence agreements, the most important of which is the mission carried out by the North American Aerospace Defense Command (NORAD). NORAD is a bi-national military organization formally established in 1958 by Canada and the US to monitor and defend North American airspace.

7. NORAD has evolved and is currently charged with the missions of aerospace warning and aerospace control for North America. Through mutual support arrangements with other commands, aerospace warning includes the monitoring of man-made objects in space; and the detection, validation, and warning of attack against North America (whether by aircraft, missiles, or space vehicles). Aerospace control includes ensuring air sovereignty and air defence of the airspace of Canada and the US. The May 2006 *NORAD Agreement Renewal* added a maritime warning mission, which entails a shared awareness and understanding of the activities conducted in US and Canadian maritime approaches, maritime areas, and inland waterways.

8. The NORAD commander is responsible to both the US President and the Canadian Prime Minister. When a US officer, Commander NORAD also command US Northern Command (USNORTHCOM). The NORAD-USNORTHCOM Command Center serves as a central collection and coordination facility for a worldwide system of sensors designed to provide the commander and the leadership of Canada and the US with an accurate picture of any aerospace threat.

9. USNORTHCOM was established in 2002 to provide command and control of US Department of Defense (DoD) homeland security efforts and to coordinate defence support of civil authorities. USNORTHCOM's specific mission is the anticipation and conduct of homeland defence and civil support operations within the assigned area of responsibility to defend, protect, and secure the US and its interests. The USNORTHCOM area of responsibility includes air, land, and sea approaches and encompasses the continental United States, Alaska, Canada, Mexico and the surrounding water out to approximately 500 nautical miles. It also includes the Gulf of

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Mexico and the Straits of Florida. The commander of USNORTHCOM is responsible for theatre security cooperation with Canada and Mexico.

10. NORAD Organization has been covered previously under *EO 021.03 Advise on legal bases and authorities pertaining to continental CAF operations*. Please refer to this lecture for more details.

11. **Canadian Special Operations Forces Command (CANSOFCOM).** CANSOFCOM fully participates in the primary CAF mission of providing for the defence of Canada. Specifically, CANSOFCOM is responsible for:

a. providing the Government of Canada with high readiness SOF capable of conducting:

(1) **Counterterrorism operations.** Offensive and defensive measures taken to prevent, deter, pre-empt, and respond to terrorism.

(2) **Maritime counterterrorism operations**. Counterterrorism (CT) operations within the extremely complex maritime environment.

(3) **High-value task.** Other missions, at home or abroad, assigned by the Government of Canada such as: special reconnaissance; direct action; counter-proliferation; NEO; and defence, diplomacy, and military assistance.

b. generating forces and deploying SOF capable of global reach and response to emerging threats to Canada's national interest;

c. developing SOF and organizations that remain on the leading edge of technology and operational capability to meet the requirements of the current and future security environments;

d. providing expert advice on special operations and CT to government officials, OGDA, senior military decision makers, and other CAF entities for routine planning, exercise, or crisis events; and

e. providing the Government of Canada and the CAF with a conduit to allied special operations and CT expertise, technology, research, and development.

12. CANSOFCOM also contributes to the overall defence of Canadian national interests by conducting operations abroad in support of CAF conventional forces, as well as on discrete and separate missions that support Government of Canada objectives. CANSOFCOM provides strategic flexibility to tailored responses in a complex strategic environment.

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13. The high-readiness posture, skill level, and deployability of SOFs allow for a rapid and determined response, but also serve as a building block for follow-on forces. CANSOFCOM provides forces that can deter and disrupt violent organization either in support of conventional operations or on discrete missions. CANSOFCOM forces may also assist partners in upgrading their CT capabilities. In general terms, CANSOFCOM operations abroad strive to:

a. destroy, disorganize, and disrupt the networks of violent organizations;

b. degrade and deny access of violent organizations to the nation's population;

c. construct social networks to promote legitimacy of efforts; and

d. organize, enable, and improve partner's tactical and operational skills in CT.

14. The effects that CANSOFCOM can deliver are keyed to its unique capabilities. First, selected components of the Command are constantly on high-readiness alert in order to provide an agile and timely response. Second, CANSOFCOM can provide highly skilled special operations task forces to conduct high-risk missions that have major strategic ramifications such as hostage rescue or special reconnaissance for operational planning and decision making. Third, CANSOFCOM contains a baseline capacity to mitigate the results and deter the use of weapons of mass effect. Fourth, CANSOFCOM facilitates the engagement with allied organizations in the fight against terrorism, as well as providing assistance to nations seeking to build SOF capacity to provide for their own internal defence. Finally, CANSOFCOM missions can set the parameters for theatre activation or shape the AO for conventional operations.

Interim Summary

Defence of Canada

15. The *Canada First Defence Strategy* of the Government of Canada identifies the primary role of the CAF as ensuring the security of our citizens and helping exercise Canada's sovereignty. The CAF, as a professional military body, remains under the control of the elected federal government at all times. In accordance with section 14 of the NDA, command of the CAF is vested in the Sovereign, who, through Letters Patent Constituting the Office of Governor General of Canada, has authorized the Governor General to exercise this command on behalf of the Sovereign. As a matter of political convention however, the political executive, being the Prime Minister of Canada and the federal Cabinet, exercises control over the CAF. Furthermore, section 4 of the *NDA* stipulates that "the management and direction of the Canadian Forces and of all matters relating to national defence" is assigned to the Minister of National Defence, a member of Cabinet.

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16. Canada's geographic size, the harsh nature of its climate, and the nature of its ocean approaches, require a military force structure that is joint, robust, sustainable, and able to operate in a multi-faceted environment. The Canadian domestic theatre of operations, known as the Canadian AOR, is considered as a single theatre with three distinctive zones of operation. The CAF must have the capabilities to effectively command, plan, lead, and sustain any military operation in the Canadian AOR. The Canadian AOR's three distinct zones are Maritime Regions, Arctic Region and Internal Territory

17. Continental operations are carried out within the North American AOR in support of Canada-United States (US) shared strategic objectives. To accomplish this, the CAF has established memoranda of understanding (MOUs) with the appropriate US military and selected government departments and agencies (e.g., the Department of Homeland Security) and participates in binational planning forums. The CAF is responsible for the conduct of operations and campaigns on a global scale encompassing the full spectrum of operations in response to Government of Canada direction. Unlike domestic operations, there are no predefined distinct zones of operation for international operations.

18. The US is Canada's most important ally and defence partner. The relationship between the two countries goes beyond security issues and is underpinned by close economic interdependence and shared values. Canada and the US have more than 80 treaty-level defence agreements, the most important of which is the mission carried out by the NORAD. It has evolved and is currently charged with the missions of aerospace warning and aerospace control for North America. The NORAD commander is responsible to both the US President and the Canadian Prime Minister. USNORTHCOM was established in 2002 to provide command and control of US Department of Defense (DoD) homeland security efforts and to coordinate defence support of civil authorities. USNORTHCOM's specific mission is the anticipation and conduct of homeland defence and civil support operations within the assigned area of responsibility to defend, protect, and secure the US and its interests.

19. CANSOFCOM fully participates in the primary CAF mission of providing for the defence of Canada. CANSOFCOM also contributes to the overall defence of Canadian national interests by conducting operations abroad in support of CAF conventional forces, as well as on discrete and separate missions that support Government of Canada objectives. CANSOFCOM provides strategic flexibility to tailored responses in a complex strategic environment. The effects that CANSOFCOM can deliver are keyed to its unique capabilities.

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Suggested Questions

Q. What are the three Canadian AOR's zones? (Para 3)
(Maritime Regions, Arctic Region, Internal Territory)

Q. What is the USNORTHCOM mission? (Para 9)

Q. What are CANSOFCOM responsibilities in the defence of Canada?
(Paras 11, 12)

Q. What CANSOFCOM operations abroad strive to? (Para 13)

Q. What effects CANSOFCOM may deliver? (Para 14)

Note to the Instructor: Encourage students to actively participate in the lesson and to reason through problems.

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PART 3 – BODY OF THE LESSON

Stage 3 – Sovereignty Operations

Introduction

Sovereignty Operations

1. The *Canada First Defence Strategy* of the Government of Canada identifies the primary role of the CAF as ensuring the security of our citizens and helping exercise Canada's sovereignty. The challenging environmental conditions found in the Arctic region require forces capable of carrying out operations in an austere environment with limited or no local support. The forces must be capable of commanding, coordinating, and sustaining operations as well as supporting OGDA. This is particularly important given the increased emphasis on potential northern operations due to climate change and increased international interest. The CAF must help assert Canada's sovereignty and ensure the security of its citizens by fulfilling essential national responsibilities. The CAF must also work closely with federal government partners to ensure that Canada's territory as well as her air and maritime approaches are monitored constantly in order to detect threats to Canadian security as early as possible.

2. The CAF must be capable of addressing domestic threats quickly and effectively. While for the most part, other government departments (OGDs) and agencies have lead responsibilities in this area, the CAF has a vital role to play in many instances from scrambling fighters to intercept an unknown potential air threat that has strayed too close to Canadian airspace to deploying special operations forces in response to a terrorist threat. The CAF's role at home also includes assisting civilian authorities to fulfill their mandated national security responsibilities. While the CAF does not have the lead role in responding to domestic emergencies of this nature, if called upon, the CAF must be ready to support civilian authorities as required. This necessitates close coordination between military and federal departments such as Public Safety Canada, as well as provincial and territorial governments. The CAF must also be ready to assist OGDs for Canadian security concerns such as overfishing, organized crime, drug interdiction, human smuggling, and environmental degradation.

3. The CAF must also have the capacity to exercise control and assert Canada's sovereignty in the Canadian Arctic. As activity in the Canadian Arctic, both on land and on water, increases, the CAF will have a critical role to play in demonstrating a visible Canadian presence in this potentially resource rich region and in helping other government agencies respond to any contingencies.

Joint Task force North (JTFN)

4. JTFN provides Canadian Joint Operations Command with a robust operational headquarters with the capability to effectively plan, command, support, and execute

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joint, integrated and combined expeditionary operations throughout the North such as in Operations NANOOK, NUNALIVUT and NUNAKPUT (hereafter Sovereignty Operations).

5. **Sovereignty Operations.** The largest sovereignty operations conducted annually in Canada's North, Operation NANOOK takes place in several locations across Yukon, the Northwest Territories and Nunavut. The objectives of those Sovereignty Operations are:

a. To assert Canada's sovereignty over its northernmost regions;

b. To enhance the CAF' ability to operate in Arctic conditions;

c. To improve coordination in whole-of-government operations; and

d. To maintain interoperability with mission partners for maximum effectiveness in response to safety and security issues in the North.

6. **Task Force.** The joint forces deployed on Sovereignty Operations in the North comprise personnel and assets from across Canada, and may be drawn from any or all of the primary force-generators of the CAF:

a. the Royal Canadian Navy (RCN);

b. the Canadian Army;

c. the Royal Canadian Air Force (RCAF); and

d. Canadian Special Operations Forces Command (CANSOFCOM).

7. The size and make-up of the forces deployed on Sovereignty Operations vary from year to year, according to the planned mix of activities and exercises, but they always include the following organizations of JTFN:

a. 1st Canadian Ranger Patrol Group, a Reserve formation of the Canadian Army headquartered in Yellowknife, with 60 patrol units distributed in communities across the North, and

b. 440 "Vampire" Transport Squadron, an RCAF unit based in Yellowknife, flying the CC-138 Twin Otter, a utility transport aircraft designed for short take-off and landing.

c. 407 Long Range Patrol Squadron from 19 Wing Comox and 405 Long Range Patrol Squadron from 14 Wing Greenwood, operating CP-140 Aurora long range reconnaissance aircraft.

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8. Over the years, the forces deployed on Sovereignty Operations have been combined and integrated with:

a. international military partners;

b. Canadian federal government departments and agencies; and

c. provincial, territorial and municipal governments.

Sovereignty Operations are conducted under operational command of the Commander CJOC and operational control of JTFN HQ in Yellowknife, Northwest Territories.

Mission Context

9. **Area.** The DND and CAF define the North as the area encompassing:

a. the Sub-Arctic Region, the part of Canada that lies between 55 and 60 degrees North latitude; and

b. the Arctic Region, the part of Canada that lies north of 60 degrees North latitude.

The high Arctic is the part of the Arctic Region that lies North of the Arctic Circle, which is 66.5 degrees North latitude.

10. **Global environment.** The Arctic is known to have vast reserves of fossil fuels and an abundance of minerals, including gold and diamonds, and is increasingly accessible due to climate change. Consequently, this region is attracting more and more Canadian and international attention. Because climate change is gradually eroding the Arctic icecap, the waters of the Arctic Archipelago are more navigable every year and more ships enter the region. The increase in traffic at sea and in the air, and the escalating exploitation of natural resources in the North, boost the risk of sovereignty challenges, environmental problems, accidents giving rise to SAR requirements, and criminal activity, especially illicit entry of people and goods.

11. **Mission.** Sovereignty Operations have been conducted annually since 2007. As an Arctic nation, Canada regularly and fully exercises its sovereign rights and jurisdiction in its northern territories. The CAF have a significant role to play in forestalling sovereignty challenges, defending Canada against threats in the region, and protecting Canadians by supporting whole-of-government efforts to ensure appropriate responses to security and environmental concerns in the North.

12. Op NANOOK is the CAF' annual engagement with international military and security partners to demonstrate interoperability in the Arctic. This aspect of the operation usually entails exercises using scenarios in which the CAF partner with other Canadian government departments and agencies, and with allied armed forces, to mount whole-of-government responses to security and environmental issues. Op

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NANOOK typically involves simultaneous activities at sea, on land and in the air, and all force-generators may be tasked to deploy personnel, capital equipment and other resources. The number of soldiers, sailors, airmen and airwomen deployed on Op NANOOK has ranged from about 650 to more than 1,250.

13. Op NUNALIVUT allows the CAF to provide meaningful support to scientific research in the Arctic, and to demonstrate interoperability in the High Arctic with military allies and other Canadian government institutions. In Op NUNAKPUT, the CAF conduct concurrent and complementary operations with the Royal Canadian Mounted Police (RCMP), Fisheries and Oceans Canada (DFO) and Environment Canada (EC). These activities test the effectiveness of the CAF northern capabilities and promote the whole-of-government working model outlined in the Canada First Defence Strategy and Canada's Northern Strategy.

14. **Results.** Sovereignty Operations helps ensure the North remains secure within a strong and sovereign Canada. It enables the CAF to demonstrate their joint capabilities to operate effectively at sea, on land and in the air across all regions of the North. It strengthens the CAF' links with international, interdepartmental and intergovernmental partners, and showcases the support the CAF have to offer in response to threats to public safety and other hazards in northern regions. The recurring presence of the CAF throughout our country's northern regions visibly expresses Canadian sovereignty while providing Canadian Joint Operations Command with eyes and ears in some of Canada's most remote areas.

Legal Issues arising during Arctic Operations

15. Each new mission or operation involves the provision of legal advice in a multitude of areas. Primarily, legal advice focused on identifying the legal authority for the CAF to carry out the operation and the inextricably linked parameters that defined what the CAF and its members could or could not do. Additional areas focused on a broad spectrum of legal issues that facilitated the operations, such as discipline, contracting, and claims. Just as the nature of operations are becoming more complex, so too are the legal issues that arise prior to, during, and following an operation. The complexities and sensitivities of most CAF operations require the operational commander at any level to have a sound understanding of the legal issues associated with such operations. The challenge for the commander is to obtain timely and accurate operational legal advice in order to ensure that the mission is successfully executed in accordance with the rule of law. Consequently, Arctic Operations still need to follow the law. The following points quite not exhaustive are issues that might have legal implications during Arctic Operations.

16. **Canadian Rangers (CR).** There is no obligation under CFAO 2-8 or "CDS Revised Role, Mission and Tasks of Canadian Rangers (dated 11 Jul 08)" requiring CR to:

a. participate in Arctic Operations, exercises or training; or

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b. provide predator control during Arctic Operations, exercises or training.

17. CR may be placed on Class "A", "B" or "C" service at the discretion of the responsible Commander and paid accordingly pursuant to para 33 of CFAO 2-8. "CDS Revised Role, Mission and Tasks of Canadian Rangers" outlines the roles and mission of CR which may include being "tasked to provide support, within their role, to other CAF components conducting military training."

18. Responsible Commander may order CR to participate in Arctic Operations, exercises and training. CR may be ordered by responsible Commander to educate and train CAF members regarding light snow operational vehicle (LSOV) operation, LSOV repair, navigation, predator control, survival techniques, weapons training and/or other skills. Survival techniques could include instruction regarding proper dressing, cleaning, cooking and eating wildlife and/or flora.

19. **CR Acting as Guides.** The term "guide" in CFAO 2-8 does not satisfy the definition of a "guide" or "outfitter" in Territorial legislation or regulations. CAF training involving hunting in the Arctic requires CAF to hire a guide to hunt big game pursuant to Territorial legislation. CR could be hired as a hunting "guide", if CR acts in his or her civilian capacity, and if CR is a licenced hunting guide pursuant to the relevant legislation. Hunting small game or game birds does not require a guide but CAF members must obtain hunting licences. Territorial legislation is clear that a hunting guide, possibly CR acting in a civilian capacity, shall not wound or kill wildlife on behalf on CAF members except in limited circumstances.

20. **CR Hunting & Fishing Rights.** CR primarily consists of individuals from Aboriginal organizations. Treaties, Federal Court decisions, federal legislation and Territorial legislation have recognized traditional Aboriginal organizations rights to hunt and fish on traditional lands and waters. However, these rights are not absolute and may be curtailed by government. Geographic restrictions regarding the right to hunt and fish by Aboriginal peoples are common. For example, a member of the Sahtu First Nation may hunt and fish within the Sahtu Settlement Area but his or her hunting/fishing rights do not extend to the Inuvialuit land claims area.

21. Territorial *Wildlife Acts* contain geographic restrictions regarding hunting rights for members from Aboriginal groups. The Inuit of Northern Quebec, Aboriginal People of the NWT, members of a Manitoba Band or members of a Saskatchewan Band are permitted to hunt in Nunavut in areas that are "traditionally used and continue to be used for that purpose" pursuant to Sec. 12, 13 and 14 of Nunavut *Wildlife Act*. Note this *Act* curtails the right to hunt as it does not extend to the entire Nunavut Territory and may expire due to inactivity. CR could be required to purchase a hunting and/or fishing licence while participating in Arctic training depending on the requirement to hunt/fish, the location of the hunting/fishing and despite CR being members of an Aboriginal group.

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22. Members of Aboriginal groups may exercise their right to hunt, fish and/or trap, within the appropriate area for self, family, community sustenance or commercial purposes. Treaties, Federal Court decisions, Federal legislation, regulations may govern said hunting by setting quotas limiting the quantity of harvested game or fish. Said rights do not extend to CR hunting or fishing on behalf of CAF during military operations, exercises or training.

23. **Claims Against the Crown.** Risks of DND damaging private or OGD property increase as DND conducts Arctic Operations, exercises, training and other military activities. Risks also increase if DND temporarily uses structures such as airports, airstrips, bridges, community centres, civilian medical facilities, quarries and/or schools. Damage to private or public property caused by DND could result in a Claim Against The Crown. Claims Against the Crown are usually handled by DJA Yellowknife and AJAG Western Region.

24. **Environmental Authorizations and Permits.** CAF units conducting Arctic Operations, training or exercises must obtain the required authorizations and permits from the appropriate land owner/administrator (Aboriginal organizations, AANDC, EC, PC and/or Territorial government departments). CAF units should contact JTFN Eng and JTFN Environment Officer at Canadian Forces Base (CFB) Edmonton for advice.

25. **Intelligence Collection & Surveillance.** Surveillance platforms used during Arctic Operations, exercises, training and military may consist of aircraft, helicopters, land based systems, satellites, submarines, unmanned aerial vehicles (UAV) and unmanned underwater vehicles (UUV). Surveillance pursuant to CAF's national defence mandate during Arctic Operations, exercises or training is not problematic so long as said surveillance does focus on specific individuals or property.

26. **Privacy Issues.** Legal issues involving the *Privacy Act*, and other legislation, could arise if DND receives requests from OGD to conduct surveillance on specific individuals or property. Should sharing information with OGD occur, legal issues involve the *Privacy Act*, *Access To Information Act* (*ATIA*) and other Federal legislation. Legal advice will be provided on a case-by-case basis and is fact dependent, taking into account the following:

c. when was the information gathered;

d. type of information collected;

e. where was the information collected;

f. purpose of collecting the information;

g. how will the information be used;

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h. what Federal, Provincial or Territorial government department will have access and use the information; and

i. other relevant factors.

CAF units should contact JAG for legal advice regarding intelligence collection and surveillance prior to conducting any Arctic Operations, exercises, training or other military activities.

27. **Land Claims.** The location and type/scope of DND Arctic Operations, exercises, training and other military activities may affect traditional Aboriginal rights or subject DND to Aboriginal land claims provisions. DND adheres to Federal legislation regarding traditional Aboriginal rights and land claims by:

a. sending written correspondence to affected Aboriginal organizations prior to accessing affected lands and/or waters;

(1) written correspondence could be in English, French and possibly Aboriginal languages (if required);

b. consulting and engaging with affected Aboriginal organizations to promote cooperation and maintain positive community relations;

(1) engagement activities could occur at Territorial, regional and municipal levels;

c. obtaining consent or agreement from affected Aboriginal Peoples to access lands and waters, which could be obtained through the Environmental authorization process.

28. CAF units must have Aboriginal Peoples' consent or agreement prior to conducting Arctic Operations, exercises, training and other military activities if said military activity is conducted on Aboriginal lands and/or waters. Lack of consent means no DND operation, exercise or training on said lands and/or waters except for CAF search and rescue (SAR) or responding to an emergency. CAF units should liaise with JTFN, JTFN POLAD, JTFN Eng and DJA Yellowknife for advice on Aboriginal matters, land claims and other issues prior to conducting operations, exercises, training or other military activities.

29. **Military Police (MP).** MP participation, if required, during Arctic Operations, exercises and training involves several legal issues. MP should liaise with RCMP regarding concurrent jurisdiction over offences and request MP handle criminal investigations involving CAF members whenever possible. In addition, MP must verify their jurisdiction as their jurisdiction could be limited to Controlled Access Areas, defence establishments or other confined operational areas. MP should liaise with JTFN

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Provost Marshall and obtain legal advice from appropriate JAG to resolve these legal issues.

30. **Operations Orders.** Arctic Operations, exercises, training and other military activities may involve several Op Orders from various CAF organizations. CAF units should verify the following prior to conducting Arctic Operations, exercises, training and other military activities:

a. CDS Op Orders;

b. CJOC Continental Op Orders; and

c. CAF Unit Op Orders.

31. **Private Property.** CAF units must verify whether DND requires use of private lands and/or waters during Arctic Operations, exercises or training. If so, DND must identify owners of private property, enter into legal agreements with said owners regarding MND control of said property, obtain legal advice from appropriate JAG, liaise with real property personnel at CFB Edmonton and liaise with JTFN.

32. **Rules of Engagement (ROE).** CAF contingency operations ROE process is:

a. CJOC sends a ROE REQ to CDS;

b. CDS sends a ROE AUTH to CJOC; and

c. CJOC sends JTFN a ROE IMP.

CAF units should obtain relevant ROE prior to conducting any Arctic Operations, exercises, training or other military activities. CAF units should contact JAG for legal advice regarding appropriate ROE and proper language for Soldiers' Cards. CAF units should distribute electronic and hard copy of ROE to JTFN and DJA Yellowknife. Please note that drafting and implementing ROE is a Chain of Command responsibility.

33. **Self-Defence & Wildlife.** CAF members may act in self-defence and kill wildlife if it is necessary to preserve human life, protect property or prevent starvation pursuant to Territorial legislation. However, killing wildlife in said circumstances requires CAF members to report the killing and deliver the wildlife to a Conversation Officer. An informal criminal investigation into the incident will be completed by a Conversation Officer. Please note that CAF members have the right to remain silent and other Charter rights during a Conservation Officer's investigation. Therefore, CAF members are not obligated to make any statements to a Conservation Officer. CAF units should develop SOP regarding predator control and self-defence in the Arctic. CAF members should be trained in escalation of force techniques that avoid harming wildlife and kill wildlife as the last option.

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Interim Summary

34. The *Canada First Defence Strategy* of the Government of Canada identifies the primary role of the CAF as ensuring the security of our citizens and helping exercise Canada's sovereignty. The challenging environmental conditions found in the Arctic region require forces capable of carrying out operations in an austere environment with limited or no local support. The forces must be capable of commanding, coordinating, and sustaining operations as well as supporting OGDA. The CAF must be capable of addressing domestic threats quickly and effectively. While for the most part, other government departments (OGDs) and agencies have lead responsibilities in this area, the CAF has a vital role to play in many instances from scrambling fighters to intercept an unknown potential air threat that has strayed too close to Canadian airspace to deploying special operations forces in response to a terrorist threat.

35. JTFN provides Canadian Joint Operations Command with a robust operational headquarters with the capability to effectively plan, command, support, and execute joint, integrated and combined expeditionary operations throughout the North such as in Operations NANOOK, NUNALIVUT and NUNAKPUT (hereafter Sovereignty Operations). The largest sovereignty operations conducted annually in Canada's North, Operation NANOOK takes place in several locations across Yukon, the Northwest Territories and Nunavut. The joint forces deployed on Sovereignty Operations in the North comprise personnel and assets from across Canada, and may be drawn from any or all of the primary force-generators of the CAF. The size and make-up of the forces deployed on Sovereignty Operations vary from year to year, according to the planned mix of activities and exercises, but they always include the 1st Canadian Ranger Patrol Group, 440 "Vampire" Transport Squadron and 407 Long Range Patrol. Over the years, the forces deployed on Sovereignty Operations have been combined and integrated with international military partners, Canadian federal government departments and agencies and provincial, territorial and municipal governments. The Arctic is known to have vast reserves of fossil fuels and an abundance of minerals, including gold and diamonds, and is increasingly accessible due to climate change. Because climate change is gradually eroding the Arctic icecap, the waters of the Arctic Archipelago are more navigable every year and more ships enter the region.

36. Sovereignty Operations have been conducted annually since 2007. As an Arctic nation, Canada regularly and fully exercises its sovereign rights and jurisdiction in its northern territories. Op NANOOK is the CAF' annual engagement with international military and security partners to demonstrate interoperability in the Arctic. Op NUNALIVUT allows the CAF to provide meaningful support to scientific research in the Arctic, and to demonstrate interoperability in the High Arctic with military allies and other Canadian government institutions. In Op NUNAKPUT, the CAF conduct concurrent and complementary operations with the Royal Canadian Mounted Police (RCMP), Fisheries and Oceans Canada (DFO) and Environment Canada (EC). These activities test the effectiveness of the CAF northern capabilities and promote the whole-of-government working model outlined in the Canada First Defence Strategy and Canada's Northern Strategy.

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37. Each new mission or operation involves the provision of legal advice in a multitude of areas. Primarily, legal advice focused on identifying the legal authority for the CAF to carry out the operation and the inextricably linked parameters that defined what the CAF and its members could or could not do. A number of issues such as Employment of Canadian Rangers (CR), CR acting as guides, CR Hunting & Fishing Rights, Claims Against the Crown, Environmental Authorizations and Permits, Intelligence Collection & Surveillance, Privacy Issues, Land Claims, Military Police services, Operations Orders, Private Property, Rules of Engagement, Self-Defence & Wildlife might have legal implications while conducting Arctic Operations.

Suggested Questions

Q. What is the aim of the *Canada First Defence Strategy*? (Para 1)

Q. What are the Sovereignty Operations conducted in the North? (Para 4)

Q. What are the objectives of Sovereignty Operations? (Para 5)

Q. Which organizations are the primary force-generators for Sovereignty Operations? (Para 6)

Q. Which organizations are always included of Sovereignty Operations? (Para 7)

Q. What is Op NANOOK Mission? (Para 12)

Q. What is Op NUNALIVUT Mission? (Para 13)

Q. What is Op NUNAKPUT Mission? (Para 13)

Q. Which legal issues might arise during Arctic Operations (Paras 15 to 33) (Employment of Canadian Rangers (CR), CR acting as guides, CR Hunting & Fishing Rights, Claims Against the Crown, Environmental Authorizations and Permits, Intelligence Collection & Surveillance, Privacy Issues, Land Claims, Military Police services, Operations Orders, Private Property, Rules of Engagement, Self-Defence & Wildlife)

Note to the Instructor: Encourage students to actively participate in the lesson and to reason through problems.

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PART 3 – BODY OF THE LESSON

Stage 4 – Aid of the Civil Power

Introduction

1. Part VI of the *NDA* gives the Attorney General of a province the power to require the CAF to be called out in aid of the civil power for a situation involving a riot or disturbance. That can occur if, in the opinion of the Attorney General of the province, there is a riot or disturbance of the peace that occurs or is likely to occur and is beyond the powers of the civil authorities to suppress, prevent, or deal with. CAF members of the Regular Force are liable to serve in aid of the civil power. Members of the Reserve Force, excluding those of the Supplementary Reserve, may be called out to serve in aid of the civil power in accordance with *NDA* sections 275 and 276 and QR&O 9.03.

2. The provincial Attorney General may make a written requisition to the CDS, or designate, requiring the CAF to provide service in aid of the civil power. Once the requisition is received, the CDS, or designate, shall, subject to such directions as the MND considers appropriate in the circumstances and in consultation with that Attorney General and the Attorney General of any other province that might be affected, comply with the request by calling out such part of the CAF that the CDS or his designate considers necessary for the purpose of suppressing or preventing any actual riot or disturbance or any riot or disturbance that is considered as likely to occur.

3. When the CAF is called out for service in aid of the civil power, it does not replace the civil authorities; it assists them in the maintenance of law and order. While on aid-of-the-civil-power duties, CAF members will have the powers and duties of constables. Further by virtue of section 2 of the *Criminal Code*, they also have the powers and protections of peace officers. However, CAF members are not peace officers for all purposes and are not obligated to enforce civil laws, as would be the case for civilian police officers. CAF members must act as a military body, and members will remain individually liable to obey the lawful orders of their superior officers.

4. During CAF aid-of-the-civil-power operations, the participation of the civilian government is very important to ensure that the CAF remains in support of the civilian authorities. Once the military force arrives at the incident site, the local commander shall ensure that a representative of the civil authorities is present and remains at the scene until that representative directs the commander to take action on its behalf. A representative of the civil authorities is a person designated by the provincial Attorney General or Deputy Attorney General, generally a senior police officer with adequate training and experience in the control of riots or disturbances. There should be sufficient representatives available to accompany each separate group of armed CAF members who may be required to use force. The role of the civil representative is to request the military commander to initiate action when the representative has determined the

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situation is beyond the power of the civil authorities, and that action by the CAF is essential to resolving the situation. The CAF members called out in aid of the civil power will remain on duty in such strength as the CDS, or designate, deems necessary until the CAF are no longer required as notified by the provincial Attorney General.

5. Aid of the Civil Power has been covered previously under *EO 021.02 Advise on legal bases and authorities pertaining to domestic CAF operations*. Please refer to this lecture for more details.

Interim Summary

6. Part VI of the *NDA* gives the Attorney General of a province the power to require the CAF to be called out in aid of the civil power for a situation involving a riot or disturbance. That can occur if, in the opinion of the Attorney General of the province, there is a riot or disturbance of the peace that occurs or is likely to occur and is beyond the powers of the civil authorities to suppress, prevent, or deal with. The provincial Attorney General may make a written requisition to the CDS, or designate, requiring the CAF to provide service in aid of the civil power. Once the requisition is received, the CDS, or designate, shall, subject to such directions as the MND considers appropriate in the circumstances and in consultation with that Attorney General. When the CAF is called out for service in aid of the civil power, it does not replace the civil authorities; it assists them in the maintenance of law and order. While on aid-of-the-civil-power duties, CAF members will have the powers and duties of constables. Further by virtue of section 2 of the *Criminal Code*, they also have the powers and protections of peace officers.

7. During CAF aid-of-the-civil-power operations, the participation of the civilian government is very important to ensure that the CAF remains in support of the civilian authorities. Once the military force arrives at the incident site, the local commander shall ensure that a representative of the civil authorities is present and remains at the scene until that representative directs the commander to take action on its behalf. The CAF members called out in aid of the civil power will remain on duty in such strength as the CDS, or designate, deems necessary until the CAF are no longer required as notified by the provincial Attorney General.

Suggested Questions

Q. Which NDA Sections applies to the request made for aid to the civil power? (279, 280 NDA)

Q. What are the duties of the CAF when called out for service in aid to the civil power?

Note to the Instructor: Encourage students to actively participate in the lesson and to reason through problems.

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PART 3 – BODY OF THE LESSON

Stage 5 – Aid to Law Enforcement Agencies (ALEA)

Introduction

1. The primary role for the CAF is the defence of Canada. The defence of Canadians by the CAF does not include a traditional law enforcement mandate for the military. This responsibility has been assigned to provincial/territorial governments through section 92 of the *Constitution Act*. The CAF does not have any mandate for law enforcement beyond its own personnel and facilities. The organization, training, and equipment of the CAF give it capabilities that may be requested by civilian authorities to assist them in effectively dealing with a law-enforcement matter such as supporting a Canadian special security event (CSSE), or to restore or preserve order in the event of riots or disturbances that are beyond the ability of civilian authorities to control (aid of the civil power).

2. There are several legal instruments and interdepartmental MOUs through which the CAF may be authorized to assist law enforcement agencies in the execution of their mandate. Municipal, provincial/territorial, or federal law-enforcement agencies, as well as other federal government departments, such as the Department of Fisheries and Oceans, are responsible for the enforcement of federal laws and may seek military assistance in discharging their assigned duties. Normally, the assistance requested is for a unique or special skill, capability, or equipment only available from within the CAF. CAF assistance, when provided, is always in support of the law enforcement agency (LEA) of jurisdiction. That LEA always retains full responsibility for the conduct of all law-enforcement operations including the acquisition of judicial warrants, collection and retention of evidence, arrest and detention of persons, and activities associated with the prosecution of those charged with offences.

3. ALEA operations are sensitive and may involve CAF members or operational equipment at or near the scene of a disturbance of the peace; therefore, requests for assistance must be properly analyzed and must be authorized at the appropriate level. A critical first step in addressing a request from a civilian law enforcement agency is to determine: who is making the request, what type of assistance is being requested, and who has the authority to approve the request. The request process and approval authority will vary according to the legal instrument used. Analyzing the request in this way will identify which instrument (MOU, order in council, directive, etc.) is most appropriate for use in the circumstances. As RJTF HQs are the usual CAF points of contact with provincial/territorial authorities, they should normally coordinate requests for ALEA. Here are the main legal instruments applied for ALEA.

4. ***CAF Assistance to Provincial Police Forces Directions (CFAPPFD).*** *CFAPPFD* and its accompanying *Principles* require that the provinces must look to their own resources first. If unable to meet their needs from their own resources, the

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provincial police force must then seek the assistance of the RCMP. Only after having exhausted those steps, should a request be made for CAF support.

5. **Provincial policing and the application of subsection 273.6(2) of the *NDA***
The procedures in a CFAPPFD request define CAF support to provincial law enforcement agencies such as the Ontario Provincial Police, the Sûreté du Québec and the RCMP on Contracting Policy duties elsewhere in Canada. In addition, subsection 273.6(2) of the *NDA* provides an additional legal basis to provide CAF support. As a result of similar request and approval mechanisms between these two legal bases, the government of Canada could choose to respond to a provincial request made through the *CFAPPFD* using subsection 273.6(2), as the end result would be the same.

6. **Assistance to Correctional Services Canada - federal penitentiaries**
Assistance to federal law-enforcement agencies and other federal government departments can be provided pursuant to a number of legal instruments. These include *NDA* subsection 273.6(2), orders in council created through the exercise of the Crown prerogative, and minister-to-minister arrangements created by MOU. The *Assistance to Federal Penitentiaries Order* authorizes the MPS or the Commissioner of Penitentiaries to obtain military assistance from the CDS for the purpose of aiding in suppressing, preventing, or otherwise dealing with a disturbance that occurs, or is likely to occur, and which is beyond the powers of the penitentiary staff to suppress or prevent. Scenarios that may lead to a request for CAF assistance include a strike by penitentiary guards, or a major riot or other disturbance at a federal penitentiary.

7. ***Canadian Forces Armed Assistance Directions (CFAAD).*** This order in council provides a process for the RCMP to request CAF support to deal with disturbances of the peace involving offences under the *Criminal Code* or the *Security Offences Act* involving terrorists, hostage-taking, or violence aimed at internationally protected persons, such as diplomats. This order in council was created to facilitate a request for assistance from the RCMP for the rendering of armed assistance in the resolution of an issue or a potential issue that affects the national interest by Joint Task Force 2 (JTF 2). The responsibility for the national counter-terrorism response unit was transferred from the RCMP to the CAF in 1993.

8. **Federal law enforcement and the application of *NDA* subsection 273.6(2)**
CAF ALEA operations are initiated by a request for assistance from Canadian civilian law enforcement authorities such as provincial police, RCMP, and other federal government departments. Also, *NDA* subsection 273.6(2) preserves, and does not limit, the pre-existing ability of the Governor in Council to act on its own authority to issue a direction authorizing the CAF to provide law-enforcement assistance. The Governor in Council may issue such direction in the absence of a request from any civilian law enforcement agency. The MND may issue a similar direction only after a request for assistance from the MPS or any other minister. The Governor in Council may exercise this authority whenever it considers that CAF assistance in respect of any law-enforcement matter may be in the national interest and the matter cannot be effectively dealt with except with the assistance of the CAF.

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9. **CAF assistance pursuant to Memoranda of Understanding (MOU)**
MOU are administrative arrangements that are not legally binding upon the participants. However, for administrative purposes, MOUs are normally treated as if they are legally binding. MOUs are very useful for setting out the nature, extent, and process of cooperative arrangements between the participants to the MOU. MOUs are sometimes developed to facilitate the provision of support on a periodic basis by the CAF to another department or agency of the federal government. For such support requiring MND approval, as is the case with assistance to law enforcement agency operations, an MOU facilitates the granting of MND approval. Where CAF support is frequently sought for recurring law enforcement operations, the MOU creates a pre-existing authorization mechanism using the overarching legal authority provided by the *NDA* subsection 273.6(2) and the Crown prerogative.

10. Assistance to Law Enforcement Agencies has been covered previously under *EO 021.02 Advise on legal bases and authorities pertaining to domestic CAF operations.* Please refer to this lecture for more details.

Interim Summary

11. The primary role for the CAF is the defence of Canada. The defence of Canadians by the CAF does not include a traditional law enforcement mandate for the military. This responsibility has been assigned to provincial/territorial governments through section 92 of the *Constitution Act*. The CAF does not have any mandate for law enforcement beyond its own personnel and facilities. There are several legal instruments and interdepartmental MOUs through which the CAF may be authorized to assist law enforcement agencies in the execution of their mandate. Municipal, provincial/territorial, or federal law-enforcement agencies, as well as other federal government departments, such as the Department of Fisheries and Oceans, are responsible for the enforcement of federal laws and may seek military assistance in discharging their assigned duties. ALEA operations are sensitive and may involve CAF members or operational equipment at or near the scene of a disturbance of the peace; therefore, requests for assistance must be properly analyzed and must be authorized at the appropriate level. A critical first step in addressing a request from a civilian law enforcement agency is to determine: who is making the request, what type of assistance is being requested, and who has the authority to approve the request.

12. *CAF Assistance to Provincial Police Forces Directions* (*CFAPPFD*) and its accompanying *Principles* require that the provinces must look to their own resources first. If unable to meet their needs from their own resources, the provincial police force must then seek the assistance of the RCMP. Only after having exhausted those steps, should a request be made for CAF support. The procedures in a CFAPPFD request define CAF support to provincial law enforcement agencies such as the Ontario Provincial Police, the Sûreté du Québec and the RCMP on Contracting Policy duties elsewhere in Canada.

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13. Assistance to federal law enforcement agencies and other federal government departments can be provided pursuant to a number of legal instruments. These include *NDA* subsection 273.6(2), orders in council created through the exercise of the Crown prerogative, and minister-to-minister arrangements created by MOU. *Canadian Forces Armed Assistance Directions (CFAAD)* provides a process for the RCMP to request CAF support to deal with disturbances of the peace involving offences under the *Criminal Code* or the *Security Offences Act* involving terrorists, hostage-taking, or violence aimed at internationally protected persons, such as diplomats. CAF ALEA operations are initiated by a request for assistance from Canadian civilian law enforcement authorities such as provincial police, RCMP, and other federal government departments. Also, *NDA* subsection 273.6(2) preserves, and does not limit, the pre-existing ability of the Governor in Council to act on its own authority to issue a direction authorizing the CAF to provide law-enforcement assistance. MOUs are administrative arrangements that are not legally binding upon the participants. However, for administrative purposes, MOUs are normally treated as if they are legally binding. MOUs are very useful for setting out the nature, extent, and process of cooperative arrangements between the participants to the MOU.

Suggested Questions

Q. What is the purpose of the *Canadian Forces Assistance to Provincial Police Forces Directions (CFAPPFDs)?*

Q. What is the purpose of the *Canadian Forces Armed Assistance Directions (CFAADs)?*

Q. Under what circumstances Section 273.6 *NDA* may be applied?

Q. What is the purpose of the *Assistance to Federal Penitentiaries Order?*

Q. What is the application of *NDA* subsection 273.6(2) to federal law enforcement?

Note to the Instructor: Encourage students to actively participate in the lesson and to reason through problems.

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PART 3 – BODY OF THE LESSON

Stage 6 – Public Service under the *National Defence Act*

Introduction

1. In domestic operations, the CAF responds to requests from federal, provincial/territorial, or municipal lead civil authorities. With the exception of routine sovereignty operations and its defence-of-Canada role, and search and rescue, the CAF is always in support. Under Canadian constitutional law, the provincial governments have responsibility over the administration of justice, in addition to local or civil matters in the province. Implicit in this responsibility is a mandate to maintain law and order within their jurisdiction and to protect the public during times of crisis within the limits of their resources. Generally, if an activity or crisis exceeds the capacity of the provincial government to manage, or in the event of a natural disaster, a formal request for assistance, including the assistance of the CAF, must be made to the federal government before Defence resources can be assigned in support. The Government of Canada will consider these requests on a case-by-case basis and may respond with federal government assets if it is within the national interest and beyond the capability of the province to manage.

2. The primary responsibility for emergency preparedness activities lies with provincial and territorial governments. The provincial minister responsible for emergency preparedness, the Lieutenant Governor of a province or the Commissioner of a territory, may require provincial or municipal government departments to formulate emergency plans. CAF commanders at all levels must become familiar with the responsibilities of civilian emergency planning authorities as well as the limitations and constraints under which they operate and must be prepared to provide assistance when/as requested.

3. **Legal basis for Domestic Operations.** The legal authority for CAF domestic operations is based upon the Crown prerogative and Canadian legislation. The Crown prerogative is the general authority for the Government of Canada to exercise its executive powers. Authority for the defence of Canada, and some orders in council for CAF assistance to law enforcement, is based upon the Crown prerogative. Federal legislation also provides authority for the CAF to assist civil authorities by performing duties involving a public service, or by assisting law enforcement.

4. **The *NDA* and Public Service.** In some cases, the provision of service by the CAF may evolve into a public service operation. This requires a request to the MND under section 273.6(1) of the *NDA*, seeking authority to commit further resources and expend funds at a higher level than permitted by the local commander. Subsection 273.6(1) permits a broad range of originators to request CAF assistance.

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5. Section 273.6 (1) of the *NDA* allows the CAF to perform "any duty involving public service." The term 'public service' is not defined in the *NDA* except in the context of the liability of members of the CAF to perform any lawful duty. The *NDA* provides that 'duty' includes both those duties that are military in nature, and 'public service' as authorized under section 273.6(1). The term 'public service' therefore applies to a wide variety of CAF activities involving the provision of assistance to the Canadian public and civilian authorities. Typically when CAF assistance is needed for a domestic humanitarian relief operation, the request for assistance is made to the MND pursuant to *NDA* section 273.6(1).

6. Public Service under the *NDA* has been covered previously under *EO 021.02 Advise on legal bases and authorities pertaining to domestic CAF operations*. Please refer to this lecture for more details.

Interim Summary

7. In domestic operations, the CAF responds to requests from federal, provincial/territorial, or municipal lead civil authorities. With the exception of routine sovereignty operations and its defence-of-Canada role, and search and rescue, the CAF is always in support. Under Canadian constitutional law, the provincial governments have responsibility over the administration of justice, in addition to local or civil matters in the province. Implicit in this responsibility is a mandate to maintain law and order within their jurisdiction and to protect the public during times of crisis within the limits of their resources. The primary responsibility for emergency preparedness activities lies with provincial and territorial governments. The provincial minister responsible for emergency preparedness, the Lieutenant Governor of a province or the Commissioner of a territory, may require provincial or municipal government departments to formulate emergency plans.

8. The legal authority for CAF domestic operations is based upon the Crown prerogative and Canadian legislation. The Crown prerogative is the general authority for the Government of Canada to exercise its executive powers. In some cases, the provision of service by the CAF may evolve into a public service operation. This requires a request to the MND under section 273.6(1) of the *NDA*, seeking authority to commit further resources and expend funds at a higher level than permitted by the local commander. Section 273.6 (1) of the *NDA* allows the CAF to perform "any duty involving public service." The term 'public service' is not defined in the *NDA* except in the context of the liability of members of the CAF to perform any lawful duty. The *NDA* provides that 'duty' includes both those duties that are military in nature, and 'public service' as authorized under section 273.6(1). The term 'public service' therefore applies to a wide variety of CAF activities involving the provision of assistance to the Canadian public and civilian authorities.

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Suggested Questions

Q. What means the term "public service"? (Applies to a wide variety of CAF activities involving the provision of assistance to the Canadian public and civilian authorities. It includes both assistance of a civic or humanitarian nature, as well as assistance in respect of any law enforcement matters.)

Q. Which NDA **s**ubsection provides that either the Governor in Council or the MND may authorize the CAF to perform any duty involving public service? (273.6(1) *NDA)*

Note to the Instructor: Encourage students to actively participate in the lesson and to reason through problems.

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PART 3 – BODY OF THE LESSON

Stage 7 – Provision of Service (POS)

Introduction

1. All CAF commanders are allocated resources to carry out their assigned portion of the Defence Services Program and are accountable for how those resources are expended. However, there are occasions when it is consistent with government policy to provide a service in response to a request from a non-defence agency, even though the provision of such a service is outside the immediate scope of the Defence Services Program. Provision of services provides an umbrella for a gamut of domestic operations and there may be occasions when such requests exceed the capability of an RJTF. Under such circumstances, Commander Canada Command will review the situation and provide direction. The DND policy for assessing and addressing such requests is found in the DND *Provision of Services Manual*. This policy is applicable to the CAF and provides enough flexibility and authority to commanders to deal with the majority of requests for CAF services.

2. **Provision of Services Requests.** Requests for CAF provision of services support may be received at any level and may involve the proposed use or employment of a wide range of CAF personnel and resources. CAF units at all levels are frequently solicited to provide support for community-based activities, such as the short-term loan of items such as tents, mobile cooking facilities, or other temporary infrastructure. This type of support provides CAF units the opportunity to actively participate in local events being held within the communities in which they live and work. In addition, it also offers an opportunity to show members of the Canadian public the human face of the CAF. In order to protect the interest of the CAF, all services to non-defence agencies will be provided under a written agreement.

3. There are four types or categories of provision of services requests:

   a. Type 1 - service provided to an OGDA.

   b. Type 2 - service provided in compliance with an *Act*, Regulation, or agreement.

   c. Type 3 -service provided to use surplus defence capacity.

   d. Type 4 - service provided to meet any other request for service.

4. The type of request will dictate the authority level and whether full or partial cost recovery will be undertaken. When a service is provided to a non-defence agency, the CAF will normally charge the recoverable cost calculated in accordance with the

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Provision of Services Manual. Situations may occur when, in the opinion of the approving authority, it is consistent with the purpose of the government policy to charge less than the recoverable cost, within limits set by the MND. Records must be kept of what was requested, who requested it, what was eventually provided, what costs were incurred, what costs were recovered and who authorized both the provision of the service and whatever cost recovery action was initiated.

5. In general terms, a "service may be provided to a non-defence agency if provision of the service would be consistent with the purpose of government policy." To assist in defining this purpose, the *Provision of Services Manual* creates a four-part set of conditions to be met before a service is provided.

6. The first two conditions must be met before any service of a routine nature is provided. A service shall not be provided if that service will either:

a. result in an unacceptable degradation of Defence readiness or capability to carry out our Defence activities; or

b. adversely affect the confidence or respect the public has for Defence.

7. The next two conditions require the appropriate exercise of discretion expected of any Defence resource manager. A service should not be provided if that service will either:

a. place Defence in competition with a private industry; or

b. be provided on a continuing basis where other responsible government departments or the private sector should be encouraged to develop their own capabilities.

8. **Non-Defence Use of CAF Personnel.** A request often made to Defence resource managers is for the use of CAF personnel to support civilian activities. This can include the use of CAF members to set up and tear down shelters, as drivers of equipment or supplies, and to assist local authorities to fill sandbags, shovel snow, clear rubble, put out fires and provide other support to local disaster response teams.

9. In some cases, CAF personnel, including military police, may be asked to assist local law enforcement by manning traffic control points or providing crowd control services during large outdoor events. These requests may seem innocuous; they have to be assessed in terms of the potential to become a difficult or dangerous situation for CAF members possibly requiring peace officer protections. These types of requests may be more in the nature of assistance to law enforcement, which utilize a different legal regime than the *Provision of Services Policy* (PSP), which is explained in the section dealing with assistance to law enforcement.

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10. An important consideration is that CAF members must not be seen as a local skilled work pool, to be relied upon in lieu of civilian volunteers or paid workers. Also, for the purposes of compensation to CAF personnel for workplace injuries, the injury must be attributable to military service. Therefore, it is particularly important to ensure that personnel is committed pursuant to a written agreement, tasked to only perform work for which it is competent, qualified, and trained, and also, that its tasks are consistent with the CAF mandate, in accordance with the PSP. Depending on the nature of the operation, the MND may also declare that a domestic deployment is classified as a 'special duty operation' for the purposes of the *Pension Act*. This in turn, provides specific protection for CAF members.

11. **Non-Defence Use of DND Real Property.** The *Provision of Services Manual* provides general guidance and specific direction to commanders to address requests for the use of DND real property for purposes not related to Defence. However, the use of DND real property in an emergency, such as provision of temporary shelter for the homeless during periods of extreme cold weather merits additional guidance. When an emergency related to the provision of shelter for the homeless is declared by a municipal or provincial authority, and a request for the use of a DND facility is received by an RJTF commander, the matter must be referred to Commander CJOC Continental for approval because of the political sensitivity of the request. An agreement must be negotiated between DND and the regional civil authority. The civil authority must accept responsibility for management of the emergency hostel, including medical care and supervision of guests. The CAF will provide only the facilities and continue to be responsible for the physical security of defence assets, and CAF personnel.

12. Provision of Service has been covered previously under *EO 021.02 Advise on legal bases and authorities pertaining to domestic CAF operations*. Please refer to this lecture for more details.

Interim Summary

13. All CAF commanders are allocated resources to carry out their assigned portion of the Defence Services Program and are accountable for how those resources are expended. However, there are occasions when it is consistent with government policy to provide a service in response to a request from a non-defence agency, even though the provision of such a service is outside the immediate scope of the Defence Services Program. Provision of services provides an umbrella for a gamut of domestic operations and there may be occasions when such requests exceed the capability of an RJTF. Requests for CAF provision of services support may be received at any level and may involve the proposed use or employment of a wide range of CAF personnel and resources. CAF units at all levels are frequently solicited to provide support for community-based activities, such as the short-term loan of items such as tents, mobile cooking facilities, or other temporary infrastructure.

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14. The type of request will dictate the authority level and whether full or partial cost recovery will be undertaken. When a service is provided to a non-defence agency, the CAF will normally charge the recoverable cost calculated in accordance with the *Provision of Services Manual*. Situations may occur when, in the opinion of the approving authority, it is consistent with the purpose of the government policy to charge less than the recoverable cost, within limits set by the MND. In general terms, a "service may be provided to a non-defence agency if provision of the service would be consistent with the purpose of government policy." To assist in defining this purpose, the *Provision of Services Manual* creates a four-part set of conditions to be met before a service is provided.

15. A request often made to Defence resource managers is for the use of CAF personnel to support civilian activities. This can include the use of CAF members to set up and tear down shelters, as drivers of equipment or supplies, and to assist local authorities to fill sandbags, shovel snow, clear rubble, put out fires and provide other support to local disaster response teams. In some cases, CAF personnel, including military police, may be asked to assist local law enforcement by manning traffic control points or providing crowd control services during large outdoor events. An important consideration is that CAF members must not be seen as a local skilled work pool, to be relied upon in lieu of civilian volunteers or paid workers. Also, for the purposes of compensation to CAF personnel for workplace injuries, the injury must be attributable to military service.

16. The *Provision of Services Manual* provides general guidance and specific direction to commanders to address requests for the use of DND real property for purposes not related to Defence. However, the use of DND real property in an emergency, such as provision of temporary shelter for the homeless during periods of extreme cold weather merits additional guidance. When an emergency related to the provision of shelter for the homeless is declared by a municipal or provincial authority, and a request for the use of a DND facility is received by an RJTF commander, the matter must be referred to Commander CJOC Continental for approval because of the political sensitivity of the request.

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Suggested Questions

Q. What document sets out the policy and procedures applicable to the provision of services by DND and the CAF to non-defence agencies? (DND Provision of Services Policy)

Q. What the PSP sets out? (approval authorities for various services; types of services; provisions for cost recovery and waiver of costs; rovisions for recording of services rendered; and directions for provision of some limited services to law enforcement agencies.)

Q. What are the types or categories of provision of services requests?
(Type 1 - service provided to an OGDA
Type 2 - service provided in compliance with an *Act*, Regulation, or agreement
Type 3 -service provided to use surplus defence capacity
Type 4 - service provided to meet any other request for service)

Note to the Instructor: Encourage students to actively participate in the lesson and to reason through problems.

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PART 3 – BODY OF THE LESSON

Stage 8 – Search and Rescue Operations

1. **Introduction.** In 1986, the Government of Canada directed the establishment of a National Search and Rescue Program (NSP). The NSP is a co-operative effort by federal, provincial and municipal governments along with other search and rescue (SAR) organizations. The objective of the NSP is to save lives by enhancing SAR prevention and provide effective and affordable SAR services in Canada's SAR areas of responsibility. Membership in the National Search and Rescue Program does not in any way change existing jurisdictions, responsibilities or authorities, nor require the mandatory expenditure of resources. Membership does, however, provide a structure and process to produce effective, efficient and economical use of resources.
The National Search and Rescue Program is characterized by the three complementary components of aeronautical, maritime and ground SAR. Each component is broken down into two sub-components: SAR operations and SAR prevention.

2. **National SAR Objective.** The national SAR objective is to prevent loss of life and injury through search and rescue alerting, responding and aiding activities using public and private resources. Where possible and when directly related thereto, reasonable efforts will be made to minimize damage to or loss of property. Through prevention measures focused on owners and operators most commonly involved in SAR incidents, the National Search and Rescue Program will attempt to reduce the number and severity of SAR incidents. The Canadian federal area of responsibility is as defined under International Civil Aviation Organization agreements for aeronautical SAR and as defined under International Maritime Organisation agreements for maritime SAR. The Canadian waters of the Great Lakes and the St. Lawrence River system are also part of the Canadian federal SAR area of responsibility.

3. **National Defence (DND) SAR Responsibilities.** The primary responsibility for the provision of aeronautical SAR services and effective operation of the co-ordinated aeronautical and maritime SAR system is assigned to the DND. The provision of assistance to aircraft in distress through a federal aeronautical SAR service arises out of Canada's signatory status to the *1944 Convention on International Civil Aviation*, Article 25. As well, on June 18, 1947, the Cabinet authorized the (RCAF to establish facilities and equipment to meet this commitment. In 1951, the Cabinet further delegated responsibility for maritime SAR co-ordination to the RCAF.

4. **Chief of Air Staff (CAS) Responsibilities.** The CAS is responsible for:

   a. strategic DND SAR policy and unit allocation;

   b. liaison with the National SAR Secretariat;

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c. the provision of a DND Interdepartmental Committee on SAR representative responsible for departmental SAR policy co-ordination; and

d. liaison with other SAR operating departments and agencies, nationally and internationally.

5. **1 Canadian Air Division (CAD) Responsibilities.** 1 CAD is responsible for:

a. operational command of all aeronautical search and rescue assets;

b. the establishment and manning of the rescue co-ordination centres and the SARSAT Canadian Mission Control Centre;

c. the provision of ground search parties in support of aeronautical and maritime incidents; and

d. the interface between the Civil Air SAR Association and the DND at the operational level.

6. **Commander MARLANT Responsibilities.** The Commander Maritime Forces Atlantic, as Commander of the Halifax Search and Rescue Region (SRR), is accountable for the co-ordination, control and conduct of search and rescue operations in the Halifax SRR.

7. **Commander 1 CAD Responsibilities.** The Commander, 1 CAD, as Commander of the Trenton SAR Region (SRR), is accountable for the coordination, control and conduct of search and rescue operations in the Trenton SRR.

8. **Commander MARPAC Responsibilities.** The Commander, Maritime Forces Pacific, as Commander of the Victoria SAR Region (SRR), is accountable for the coordination, control and conduct of search and rescue operations in the Victoria SRR.

9. **DND SAR Activities.** DND SAR activities are:

a. the efficient operation of the aeronautical and maritime components of the co-ordinated SAR system;

b. the provision and operation of the rescue co-ordination centres and other SAR facilities in conjunction with the Canadian Coast Guard (CCG);

c. the co-ordination, control, and conduct of aeronautical SAR operations within the Canadian area of responsibility and between Canada and the United States in accordance with existing agreements;

d. the provision of SAR aircraft in response to SAR incidents within the Canadian area of responsibility;

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e. the setting of priorities pertaining to the allocation of search and rescue units (SRUs) to SAR operations;

f. the provision of ground SAR and humanitarian assistance, as a complementary tasking;

g. the formulation and promulgation of SAR policy (in collaboration with the Interdepartmental Committee on AR);

h. the establishment of operating standards and the provision of SAR training for the coordinated SAR system in collaboration (when appropriate) with CCG authorities;

i. the evaluation of SAR equipment and procedures in collaboration (when appropriate) with CCG authorities;

j. the review of SAR services, facilities and SRUs in collaboration (when appropriate) with CCG;

k. co-ordination of the Civil Air Search and Rescue Association training and operational activity; and

l. the efficient operation of the Canadian components of the SARSAT system.

10. **DND Basic SAR Tasks.** DND has the following basic SAR tasks:

a. to co-ordinate, control and conduct SAR operations in relation to aeronautical SAR incidents within the Canadian AOR;

b. to provide search and rescue units (SRUs) in support of the prosecution of maritime SAR operations and to exercise ultimate authority in the allocation of all SRUs during a SAR incident;

c. to conduct ground searches in relation to aeronautical and maritime SAR incidents; and

d. to provide the resources to operate the Canadian components of the SARSAT system.

11. **DND Complementary SAR Tasks.** DND has the following complementary SAR tasks:

a. To provide search and rescue units when and where available, to assist in the prosecution of ground SAR and humanitarian incidents which occur within provincial or municipal AOR; and

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b. to support Transport Canada (Aviation) and the Canadian Coast Guard in SAR prevention through participation in related educational programs and by advising the appropriate agencies of areas of concern identified in SAR operations.

12. **SAR Units.** DND and the Canadian Coast Guard (CCG) are required to provide primary search and rescue units (SRUs). In addition to primary search and rescue units (SRUs), CCG provides CCG units multitasked to the SAR program. When tasked to SAR, these units are subject to the same standards of operation and procedures that apply to primary CCG SRUs including state of readiness and pre-positioning deployment in anticipation of SAR related demand. Search and rescue region (SRR) commanders may utilize all primary and secondary SRUs available in providing SAR services. In instances where a commander's SRUs are considered to be inadequate for a specific task, he may request assistance from any suitable source. These may include:

a. the primary SRUs of neighbouring SRRs which may be available and are requested through the appropriate rescue co-ordination centre (RCC)/maritime rescue sub-centre (MRSC);

b. DND secondary SRUs, which may be tasked through 1 CAD/Air Operations Centre or NDHQ/National Defence Operations Centre;

c. CCG units not assigned to SAR; which may be tasked through the appropriate CCG responsibility manager;

d. other federal government departments units; and

e. maritime or aeronautical units which may be tasked under the *Canada Shipping Act* by the RCC controller, acting for the SRR commander.

13. DND provides rescue co-ordination centres (RCCs) staffed by both DND and Canadian Coast Guard (CCG) personnel on a 24 hours a day, 7 days a week basis. In addition, CCG provides two maritime rescue sub-centres (MRSCs) manned by CCG personnel also on a 24 hours a day, 7 days a week basis. The RCCs and MRSCs will respond to all incidents until such time as the incident is resolved or until the incident can be passed to the appropriate authority.

14. **CAF SAR Technicians.** The role of SAR Techs in SAR and non-SAR operations is to save lives and reduce human suffering. This is accomplished by:

a. accessing the site to determine the situation;

b. initiating and maintaining medical treatment;

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c. sustaining the survivors by the provision of food, water and shelter; and

d. evacuating survivors.

NOTE: SAR Techs shall not dive for salvage or body recovery operations.

15. The method of accessing the distress site rests with the aircraft commander and the SAR Tech team leader. It may be achieved by one of the following:

a. parachute;

b. hoist;

c. Lock Rope Descent device;

d. free entry;

e. Compressed Air Breathing Apparatus;

f. over land; or

g. over water.

16. Operational deployment of the SAR Tech team for SAR or non-SAR incidents shall normally be preceded by authorization from the searchmaster or the rescue co-ordination centre to ensure that it is the most effective method of resolving the situation. With regard to safety, the SAR Tech team shall not be deployed without the complete concurrence of the SAR Tech team leader and of the aircraft commander.

17. **CAF Ground Search Parties.** Ground search parties are primary search and rescue units. They can be used to search small high probability areas which cannot be effectively covered by other means. They may also be used to aid in the rescue of survivors which have been located but cannot be evacuated by other means. The parties are made up of a minimum of ten volunteer service personnel who have experience in bush lore and outdoor activities. The organization of ground search parties is the responsibility of the Base, Wing or Squadron Commander. They are responsible to the regional rescue co-ordination centre (RCC) through the normal chain of command and during operational functions, are at the disposal of the RCC or of the searchmaster. Under normal circumstances ground search parties shall be equipped and ready to leave their unit within two hours of being alerted by the RCC. When CF ground search parties are tasked by other agencies they shall obtain approval from the parent RCC.

18. **SAR Log and Case Files.** A log or case file shall be kept in which all rescue co-ordination centre (RCC)/maritime rescue sub-centre (MRSC)/searchmaster (SM) actions are recorded, with times entered in Coordinated Universal Time (UTC). All

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RCC/MRSC controllers shall sign the log at the beginning and end of each shift. Logs shall be retained in the RCC/MRSC for three years and then forwarded to the Regional Archives Centre. SMs shall submit logs to the RCC at the termination of a search. Case files shall be kept on individual search and rescue (SAR) incidents. The case file will be the primary record of a case and shall include all pertinent information on the incident, including all message traffic, records of telephone conversations and, where applicable, such information as coroner's reports and press clippings. Searchmasters' case files shall be submitted to the RCC at the termination of a search.

19. To meet the legal retention period for RCCs/MRSCs/Canadian Mission Control Centre (CMCC) data of seven years (JA Ont: 33385–1 6 NOV 95) and the requirement to store SAR files at the National Archives for historical purposes, the following procedure will be followed:

a. RCC/MRSC/CMCC case files shall be retained at the RCC/MRSC for a minimum of two years after the date of the last entry. Major SAR Operations, unresolved incidents or other cases of interest may be retained longer at the discretion of the centre. If files are retained at the centre, the SAR name, date and case number of the retained file(s) shall accompany the applicable records box sent to the Archives;

b. after the RCC/MRSC retention period, case files are to be sent to the respective Regional Archives Centre;

c. the Regional Centre will retain the case files for a period of time stated in the *Records Scheduling and Disposal Manual* (for SAR files, this period is 5 years from the date of receipt). After this time has elapsed, the Regional Centre will forward a letter to the appropriate RCC/MRSC requesting permission to dispose of the files. If the legal time period has been met and the RCC/MRSC can see no reason to retain the files further, they shall advise the Centre to dispose of the files; and

d. the Regional Centre will then forward all files to the Government Archives Division in Ottawa for permanent storage in accordance with the *Records Scheduling and Disposal Manual*.

20. **Access to Information/Privacy Act.** All records, logs and report created during the resolution of an incident are accessible to the public and are controlled by the DND. Information requested to DND will forwarded to the Maritime Forces Pacific, the Maritime Forces Atlantic or the 1 CAD Privacy and Access to Information section, for onward transmission to the appropriate rescue co-ordination centre (RCC). If the information request is of a factual nature and does not impinge on the privacy of other individuals then the Officer in Charge (OIC) of the RCC may authorize the release of that information. If the documents to be released contain any information that is contrary to the tenants of the Access to Information Act of the Privacy Act, this information must be severed in accordance with the applicable section of the aforementioned Act.

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Consult the local Access to Information experts if in doubt as to what portion should be severed. To expedite investigations by Coroner Boards of Inquiry, Transportation Safety Board of Canada (TSB) members or local police, the OIC RCC is authorized to release copies of pertinent documents and tape transcripts to these authorities.

21. **Legal Responsibilities.** The Crown will indemnify, according to Treasury Board policy, rescue co-ordination centre/maritime rescue sub-centre personnel and the servants of the Crown if they were acting within the scope of their employment and not acting maliciously or dishonestly. If legal action is commenced against an employee, member of the DND or other servant of the Crown, they may apply through the chain of command for legal representation at public expense. Where the Department of Justice is notified that there is a divergence of interest as between the employee and the Crown as employer, arrangements will be made to provide for separate representation of the employee by an outside lawyer.

22. If an employee is summoned to give evidence at a Coroner's Inquest, Board of Inquiry or other body engaged in the investigation of a search and rescue related misadventure, he should request legal advice through his immediate supervisor. CAF Members should comply with QR&O *19.55*. Where Canadian Coast Guard personnel are subpoenaed to testify during formal SAR investigations, in recognition of the DND overall responsibility in SAR co-ordination, a DND SAR expert will be tasked to provide advice. Depending on the nature of the inquiry there may also be a requirement for a DND legal representative to be present. In the case of investigations into incidents having maritime implications, the appropriate Canadian Coast Guard search and rescue expert shall also be in attendance to give advice.

Interim Summary

23. In 1986, the Government of Canada directed the establishment of a National Search and Rescue Program (NSP). The NSP is a co-operative effort by federal, provincial and municipal governments along with other search and rescue (SAR) organizations. The objective of the NSP is to save lives by enhancing SAR prevention and provide effective and affordable SAR services in Canada's SAR areas of responsibility. The national SAR objective is to prevent loss of life and injury through search and rescue alerting, responding and aiding activities using public and private resources. Where possible and when directly related thereto, reasonable efforts will be made to minimize damage to or loss of property. Through prevention measures focused on owners and operators most commonly involved in SAR incidents, the National Search and Rescue Program will attempt to reduce the number and severity of SAR incidents.

24. The primary responsibility for the provision of aeronautical SAR services and effective operation of the co-ordinated aeronautical and maritime SAR system is assigned to the DND. DND conducts SAR activities, basic and complementary SAR tasks through responsibilities devoted to the Chief of Air Staff, 1 Canadian Air Division,

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Commander MARLANT, Commander 1 CAD and Commander MARPAC. DND and the Canadian Coast Guard (CCG) are required to provide primary search and rescue units (SRUs). In addition to primary search and rescue units (SRUs), CCG provides CCG units multitasked to the SAR program. When tasked to SAR, these units are subject to the same standards of operation and procedures that apply to primary CCG SRUs including state of readiness and pre-positioning deployment in anticipation of SAR related demand. DND provides rescue co-ordination centres (RCCs) staffed by both DND and Canadian Coast Guard (CCG) personnel on a 24 hours a day, 7 days a week basis

25. The role of SAR Techs in SAR and non-SAR operations is to save lives and reduce human suffering. The method of accessing the distress site rests with the aircraft commander and the SAR Tech team leader. Operational deployment of the SAR Tech team for SAR or non-SAR incidents shall normally be preceded by authorization from the searchmaster or the rescue co-ordination centre to ensure that it is the most effective method of resolving the situation. Ground search parties are primary search and rescue units. They can be used to search small high probability areas which cannot be effectively covered by other means. They may also be used to aid in the rescue of survivors which have been located but cannot be evacuated by other means. The parties are made up of a minimum of ten volunteer service personnel who have experience in bush lore and outdoor activities.

26. A log or case file shall be kept in which all rescue co-ordination centre (RCC)/maritime rescue sub-centre (MRSC)/searchmaster (SM) actions are recorded, with times entered in Coordinated Universal Time (UTC). All RCC/MRSC controllers shall sign the log at the beginning and end of each shift. Logs shall be retained in the RCC/MRSC for three years and then forwarded to the Regional Archives Centre. SMs shall submit logs to the RCC at the termination of a search. To meet the legal retention period for RCCs/MRSCs/Canadian Mission Control Centre (CMCC) data of seven years (JA Ont: 33385–1 6 NOV 95) and the requirement to store SAR files at the National Archives for historical purposes, procedures will be followed.

27. All records, logs and report created during the resolution of an incident are accessible to the public and are controlled by the DND. Information requested to DND will forwarded to the Maritime Forces Pacific, the Maritime Forces Atlantic or the 1 CAD Privacy and Access to Information section, for onward transmission to the appropriate rescue co-ordination centre (RCC). If the information request is of a factual nature and does not impinge on the privacy of other individuals then the Officer in Charge (OIC) of the RCC may authorize the release of that information. The Crown will indemnify, according to Treasury Board policy, rescue co-ordination centre/maritime rescue sub-centre personnel and the servants of the Crown if they were acting within the scope of their employment and not acting maliciously or dishonestly. If legal action is commenced against an employee, member of the DND or other servant of the Crown, they may apply through the chain of command for legal representation at public expense.

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28. If an employee is summoned to give evidence at a Coroner's Inquest, Board of Inquiry or other body engaged in the investigation of a search and rescue related misadventure, he should request legal advice through his immediate supervisor. CAF Members should comply with QR&O *19.55*. Where Canadian Coast Guard personnel are subpoenaed to testify during formal SAR investigations, in recognition of the DND overall responsibility in SAR co-ordination, a DND SAR expert will be tasked to provide advice. Depending on the nature of the inquiry there may also be a requirement for a DND legal representative to be present.

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Suggested Questions

Q. What is the National SAR Objective? (Para 2)

Q. What are DND SAR Responsibilities? (Para 3)

Q. What are the Chief of Air Staff Responsibilities? (Para 4)

Q. What are 1 Canadian Air Division Responsibilities? (Para 5)

Q. What are Commander MARLANT Responsibilities? (Para 6)

Q. What are Commander 1 CAD Responsibilities? (Para 7)

Q. What are Commander MARPAC Responsibilities? (Para 8)

Q. What are DND SAR Activities? (Para 9)

Q. What are DND Basic SAR Tasks? (Para 10)

Q. What are DND Complementary SAR Tasks? (Para 11)

Q. How CAF SAR Techs accomplished their role? (Para 14)

Q. Which methods are used to access distress sites? (Para 15)

Q. Who is responsible for CAF Ground Search Parties? (Para 17)

Q. What is the legal retention period for SAR Logs and Case Files? (Paras 18, 19)

Q. Which organization is responsible with regards to access to information and privacy purposes? (Para 20)

Q. What are the legal responsibilities for the personnel involved in SAR Operations? (Paras 21, 22)

Note to the Instructor: Encourage students to actively participate in the lesson and to reason through problems.

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PART 3 – BODY OF THE LESSON

Stage 9 – Operations involving other governmental departments (OGD)

Introduction

Operations involving Other Governmental Departments (OGD)

1. Domestic operations conducted within Canada and along the maritime and air approaches to Canada are generally undertaken in partnership with OGD embracing a comprehensive approach. Typically, the CAF will act in a supporting role, however, under certain circumstances the CAF will be the lead department. Domestic operations are generally delineated as:

a. Provisions of service;

b. Humanitarian assistance;

c. Assistance to law-enforcement agencies;

d. Aid of the civil power; and

e. Defence of Canada including sovereignty.

2. In supporting OGDs, including assistance to law enforcement and aid of the civil power, support should normally be limited to those capabilities that are unique to the CAF or when primary response municipal, provincial, and federal capabilities are exhausted, thereby necessitating the use of CAF capabilities as a force of last resort.

3. **Federal Law Enforcement and the Application of *NDA* Subsection 273.6(2).** As with requests from provincial police forces, requests for CAF assistance pursuant to subsection 273.6(2) of the *NDA* from OGDs and federal law-enforcement agencies must be submitted by the responsible minister, usually the MPS, to the MND. Generally, as the lead minister for law-enforcement issues, the MPS would likely be consulted by the MND prior to any directions being given to the CDS to deploy the CAF under this statutory provision, even if the request came from another federal minister. As with assistance to provincial police forces, if the MPS is the source of the request for assistance pursuant to subsection 273.6(2), by virtue of *QR&O* 22.01(3), those CAF members directly performing law enforcement duties would have the status of peace officers during such time as they are performing said duties. If the request for assistance came from another minister besides the MPS, or directly from the Governor in Council, CAF members directly employed on law-enforcement duties that are such that they necessitate that they have peace officer status, will have the authority of peace officers during such time as they are employed on these duties.

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4. **CAF assistance pursuant to Memoranda of Understanding (MOU).** MOUs are administrative arrangements that are not legally binding upon the participants. However, for administrative purposes, MOUs are normally treated as if they are legally binding. MOUs are very useful for setting out the nature, extent, and process of cooperative arrangements between the participants to the MOU.

5. MOUs are sometimes developed to facilitate the provision of support on a periodic basis by the CAF to another department or agency of the federal government. For such support requiring MND approval, as is the case with assistance to law-enforcement agency operations, an MOU facilitates the granting of MND approval. Where CAF support is frequently sought for recurring law-enforcement operations, the MOU creates a pre-existing authorization mechanism using the overarching legal authority provided by the *NDA* subsection 273.6(2) and the Crown prerogative. The following are examples of some existing MND-authorized MOUs with OGD relating to CAF assistance in law-enforcement operations:

a. **MOU Respecting CAF Assistance in Support of the RCMP in its Drug Law enforcement Role.** This MOU provides for CAF assistance in the form of air transportation to RCMP officers engaged in counter-drug operations.

b. **MOU between the Department of Fisheries and Oceans (DFO) and the CAF respecting Surface Ship Patrols and Aerial Fisheries Surveillance.** This MOU provides for CAF assistance in the form of CAF ship and air-surveillance patrols in support of DFO officers engaged in enforcement of the *Fisheries Act*.

c. **MOU between the CAF and the RCMP Concerning the Provision of Assistance by the CAF in Support of the RCMP in its Vessel-escort Mission.** This MOU provides for CAF assistance in the form of CAF platform/vessel transport of RCMP officers conducting escort duties for nuclear powered vessels or other foreign naval vessels while they transit through Canadian territorial waters.

d. **MOU Between the CAF and the RCMP Concerning the Provision of CAF Assistance to the RCMP in its Response to a Criminal or Terrorist CBRNE Incident.** This MOU provides for CAF deployment of operational equipment and personnel within Canada, as well as providing access to other unique CAF capabilities, expertise, or advice, to aid the RCMP in the conduct of CBRNE-incident-response operations.

6. **Operation PALACI.** *Op PALACI* is the CAF' contribution to Parks Canada's avalanche-control program in Rogers Pass, where the Trans-Canada Highway and the Canadian Pacific Railway cross the Selkirk Mountains in British Columbia. Its objective is to prevent uncontrolled, naturally occurring avalanches, and thus prevent blockage of the essential road and rail links between coastal British Columbia and the rest of

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Canada. *Op PALACI* is conducted under a MOU between the DND and Parks Canada, which has jurisdiction over Rogers Pass because it lies within the boundaries of Glacier National Park.

7. **The Task Force.** The task force deployed on *O PALACI* is provided by the Regular and Reserve Force regiments of the Royal Canadian Artillery, a combat arms branch of the Canadian Army. Operational command, control and coordination are provided by JTF Pacific Headquarters in Esquimalt, British Columbia. Every year, from November to April, the artillery task force is deployed in Rogers Pass with 105-mm howitzers modified for precision firing from roadside gun platforms.

8. **Mission.** The Trans-Canada Highway and the Canadian Pacific Railway use Rogers Pass as a shortcut across the "Big Bend" of the Columbia River between Revelstoke and Donald, British Columbia. With an elevation of 1,330 metres and an average annual snow accumulation of 12 metres, Rogers Pass is the site of frequent avalanches between 1885 and 1916, avalanches in the area took the lives of more than 250 railway workers. Today, Rogers Pass contains more than 130 avalanche paths intersecting the Trans-Canada Highway, which therefore holds the highest avalanche rating of arterial roads in North America. For more than 50 years, the Royal Canadian Artillery has provided the key component of the world's largest mobile avalanche-control program. Parks Canada scientists monitor and evaluate the snow conditions in Rogers Pass to predict when and where avalanches are most likely to occur. When a potential avalanche is identified, the co-ordinates are communicated to the artillery task force.

9. Gun detachments fire from 18 positions along the Trans-Canada Highway. Directing their fire on registered targets at distances ranging from three to five kilometres, the gunners use explosive shells to trigger safe, controlled avalanches, thus preventing snow build-up that would eventually produce dangerous, uncontrolled avalanches. The highway and the rail line are closed to traffic before each shoot, and care is taken to prevent damage to humans, wildlife and the environment. When each shoot is completed, the fallen snow is cleared from the route, which is then opened to traffic once more. During the winter, the traffic burden in Rogers Pass can reach 4,000 motor vehicles and 40 trains per day. The value of maintaining four-season commercial-grade road and rail links between coastal British Columbia and the rest of Canada is estimated at billions of dollars.

10. Operations involving Other Governmental Departments (OGD) have been covered previously under *EO 021.02 Advise on legal bases and authorities pertaining to domestic CAF operations*. Please refer to this lecture for more details.

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Interim Summary

11. Domestic operations conducted within Canada and along the maritime and air approaches to Canada are generally undertaken in partnership with OGD embracing a comprehensive approach. Typically, the CAF will act in a supporting role, however, under certain circumstances the CAF will be the lead department. In supporting OGDs, including assistance to law enforcement and aid of the civil power, support should normally be limited to those capabilities that are unique to the CAF or when primary response municipal, provincial, and federal capabilities are exhausted, thereby necessitating the use of CAF capabilities as a force of last resort. As with requests from provincial police forces, requests for CAF assistance pursuant to subsection 273.6(2) of the *NDA* from OGDs and federal law-enforcement agencies must be submitted by the responsible minister, usually the MPS, to the MND.

12. MOUs are administrative arrangements that are not legally binding upon the participants. However, for administrative purposes, MOUs are normally treated as if they are legally binding. MOUs are very useful for setting out the nature, extent, and process of cooperative arrangements between the participants to the MOU. MOUs are sometimes developed to facilitate the provision of support on a periodic basis by the CAF to another department or agency of the federal government. For such support requiring MND approval, as is the case with assistance to law-enforcement agency operations, an MOU facilitates the granting of MND approval.

13. The following are examples of some existing MND-authorized MOUs with OGD relating to CAF assistance in law-enforcement operations: MOU Respecting CAF Assistance in Support of the RCMP in its Drug Law enforcement Role, MOU between the Department of Fisheries and Oceans (DFO) and the CAF respecting Surface Ship Patrols and Aerial Fisheries Surveillance, MOU between the CAF and the RCMP Concerning the Provision of Assistance by the CAF in Support of the RCMP in its Vessel-escort Mission, MOU Between the CAF and the RCMP Concerning the Provision of CAF Assistance to the RCMP in its Response to a Criminal or Terrorist CBRNE Incident.

14. *Op PALACI* is the CAF' contribution to Parks Canada's avalanche-control program in Rogers Pass, where the Trans-Canada Highway and the Canadian Pacific Railway cross the Selkirk Mountains in British Columbia. Its objective is to prevent uncontrolled, naturally occurring avalanches, and thus prevent blockage of the essential road and rail links between coastal British Columbia and the rest of Canada. *Op PALACI* is conducted under a MOU between the DND and Parks Canada, which has jurisdiction over Rogers Pass because it lies within the boundaries of Glacier National Park.

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Suggested Questions

Q. What is the application of *NDA* subsection 273.6(2) to federal law enforcement?

Q. What is the MOU for CAF assistance to RCMP counter drug operations?

Q. What is the MOU for CAF assistance to the Department of Fisheries and Oceans (DFO)?

Q. What is the legal protection for CAF members providing support to DFO?

Q. What is *Op PALACI*?

Note to the Instructor: Encourage students to actively participate in the lesson and to reason through problems.

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PART 4 – CONCLUSION

Summary

Legal framework for Domestic Operations

1. Domestic operations are conducted within the confines of Canadian territory and exclusive economic zones and take many different shapes and forms: assistance during civil emergencies; support to national development goals; support to the maintenance of public order and security, and/or their restoration; and conduct of surveillance-and-control operations. Under the *Constitution Act of 1867*, a division of legislative jurisdiction was made between the federal and provincial governments. At Section 91, the federal government was given exclusive jurisdiction for emergencies that span two or more provincial or territorial government jurisdictions.

Use of Force in Domestic Operations

2. CAF operations must be conducted in accordance with the rule of law. During law enforcement assistance operations it may become necessary to take action for the maintenance of law and order. This could put members of the CAF in a position where they may have to use force against their fellow citizens. Even during humanitarian assistance operations circumstances may arise during which civilian police are not present when crimes might be committed in the presence of CAF members.

3. The *Criminal Code* sections dealing with self-defence have in common a concept of "justified use of force". This reflects the influence of a common law principle that in circumstances where the use of force is necessary, the harm sought to be prevented could not be prevented by less violent means and the injury done, or reasonably expected to be done, is not disproportionate to the harm it is intended to prevent. Under Canadian law there is no legal basis to defend property with deadly force unless there also exists a coincident threat of death or serious bodily harm to a person. The maintenance of law and order is primarily the responsibility of the civilian police authorities. Except in those cases where they are employed in a law enforcement assistance role, or when performing aid of the civil power duties, CAF members have no special status or obligation to enforce the law.

Peace Officer Status

4. Peace officer status is a term most often associated with police officers. However, historically the classes of officials charged with responsibility to protect the peace included persons other than police officers. This continues today. The historical roots of the term are reflected in the definition of "peace officer" in section 2 of the *Criminal Code* which sets out an extensive list of public authorities responsible for preservation and maintenance of the public peace, or who are authorized to perform duties and functions related to enforcing Canadian law. CAF personnel may benefit from a number of protections provided by the law. The *Criminal Code* provisions relating

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to self-defence or the use of reasonable force to prevent the commission of serious crimes, both of which are available to all Canadians, may provide CAF members legal protection in circumstances where it is not entirely clear that they are entitled to the protections arising from peace officer status.

5. The liabilities of members of the CAF when performing law enforcement assistance duties approximate those of the civilian police. However, apart from the specific statutory duty to take reasonable steps to suppress a riot, there is no broad common law duty to enforce the law and CAF members cannot be expected to perform general law enforcement duties as would be expected of civilian police officers. Peace officer status arises by operation of law. Article 22.01(2) of *Queen's Regulations and Orders* circumscribes those circumstances in which CAF members with peace officer status are performing duties that actually require them to have the powers and duties of peace officers.

6. When the CAF provides support to law enforcement authorities a consequence can be that CAF members may be required to provide evidence or testify as witnesses in criminal trials. CAF support to law enforcement authorities imposes obligations upon the CAF to ensure the proper logging of information and the retention of evidence. A claim against the Crown may arise as a result of CAF actions during domestic operations. CAF members participating in domestic operations may be subpoenaed to appear as witnesses in a civil claims proceeding or lawsuit. Members may only respond to such subpoena after obtaining direction from their chain of command. During assistance to law enforcement operations the supported civilian law enforcement authorities will retain responsibility for the arrest of any persons that may be detained by CAF members. With the exception of Military Police personnel, CAF members are not trained on arrest procedures, including the requirement to caution individuals of their rights under the *Charter of Rights and Freedoms* when an arrest is made.

Defence of Canada

0. The *Canada First Defence Strategy* of the Government of Canada identifies the primary role of the CAF as ensuring the security of our citizens and helping exercise Canada's sovereignty. The CAF, as a professional military body, remains under the control of the elected federal government at all times. In accordance with section 14 of the NDA, command of the CAF is vested in the Sovereign, who, through Letters Patent Constituting the Office of Governor General of Canada, has authorized the Governor General to exercise this command on behalf of the Sovereign.

0. Canada's geographic size, the harsh nature of its climate, and the nature of its ocean approaches, require a military force structure that is joint, robust, sustainable, and able to operate in a multi-faceted environment. The Canadian domestic theatre of operations, known as the Canadian AOR, is considered as a single theatre with three distinctive zones of operation; Maritime Regions, Arctic Region and Internal Territory. Continental operations are carried out within the North American AOR in support of Canada-United States (US) shared strategic objectives. To accomplish this, the CAF

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has established memoranda of understanding (MOUs) with the appropriate US military and selected government departments and agencies. Canada and the US have more than 80 treaty-level defence agreements, the most important of which is the mission carried out by the NORAD. CANSOFCOM also fully participates in the primary CAF mission of providing for the defence of Canada.

Sovereignty Operations

0. The *Canada First Defence Strategy* of the Government of Canada identifies the primary role of the CAF as ensuring the security of our citizens and helping exercise Canada's sovereignty. The challenging environmental conditions found in the Arctic region require forces capable of carrying out operations in an austere environment with limited or no local support. The forces must be capable of commanding, coordinating, and sustaining operations as well as supporting OGDA. The CAF must be capable of addressing domestic threats quickly and effectively. JTFN provides Canadian Joint Operations Command with a robust operational headquarters with the capability to effectively plan, command, support, and execute joint, integrated and combined expeditionary operations throughout the North such as in Operations NANOOK, NUNALIVUT and NUNAKPUT. Each new mission or operation involves the provision of legal advice in a multitude of areas. Primarily, legal advice focused on identifying the legal authority for the CAF to carry out the operation and the inextricably linked parameters that defined what the CAF and its members could or could not do. A number of issues will have legal implications while conducting Arctic Operations.

Aid of the Civil Power

0. Part VI of the *NDA* gives the Attorney General of a province the power to require the CAF to be called out in aid of the civil power for a situation involving a riot or disturbance. That can occur if, in the opinion of the Attorney General of the province, there is a riot or disturbance of the peace that occurs or is likely to occur and is beyond the powers of the civil authorities to suppress, prevent, or deal with. While on aid-of-the-civil-power duties, CAF members will have the powers and duties of constables. Further by virtue of section 2 of the *Criminal Code*, they also have the powers and protections of peace officers. The CAF members called out in aid of the civil power will remain on duty in such strength as the CDS, or designate, deems necessary until the CAF are no longer required as notified by the provincial Attorney General.

Aid to Law Enforcement Agencies (ALEA)

0. The primary role for the CAF is the defence of Canada. The defence of Canadians by the CAF does not include a traditional law enforcement mandate for the military. This responsibility has been assigned to provincial/territorial governments through section 92 of the *Constitution Act*. The CAF does not have any mandate for law enforcement beyond its own personnel and facilities. A critical first step in addressing a request from a civilian law enforcement agency is to determine: who is making the request, what type of assistance is being requested, and who has the authority to

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approve the request. *CAF Assistance to Provincial Police Forces Directions* (*CFAPPFD*) and its accompanying *Principles* require that the provinces must look to their own resources first. If unable to meet their needs from their own resources, the provincial police force must then seek the assistance of the RCMP.

0. Assistance to federal law enforcement agencies and other federal government departments can be provided pursuant to a number of legal instruments. These include *NDA* subsection 273.6(2), orders in council created through the exercise of the Crown prerogative, and minister-to-minister arrangements created by MOU. *Canadian Forces Armed Assistance Directions (CFAAD)* provides a process for the RCMP to request CAF support to deal with disturbances of the peace involving offences under the *Criminal Code* or the *Security Offences Act* involving terrorists, hostage-taking, or violence aimed at internationally protected persons, such as diplomats. MOUs are administrative arrangements that are not legally binding upon the participants. However, for administrative purposes, MOUs are normally treated as if they are legally binding. MOUs are very useful for setting out the nature, extent, and process of cooperative arrangements between the participants to the MOU.

Public Service under the *NDA*

0. In domestic operations, the CAF responds to requests from federal, provincial/territorial, or municipal lead civil authorities. With the exception of routine sovereignty operations and its defence-of-Canada role, and search and rescue, the CAF is always in support. Under Canadian constitutional law, the provincial governments have responsibility over the administration of justice, in addition to local or civil matters in the province. Implicit in this responsibility is a mandate to maintain law and order within their jurisdiction and to protect the public during times of crisis within the limits of their resources. The legal authority for CAF domestic operations is based upon the Crown prerogative and Canadian legislation. Section 273.6 (1) of the *NDA* allows the CAF to perform "any duty involving public service." The term 'public service' is not defined in the *NDA* except in the context of the liability of members of the CAF to perform any lawful duty. The *NDA* provides that 'duty' includes both those duties that are military in nature, and 'public service' as authorized under section 273.6(1).

Provision of Service (POS)

0. All CAF commanders are allocated resources to carry out their assigned portion of the Defence Services Program and are accountable for how those resources are expended. However, there are occasions when it is consistent with government policy to provide a service in response to a request from a non-defence agency, even though the provision of such a service is outside the immediate scope of the Defence Services Program. The type of request will dictate the authority level and whether full or partial cost recovery will be undertaken. When a service is provided to a non-defence agency, the CAF will normally charge the recoverable cost calculated in accordance with the *Provision of Services Manual*. A request often made to Defence resource managers is for the use of CAF personnel to support civilian activities. This can include the use of

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CAF members to set up and tear down shelters, as drivers of equipment or supplies, and to assist local authorities to fill sandbags, shovel snow, clear rubble, put out fires and provide other support to local disaster response teams The *Provision of Services Manual* provides general guidance and specific direction to commanders to address requests for the use of DND real property for purposes not related to Defence.

SAR Operations

0. In 1986, the Government of Canada directed the establishment of a National Search and Rescue Program (NSP). The NSP is a co-operative effort by federal, provincial and municipal governments along with other search and rescue (SAR) organizations. The objective of the NSP is to save lives by enhancing SAR prevention and provide effective and affordable SAR services in Canada's SAR areas of responsibility. The primary responsibility for the provision of aeronautical SAR services and effective operation of the co-ordinated aeronautical and maritime SAR system is assigned to the DND. DND conducts SAR activities, basic and complementary SAR tasks through responsibilities devoted to the Chief of Air Staff, 1 Canadian Air Division, Commander MARLANT, Commander 1 CAD and Commander MARPAC. DND and the Canadian Coast Guard (CCG) are required to provide primary search and rescue units (SRUs).

0. The role of SAR Techs in SAR and non-SAR operations is to save lives and reduce human suffering. The method of accessing the distress site rests with the aircraft commander and the SAR Tech team leader. Operational deployment of the SAR Tech team for SAR or non-SAR incidents shall normally be preceded by authorization from the search master or the rescue co-ordination centre to ensure that it is the most effective method of resolving the situation.

0. A log or case file shall be kept in which all rescue co-ordination centre (RCC)/maritime rescue sub-centre (MRSC)/searchmaster (SM) actions are recorded, with times entered in Coordinated Universal Time (UTC). All records, logs and report created during the resolution of an incident are accessible to the public and are controlled by the DND. Information requested to DND will forwarded to the Maritime Forces Pacific, the Maritime Forces Atlantic or the 1 CAD Privacy and Access to Information section, for onward transmission to the appropriate rescue co-ordination centre (RCC). The Crown will indemnify, according to Treasury Board policy, rescue co-ordination centre/maritime rescue sub-centre personnel and the servants of the Crown if they were acting within the scope of their employment and not acting maliciously or dishonestly. If an employee is summoned to give evidence at a Coroner's Inquest, Board of Inquiry or other body engaged in the investigation of a search and rescue related misadventure, he should request legal advice through his immediate supervisor.

Operations involving other governmental departments (OGD)

0. Domestic operations conducted within Canada and along the maritime and air approaches to Canada are generally undertaken in partnership with OGD embracing a

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comprehensive approach. Typically, the CAF will act in a supporting role, however, under certain circumstances the CAF will be the lead department. MOUs are administrative arrangements that are not legally binding upon the participants. However, for administrative purposes, MOUs are normally treated as if they are legally binding. MOUs are very useful for setting out the nature, extent, and process of cooperative arrangements between the participants to the MOU. *Op PALACI* is the CAF' contribution to Parks Canada's avalanche-control program in Rogers Pass, where the Trans-Canada Highway and the Canadian Pacific Railway cross the Selkirk Mountains in British Columbia. Its objective is to prevent uncontrolled, naturally occurring avalanches, and thus prevent blockage of the essential road and rail links between coastal British Columbia and the rest of Canada.

Confirmation

The instructor may ask other confirmation questions.

Conclusion

Legal issues common to all domestic CAF operations

0. In domestic operations, the use of force by CAF members is based on Canadian law and controlled by the chain of command in accordance with ROE or a use of force directive approved and issued by the CDS. Whether ROE are authorized or not, CAF members retain the right of self-defence. Canadian law recognizes the right of all Canadians, including members of the CAF, to use reasonable and justifiable force to protect oneself, and others under their protection. In some limited circumstances force may be used to protect property. CAF members who are authorized to assist law enforcement authorities will have peace officer status and may be authorized to use force to carry out their duties. Any force used must be both reasonable and necessary in the circumstances.

0. CAF participation in domestic operations may involve contact with the public. Duties associated with assisting civilian law enforcement authorities can result in contact involving the use of force. Having peace officer status when performing law enforcement duties will provide CAF members with lawful justification for using force and legal protection from criminal and civil liability. Additionally, for those CAF operations that lead to court proceedings, CAF members, and their operational records, may be required as witnesses and evidence. The potential requirement for CAF members to testify in criminal or civil proceedings gives rise to the need to maintain complete and accurate records of all CAF domestic operations.

Defence of Canada

0. Delivering excellence at home helps us contribute to the defence of North America in cooperation with the United States, Canada's closest ally. Given our

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common defence and security requirements, it is in Canada's strategic interest to remain a reliable partner in the defence of the continent. The CAF will continue to collaborate with their US counterparts as a partner in the North American Aerospace Defence Command (NORAD). This binational command has been an important element of the Canada-US defence relationship since its creation in 1958, and its primary mission of defending North American aerospace remains important today. NORAD is also evolving to meet future threats and the Command was assigned the new responsibility of maritime warning.

0. CJOC Continental will continue to work with US Northern Command in support of shared objectives. The two Commands are dedicated to enhancing military-to-military cooperation to provide assistance to civilian emergency response agencies in the event of a crisis. The CAF are prepared to do their part under such circumstances with the approval of both governments and would expect similar help in return. Finally, the two nations' armed forces will pursue their effective collaboration on operations in North America and abroad. To remain interoperable, we must ensure that key aspects of our equipment and doctrine are compatible. Accordingly, the CAF will continue to participate in joint training exercises and personnel exchanges with their US counterparts.

Sovereignty Operations

0. In Canada's Arctic region, changing weather patterns are altering the environment, making it more accessible to sea traffic and economic activity. Retreating ice cover has opened the way for increased shipping, tourism and resource exploration, and new transportation routes are being considered, including through the Northwest Passage. While this promises substantial economic benefits for Canada, it has also brought new challenges from other shores. These changes in the Arctic could also spark an increase in illegal activity, with important implications for Canadian sovereignty and security and a potential requirement for additional military support. The Government has committed to making sure that Canada has the tools it needs to deal with the full range of threats and challenges to Canada and Canadians. The Canada First Defence Strategy represents a major step in this direction by giving the CAF the capabilities they need to operate effectively in today's - and tomorrow's - uncertain environment.

Aid of the Civil Power, Public service under NDA, Provision of Service, Operations involving other governmental departments (OGD)

0. Although the CAF does not have a standing mandate to enforce the laws of Canada, other than in relation to CAF members and defence establishments, both provincial and federal law enforcement agencies and other government departments may request CAF assistance to enforce laws within their respective jurisdictions. There are several legal instruments through which the CAF may be authorized to assist law enforcement agencies in the execution of their mandate. Normally, the assistance requested is for a unique or special skill, capability or equipment only available from within the CAF. The request process and approval authority will vary according to the legal instrument used. Consequently, legal advisors must be aware of the various legal

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instruments and their respective processes. Requests for assistance must be made and authorized at the appropriate level. If CAF assistance is provided, it is always provided in support of the police force of jurisdiction. That law enforcement agency retains responsibility for the general management of the law enforcement operation.

Assistance to Law Enforcement Agencies (ALEA)

0. The CAF does not have a mandate to enforce the laws of Canada, other than in relation to CAF members and defence establishments. However, both provincial and federal law-enforcement agencies and OGDA may request CAF assistance to enforce laws within their respective jurisdictions. There are several authorities by which the CAF may be authorized to assist law-enforcement agencies in the execution of their mandate. These can include statutory instruments like the *NDA*, orders in council like the *CFAAD*, and administrative arrangements like the RCMP Drug Law Enforcement MOU. Normally, the assistance requested should be for a unique or special skill, capability or equipment only available from within the CAF. The request process and approval authority will vary according to the legal instrument used, though the principle that the CAF must remain in support of law enforcement agency runs through each mechanism.

SAR Operations

0. The National SAR Program incorporates SAR response in the three domains of land, sea, and air. The MND is designated as the lead minister for SAR. The CAF is mandated and resourced to respond to distress situations that are generated by persons in distress originating from an aircraft or a marine vessel. On behalf of the SAR region commanders and the Commander CJOC Continental, the Joint Rescue Coordination Centres (JRCCs) coordinate the rescue effort in these situations. Distress scenarios that do not involve an aircraft or a boat and have a ground search aspect (GSAR), such as lost hunters or overdue snowmobilers, are the responsibility of a municipal, provincial or territorial agency depending on the locale and nature of the situation. If the assistance of the CAF is requested in these scenarios, it is usually done via a JRCC, but sometimes involves an RJTF HQ. If the CAF SAR system is engaged to provide SAR air assets, a JRCC will be contacted either by the RJTF or directly by the responsible agency. In these instances, if life is deemed to be at risk and assets are not otherwise committed, the officer in charge (OIC) of the JRCC has the authority to commit SAR assets to a non-mandated SAR activity. As in all cases where the CAF provides support, particularly air support to an outside agency, it is deemed to be a "provision of service" and cost recovery may be pursued.

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PO 026 ADVISE ON CAF OPERATIONS

PART 1 -- LESSON IDENTIFICATION

TITLE: EO 026.03 Advise on CAF operations of mixed international and domestic nature

Performance. Advise on CAF operations of mixed international and domestic nature

Conditions.

Given: On CAF operations of mixed international and domestic nature, references including legal principles on maritime operations at the international and domestic level (i.e. UNCLOS, maritime zones, controlled access zone orders, CAF support to RCMP counter drug operations, fisheries Act, Coastal Fisheries Protection Act), legal issues related to intelligence and information operations and on special operations.

Denied: Direct supervision

Standard. The legal officer shall advise on mixed international and domestic CAF operations.

Main Teaching Points:

- Maritime Operations
- Legal issues related to Intelligence Operations
- Legal issues related to Information Operations
- Legal issues related to Special Operations (SOF)

Method. This EO will be accomplished by a combination of self-study and class lectures. Students will be required to read assigned materials and be prepared to respond to questions.

Duration. Four 40-minute periods.

References. *Privacy Act*
Canadian Security Intelligence Service Act
Radiocommunication Act
United Nations Convention on the Law of the Sea
B-GJ-005-104/FP-024 The Operational Law Manual (Draft)
Chapters 2, 20, 23, 24
B-GJ-005-302/FP-001 Domestic Operations, paras 0404 to 0406
B-GJ-005-200/FP-000 Joint Intelligence Doctrine, para 211
B-GG-005-004/AF-010 CF Information Operations, Chapter 1
B-GJ-005-000/FP-001 Canadian Military Doctrine, Chapter 5

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Training/ Learning Aids. Standard classroom with whiteboard and projection system/handouts; CD materials; Legal Officer Qualification Course (LOQC) Instructors Handbook – Module(s) [XXX]

Note to the instructor. The developmental lesson shall be conducted in structured manner, using a list of questions to the class. Instructors are to complement each segment of the developmental lesson by follow-up and direct questions taking into account the flow and direction of the discussion. Interim summaries shall be conducted at the end of each segment to confirm the material was learned and provide a basis from which the discussion can progress to the next segment. A review of the main teaching points will then take place at the end of the period.

PART 2 – INTRODUCTION

Objective: The instructor shall advise on the status pertaining to PWs & detainees as outlined in Module [XXX] of the LOQC Instructors Handbook.

Introduction:

Outline:

Stage 1 – Maritime Operations

Stage 2 – Legal issues related to Intelligence Operations

Stage 3 – Legal issues related to Information Operations

Stage 4 – Legal issues related to Special Operations (SOF)

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PART 3 – BODY OF THE LESSON

Stage 1 – Maritime Operations

Introduction

1. The maritime domain is a complex environment within which careful consideration must be given to the rule of law in the conduct of international and domestic operations. As outlined in the *United Nations Convention on the Law of the Sea* (*UNCLOS*) and the *Oceans Act,* maritime zones are required under international law and serves to outline the sovereign rights that can be exercised by a coastal state in these areas of the sea. In general terms, under *UNCLOS*, the rights of a coastal state diminish with distance from the coast. The zones also outline the rights that can be exercised by other countries when they wish to undertake activities in these areas of the sea. Canadian internal waters are generally treated the same way as land territory, that is, Canada has full sovereignty over them. The Canadian territorial sea is also treated similar to land territory and Canada's sovereignty extends to the airspace, seabed, and subsoil within this zone. Notwithstanding Canada's rights, ships of all states enjoy the right of innocent passage through the territorial sea but they must operate under certain conditions as outlined in *UNCLOS*. Within the contiguous zone, Canada may exercise control to prevent the infringement of its customs, fiscal, immigration, or sanitary laws and regulations. Canada may also punish for such infringements.

2. Within the Canadian exclusive economic zone, Canada has sovereignty and jurisdiction over exploration and management of the marine environment, and economic exploitation of living and nonliving resources in the waters above the seabed, in the seabed, and beneath the seabed. No state has sovereignty or jurisdiction over the high seas, however, *UNCLOS* sets out certain universal crimes on the high seas such as: piracy, illicit drug trafficking, unauthorized broadcasting, and slave trade. It must be noted, however, that it is not always clear that Canadian law-enforcement agencies can exercise enforcement powers on the high seas for actions related to these crimes.

3. This outline will address the legal basis for international and domestic naval operations and some of the issues that arise during naval operations at sea during peacetime, Security Council mandated enforcement operations during times of armed conflict and various international and domestic legislation that provide the basis for naval operations.

4. **International Law.** International law is mostly composed of treaty law and customary international law. A treaty is simply any agreement between two or more states that is intended to establish obligations as a matter of international law. The *UN Charter*, the UNCLOS, the *Geneva Conventions*, their *Additional Protocols*, and the Rome Statute of the International Criminal Court all establish treaty obligations. The express consent of a state is required before it is bound to comply with any treaty

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obligations. Customary international law, on the other hand, binds all states, without requiring their prior express consent. Customary legal principles result from the evolution of state practice and attitudes, rather than from the formal negotiation of binding agreements. The 'crystallisation' of a norm into a binding principle of customary international law requires that two threshold criteria be met: established state practice supporting the principle and a belief by states that this practice is legally required (*opinio juris sive necessitatis*).

5. Generally speaking, significant treaty sources of law impacting on international naval operations are the UNCLOS, the *UN Charter* and the LOAC. UNCLOS applies during peacetime and times of armed conflict and it is the most comprehensive convention pertaining to the law of the sea. The UN Charter is the legal basis upon which Security Council (SC) mandated naval operations rest. These SC mandated operations may or may not involve an armed conflict. LOAC consists of treaty law and customary international law. Key treaties include the *Geneva Conventions* and the *Additional Protocols*. Customary international law and LOAC related to naval operations have been captured in the San Remo Manual. The Manual, generally speaking, is a compilation of customary international law, as it exists today and is generally considered authoritative. It encapsulates international law as it applies to armed conflicts at sea.

6. Legal advisors and naval commanders should be familiar with the law as it applies to naval operations during times of peace, during Security Council mandated operations and during times of armed conflict. It is important for legal advisors and naval commanders to be able to identify the type of operation they are conducting and the law that will apply to that operation. As will be illustrated below, international and domestic law play an influential role in shaping naval operations.

7. ***United Nations Convention on the Law of the Sea (UNCLOS).*** UNCLOS defines each maritime zone as well as the rights and obligations of states with respect to each zone. Some of the key rights and zones include internal waters, the territorial sea, innocent passage in the territorial sea, contiguous zone, international straits, transit passage, archipelagic waters, exclusive economic zone, continental shelf and the high seas. Canada ratified UNCLOS on Nov 6, 2003 and it came into force in Canada on Dec 7, 2003. Although there is little discussion with respect to the military use of the sea *per se* in UNCLOS, the rights and obligations that each State has with respect to the maritime zones, as stated in UNCLOS, will have an impact on the military uses of the sea.

8. **The *Charter of the United Nations.*** The Charter of the United Nations empowers the Security Council to pass Security Council Resolutions (SCR) that may authorize states to establish and enforce embargoes and sanctions. Article 41 provides for the creation of embargoes and sanctions against a target state. It does not provide for their enforcement through use of force.

9. A SCR created under the authority of Article 42 may provide a legal basis for military enforcement measures in support of a SCR that has established embargos and

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sanctions. In such circumstances, depending upon the wording of the SCR, a member state may use force against other states for the purpose of enforcing the UN SCR. Consequently, a particular SCR may permit warships to do more then what UNCLOS would otherwise allow. An armed conflict does not need to exist for SCR to apply. As discussed below, CAF naval forces have been particularly active in the last few years conducting maritime interdiction operations enforcing SCRs.

10. **Law of Armed Conflict (LOAC).** Geneva Convention II and Additional Protocol I regulates certain aspects of naval warfare. Most aspects of naval warfare are regulated by customary international law.

11. **San Remo Manual on International Law Applicable to Armed Conflicts at Sea.** Customary international law is a main source of law as it applies to armed conflicts at sea. The *San Remo Manual on International Law Applicable to Armed Conflicts at Sea* outlines both treaty law and state practice. The San Remo manual covers such areas of the law as the region of operations, basic rules and target discrimination, methods and means of warfare at sea, measures short of attack including interception, visit, search, diversion and capture, and the law as it applies to protected persons, medical transports and medical aircraft.

12. **Domestic Law.** Domestic legislation will apply in certain circumstances to international operations but predominately it applies to operations conducted in Canadian waters, particularly those conducted in the exclusive economic zone and the contiguous zone. Naval commanders and their legal advisors must be aware of the domestic legislation that exists and its application to operations conducted in Canadian waters. Commanders need to be aware of their obligations and responsibilities under each federal statute that may apply to their day-to-day operations.

13. Canada's *Oceans Act* defines Canada's maritime zones. There are also sections on the prevention of the infringement of federal laws and the enforcement of federal laws in the contiguous zone and the application of federal laws to continental shelf installations.

14. The *Fisheries Act* provides the Minister of Fisheries and Oceans with authority pursuant to section 5 of the Act to appoint persons or classes of persons as fisheries officers and to provide the appointed person or class of persons with a certificate certifying their designation. This designation legally empowers the designated person with certain rights under the Act. CAF officers conducting fishery patrols have been so designated.

15. The *Coastal Fisheries Protection Act* provides the Governor in Council with the authority to authorize CAF commissioned officers to enforce the *Coastal Fisheries Protection Act* and to be protection officers within the meaning of the Act. CAF members acting as Protection Officers have a number of powers and responsibilities pursuant to this Act. These powers and responsibilities will be discussed later in the chapter. CAF naval personnel were so designated in the so-called "Turbot War".

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16. Section 273.6(2) of the *National Defence Act* allows the Governor-in-Council, or the Minister of National Defence on the request of another Minister, to issue directions to the CAF to assist the law enforcement agencies if the Governor-in-Council or the Minister considers the assistance to be in the national interest and the matter cannot to effectively dealt with but for the assistance of the CAF. This is relevant during the various counter drugs operations the CAF has participated in.

17. **Maritime Zones.** UNCLOS is the main body of law that defines maritime zones. It is important that naval commanders and their legal advisor be able to identify the zone in which HMC Ships are located, as Canada's rights and obligations will vary with the zone.

18. **Internal Waters, Ports & Territorial Sea.** Internal waters are those waters found on the landward side of the baseline of a state's territorial sea. The territorial sea is that part of the sea that extends seaward from the baseline to 12 nautical miles. A state has sovereignty over its landmass, internal waters and its territorial sea.

19. **Contiguous Zone (CZ) and Exclusive Economic Zone (EEZ).** The CZ is simply a zone contiguous to the territorial sea. It extends no more than 24 nautical miles from the baseline of the coastal state. Importantly, for domestic operations, the coastal state can exercise control over this area to prevent and punish infringement of its state laws pertaining to customs, immigration, and fisheries in its territory or territorial sea. Consequently, much of the CAF domestic naval operations have been undertaken in these zones while assisting law enforcement authorities. The EEZ is the area that is beyond and adjacent to the territorial sea. It extends no more than 200 nautical miles from the baseline.

20. Coastal states have certain rights and duties in the EEZ. "The coastal state has sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources, whether living or non-living, of the waters superjacent to the seabed and of the seabed and its subsoil, and with regard to other activities for the economic exploitation and exploration of the zone, such as the production of energy from the water, currents and winds".

21. **High Seas.** The high seas are those areas of the world's oceans that do not fall within the EEZ, territorial sea or internal waters or archipelagic waters of an archipelagic state.

22. **International Straits and Archipelagic Sea Lanes.** International straits or archipelagic sea-lanes are used to traverse from one part of the high seas or EEZ to another part of the high seas or EEZ. The right of transit passage through an international strait or an archipelagic sea-lane does not change the legal status of the waters that form the strait.

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International Operations

23. **Peacetime.** The purpose of this section is to identify the impact each maritime zone will have on naval operations being conducted in peacetime. UNCLOS is the main body of law applicable during peacetime.

24. **Internal Waters, Ports, Territorial Sea and Innocent Passage.** All vessels have a right to innocent passage through a coastal state's territorial sea. Passage through the territorial sea must be for the purpose of traversing the territorial sea to reach another maritime zone. Vessels are required to pass through the territorial sea without passing through the internal waters of the coastal state. They are also not to enter or leave internal waters or stop at any port during its passage unless permitted to do so by the coastal state. According to UNCLOS, passage shall be continuous and expeditious. However, passage includes stopping and anchoring, but only in so far as the same are incidental to ordinary navigation or are rendered necessary by *force majeure* or distress or for the purpose of rendering assistance to person, ships or aircraft in danger or distress". The right of innocent passage belongs to warships as well as to merchant vessels.

25. When foreign vessels are passing through the territorial waters of a coastal state they must refrain from doing anything that would threaten the peace and security of the coastal state. Acts that could be considered threatening to the peace and security of the coastal state include threatening to use force against the coastal state, conducting any exercise involving the use of their weapons, breaching the laws of the coastal state with respect to customs and immigration and collecting or attempting to collect information to the prejudice of the defence or security of the coastal state. This is not an exhaustive list. Other activities prohibited by vessels traversing the territorial sea can be found in Art 19(2) of UNCLOS.

26. Submarines and any other underwater vessel traversing the territorial sea must do so above the surface of the water with their flag raised. Aircraft may not be launched or recovered while conducting innocent passage through the territorial sea.

27. Warships and certain other Government operated vessels at sea and in port have immunity from the jurisdiction of the coastal State. That is, they are not subject to the enforcement jurisdiction of any state with the exception of the flag state. Laws not concerning passage through the territorial sea, for example the general criminal law of the coastal state, cannot be enforced against them. Warships are obliged to respect coastal state laws concerning passage through the territorial sea. When a warship does not comply with the laws and regulations of the coastal state while passing through its territorial sea and ignores a request for compliance, the coastal state may order it to leave its territorial sea immediately. If the coastal state suffers any damage due to the warship's non-compliance, the flag state will bear responsibility for the damage. As a result of this immunity a local police force may not board a warship for the purposes of enforcing the coastal state's laws unless flag state consent is obtained.

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28. **International Straits and Archipelagic Sea Lanes.** A military vessel may transit through, under or over an international strait or archipelagic sea-lane in their "normal mode". In other words, the vessel may launch or recover aircraft and leave its radar and weapons systems on submarines can remain submerged.

29. **Contiguous Zone (CZ) and Exclusive Economic Zone (EEZ).** A military vessel may operate in its "normal mode". It has the freedom of navigation and over flight. It may launch or recover aircraft, leave its radar and weapons system on and submarines may remain submerged. Foreign vessels must, however, have due regard to the rights of the coastal state and must obey the laws of the coastal state while in the EEZ provided that the laws are not inconsistent with UNCLOS.

30. **High Seas.** The high seas are open to all states including landlocked states for the purposes of navigation, the laying of pipelines and other rights within UNCLOS. A state when exercising its rights on the high seas must have due regard for the rights of other states to the freedom of the high seas. The high sea legal regime anticipates that every ship will sail under the flag of a state (and one state only). In relation to private vessels, it is expected that flagging states exercise exclusive responsibility to regulate the conduct of these ships. Warships from other states are not entitled to board the vessel, unless there are easonable grounds to believe that that vessel is engaged in certain prohibited activities (*e.g.*, piracy) or has no nationality (*i.e.*, is not flagged). The rules for non-commercial governmental ships are even more limiting: any government vessel operated for non-commercial purposes has immunity from the jurisdiction of any other state while on the high seas. Warships on the high seas are subject to the jurisdiction of the flag state only.

31. **Armed Conflict at Sea.** Opposing parties to an armed conflict may be engaged at sea. Customary international law is the main body of law applicable to armed conflict at sea. The law, generally speaking, has been captured in the San Remo manual. While Canada has not adopted the manual *per se* as a definitive statement of customary international law, it is an important resource. CAF legal advisors and naval commanders were active in contributing to the manual.

32. **Internal Waters, Ports and Territorial Sea.** During an armed conflict at sea, operations may be conducted in the internal waters and territorial sea of the belligerents. In times of armed conflict, the territorial waters of a neutral state are considered neutral waters and hostile acts by belligerents are forbidden in these waters. Neutral states are responsible for exercising control over their neutral waters to prevent belligerents from using the waters as a sanctuary or committing hostile acts. Hostile acts can include attacking persons or objects in neutral waters, the laying of mines, capturing vessels, etc. If the neutral state is unable or unwilling to stop a violation of its waters by belligerents, the opposing belligerent must give notice to the neutral state that it is to take steps to terminate the violation. The belligerent is to provide the neutral state with a reasonable amount of time to terminate the violation. "If the violation of the neutrality of the State by the belligerent constitutes a serious and immediate threat to the security of the opposing belligerent and the violation is not terminated, then that

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belligerent may, in the absence of any feasible and timely alternative, use such force as is strictly necessary to respond to the threat posed by the violation".

33. A neutral state may, without jeopardizing its neutrality, permit belligerent vessels to conduct innocent passage through its territorial sea or archipelagic sea. The neutral state may also allow a belligerent vessel to replenish its supply of food, water, and fuel so as to enable the vessel to reach its own port. It may also allow repairs of that vessel in order to make it seaworthy and capable of reaching its own port. The neutral is not to repair any weapons or increase the fighting capacity of the vessel in any way.

34. **International Straits and Archipelagic Sea Lanes.** Belligerent military vessels may pass through, under or over an international strait or archipelagic sea-lane. Their passage through, under or over a strait or sea-lane does not affect the neutrality of the coastal state. Also neutral vessels may pass through, under or over an international strait and archipelagic sea-lane of a belligerent coastal state. The neutral state should, however, give the belligerent notice that it intends to exercise its right of transit passage.

35. Belligerent vessels passing through, under or over an international strait or archipelagic sea-lane must do so without delay. They are to refrain from the threat or use of force against the territorial integrity or political independence of the neutral littoral or archipelagic State, or in any other manner inconsistent with the purposes of the Charter of the United Nations, and otherwise to refrain from any hostile actions or other activities not incident to their transit. Belligerents passing through, under or over neutral straits or waters in which the right of archipelagic sea lanes passage applies are permitted to take defensive measures consistent with their security, including launching and recovery of aircraft, screen formation steaming, and acoustic and electronic surveillance. Belligerents in transit or archipelagic sea lanes passage may not, however, conduct offensive operations against enemy forces, nor use such neutral waters as a place of sanctuary nor as a base of operations. The mere fact that there is an armed conflict does not change the right of transit passage through an international strait or archipelagic sea-lane as it relates to neutral states.

36. **Contiguous Zone (CZ) and Exclusive Economic Zone (EEZ).** Belligerents may lay mines in the EEZ, including the EEZ of a neutral state. If they do lay mines the belligerent must notify the neutral state of this fact. The belligerent must also ensure that the size of the minefield and the type of mines used do not endanger artificial islands, installations and structures, nor interfere with access thereto, and shall avoid so far as practicable interference with the exploration or exploitation of the zone by the neutral State. Due regard shall also be given to the protection and preservation of the maritime environment. Belligerents shall when conducting hostilities in the EEZ have due regard to the right of neutral states to explore and exploit economic resources found within the EEZ. Belligerents shall also have due regard for the marine environment and any artificial island, structure or installation they have built in the EEZ.

37. **High Seas.** Belligerents when conducting hostile acts on the high seas must have due regard for the rights of neutral states to use the high sea for any purpose as

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set out in UNCLOS. If there are cables or pipelines on the seabed, which belong to neutral states, the belligerents must take care not to damage them.

38. **Visit and Search Operations: Leadership Interdiction Operations.** The LOAC provides another legal basis for maritime operations, which would not necessarily be available under UNCLOS. "Leadership interdiction operations" (LIOs) occur under the authority of LOAC and are an exercise of visit and search. Naval forces may at times have to conduct visit and search operations directed at neutral shipping to ensure that they are not carrying contraband or belligerents. Military vessels and aircraft have a right to visit and search merchant vessels outside neutral waters where there are reasonable grounds for suspecting that they are subject to capture. They may be subject to capture if they are carrying contraband or belligerents. When visit and search is not possible, for example due to weather or sea conditions, diversion to port for the purpose of visit and search is acceptable.

39. In order to avoid visit and search operations, military forces may enforce reasonable control measures and certification procedures for the inspection of cargo of neutral merchant vessels. As a general rule, neutral merchants ships may not be attacked. However, if the naval commander believes on reasonable grounds that the vessel is carrying contraband, and after a prior warning is given, the vessel intentionally and clearly refuses to stop or resists visit, search and capture, then the vessel may be attacked. Use of force would be used in accordance with LOAC principles of necessity and proportionality.

40. CAF naval forces have spent a great deal of their time conducting LIOs as a part of the Campaign Against Terrorism. Numerous ships were boarded to ensure that they were not carrying contraband or belligerents. Legal advisors and naval commanders need to understand the law as it applies to visit and search since it is important part of what CAF naval forces do.

41. **Enforcement of Security Council Resolutions: Maritime Interdiction Operations.** Over the years, CAF naval forces have conducted a number of maritime interdiction operations (MIO). CAF maritime forces has been involved in operations off the coasts of Haiti55, the former Yugoslavia, East Timor, the Arabian Gulf and Somalia. Since MIOs are conducted with such frequency, it is important for legal advisors and naval commanders to have an understanding of the legal basis that underpin these operations.

42. The Charter of the United Nations provides the legal authority to pass Security Council resolutions (SCR) that may give states the right to establish embargoes and sanctions. As discussed in section 2, Article 41 covers embargos, sanctions and their monitoring. Article 42 provides the means to enforce embargos and sanctions against states that violate the SCR establishing the embargos and sanctions in the first place. SCR can apply to operations that may or may not involve an armed conflict.

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43. A SCR issued under the authority of article 41 is binding on all member states including the target state. Members must adhere to the SCR with respect to obeying and self-policing the embargos and sanctions as it relates to ships flying their flag. Ships from member states are not entitled to violate the SCR and each member state must ensure that their own ships adhere to the resolution. Ships are not entitled to enforce the resolution through coercive means against other states while operating under Article 41 but may rely on any applicable domestic legislation. If the Security Council considers the measures taken under Article 41 to be inadequate then the Security Council may take steps under Article 42 to compel compliance with the SCR. At that time member states may take all necessary steps to enforce compliance.

44. The UN Charter provides the Security Council with the legal authority to create SCR that allow states to enter various maritime zones such as the territorial sea to enforce various mandates and to conduct a variety of operations using varying degrees of force, which, importantly, would not be possible under UNCLOS. For example, UNCLOS prohibits a ship from entering the territorial sea of another state unless its passage is innocent or the coastal state consents to activities beyond innocent passage. When states are operating under a SCR, a ship may enter the target state's territorial sea to enforce compliance with the SCR. Entering the territorial sea of third party member state (*i.e.*, a non-target state) to enforce compliance with the SCR when it appears that the third party state is either unwilling or unable to enforce the SCR, while controversial, would generally speaking, be permissible.

45. Operations that may be permitted pursuant to a SCR made under Article 42 include intelligence gathering, boarding, diversion, air operations and disabling vessels. At a minimum, enforcement requires the authority to approach, board, demand documents, search, divert or arrest. At the extreme, if a vessel refuses to comply, this authority ultimately extends to firing across that vessel's bows or, as a last resort, disabling it with direct fire.

46. In order to determine whether the CAF naval force has the authority to board, search, divert, seize or perform any other maritime interdiction operation, the legal advisor must consult the SCR. For example, during Op FRICTION, CAF naval forces were active in conducting maritime interdiction operations in the Arabian Gulf and Sea. The authorization to use force to enforce the sanctions regime was anchored on SCRs such as SCR 665 (1991) which states in part:

> *Calls upon those Member States co-operating with the Government of Kuwait which are deploying maritime forces to the area to use such measures commensurate to the specific circumstances as may be necessary under the authority of the Security Council to halt all inward and outward maritime shipping, in order to inspect and verify their cargoes and destinations and to ensure strict implementation of the provisions related to such shipping laid down in resolution 661 (1990).*

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Since then numerous SCRs have been issued relating to Iraqi sanctions and embargoes.

47. **Proliferation Security Initiative (PSI).** The PSI is an activity whose purpose is to stop the unlawful proliferation of weapons of mass destruction (WMD). PSI participating states rely on already existing national and international law to stop or impede the transfer, shipment or sale of WMD or its related materials to state or non-state actors of proliferation concern. In 2004, Canada began to participate in PSI activity and to commit to the Interdiction Principles set out by the PSI. The PSI calls on states to commit to detaining, boarding and searching ships and aircraft registered to other member states committed to the PSI principles when they enter their internal waters, territorial sea, contiguous zone or national airspace. States are also called upon to board and search ships flying a flag of another state if the state is prepared to allow the interdiction. States are also called upon to require an aircraft flying through its national airspace to land if the state reasonably suspects that the aircraft has WMD cargo and is carrying the cargo to a state or non-state actor of proliferation concern.

48. **Domestic Operations.** There will be times when the CAF is requested to assist the civil authorities. The government has issued a number of orders in council providing CAF members with the authority and powers to enforce laws. Except as provided by these orders in council and applicable legislation, the CAF does not have the legal authority to conduct domestic law enforcement operations.

49. **Controlled Access Zone Order (Halifax, Esquimalt and Nanoose Harbours)** The Controlled Access Zone Order, P.C. 2002-2190, 12 December 2002, was made by the Governor General in Council on the recommendation of the Minster of National Defence for the purpose of establishing controlled access zones around Halifax, Esquimalt and Nanoose harbours. This order provides for the designation of a controlled access zone, types of access to a controlled access zone and compliance and enforcement of the conditions of access to a controlled access zone.
Security guards are responsible for enforcing this order. Security guard is defined in section 1(1) of the order as "(a) an officer or a non-commissioned member who is employed on duties relating to the enforcement of this Order; or (b) a person authorized by the Chief of the Defence Staff to enforce this Order".

50. **CAF Support to RCMP Counter Drug Operations.** The CAF and RCMP have entered into successive MOUs over the past decades, which MOUs govern the provision of CAF assistance to RCMP counterdrug operation. The latest of these MOUs came into force on 20 January 2005 and will remain in force until December 2006. The purpose of the MOU is to define the scope of CAF assistance and the process for requesting CAF support. CAF personnel will act in a support role in relation to the RCMP and will only provide assistance where there is neither the intention nor significant probability that CAF personnel will be used to directly apprehend, arrest or detain suspects.

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51. Assistance to law enforcement is subject to the exigencies of the service and the CDS or his/her delegate [will] determine the strength, composition, arms and equipment of any military force tasked or dispatched in response to a specific request for assistance and any subsequent changes thereto. CAF naval forces may be called upon to support the RCMP in their counter drug operations. The type of support provided to the RCMP generally consists of intelligence sharing and liaison, and surveillance of specific vessels and aircraft of interest by military surveillance systems or by military airplane or ships. In addition, CAF naval forces may be asked to assist in interdiction operations against identified vessels and aircraft but only upon the specific request of the RCMP, and appropriate CAF authorization. Other forms of assistance that are consistent with the MOU may also be provided.

52. ***Fisheries Act.*** The Minister of Fisheries and Oceans has the authority pursuant to section 5 of the *Fisheries Act* to appoint persons or classes of persons as fisheries officers and to provide the appointed person or class of persons with a certificate certifying their designation. A class designation and certificate of designation was provided to officers and non-commissioned members of the CAF serving in Her Majesty's Canadian ships and submarines as fishery officers. This designation applies for such time as the CAF members are required to perform duties or functions under the *Fisheries Act* or the *Coastal Fisheries Protection Act.*

53. There is also an MOU between the Department of Fisheries and Oceans and the CAF respecting surface ship patrols and aerial fisheries surveillance. The purpose of the MOU is to define the terms and procedures for the provision of support by the CAF to the Department of Fisheries and Oceans (DFO) for the purposes of surveillance and enforcement in waters of Canadian fisheries jurisdiction and those waters where Canada has international fisheries commitments.

54. The MOU defines the terms and procedures for the provision of surface ship patrols and aerial fisheries surveillance. Ship days and flying hours are allocated on an annual basis after consultation between DFO and CAF officials. The MOU also deals with the cost structure pertaining to the provision of support to the Department of Fisheries and Oceans. Annex D to the MOU provides a matrix for an assistance request from DFO to DND.

55. ***Coastal Fisheries Protection Act.*** Under the authority of section 5(2) of the *Fisheries Act,* the Deputy Minister of Fisheries has issued a certificate designating officers and non-commissioned officers of the CAF "Fishery Officers" when performing duties or functions under the *Fisheries Act* or *Coastal Fisheries Protection Acts*. In addition, the Governor in Council has authorized CAF commissioned officers to enforce the *Coastal Fisheries Protection Act* and to be protection officers within the meaning of the Act.

56. The *Coastal Fisheries Protection Act* provides the protection officer with the powers of inspection, arrest, seizure and forfeiture. Section 7 of the Act provides that:

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7. A protection officer may
(a) for the purpose of ensuring compliance with this Act and the regulations, board and inspect any fishing vessel found within Canadian fisheries waters or the NAFO Regulatory Area; and
(b) with a warrant issued under section 7.1, search any fishing vessel found within Canadian fisheries waters or the NAFO Regulatory Area and its cargo.

57. With respect to enforcement on the high seas for unauthorized fishing in Canadian fisheries waters, s. 7.01(1) provides:

7.01(1) If a protection officer believes on reasonable grounds that a fishing vessel of a participating state or of a state party to a treaty or an arrangement described in paragraph 6(f) has engaged in unauthorized fishing in Canadian fisheries waters and the officer finds the vessel in an area of the sea designated under subparagraph 6(e)(ii) or f (ii), the officer may, with the consent of that state, take any enforcement action that is consistent with this Act;
(2) Subsection (1) does not affect any powers the protection officer may have in the case of pursuit that began while the vessel was in Canadian fisheries waters.

58. Due to the nature of these duties, when enforcing this Act, CAF members, have "peace officer" status pursuant to the definition of "peace officer" in the *Criminal Code*. This definition includes "a person designated as a fishery officer under the *Fisheries Act* when performing any duties or functions under that Act or the *Coastal Fisheries Protection Act*", as well as members of the CAF who are "... employed on duties that the Governor in Council, in regulations made under the *National Defence Act* for the purposes of this paragraph, has prescribed to be of such a kind as to necessitate that the officers and non-commissioned members performing them have the powers of peace officers".

59. Peace officer status is important when performing duties related to law enforcement. Peace officer status is time specific and exists when a member is performing law enforcement duties. It does not exist merely because the CAF member is deployed in a domestic operation. Peace officer status is important because it will permit CAF members to enforce the law and to use force while doing so and it will protect them from criminal and civil liability provided they are acting within the scope of their duties. This is important to the navy since the navy may need to use force when acting as protection officers. Peace officer status will provide them with protection from criminal and civil liability while acting in the scope of their duties.

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Interim Summary

60. The maritime domain is a complex environment within which careful consideration must be given to the rule of law in the conduct of international and domestic operations. As outlined in the *United Nations Convention on the Law of the Sea* (*UNCLOS*) and the *Oceans Act,* maritime zones are required under international law and serves to outline the sovereign rights that can be exercised by a coastal state in these areas of the sea. The Canadian territorial sea is also treated similar to land territory and Canada's sovereignty extends to the airspace, seabed, and subsoil within this zone. Notwithstanding Canada's rights, ships of all states enjoy the right of innocent passage through the territorial sea but they must operate under certain conditions as outlined in *UNCLOS*. Within the Canadian exclusive economic zone, Canada has sovereignty and jurisdiction over exploration and management of the marine environment, and economic exploitation of living and nonliving resources in the waters above the seabed, in the seabed, and beneath the seabed.

61. International law is mostly composed of treaty law and customary international law. A treaty is simply any agreement between two or more states that is intended to establish obligations as a matter of international law. The *UN Charter*, the UNCLOS, the *Geneva Conventions*, their *Additional Protocols*, and the Rome Statute of the International Criminal Court all establish treaty obligations. Generally speaking, significant treaty sources of law impacting on international naval operations are the UNCLOS, the *UN Charter* and the LOAC. UNCLOS applies during peacetime and times of armed conflict and it is the most comprehensive convention pertaining to the law of the sea. The UN Charter is the legal basis upon which Security Council (SC) mandated naval operations rest. These SC mandated operations may or may not involve an armed conflict. LOAC consists of treaty law and customary international law.

62. UNCLOS defines each maritime zone as well as the rights and obligations of states with respect to each zone. Some of the key rights and zones include internal waters, the territorial sea, innocent passage in the territorial sea, contiguous zone, international straits, transit passage, archipelagic waters, exclusive economic zone, continental shelf and the high seas. Canada ratified UNCLOS on Nov 6, 2003 and it came into force in Canada on Dec 7, 2003. The Charter of the United Nations empowers the Security Council to pass Security Council Resolutions (SCR) that may authorize states to establish and enforce embargoes and sanctions. Article 41 provides for the creation of embargoes and sanctions against a target state. It does not provide for their enforcement through use of force. Geneva Convention II and Additional Protocol I regulates certain aspects of naval warfare. Most aspects of naval warfare are regulated by customary international law. Customary international law is a main source of law as it applies to armed conflicts at sea. The *San Remo Manual on International Law Applicable to Armed Conflicts at Sea* outlines both treaty law and state practice.

63. Domestic legislation will apply in certain circumstances to international operations but predominately it applies to operations conducted in Canadian waters, particularly those conducted in the exclusive economic zone and the contiguous zone.

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Canada's *Oceans Act* defines Canada's maritime zones. There are also sections on the prevention of the infringement of federal laws and the enforcement of federal laws in the contiguous zone and the application of federal laws to continental shelf installations. The *Fisheries Act* provides the Minister of Fisheries and Oceans with authority pursuant to section 5 of the Act to appoint persons or classes of persons as fisheries officers and to provide the appointed person or class of persons with a certificate certifying their designation.

64. The *Coastal Fisheries Protection Act* provides the Governor in Council with the authority to authorize CAF commissioned officers to enforce the *Coastal Fisheries Protection Act* and to be protection officers within the meaning of the Act. Section 273.6(2) of the *National Defence Act* allows the Governor-in-Council, or the Minister of National Defence on the request of another Minister, to issue directions to the CAF to assist the law enforcement agencies if the Governor-in-Council or the Minister considers the assistance to be in the national interest and the matter cannot to effectively dealt with but for the assistance of the CAF.

65. UNCLOS is the main body of law that defines maritime zones. It is important that naval commanders and their legal advisor be able to identify the zone in which HMC Ships are located, as Canada's rights and obligations will vary with the zone. Internal waters are those waters found on the landward side of the baseline of a state's territorial sea. The territorial sea is that part of the sea that extends seaward from the baseline to 12 nautical miles. The Contiguous Zone is simply a zone contiguous to the territorial sea. It extends no more than 24 nautical miles from the baseline of the coastal state. The Exclusive Economic Zone is the area that is beyond and adjacent to the territorial sea. It extends no more than 200 nautical miles from the baseline. Coastal states have certain rights and duties in the EEZ. The high seas are those areas of the world's oceans that do not fall within the EEZ, territorial sea or internal waters or archipelagic waters of an archipelagic state.

66. All vessels have a right to innocent passage through a coastal state's territorial sea. Passage through the territorial sea must be for the purpose of traversing the territorial sea to reach another maritime zone. Vessels are required to pass through the territorial sea without passing through the internal waters of the coastal state. When foreign vessels are passing through the territorial waters of a coastal state they must refrain from doing anything that would threaten the peace and security of the coastal state.

67. Warships and certain other Government operated vessels at sea and in port have immunity from the jurisdiction of the coastal State. That is, they are not subject to the enforcement jurisdiction of any state with the exception of the flag state. Laws not concerning passage through the territorial sea, for example the general criminal law of the coastal state, cannot be enforced against them. Warships are obliged to respect coastal state laws concerning passage through the territorial sea. A military vessel may transit through, under or over an international strait or archipelagic sea-lane in their "normal mode". In the CZ and EEZ, a military vessel may operate in its "normal mode".

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It has the freedom of navigation and over flight. It may launch or recover aircraft, leave its radar and weapons system on and submarines may remain submerged.

68. The high seas are open to all states including landlocked states for the purposes of navigation, the laying of pipelines and other rights within UNCLOS. A state when exercising its rights on the high seas must have due regard for the rights of other states to the freedom of the high seas. The high sea legal regime anticipates that every ship will sail under the flag of a state (and one state only). In relation to private vessels, it is expected that flagging states exercise exclusive responsibility to regulate the conduct of these ships. Opposing parties to an armed conflict may be engaged at sea. Customary international law is the main body of law applicable to armed conflict at sea. The law, generally speaking, has been captured in the San Remo manual.

69. During an armed conflict at sea, operations may be conducted in the internal waters and territorial sea of the belligerents. In times of armed conflict, the territorial waters of a neutral state are considered neutral waters and hostile acts by belligerents are forbidden in these waters. Neutral states are responsible for exercising control over their neutral waters to prevent belligerents from using the waters as a sanctuary or committing hostile acts. Hostile acts can include attacking persons or objects in neutral waters, the laying of mines, capturing vessels, etc. A neutral state may, without jeopardizing its neutrality, permit belligerent vessels to conduct innocent passage through its territorial sea or archipelagic sea.

70. Belligerent military vessels may pass through, under or over an international strait or archipelagic sea-lane. Their passage through, under or over a strait or sea-lane does not affect the neutrality of the coastal state. Belligerent vessels passing through, under or over an international strait or archipelagic sea-lane must do so without delay. They are to refrain from the threat or use of force against the territorial integrity or political independence of the neutral littoral or archipelagic State, or in any other manner inconsistent with the purposes of the Charter of the United Nations, and otherwise to refrain from any hostile actions or other activities not incident to their transit.

71. Belligerents may lay mines in the EEZ, including the EEZ of a neutral state. If they do lay mines the belligerent must notify the neutral state of this fact. The belligerent must also ensure that the size of the minefield and the type of mines used do not endanger artificial islands, installations and structures, nor interfere with access thereto, and shall avoid so far as practicable interference with the exploration or exploitation of the zone by the neutral State. Belligerents when conducting hostile acts on the high seas must have due regard for the rights of neutral states to use the high sea for any purpose as set out in UNCLOS. If there are cables or pipelines on the seabed, which belong to neutral states, the belligerents must take care not to damage them.

72. The LOAC provides another legal basis for maritime operations, which would not necessarily be available under UNCLOS. "Leadership interdiction operations" (LIOs) occur under the authority of LOAC and are an exercise of visit and search. Naval forces may at times have to conduct visit and search operations directed at neutral shipping to

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ensure that they are not carrying contraband or belligerents. In order to avoid visit and search operations, military forces may enforce reasonable control measures and certification procedures for the inspection of cargo of neutral merchant vessels. As a general rule, neutral merchants ships may not be attacked.

73. The Charter of the United Nations provides the legal authority to pass Security Council resolutions (SCR) that may give states the right to establish embargoes and sanctions. A SCR issued under the authority of article 41 is binding on all member states including the target state. Members must adhere to the SCR with respect to obeying and self-policing the embargos and sanctions as it relates to ships flying their flag. Ships from member states are not entitled to violate the SCR and each member state must ensure that their own ships adhere to the resolution. The UN Charter provides the Security Council with the legal authority to create SCR that allow states to enter various maritime zones such as the territorial sea to enforce various mandates and to conduct a variety of operations using varying degrees of force, which, importantly, would not be possible under UNCLOS. In order to determine whether the CAF naval force has the authority to board, search, divert, seize or perform any other maritime interdiction operation, the legal advisor must consult the SCR. Since then numerous SCRs have been issued relating to Iraqi sanctions and embargoes.

74. The Proliferation Security Initiative (PSI) is an activity whose purpose is to stop the unlawful proliferation of weapons of mass destruction (WMD). PSI participating states rely on already existing national and international law to stop or impede the transfer, shipment or sale of WMD or its related materials to state or non-state actors of proliferation concern.

75. There will be times when the CAF is requested to assist the civil authorities. The government has issued a number of orders in council providing CAF members with the authority and powers to enforce laws. The Controlled Access Zone Order, P.C. 2002-2190, 12 December 2002, was made by the Governor General in Council on the recommendation of the Minster of National Defence for the purpose of establishing controlled access zones around Halifax, Esquimalt and Nanoose harbours.".

76. The CAF and RCMP have entered into successive MOUs over the past decades, which MOUs govern the provision of CAF assistance to RCMP counterdrug operation. Assistance to law enforcement is subject to the exigencies of the service and the CDS or his/her delegate [will] determine the strength, composition, arms and equipment of any military force tasked or dispatched in response to a specific request for assistance and any subsequent changes thereto. The Minister of Fisheries and Oceans has the authority pursuant to section 5 of the *Fisheries Act* to appoint persons or classes of persons as fisheries officers and to provide the appointed person or class of persons with a certificate certifying their designation. There is also an MOU between the Department of Fisheries and Oceans and the CAF respecting surface ship patrols and aerial fisheries surveillance.

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77. Under the authority of section 5(2) of the *Fisheries Act,* the Deputy Minister of Fisheries has issued a certificate designating officers and non-commissioned officers of the CAF "Fishery Officers" when performing duties or functions under the *Fisheries Act* or *Coastal Fisheries Protection Acts*. Due to the nature of these duties, when enforcing this Act, CAF members, have "peace officer" status pursuant to the definition of "peace officer" in the *Criminal Code*. Peace officer status is important when performing duties related to law enforcement. Peace officer status is time specific and exists when a member is performing law enforcement duties. It does not exist merely because the CAF member is deployed in a domestic operation.

Suggested Questions

Q. What are the main sources of law impacting on international naval operations? (UNCLOS, the *UN Charter (Security Council Resolutions)* and the LOAC *(Geneva Conventions* and the *Additional Protocols),* Customary international law San Remo Manual) (Para 5)

Q. What covers the San Remo Manual? (Para 11)

Q. What are the main sources of law impacting on domestic naval operations? (*Oceans Act, Fisheries Act, Coastal Fisheries Protection Act)* (Para 12 to 15)

Q. What are the five maritime zones that are outlined in UNCLOS and the *Oceans Act*? (Internal waters, territorial sea, contiguous zone, exclusive economic zone, and high seas) (Paras 18 to 22)

Q. What are Internal Waters? (Para 18)

Q. What is the Territorial Sea? (Para 18)

Q. What are the Contiguous and Exclusive Economic Zones? (Para 19)

Q. What are High Seas? (Para 21)

Q. What are International Straits and Archipelagic Sea Lanes? (Para 22)

Q. Explain what is Innocent Passage? (Paras 24 to 27)

Q. What is a Transit Passage? (Paras 28, 29)

Q. What are High Seas? (Para 30)

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Q. Explain maritime operations allowed in Internal Waters, Ports and Territorial Sea during armed conflict? (Paras 31 to 33)

Q. Explain passage in International Straits and Archipelagic Sea Lanes during armed conflict? (Paras 34, 35)

Q. Explain the laying mines process in the Contiguous and Exclusive Economic Zones during armed conflict? (Para 36)

Q. What are Leadership Interdiction Operations? (Paras 38 to 40)

Q. What are Maritime Interdiction Operations? (Paras 41 to 46)

Q. What is a Proliferation Security Initiative? (Para 47)

Q. Wjat is the Controlled Access Zone Order (Halifax, Esquimalt and Nanoose Harbours)? (Para 49)

Q. What is the MOU between DND and the RCMP to support Counter Drug Operations? (Paras 50, 51)

Q. What is the MOU between DND and Department of Fisheries and Oceans and the CAF respecting surface ship patrols and aerial fisheries surveillance? (Para 53, 54)

Q. Why the Peace Officer status is important when performing duties related to law enforcement? (Para 59)

Note to the Instructor: Encourage students to actively participate in the lesson and to reason through problems.

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PART 3 – BODY OF THE LESSON

Stage 2 – Legal issues related to Intelligence Operations

Introduction

1. The collection of intelligence is a practice of nations that lies at the heart of operational readiness. It is universally regarded as a fundamental element of every state's national security in both peacetime and war, and it is vital to the planning and conduct of military operations.

2. Intelligence is fundamental to the conduct of any operation be it an international operation or a domestic one. Proper direction of the gathering and use of intelligence is an important responsibility of command. The lack of sufficient intelligence can impact on the planning and execution of operations. The gathering of intelligence may be, at times, sensitive, and is particularly so if information is sought with respect to Canadian citizens or within Canada. The challenge in a liberal democracy such as Canada is to ensure that national security and national defence activities remain consistent with the principles and protections set out in the *Canadian Charter of Rights and Freedoms* and the statutory rules in places like the *Access to Information Act and the Privacy Act*.

3. **Legal Framework.** Other than the enabling provisions of the *National Defence Act* (*NDA*) governing the activities of the Communications Security Establishment (CSE), the *NDA* does not specifically authorize or prohibit the conduct of intelligence gathering. Since there is no general purpose clause authorizing military intelligence-related activities *per se*, such activity implicitly falls within the general ambit of the national defence mandate.

4. However, reference to a defence intelligence mandate is statutorily contained in other legislation. In particular, section 16 of the *Canadian Security Intelligence Act* provides as follows:

> *16(1) Subject to this section, the Service may, in relation to the defence of Canada or in the conduct of international affairs…, assist the Minister of National Defence …, within Canada, in the collection of information or intelligence relating to the capabilities, intentions or activities of*
>
> *(a) any foreign state or group of foreign states; or*
>
> *(b) any person other than:*
>
> *i. a Canadian Citizen,*
> *ii. a permanent resident within the meaning of the Immigration Act, or*
> *iii. a corporation incorporated by an Act of Parliament.*

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The statement that the Canadian Security Intelligence Service (CSIS) can "assist the Minister" implies that the Minister already has an information or intelligence collection capability. In this context, the reference to the Minister would include all elements of the Defence Intelligence portfolio (DND, CAF and CSE).

5. It remains that the reliance on the Crown prerogative forms the basis upon which most military intelligence activities takes place. The Crown prerogative is comprised of the miscellaneous powers, privileges and duties accepted under law as vested in the Crown and exercised by the Governor in Council. The exercise of the Crown prerogative is shaped and implemented at the strategic level by a series of instruments including broad government-wide policy statements and executive government direction. The former include the Government Security Policy, the 1994 Defence White Paper, the 2004 National Security Policy and the Defence Section of Canada's 2005 International Policy Statement.

6. For example, the Government Security Policy establishes for each federal department an obligation to develop departmental procedures for reporting and investigating security incidents. In addition, certain departments are assigned additional responsibilities for intelligence-related functions in support of government policies. As part of the principal responsibilities assigned to the military, the Deputy Minister and the Chief of the Defence Staff are jointly responsible to provide advice to departments on military intelligence for threat and risk assessment purposes.

7. While there is no one mechanism for the establishment of integrated policies and procedures, the Government of Canada does provide executive government direction on intelligence collection priorities for the security and intelligence community. An *ad hoc* Committee of Cabinet approves the priority intelligence requirements for the Government of Canada on an annual basis. The relevant parts of the Government's intelligence requirements are subsequently formulated into the Defence Intelligence Priorities. This keystone defence document serves as the basis for the issuance of subordinate direction in the form of the Commander's Critical Information Requirements (CCIRs).

8. **International Intelligence Law.** It is universally accepted international custom and practice that states will gather intelligence in the pursuit of their national interests and for the protection of their sovereignty. Although there is no unified body of law constraining its practice, various aspects of international civil treaties, the law of armed conflict, and customary international law touch upon and restrict certain means and platforms utilized in intelligence collection.

9. Intelligence law, an amalgamation of diverse international and domestic legal elements, is the legal framework underpinning the collection of intelligence at every level of operations. On the international stage, the deep-seated importance of intelligence to all states has dictated the freedom of its collection, except insofar as it conflicts with national sovereignty interests of a foreign state. As such, the collection of

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intelligence varies in accordance with the degree of infringement and the potential for conflict with foreign domestic laws.

10. **Domestic Intelligence Law.** It is an important tenet of democratic society that the military refrain from involvement with civilian functions except when authorized. The conduct of intelligence activities by DND and the CAF is guided by the obligation of the Government of Canada to protect the nation's sovereignty and institutions from internal and external threats, and, to safeguard the rights and freedom of the citizenry subject to such reasonable limits as prescribed by law as can be demonstrably justified in a free and democratic society. As such, the legal underpinnings of domestic intelligence lie in a complex interrelationship of constitutional law, domestic statutes and Crown prerogative which in turn govern the small but not insignificant role of military intelligence activities.

11. **International Intelligence Collection.** There is no prohibition under international law on most forms of intelligence gathering. Intelligence collection is recognized as accepted practice in peacetime and during periods of armed conflict. Although widely denied by governments for reasons of diplomacy and the fear of disclosing confidential sources, intelligence is tacitly acknowledged as important to all nations, and practiced by each. While prohibiting foreign intelligence gathering activities by treating "spying" as a criminal act as a matter of national law, there is no international law specifically preventing the gathering of security-related information. In fact, nations have a recognized ability to collect intelligence. Nonetheless, states have an obligation not to interfere in the sovereign affairs of other states. Intelligence gathering of an active and intrusive nature could be characterized as such an interference.

12. First, under customary law, there is an implicit right to collect intelligence for the purpose of self defence. Given the pre-emptive aspects of intelligence gathering, it is reasonable for states to carry out intelligence operations in anticipation of threats to their integrity.

13. Secondly, the *1907 Hague Convention (IV)* recognizes the right of belligerents to collect intelligence during armed conflict:

> *Ruses of war and the employment of measures necessary for obtaining information about the enemy and the country are considered permissible.*

14. Although this provision does not apply in peacetime, it provides permission for belligerents to "obtain information" on one another, and supports the notion that peacetime intelligence collection is accepted as part of customary international law. International law does, however, limit the methods and platforms of collection to reflect international custom and territorial sovereignty. The fact that international law provides few proscriptions on the collection of intelligence is no reflection of the gravity that states attribute to traitorous acts. The requirements of national security and sovereignty dictate that domestic law impose the strict punishments against those who assist other states to gain access to protected information of national security interest. While international law is largely silent regarding international intelligence collection, and

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indeed tacitly authorizes it, domestic law strictly prohibits any collection of information which could compromise a state's national security.

Primary Sources of Intelligence

15. **Collection Disciplines by Source Type.** Intelligence sources are the means or systems used to observe, sense, and record or convey information of conditions, situations and events. The primary source types, also referred to as collection disciplines, are:

a. **Acoustic Intelligence (ACINT).** "Intelligence derived from the collection and processing of acoustic phenomena". This is intelligence derived from sound. Examples of ACINT sources are hydrophones, geophones, SONAR, Integrated Underwater Surveillance System (IUSS) and artillery sound ranging systems. Because of the nature of the origin of sound, ACINT is primarily concerned with movement and the intelligence that can be derived from its detection. ACINT in the CAF is predominately maritime in nature, and involves the detection, tracking and possibly identification of submarine contacts by active and passive sonar of various types, including those that feed into the IUSS.

b. **Human intelligence (HUMINT).** "A category of intelligence derived from information collected and provided by human sources". The range of HUMINT sources are enormous. Every person, friendly, adversary or neutral is a potential source of HUMINT. HUMINT collectors are those personnel trained in the acquisition of information from human sources in response to intelligence requirements. HUMINT collectors include specially trained interrogation and HUMINT collection personnel. Collectors may also be intelligence officers, Counter-intelligence (CI) agents or Special Operations Forces (SOF) personnel when they are using human collection techniques in the course of their duties. HUMINT is of particular value in the confirmation or augmentation of IMINT and SIGINT.

c. **Imagery Intelligence (IMINT).** "Intelligence derived from imagery acquired by photographic, radar, electro-optical, infra-red, thermal and multi-spectral sensors, which can be ground based, sea borne or carried by overhead platforms". The adage that "a picture is worth a thousand words" is especially true in intelligence. The information conveyed by an image is clear, concise and in the main unequivocal and will often serve to support or confirm intelligence derived from other sources. The bulk of IMINT is derived from sources such as satellites, aircraft and unmanned aerial vehicles (UAVs).

d. **Measurement and Signature Intelligence (MASINT).** "Scientific and technical intelligence information obtained by quantitative and qualitative

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analysis of data (metric, spatial, wavelength, time dependence, modulation, plasma and hydro magnetic) derived from specific technical sensors for the purpose of identifying specific features associated with the source, emitter or sender and to facilitate subsequent identification and/or measurement of the same. MASINT is derived from the collection and comparison of a wide range of emissions with a database of known scientific and technical data in order to identify the equipment or source of the emissions. Such is the nature of MASINT that its collection is likely to be directed at the strategic level.

e. **Open Source Intelligence (OSINT).** This is intelligence based on information collected from sources open to the public, such as the media; radio, television and newspapers, state propaganda, learned journals and technical papers, the Internet, technical manuals and books, to name but a few. Contrary to popular belief, there is considerable archival evidence to confirm that the intelligence community has always used open sources in the production of intelligence. Freedom of information legislation around the world has unlocked all but the most valuable of nations' secrets and the ability to reach remote information provided by systems such as the Internet has provided rapidly growing and easily accessible sources of intelligence. OSINT is most likely to be the source of basic intelligence although, with the capabilities of modern news gathering equipment, there will be occasions when "on the spot" television reporting will be used to produce current intelligence.

f. **Radar Intelligence (RADINT).** This is intelligence derived from the use of radar as a detection device. For example, the identifying of an object, which may or mat not be recognizable, at a specific bearing and range from the radar, or the simple detection of movement at a certain point on the ground. This is distinct from the exploitation of radar data under IMINT.

g. **Signals Intelligence (SIGINT).** The generic term used to describe all intelligence derived from the Electro-Magnetic Spectrum (EMS). It is divided into:

(1) **Communications Intelligence (COMINT).** "Intelligence derived from electro-magnetic communications and communications systems by those who are not the intended recipients of the information". This is intelligence obtained from information gained through the interception of communications and data links. Such information may be collected in verbal form by the reception of broadcast radio messages, by the interception of point-to-point communications such as telephones and radio relay links, or as data through the interception of either broadcast or point-to-point data down links.

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(2) **Electronic Intelligence (ELINT).** "Intelligence derived from electro-magnetic non-communication transmissions by those who are not the intended recipients of the information". This is intelligence that is derived from the technical assessment of electro-magnetic non-communications emissions such as those produced by radars and by missile guidance systems. It also covers lasers and infrared devices and any other equipment that produces emissions in the EMS. By comparing information about the parameters of the emission that has been intercepted with equipment signatures held in databases, valuable intelligence about the equipment and its operator can be derived.

16. **Intelligence Functional Disciplines – Subject Areas.** The functional disciplines of intelligence cover subject-focused aspects of intelligence production and often require specialist analytical expertise. They contribute to general intelligence production but may also generate functionally focused product for specific purposes and in response to specific intelligence requirements of customers. These disciplines are not mutually exclusive; aspects of one discipline may also be considered as part of another discipline. The overlap between some of these categories simply reflects the convenience of grouping related subjects that may be the subject of separate study or require specialist intelligence expertise.

17. They include but are not limited to:

a. **Armed Forces Intelligence.** This is intelligence concerning all aspects of foreign space, land, sea and air forces including order of battle (ORBAT), command and control (C2), weapons systems, training, personnel, doctrine, strategy and tactics, logistics, arms trade, defence industry and defence spending.

b. **Biographic Intelligence.** This is intelligence on the views, traits, habits, skills, importance, relationships, health and curriculum vitae of those foreign personnel of actual or potential interest to Defence and the CAF.

c. **Economic Intelligence.** This is intelligence concerning foreign economic resources, activities and policies, including the production, distribution and consumption of goods and services, labour, finance, and other aspects of the international economic system such as aid, trade and investment. In the defence intelligence context, it addresses the economic potential to support and develop defence capabilities.

d. **Political Intelligence.** This is intelligence concerning the dynamics of the internal and external political affairs of foreign countries, regional groupings, multilateral treaty arrangements and organizations, and foreign political movements directed against or impacting on established governments and authorities. This includes government structures and domestic and foreign policies.

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e. **Targeting Intelligence.** Targeting intelligence is that which portrays and locates the components of a target or target complex and indicates its identification, vulnerabilities and relative importance.

f. **Scientific and Technical Intelligence.** STI is intelligence concerning foreign developments in basic and applied scientific and technical research and development including engineering and production techniques, new technology, and weapons systems and their capabilities.

g. **Technical Intelligence.** "Intelligence concerning foreign technological developments and the performance and operational capabilities of foreign materiel, which have or may eventually have a practical application for military purposes". This is intelligence derived from the scientific examination and testing of materiel including computer hardware and operating system software. Testing is centred primarily on determining the capabilities and limitations of adversary equipment and in support of the development of countermeasures to that equipment. TECHINT is a subset of STI.

h. **Logistics Intelligence.** This is intelligence concerning the ability to move forces, and support and sustain military operations.

i. **Infrastructure Intelligence.** This is intelligence concerning rail, road, pipeline, water and air transportation networks and telecommunications systems and utilities.

j. **Geospatial Intelligence.** Geospatial intelligence is the exploitation and analysis of imagery and geospatial information to describe, assess, and visually depict physical features and geographically referenced activities on the Earth.

k. **Sociological Intelligence.** This is intelligence concerning social and cultural factors including population parameters, ethnicity, social stratification and stability, public opinion, education, religion, health, history, language, values, perceptions and behaviour.

l. **Health Intelligence.** This is intelligence concerning health support facilities and capabilities, the impact of disease and environmental hazards on military forces, and other health-related information of interest to the intelligence community and its customers.

m. **Medical Intelligence.** Medical intelligence is a subset of health intelligence and addresses similar issues but is produced specifically for medical and health professionals to aid in developing medical

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countermeasures and plans for deployments. It contains terminology that must be interpreted by medical and health specialists.

n. **Security Intelligence.** SI is defined as intelligence on the identity, capabilities and intentions of organizations or individuals who pose, or may pose, a threat in peace, emergency or conflict, to the security of the resources, activities, operations, personnel and information of DND and the CAF. It includes intelligence on the identity, capabilities and intentions of foreign intelligence systems, criminal/organized crime and organizations or individuals that may be engaged in espionage, sabotage, subversion, violence or terrorism against DND and the CAF. It is especially related to CI activity.

18. There are three basic primary sources of intelligence: human, incorporating all information secured from human sources; material, comprising all documents and other recorded information; and technical, including signals, communications, electronics and imagery. Each source can serve a different purpose; for example, photo images may reveal the position of an enemy force, but enemy intentions might only be ascertain through the interception of communications. Additionally, any one of these forms of intelligence is ideally corroborated by at least one other form before it becomes a solid basis of operational decision-making.

19. **Human Sources.** HUMINT comprises all information gathered and distilled from people in general. It includes such traditional sources as reconnaissance reports, undercover agents, prisoners of war, espionage, contact reports and enemy defectors. It includes intelligence derived from any individuals, whether friendly or hostile, who happen to have access to information of importance to the gathering authority. International law is largely silent with respect to the collection of human intelligence, although important legal rules exist concerning the elicitation of intelligence via interrogation. The domestic law of most countries forbids the dissemination of information contrary to national security interests, however, the use of human sources of intelligence is an otherwise widely accepted international practice.

20. **Technical collection platforms.** The territorial sovereignty of states lies at the heart of international legal limitations on the various means by which technical intelligence is received. Whether or not particular means of collection is considered legal depends on the location of the platform used. As a general rule, states exercise control over their territories, coastal waters, and the air space above them. Any unauthorized positioning of a platform within the territorial limits of a foreign nation during peacetime may represent a breach of its national sovereignty.

21. **Aircraft.** One of the most common forms of international technical intelligence collection is military aircraft. The *Chicago Convention on International Civil Aviation* (1944) codifies the notion that every state has complete and exclusive sovereignty over the airspace above its "territory". Territory includes both the state's land areas and territorial waters. The Convention also prohibits military aircraft from flying over or

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landing on the territory of another state without prior special agreement. In contrast, the *Geneva Convention on the High Seas* (1958) established the customary right of freedom of navigation in international waters, including the "freedom to fly over the high seas". That freedom is limited to actions that respect the interests of other states in the exercise of their respective uses of the high seas. In summary, intelligence collected without consent during peacetime from an aircraft located within another state's airspace may be viewed as a violation of its territorial sovereignty, and thus forbidden by international law.

22. **Ships.** The *United Nations Convention on the Law of the Sea*, (*UNCLOS*), also codifies the right of free navigation on the "high seas", meaning all parts of the sea that are not included in the exclusive economic zone, territorial sea or internal waters of a state. By virtue of *UNCLOS*, ships are entitled implicitly to gather intelligence (such as SIGINT) in accordance with the customary right of free navigation over international waters. Although innocent passage through another state's territorial waters is permitted under international law, such passage must exclude "collecting information prejudicial to the security of the coastal state", or any activity not bearing directly on passage. A state's internal waters may not be used by another state to exercise a right of innocent passage, and therefore the use of such waters is strictly precluded under international law as location for foreign naval intelligence collection.

23. **Satellites.** Satellites are widely used by states for the collection of technical intelligence. The legality of their use within the context of intelligence collection is governed to a large extent by the United Nations *Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies*.

24. **Legal limits on Collection Platforms during Armed Conflict.** During an armed conflict to which Canada is a party, the law of armed conflict (LOAC) will apply to intelligence gathering in belligerent territory or behind enemy lines. Generally, the LOAC places no limitations on the means, methods or targets of intelligence gathering during armed conflicts. Indeed, "employment of measures necessary for obtaining information about the enemy and the country are considered permissible". There are, however, certain pre-requisites that must be met by belligerent parties if they wish to obtain protection under the LOAC while gathering intelligence. Details regarding the LOAC, including its implications on the collection of intelligence, can be found in the CAF publication entitled *The Law of Armed Conflict at the Operational and Tactical Level.*

25. **Secondary Sources of Intelligence.** Secondary sources of intelligence are those gathered by parties other than the receiving state. In Canada, the vast majority of military foreign intelligence comes from these sources. In addition to information received from various government departments and agencies (such as Foreign Affairs, CSIS and CSE), the CAF also relies heavily on open sources to augment available intelligence to assist in strategic decision-making for the government and to formulate operational tactics. Open source information is a potentially rich vein of material, often of strategic value, that is readily available for public access. It may include, for example,

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print and electronic information from the news media, the Internet, government agencies or any other publicly available source. There are no legal barriers to its collection and its exploitation.

26. **Intelligence Collection on UN Operations.** One of the fundamental principles of the United Nations is respect for the territorial integrity and political independence of states. The UN is also dedicated to transparency, impartiality and observance of the rule of law. Even when it is helpful or essential to fulfilling the UN's humanitarian mission in the most efficient and safe manner possible, the collection of covert intelligence can give rise to concerns of partiality. From a legal perspective, however, there is little preventing the UN from collecting intelligence in furtherance of its legitimate mandate.

27. Intelligence gathering may occur during both Chapter VII operations involving peace enforcement and traditional peacekeeping. All monitoring missions, such as those that were carried out in Sinai and Cyprus, involve gathering intelligence on such things as troop movements and dispositions. The monitoring is an inherent part of the mission mandate. Normally this type of mission is conducted with the permission of the host nations and thus the question of the legality of intelligence gathering does not arise. Operations conducted under Chapter VII of the UN Charter normally include a Security Council authorization to use all necessary means to achieve the mission mandate. As a result, intelligence gathering is implicitly authorized should it be necessary for the success of an operation.

28. **Domestic Intelligence Gathering.** As a general rule, democracies avoid the use of the military in domestic operations except in cases of extreme urgency or need. Canada is no exception. The CAF is not a domestic law enforcement agency. It does not have the primary responsibility or mandate to enforce the law or to act as a primary emergency response organization for the civilian authority. When domestic operations do occur, however, there is a need for intelligence, as with any operation. The CAF has no legal authority to engage in domestic intelligence gathering except as may be specifically required and authorized. This legal authority must either flow from statute or from the Crown prerogative. In either case, the CAF must operate within the proper confines of the law.

29. **Legal Authority for Intelligence Collection.** The constitutional authority underpinning the collection of intelligence for domestic purposes is section 91 of the *Constitution Act* which states that the federal Parliament may make laws relating to "peace, order and good government" in relation to all matters not coming within the classes of objects exclusively assigned to the provinces. In addition, section 91(7) states that the federal Parliament has legislative authority with respect to matters involving the militia, military, naval service and defence. Notwithstanding the broad legislative mandate, the federal government continues to rely substantially upon the Crown prerogative in certain circumstances as the only legal basis for an array of activities in the field of intelligence gathering. Parliament has exercised its authority to legislate on defence matters under section 91(7) by enacting the *NDA*. There are two

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provisions in the *NDA* that permit assistance to civilian law enforcement in Canada. These are section 273.6 (public service and assistance to law enforcement) and Part VI (Aid of the Civil Power). These provisions provide the legal basis in specific circumstances for the CAF to conduct domestic operations in support of civil authorities.

30. The Crown prerogative still plays an active part with respect to domestic operations. The government has, for example, exercised the Crown prerogative by creating Orders in Council which permit the deployment of the CAF on domestic operations in support of civilian law enforcement authorities in a number of specific ways (*e.g. Assistance to Federal Penitentiaries* OIC (1975), *Canadian Forces Armed Assistance Directions* (CAFAADS) and the *Canadian Forces Assistance to Provincial Police Force Directions* OIC (1996)). It must be noted, however, that while both the *NDA* and the Crown prerogative provide the legal mandate for the CAF to conduct domestic operations, neither specifically authorizes the conduct of defence intelligence activities. The authority to conduct this activity, which is required in order to properly accomplish the mission, must flow from the legal mandate to conduct the defence activities and must also comply with Canadian law. In other words, there must be a nexus between the intelligence activities and the legally authorized mandates.

31. **Canadian Charter of Rights and Freedoms.** All legislation passed by Parliament, and indeed all action taken by federal government institutions such as the CAF, is subject to the constitutionally entrenched *Canadian Charter of Rights and Freedoms* and the limitations it places on the collection of private information. Section 7 of the *Charter* states that "everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice". Furthermore, section 8 states that "everyone has the right to be secure against unreasonable search or seizure".

32. The Supreme Court of Canada has interpreted these sections as protecting individuals' reasonable expectation of privacy. In any given case, an assessment must be made as to whether, in any particular situation, an individual's right to privacy may be overridden by the government's interest in intruding upon individual privacy as a means of obtaining its legitimate goals. While section 8 of the *Charter* protects individuals from unjustified state intrusions, the protection of privacy is not absolute and is only accorded when there exists a reasonable expectation of privacy. The right to be free from examination by the state is subject to constitutionally permissible limits. In examining circumstances, courts strike a balance between the right to be free from surveillance and the competing societal interests of ensuring safety, security and the suppression of crime. For example, the Supreme Court of Canada has found that the quality and precision of information obtained from Forward Looking Infra-Red (FLIR) imagery used to examine the outside of a house was insufficient to give rise to a reasonable expectation of privacy.

33. **The *Privacy Act.*** In addition to the constitutionally entrenched privacy protections built into the *Charter*, the federal *Privacy Act* places a limitation on the type of information that can be collected from Canadians, and the uses that can be made of

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that information. Section 4 of the Act states "No personal information shall be collected by a government institution unless it relates directly to an operating program or activity of the institution". The information thus gathered can then only be used for the specific purpose duly authorized. Furthermore, all information collected by the CAF must be stored, used and disposed of in accordance with the provisions of the *Privacy Act*. Unless the consent of an individual is given, personal information under the control of a federal institution shall not be used except for the purposes for which it was collected, a use consistent with that purpose or a specific purpose for which an exemption is permitted by the *Privacy Act*. At present there are three DND registered personal information data banks related to intelligence activities: Security Intelligence Records; Personnel Security Investigation File; and Communications Security Establishment Foreign Intelligence Files.

34. **The *Criminal Code.*** The *Criminal Code* also restricts the use of certain intrusive collection techniques. In particular, the interception of private communications without proper judicial authorization is a criminal offence. Section 184(1) of the Code states That "everyone who, by means of any electro-magnetic, acoustic, mechanical or other device, wilfully intercepts a private communication is guilty of an indictable offence and liable to imprisonment for a term not exceeding five years". Similarly, section 184.5 of the *Criminal Code* prohibits any person from intercepting radio-based telephone communications (such as cellular telephones). In general, the intercept of private communications without consent to intercept, implied or explicit, of the originator of the private communication or the person intended by the originator to receive it is strictly forbidden. Before any request for CAF assistance involving intercept capabilities can be considered, the requesting law enforcement agency or security agency must obtain the necessary judicial or ministerial authorizations pursuant to statute for the specified activity.

35. **CAF Domestic Intelligence Policy.** The CAF has no special status when it participates in domestic operations. Its activities, like the activities of any civilian law enforcement agency, must be conducted in accordance with all domestic law. CAF policy ensures that intelligence-related activities are carried out in strict accordance with directives that govern the methods of collection, use, and dissemination of intelligence. In the absence of specific authority, security intelligence on Canadian citizens is not collected from primary sources except when individuals willingly provide information. Designated CAF authorities may only conduct or participate in security intelligence activities with a clear and direct military nexus as a result of:

a. a security event or situation involving DND employees or CAF member, military property, or foreign military members and their property on a defence establishment when the focus of efforts is solely on countering or assessing the impact of the threat to the security of DND and the CAF; or

b. a request or imminent request from another federal department or civil authority for military assistance when there is a threat of civil disturbance exceeding the capability of law enforcement agencies. In such

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circumstances, specific authorization must first be granted for collection and only information that is essential to maintain situational awareness and meet operational requirements flowing from the nature of the mission may be granted.

36. Although operational level commanders are required to assess security intelligence in their areas of responsibility, the collection of domestic security intelligence rests with the CF National Counter Intelligence Unit (CFNCIU). Only the CFNCIU and the CF National Investigative Service (CFNIS) are authorized to liaise with civil law enforcement agencies and other civilian authorizes through the Security Intelligence Liaison Programme (SILP) for police intelligence. However, CAF commanders are permitted the collection of open source information available to the public at large. Open source data can include all forms of media as well as publicly available information from such organization as NGO's and government agencies, amongst many other sources.

Interim Summary

37. The collection of intelligence is a practice of nations that lies at the heart of operational readiness. It is universally regarded as a fundamental element of every state's national security in both peacetime and war, and it is vital to the planning and conduct of military operations. Intelligence is fundamental to the conduct of any operation be it an international operation or a domestic one. Proper direction of the gathering and use of intelligence is an important responsibility of command. The lack of sufficient intelligence can impact on the planning and execution of operations.

38. Other than the enabling provisions of the *National Defence Act* (*NDA*) governing the activities of the Communications Security Establishment (CSE), the *NDA* does not specifically authorize or prohibit the conduct of intelligence gathering. Since there is no general purpose clause authorizing military intelligence-related activities *per se*, such activity implicitly falls within the general ambit of the national defence mandate. It remains that the reliance on the Crown prerogative forms the basis upon which most military intelligence activities takes place. The Crown prerogative is comprised of the miscellaneous powers, privileges and duties accepted under law as vested in the Crown and exercised by the Governor in Council. While there is no one mechanism for the establishment of integrated policies and procedures, the Government of Canada does provide executive government direction on intelligence collection priorities for the security and intelligence community.

39. It is universally accepted international custom and practice that states will gather intelligence in the pursuit of their national interests and for the protection of their sovereignty. Although there is no unified body of law constraining its practice, various aspects of international civil treaties, the law of armed conflict, and customary international law touch upon and restrict certain means and platforms utilized in intelligence collection. Intelligence law, an amalgamation of diverse international and

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domestic legal elements, is the legal framework underpinning the collection of intelligence at every level of operations. It is an important tenet of democratic society that the military refrain from involvement with civilian functions except when authorized. The conduct of intelligence activities by DND and the CAF is guided by the obligation of the Government of Canada to protect the nation's sovereignty and institutions from internal and external threats, and, to safeguard the rights and freedom of the citizenry subject to such reasonable limits as prescribed by law as can be demonstrably justified in a free and democratic society.

40. There is no prohibition under international law on most forms of intelligence gathering. Intelligence collection is recognized as accepted practice in peacetime and during periods of armed conflict. Although widely denied by governments for reasons of diplomacy and the fear of disclosing confidential sources, intelligence is tacitly acknowledged as important to all nations, and practiced by each. Intelligence gathering of an active and intrusive nature could be characterized as such an interference.

41. Intelligence sources are the means or systems used to observe, sense, and record or convey information of conditions, situations and events. The primary source types, also referred to as collection disciplines, are Acoustic Intelligence (ACINT), Human intelligence (HUMINT), Imagery Intelligence (IMINT), Measurement and Signature Intelligence (MASINT), Open Source Intelligence (OSINT), Radar Intelligence (RADINT) and Signals Intelligence (SIGINT) with subcomponents of Communications Intelligence (COMINT) and Electronic Intelligence (ELINT). The functional disciplines of intelligence cover subject-focused aspects of intelligence production and often require specialist analytical expertise. They include but are not limited to Armed Forces Intelligence, Biographic Intelligence, Economic Intelligence, Political Intelligence, Targeting Intelligence, Scientific and Technical Intelligence, Technical Intelligence, Logistics Intelligence. This is intelligence concerning the ability to move forces, and support and sustain military operations, Infrastructure Intelligence, Geospatial Intelligence, Sociological Intelligence, Health Intelligence, Medical Intelligence and Security Intelligence.

42. There are three basic primary sources of intelligence: human, incorporating all information secured from human sources; material, comprising all documents and other recorded information; and technical, including signals, communications, electronics and imagery. HUMINT comprises all information gathered and distilled from people in general. It includes such traditional sources as reconnaissance reports, undercover agents, prisoners of war, espionage, contact reports and enemy defectors. It includes intelligence derived from any individuals, whether friendly or hostile, who happen to have access to information of importance to the gathering authority.

43. The territorial sovereignty of states lies at the heart of international legal limitations on the various means by which technical intelligence is received. One of the most common forms of international technical intelligence collection is military aircraft. The *Chicago Convention on International Civil Aviation* (1944) codifies the notion that every state has complete and exclusive sovereignty over the airspace above its

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territory. *UNCLOS* also codifies the right of free navigation on the "high seas", meaning all parts of the sea that are not included in the exclusive economic zone, territorial sea or internal waters of a state. By virtue of *UNCLOS*, ships are entitled implicitly to gather intelligence (such as SIGINT) in accordance with the customary right of free navigation over international waters. Satellites are widely used by states for the collection of technical intelligence. The legality of their use within the context of intelligence collection is governed to a large extent by the United Nations *Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies*. During an armed conflict to which Canada is a party, the LOAC will apply to intelligence gathering in belligerent territory or behind enemy lines. There are, however, certain pre-requisites that must be met by belligerent parties if they wish to obtain protection under the LOAC while gathering intelligence.

44. Secondary sources of intelligence are those gathered by parties other than the receiving state. In Canada, the vast majority of military foreign intelligence comes from these sources. In addition to information received from various government departments and agencies (such as Foreign Affairs, CSIS and CSE), the CAF also relies heavily on open sources to augment available intelligence to assist in strategic decision-making for the government and to formulate operational tactics. One of the fundamental principles of the United Nations is respect for the territorial integrity and political independence of states. The UN is also dedicated to transparency, impartiality and observance of the rule of law. Even when it is helpful or essential to fulfilling the UN's humanitarian mission in the most efficient and safe manner possible, the collection of covert intelligence can give rise to concerns of partiality. From a legal perspective, however, there is little preventing the UN from collecting intelligence in furtherance of its legitimate mandate.

45. As a general rule, democracies avoid the use of the military in domestic operations except in cases of extreme urgency or need. Canada is no exception. The CAF is not a domestic law enforcement agency. It does not have the primary responsibility or mandate to enforce the law or to act as a primary emergency response organization for the civilian authority. The constitutional authority underpinning the collection of intelligence for domestic purposes is section 91 of the *Constitution Act* which states that the federal Parliament may make laws relating to "peace, order and good government" in relation to all matters not coming within the classes of objects exclusively assigned to the provinces. In addition, section 91(7) states that the federal Parliament has legislative authority with respect to matters involving the militia, military, naval service and defence.

46. All legislation passed by Parliament, and indeed all action taken by federal government institutions such as the CAF, is subject to the constitutionally entrenched *Canadian Charter of Rights and Freedoms* and the limitations it places on the collection of private information. In addition to the constitutionally entrenched privacy protections built into the *Charter*, the federal *Privacy Act* places a limitation on the type of information that can be collected from Canadians, and the uses that can be made of that information. The information thus gathered can then only be used for the specific

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purpose duly authorized. Furthermore, all information collected by the CAF must be stored, used and disposed of in accordance with the provisions of the *Privacy Act*. The *Criminal Code* also restricts the use of certain intrusive collection techniques. In particular, the interception of private communications without proper judicial authorization is a criminal offence.

47. The CAF has no special status when it participates in domestic operations. Its activities, like the activities of any civilian law enforcement agency, must be conducted in accordance with all domestic law. CAF policy ensures that intelligence-related activities are carried out in strict accordance with directives that govern the methods of collection, use, and dissemination of intelligence. Although operational level commanders are required to assess security intelligence in their areas of responsibility, the collection of domestic security intelligence rests with the CF National Counter Intelligence Unit (CFNCIU). Only the CFNCIU and the CF National Investigative Service (CFNIS) are authorized to liaise with civil law enforcement agencies and other civilian authorizes through the Security Intelligence Liaison Programme (SILP) for police intelligence.

Suggested Questions

Q. What is the legal framework for conducting Domestic Intelligence Operations? (Paras 3 to 7)

Q. What is the legal framework for conducting International Intelligence Operations? (Paras 8, 9)

Q. What are the primary sources for the conduct of International Intelligence Collection? (Paras 12 to 14)

Q. What are the Primary Sources of Intelligence? (Para 15) (Acoustic Intelligence (ACINT), Human intelligence (HUMINT), Imagery Intelligence (IMINT), Measurement and Signature Intelligence (MASINT), Open Source Intelligence (OSINT), Radar Intelligence (RADINT) and Signals Intelligence (SIGINT) with subcomponents of Communications Intelligence (COMINT) and Electronic Intelligence (ELINT)

Q. What is Acoustic Intelligence (ACINT)? (Para 15 a)

Q. What is Human intelligence (HUMINT)? (Para 15 b)

Q. What is Imagery Intelligence (IMINT)? (Para 15 c)

Q. What are Measurement and Signature Intelligence (MASINT)? (Para 15 d)

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Q. What is Open Source Intelligence (OSINT)? (Para 15 e)

Q. What is Radar Intelligence (RADINT)? (Para 15f)

Q. What is Signals Intelligence (SIGINT)? (Para 15 g)

Q. What is Signals Intelligence (SIGINT)? (Para 15 g)

Q. What are the subject areas of Intelligence Functional Disciplines? (Paras 16, 17) (Armed Forces Intelligence, Biographic Intelligence, Economic Intelligence, Political Intelligence, Targeting Intelligence, Scientific and Technical Intelligence, Technical Intelligence, Logistics Intelligence. This is intelligence concerning the ability to move forces, and support and sustain military operations, Infrastructure Intelligence, Geospatial Intelligence, Sociological Intelligence, Health Intelligence, Medical Intelligence and Security Intelligence)

Q. What is Armed Forces Intelligence? (Para 17 a)

Q. What is Biographic Intelligence? (Para 17 b)

Q. What is Economic Intelligence? (Para 17 c)

Q. What is Political Intelligence? (Para 17 d)

Q. What is Targeting Intelligence? (Para 17 e)

Q. What is Scientific and Technical Intelligence? (Para 17f)

Q. What is Technical Intelligence? (Para 17 g)

Q. What is Logistics Intelligence? (Para 17 h)

Q. What is Infrastructure Intelligence? (Para 17 i)

Q. What is Geospatial Intelligence (Para 17 j)

Q. What is Sociological Intelligence? (Para 17 k)

Q. What is Health Intelligence? (Para 17 l)

Q. What is Medical Intelligence? (Para 17m)

Q. What is Security Intelligence? (Para 17 n)

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Q. What are the three basic primary sources of intelligence? (Para 18) (Human, incorporating all information secured from human sources; material, comprising all documents and other recorded information; and technical, including signals, communications, electronics and imagery)

Q. What comprises Human Sources? (Para 19) (Reconnaissance reports, undercover agents, PW, espionage, contact reports and enemy defectors. It includes intelligence derived from any individuals, whether friendly or hostile, who happen to have access to information of importance to the gathering authority)

Q. What are Technical collection platforms? (Paras 20 to 23) (Aircraft, Ships, Satellites)

Q. What are the Legal limits on Collection Platforms during Armed Conflict? (Para 24)

Q. What are the Secondary Sources of Intelligence? (Para 25)

Q. When Intelligence gathering may occur during UN Operations? (Paras 26, 27)

Q. What are the legal authorities for the collection of Intelligence during Domestic Operations? (Paras 29 to 34) *(Constitution Act* Section 91, Crown prerogative, *NDA* section 273.6 (public service and assistance to law enforcement) and Part VI (Aid of the Civil Power). Canadian Charter of Rights and Freedoms, Sections 7, 8, *Privacy Act*, *Criminal Code* Sections 184(1), 184.5)

Q. What is the CAF Domestic Intelligence Policy (Para 35)

Q. Which organizations are responsible for the collection of Domestic Security Intelligence? (Para 36) (CFNCIU, CFNIS)

Note to the Instructor: Encourage students to actively participate in the lesson and to reason through problems.

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PART 3 – BODY OF THE LESSON

Stage 3 – Legal issues related to Information Operations

Introduction

1. Increasingly complex information systems are being integrated into all aspects of modern military operations. Today command, transport, logistics, intelligence and weapon systems rely heavily on computers, satellite communications and a host of electronic systems. Generally, the use of such systems by the military is described as "information operations" (IO). When these systems are deployed, they often reach back to higher levels of command and at times interact with other governmental agencies and with the nation. The systems are not infallible, and, with ever widening use, they become vulnerable. These vulnerabilities are two sided: they create new opportunities to exploit adversaries, but they also mean that friendly forces systems must be continually protected from external manipulation. Thus there is an offensive and defensive aspect to information operations (IO). This outline highlights the nature of IO and identifies some of the related legal issues in this expanding field. A more detailed analysis of IO doctrine may be found in the 1998 manual *B-GG-005-004/AF-010 CF Information Operations.*

2. **Definitions.** Here are some key definitions;

   a. **Information System.** An information system is the assembly of equipment, methods and procedures, and if necessary, personnel organized so as to accomplish specific information functions.

   b. **Offensive IO.** Includes actions taken to influence actual or potential adversarial decision makers. Affecting the opponent's use of or access to information and information systems may accomplish this task. Offensive IO can include using psychological operations (PSYOPS), deception, electronic warfare (EW), intelligence, computer network attack (CNA), physical destruction, and special information operations (SIO).

   c. **Psychological Operations (PSYOPS).** PSYOPS are actions to convey selected information and indicators to foreign audiences. They are designed to influence emotions, motives, reasoning, and ultimately, the behaviour of foreign governments, organizations, groups and individuals.

   d. **Deception Operations.** Those measures designed to mislead the enemy by manipulation, distortion or falsification of evidence to induce the enemy to react in a manner prejudicial to that enemy's interests.

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e. **Electronic Warfare (EW).** EW is a form of military action, which exploits the electromagnetic spectrum. EW encompasses the interception and identification of electromagnetic emissions, the employment of electromagnetic energy, including directed energy, to reduce or prevent hostile use of the electromagnetic spectrum and actions to ensure its effective use by friendly forces. The three major subdivisions of EW are electronic warfare support measures (ESM), electronic countermeasures (ECM) and electronic protection measures (EPM). EW is an IO capability that can support offensive and defensive IO. All three subdivisions of EW contribute to the IO effort.

f. **Computer Network Attack (CNA).** CNA is an operation to disrupt, deny, degrade or destroy information resident in information systems, or the information systems themselves.

g. **Special Information Operations (SIO).** SIO is IO of a sensitive nature, which, owing to its potential effect or impact, security requirements, or risk to the national security of Canada, requires a special review and approval process.

h. **Defensive IO.** Includes action taken to protect one's own information and ensure friendly decision makers have timely access to necessary, relevant and accurate information. Defensive IO also ensures friendly decision makers are protected from any adversary offensive efforts. Defensive IO strives to ensure the friendly decision making process is protected from all adverse effects, deliberate, inadvertent or accidental. Defensive IO is a process that integrates and coordinates policies, procedures, operations, intelligence, law and technology.

3. **Global Aspect of Information Operations.** There are no fixed boundaries in the information environment. Open and interconnected systems are merging into a rapidly expanding global information system infrastructure (GIS) that enfolds the Canadian National Information Infrastructure (NII). The NII includes all the systems of Canadian industry, government, academia, commercial networks and switching systems. Embedded within the NII is the Defensive Information Infrastructure (DII). At times, these three types of infrastructures cannot be distinguished from the others, as their relationship is seamless. The DII is the shared or interconnected system of computers, communications, data, security and other information systems serving DND local, national and international needs. The DII connects DND and CAF mission support, command and control (C2), and intelligence computers through voice, telecommunications, imagery, video and multimedia services. It also includes C2, tactical, intelligence, and commercial systems used to transmit DND and CAF information.

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4. **Offensive Information Operations - Legal considerations.** There is a wide spectrum of potential targets that IO can be directed towards. Today, it is a target rich environment. For example, an IO operation might include efforts to influence, manipulate or neutralize an adversary's key leadership, strategic communications, military infrastructure, civil infrastructure (including industry, financial and populace) along with an adversary's weapons systems. The type of IO attack could range from a mere temporary jamming of communications or dissemination of false information, to lethal manipulations of weapons electronics systems to massive interference with the infrastructure of the state. The Geneva Conventions (GCs), the Hague Conventions and the Additional Protocols (APs) envisage the conduct of hostilities using kinetic means and make no explicit reference to non-kinetic techniques of warfare. Nevertheless, LOAC applies to IO.

5. In the conduct of hostilities, the means and methods of causing injury to one's adversary are not unlimited. Indeed, damage caused by the disruption of an information system, including the corruption or manipulation of stored data, may have the effect of causing serious damage and injury if critical infrastructure is paralyzed or disrupted by an IO attack. This fact calls for a consideration of the impact of harmful effects arising from such actions.

6. Indeed, API defines "attacks" as "*acts of violence* against the adversary, whether in the offence or in the defence". Similarly, information operations, particularly when they have a consequential lethal effect or cause physical destruction, will likely be considered a use of "force" or "armed attack" within the meaning of the UN Charter. The complexities of determining whether an IO constitutes a use of force, along with the importance of applying the related principles of targeting and distinction between civilian objects and military objects thus underline the importance of legal review, on a case-by-case basis, for any planned IO.

7. **LOAC Issues.** IO targeting can be accomplished by application of the basic principles of LOAC, if the situation is one of armed conflict. For example, "military objectives" are defined as those objects "... which by their nature, location, purpose, or use make an effective contribution to military action and whose total or partial destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite military advantage". Once such an objective is determined to be a military objective, then the operational planner must consider the proportionality principle, namely whether the damage to civilian objects would be excessive in relation to the concrete military advantage anticipated.

8. While the use of IO may involve the use of deception and the employment of ruses, the means used may not be perfidious. Perfidy occurs whenever acts are intended to betray the confidence of an adversary to believe that he is entitled to, or obliged to accord protection under LOAC. For example, the manipulation of the enemy's targeting database so that a friendly military headquarters appears as a hospital would constitute perfidy.

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9. **International Law relating to Information Operations.** The body of international law is not extensive in this area, nor is it particularly reflective of this rapidly growing field of cyberspace. Certain treaties have relevance in peacetime to the use and control of communications. International telecommunications using wire and radio are governed in peacetime by the *International Telecommunication Convention* (ITC), which in turn establishes the framework for the operation of the International Telecommunication Union (ITU) that regulates the use of the electromagnetic spectrum or international telecommunication. Under the ITU, the International Frequency Review Board (IFRB) allocates the spectrum to national authorities so as to facilitate deconfliction of the use of the radio spectrum and to prevent harmful interference. Broadcasting stations from one country are not permitted to interfere with broadcasts of other states. Military installations must also observe these non-interference requirements. While states reserve the right to cut off a private telecommunications signals transiting their territory that appear dangerous to the security of the respective state, states may not transmit false or misleading signals.

10. **The United Nations Charter.** Article 41 of the UN Charter provides that the UN Security Council may call upon UN members to apply measures which "may include complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio and other means of communication". The disruption and denial of these services under the authority of a Security Council resolution could be carried out using IO methods and means. Nonetheless, all IO activity must be considered carefully as to whether the planned activity complies with international law.

11. **Computer Network Defence - Legal considerations.** Defensive IO involves actions to protect Canada's information and to ensure that friendly decision makers are protected from an adversary's offensive efforts. By its nature, it is a strategy that requires the coordination of policies, procedures, operations, intelligence, law and technology. It must also comply with Canadian law and with the recognized freedoms of information that are incorporated in the Canadian democratic system. The following subsections highlight some of the domestic laws and policies applicable to the conduct of computer network defence operations in peacetime.

12. The intercept of private communications in Canada raises both *Criminal Code* and *Charter* issues. With certain limited exceptions, the *Criminal Code* (section. 184) makes it unlawful to wilfully intercept private communications. The *Charter* (section. 8, in particular) prohibits any government activity that would breach an individual's reasonable expectation of privacy attaching to computer communications subject only to such reasonable limits as prescribed by law as can be demonstrably justified in a free and democratic society. For these reasons, it is important to ensure any decision to intercept computer network communications within DND/CAF as a protective measure stands firmly based on lawful authority and closely controlled in its execution. Appendix A provides an overview in matrix form of many of the considerations to be examined in obtaining computer data in the course of conducting criminal investigations and military computer network defence activities.

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13. **Government Security Policy.** The Government Security Policy (GSP) calls for each federal department and the CAF to assure the continued delivery of information technology services (IT) including the establishment of baseline security controls and the maintenance of continuous service delivery monitoring. Key elements of any continuous monitoring policy involve the detection of unauthorized access attempts, bypass of security controls, unauthorized probes, denial of service attacks, changes to hardware and software as well as system performance anomalies or known attack signatures. However, the GSP does not provide any specificity on authorized intrusion detection techniques beyond the adoption of a mere passive network posture.

14. **Treasury Board Policy on Computer Monitoring.** Treasury Board policy, entitled, "Policy on the Use of Electronic Networks", does permit user monitoring of government computer systems under certain prescribed circumstances based on the principle of informed consent of governmental system users. The Policy applies to the CAF and establishes a framework whereby authorized users are given sufficient notice prior to monitoring. Notice to users will explain the regular monitoring practices for the network, state that the network will be monitored only for work-related purposes, and advise that special monitoring may be permitted without notice in instances where there is reason to suspect unlawful or unacceptable activity. Institutions must also establish a statement indicating who is authorized to analyze the contents of individual files or electronic mail.

15. **Ministerial Authorizations.** In 2001, Bill C-36 introduced changes to the *NDA* that permit the Communication Security Establishment, when acting pursuant to a Ministerial authorization, to protect Government of Canada computer systems and networks. The sole purpose of such activities must be the protection from mischief, unauthorized use or interference of the system or network. The legislative change accorded the same exemptions for interceptions as those given to public service providers pursuant to section 184(2) of the *Criminal Code*, namely, the interception is necessary for the purpose of providing the service, in the course of random monitoring necessary for the purpose of mechanical or service quality control checks, or the interception is necessary to protect rights and property directly related to providing the service. All activities undertake pursuant to a Ministerial authorization are subject to review by the Commissioner of the Communications Security Establishment.

16. **Application of Bill 14 — Criminal Code.** The adoption of Bill C-14 in 2004 introduced amendments to section 184(2) of the *Criminal Code* that provided additional exceptions from criminal liability for the intercept of private communications on a computer network. The relevant portions of the new exceptions contained in section 184(2)(e) permit interception by anyone in control of a computer network whenever the activity is reasonably necessary for two reasons:

a. managing the quality of service of the computer system as it relates to performance factors such as responsiveness and capacity of the system as well as the integrity and availability of the system and data, or

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b. protecting the computer system against any act that would be an offence under subsection 342.1(1) or 430(1.1.) of the *Criminal Code*.

17. The first category establishes a service provider-like exemption that enables the interception for purposes of ensuring service performance and related matters. The more important second category of exemption involves efforts related to preventing computer crime offences. Section 342.1(1) contains the principle anti-hacking provisions of the *Criminal Code*. First introduced in 1985, the section prohibits four broad types of fraudulent conduct:

a. fraudulently obtaining any computer service;

b. using a device to intercept a function of a computer service;

c. causing a computer system to be used with intent to commit actions in sub-paragraph a) or b) or computer data mischief; and
d. using, possessing, or trafficking in computer codes or encryption codes.

18. Section 430(1.1) of the *Criminal Code* governs mischief in relation to computer data. The section was introduced at the same time as section 342.1 in 1985. The provision applies not only to cases of intentional destruction but also to activity that renders data meaningless or ineffective. Anyone who obstructs, interferes or interrupts lawful access to data commits an offence. As such, the provision has direct application to the use or transmission of viruses, including worms, Trojan Horses, logic bombs and other similar devices causing harmful impact on the integrity of computer systems. The offence would also apply to a denial of service attack. Combined, the two offence provisions (324.1 & 430(1.1)) cover all principle computer offences with the notable exception of computer port mapping which has yet to be legislated against in Canada.

19. It is important to point out that Bill C-14 introduced minimization procedures contained in section 182(2). First, the use and retention of intercepts is limited to what is essential to identify, isolate or prevent harm to computer systems. Disclosure of information drawn from interceptions is limited to that which is necessarily incidental to the exceptions permitted under s. 184(2)(e), that is to say, managing the quality of the system service as it relates to performance and ensuring the protection of the system.

20. **Amendments to the *Financial Administration Act* (FAA).** Bill C-14 also consequently amended section 161 of the *Financial Administration Act* to expressly empower Crown employees to perform duties related to the management and protection from misuse of computer networks, including similar duties permitted under the *Criminal Code*. Nonetheless, the amendments make the relevant minister responsible not only for the reasonableness of measures taken to intercept communications within departmental computer networks but also for the establishment of measures to control and handle the use and retention of data derived from intercepts. To ensure the sufficiency of the legal framework to carry out intercepts, operational directives may be put in place to articulate clear objectives, establish authorities

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designated to carry out computer monitoring and create guidelines for minimization procedures.

Interim Summary

21. Increasingly complex information systems are being integrated into all aspects of modern military operations. Today command, transport, logistics, intelligence and weapon systems rely heavily on computers, satellite communications and a host of electronic systems. Generally, the use of such systems by the military is described as "information operations" (IO). When these systems are deployed, they often reach back to higher levels of command and at times interact with other governmental agencies and with the nation. The systems are not infallible, and, with ever widening use, they become vulnerable. In order to better understand IO, it is necessary to grasp the concepts of the following: Information System, Offensive IO, Psychological Operations, Deception Operations, Electronic Warfare (EW), Computer Network Attack (CNA), Special Information Operations and Defensive IO.

22. There are no fixed boundaries in the information environment. Open and interconnected systems are merging into a rapidly expanding global information system infrastructure (GIS) that enfolds the Canadian National Information Infrastructure (NII). The NII includes all the systems of Canadian industry, government, academia, commercial networks and switching systems. Embedded within the NII is the Defensive Information Infrastructure (DII). At times, these three types of infrastructures cannot be distinguished from the others, as their relationship is seamless.

23. There is a wide spectrum of potential targets that IO can be directed towards. Today, it is a target rich environment. For example, an IO operation might include efforts to influence, manipulate or neutralize an adversary's key leadership, strategic communications, military infrastructure, civil infrastructure (including industry, financial and populace) along with an adversary's weapons systems. In the conduct of hostilities, the means and methods of causing injury to one's adversary are not unlimited. Indeed, damage caused by the disruption of an information system, including the corruption or manipulation of stored data, may have the effect of causing serious damage and injury if critical infrastructure is paralyzed or disrupted by an IO attack.

24. IO targeting can be accomplished by application of the basic principles of LOAC, if the situation is one of armed conflict. For example, "military objectives" are defined as those objects "... which by their nature, location, purpose, or use make an effective contribution to military action and whose total or partial destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite military advantage". While the use of IO may involve the use of deception and the employment of ruses, the means used may not be perfidious. Perfidy occurs whenever acts are intended to betray the confidence of an adversary to believe that he is entitled to, or obliged to accord protection under LOAC.

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25. The body of international law is not extensive in this area, nor is it particularly reflective of this rapidly growing field of cyberspace. Certain treaties have relevance in peacetime to the use and control of communications. International telecommunications using wire and radio are governed in peacetime by the *International Telecommunication Convention* (ITC), which in turn establishes the framework for the operation of the International Telecommunication Union (ITU) that regulates the use of the electromagnetic spectrum or international telecommunication. Article 41 of the UN Charter provides that the UN Security Council may call upon UN members to apply measures which "may include complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio and other means of communication".

26. Defensive IO involves actions to protect Canada's information and to ensure that friendly decision makers are protected from an adversary's offensive efforts. By its nature, it is a strategy that requires the coordination of policies, procedures, operations, intelligence, law and technology. The intercept of private communications in Canada raises both *Criminal Code* and *Charter* issues. With certain limited exceptions, the *Criminal Code* (section. 184) makes it unlawful to wilfully intercept private communications. The *Charter* (section. 8, in particular) prohibits any government activity that would breach an individual's reasonable expectation of privacy attaching to computer communications subject only to such reasonable limits as prescribed by law as can be demonstrably justified in a free and democratic society.

27. Treasury Board policy, entitled, "Policy on the Use of Electronic Networks", does permit user monitoring of government computer systems under certain prescribed circumstances based on the principle of informed consent of governmental system users. In 2001, Bill C-36 introduced changes to the *NDA* that permit the Communication Security Establishment, when acting pursuant to a Ministerial authorization, to protect Government of Canada computer systems and networks. The sole purpose of such activities must be the protection from mischief, unauthorized use or interference of the system or network.

28. The adoption of Bill C-14 in 2004 introduced amendments to section 184(2) of the *Criminal Code* that provided additional exceptions from criminal liability for the intercept of private communications on a computer network. The relevant portions of the new exceptions contained in section 184(2)(e) permit interception by anyone in control of a computer network. Section 430(1.1) of the *Criminal Code* governs mischief in relation to computer data. The section was introduced at the same time as section 342.1 in 1985. The provision applies not only to cases of intentional destruction but also to activity that renders data meaningless or ineffective. Bill C-14 also consequently amended section 161 of the *Financial Administration Act* to expressly empower Crown employees to perform duties related to the management and protection from misuse of computer networks, including similar duties permitted under the *Criminal Code*.

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Suggested Questions

Q. What is Information System? (Para 2 a)

Q. What are Offensive IOs? (Para 2 b)

Q. What are Psychological Operations? (Para 2 c)

Q. What are Deception Operations? (Para 2 d)

Q. What is Electronic Warfare (EW)? (Para 2 e)

Q. What is a Computer Network Attack (CNA)? (Para 2 f)

Q. What are Special Information Operations (SIO)? (Para 2 g)

Q. What are Defensive IOs? (Para 2 h)

Q. What are the Global Aspect of Information Operations? (Para 3)

Q. What are the legal considerations for Offensive Information Operations? (Para 4 to 6)

Q. What are the LOAC issues for Information Operations? (Paras 7, 8)

Q. What is the International Law related to Information Operations? (Para 9)

Q. What are the legal considerations for the Computer Network Defence? (Paras 11, 12)

Q. What is the Government Security Policy related to Information Operations? (Para 13)

Q. What is the Treasury Board Policy on Computer Monitoring related to Information Operations? (Para 14)

Q. What are the Ministerial Authorizations related to Information Operations? (Para 15 to 20) (In 2001, Bill C-36 – changes *to* the CSE, Bill C-14 in 2004 amended Section 184(2) of the *Criminal Code*. Section 342.1(1) (anti-hacking provisions), Section 430(1.1) of the *Criminal Code* governs mischief in relation to computer data, Section 161 of the *FAA* - management and protection from misuse of computer networks, including similar duties permitted under the *Criminal Code*)

Note to the Instructor: Encourage students to actively participate in the lesson and to reason through problems.

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PART 3 – BODY OF THE LESSON

Stage 4 – Legal issues related to Special Operations (SOF)

Introduction

1. The nature of defence and security challenges Canada faces and their impact on our strategic interests require the CAF to contribute to Canada's defence and security as a joint and integrated force within a Defence and whole government team. Military operations will take place at home and abroad and may be conducted with the military forces of allies and coalition partners as well. Further, operations in support of Canadian and foreign government department and agencies, provincial and local governments, and intergovernmental and NGO's will remain the norm. Successful operations result in the maintenance of re-establishment of peace and security, or in conditions that enable those strategic objectives. These results are made possible through the planning and conduct of land, air, maritime, special, space and cyber-operations. This outline will focus ont special operations.

2. **Canadian Special Operations Forces Command.** Canada's current Special Operations Forces are generated and commanded by the Canadian Special Operations Forces Command (CANSOFCOM). CANSOFCOM is a high-readiness organization, ready to deploy Special Operations Forces on very short notice to protect Canada and Canadians from threats to the national interest at home and abroad. CANSOFCOM is capable of contributing to CAF operations across the full spectrum of conflict, from peace through to war; therefore, CANSOFCOM provides special operations support to CAF operations abroad when required. CANSOFCOM's primary mission is counter-terrorism, which involves conducting rigorous and specialized training and working with local law enforcement agencies, as required, to protect Canadians from the threat of terrorism.

3. Commander CANSOFCOM is the operational commander for all special operations. CANSOFCOM is the principal source of expertise on the development, generation and employment of SOF and is responsible for and capable of responding to terrorism and threats to Canadians and Canadian interests around the world. Commander CANSOFCOM reports directly to the Chief of the Defence Staff (CDS), it is important to note that the Leadership of the CAF and the DND maintains full oversight on all CANSOFCOM operations. CANSOFCOM is organized into a headquarters element and five units: Joint Task Force 2 (JTF 2); the Canadian Special Operations Regiment (CSOR); 427 Special Operations Aviation Squadron (SOAS); the Canadian Joint Incident Response Unit – Chemical, Biological, Radiological and Nuclear (CJIRU-CBRN); and the Canadian Special Operations Training Centre (CSOTC).

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4. **Responsibilities.** Commander CANSOFCOM is accountable to the CDS for the force development, force generation, and force employment of SOF in CAF routine, contingency, and rapid-response operations. As such, the Commander has specific delegated authorities to plan, prepare for, and execute operations. Normally, SOF deployed on operations is employed under OPCOM Comd Canada COM or Comd CEFCOM depending on whether the mission/task is domestic or expeditionary. Regardless, CANSOFCOM generates, trains, validates, and deploys the requisite force packages (i.e., SOTF) that are employed by the appropriate command. In these instances, Comd CANSOFCOM, or his designated representative, becomes Deputy Commander SOF (SOF Advisor) to the supported command. In special circumstances, CANSOFCOM may also employ a SOTF to conduct missions on behalf of the Government of Canada where it will be required to plan, prepare, and execute on its own and report directly to the CDS.

5. CANSOFCOM is responsible for:

a. providing the Government of Canada with high readiness SOF capable of conducting:

(1) **Counterterrorism operations.** Offensive and defensive measures taken to prevent, deter, pre-empt, and respond to terrorism.

(2) **Maritime counterterrorism operations**. Counterterrorism (CT) operations within the extremely complex maritime environment.

(3) **High-value task.** Other missions, at home or abroad, assigned by the Government of Canada such as: special reconnaissance; direct action; counter-proliferation; NEO; and defence, diplomacy, and military assistance.

b. generating forces and deploying SOF capable of global reach and response to emerging threats to Canada's national interest;

c. developing SOF and organizations that remain on the leading edge of technology and operational capability to meet the requirements of the current and future security environments;

d. providing expert advice on special operations and CT to government officials, OGDA, senior military decision makers, and other CAF entities for routine planning, exercise, or crisis events; and

e. providing the Government of Canada and the CAF with a conduit to allied special operations and CT expertise, technology, research, and development.

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6. CANSOFCOM fully participates in the primary CAF mission of providing for the defence of Canada. It does so by seeking to defeat terrorist threats to Canada by providing CT forces capable of operating in all environments. These forces are organized, equipped, and trained not only to be responsive but also to serve as a deterrent. Through interagency liaison, discussion, and training CANSOFCOM seeks to enable and assist OGDA, where appropriate, in CT planning and execution.

7. CANSOFCOM also contributes to the overall defence of Canadian national interests by conducting operations abroad in support of CAF conventional forces, as well as on discrete and separate missions that support Government of Canada objectives. CANSOFCOM provides strategic flexibility to tailored responses in a complex strategic environment.

8. The high-readiness posture, skill level, and deployability of SOTFs allow for a rapid and determined response, but also serve as a building block for follow-on forces. CANSOFCOM provides forces that can deter and disrupt violent organization either in support of conventional operations or on discrete missions. CANSOFCOM forces may also assist partners in upgrading their CT capabilities. In general terms, CANSOFCOM operations abroad strive to:

a. destroy, disorganize, and disrupt the networks of violent organizations;

b. degrade and deny access of violent organizations to the nation's population;

c. construct social networks to promote legitimacy of efforts; and

d. organize, enable, and improve partner's tactical and operational skills in CT.

9. The effects that CANSOFCOM can deliver are keyed to its unique capabilities. First, selected components of the Command are constantly on high-readiness alert in order to provide an agile and timely response. Second, CANSOFCOM can provide highly skilled special operations task forces to conduct high-risk missions that have major strategic ramifications such as hostage rescue or special reconnaissance for operational planning and decision making. Third, CANSOFCOM contains a baseline capacity to mitigate the results and deter the use of weapons of mass effect. Fourth, CANSOFCOM facilitates the engagement with allied organizations in the fight against terrorism, as well as providing assistance to nations seeking to build SOF capacity to provide for their own internal defence. Finally, CANSOFCOM missions can set the parameters for theatre activation or shape the AO for conventional operations.

10. **Special Operations Task Forces (SOTF).** CANSOFCOM employs an integrated operating concept that combines the capabilities of all units in a Special Operations Task Force (SOTF) capable of completing assigned missions and tasks. Therefore, depending on the tasks at hand, various combinations of personnel from JTF 2, CSOR,

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427 SOAS and CJIRU are assembled into a Special Operations Task Force, as appropriate, to accomplish assigned missions. The Commander selects which task force or team will be deployed based on several criteria, including:

a. The scope of the problem;

b. The required response time;

c. What effect needs to be achieved; and

d. The level of precision required.

11. Based on the requirement to respond to specific standing tasks assigned to the CAF by the GoC, such as respond to a terrorist attack, an international crisis or a CBRN threat, CANSOFCOM has developed several standing Special Operations Task Forces:

a. **Immediate Response Task Force (IRTF).** The IRTF is the highest readiness task force available to the Government of Canada; it is deployed on extremely short notice to address issues that could affect national interests. It is comprised of personnel from all CANSOFCOM units and is led by JTF 2. Its primary focus is counter-terrorism operations, domestic or international. Tasks include, but are not limited to Hostage rescue, direct action, CBRN response, sensitive site exploitation, counter-proliferation, maritime special operations.

b. **Chemical, Biological, Radiological and Nuclear (CBRN) Task Force.** This Task Force is based on the personnel and capabilities of CJIRU and includes the CANSOFCOM contribution to Canada's National CBRNE Response Team, led by the RCMP. The CBRN Task Force provides a short notice response to crisis or major events within Canada and is primarily focused on counter-terrorism that involves Chemical, Biological, Radiological and/or Nuclear elements. It provides technical response to CBRN incidents and can be enabled by the capabilities of other CANSOFCOM units as required. At the request of the Government of Canada, the CBRN Task Force can also conduct counter-proliferation operations and be deployed internationally. Tasks include, but are not limited to Reconnaissance, surveillance, sampling, limited decontamination for Task Force personnel and sensitive site exploitation.

c. **Task Force Arrowhead.** TF Arrowhead is a scalable, agile force able to respond to threats and incidents around the globe on short notice. While it is internationally focused, it can also be deployed in Canada. It is a high readiness SOTF capable of quickly deploying to a crisis for short periods of time. It is comprised of personnel from all four units in the Command and is led by CSOR. TF Arrowhead represents an initial response that could be a pre-cursor to the deployment of another SOTF or conventional

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task force. Tasks include, but are not limited to: Direct action, CBRN response, sensitive site exploitation, counter-proliferation, support to non-combatant evacuation operations, special protection operations.

d. **SOF Teams.** Small teams of CANSOFCOM personnel perform tasks that fall outside the scope of the three standing task forces. SOF teams generally deploy for short periods of time, typically not longer than six months. SOF teams are made up of personnel and capabilities from all four units. Tasks include, but are not limited to defence, diplomacy and military assistance, strategic advice, planning and liaison, strategic reconnaissance and security support to operations of other Government of Canada organizations.

12. **Joint Task Force 2 (JTF 2).** JTF 2 protects the Canadian National Interest and combats terrorism at home and abroad. JTF 2 was created on April 1, 1993, when the CAF accepted responsibility for federal counter-terrorism operations from the RCMP. Since its inception, the unit has continuously evolved to meet modern-day threats. As the events of 11 September 2001 have shown, the threat of terrorism comes from an elusive, sophisticated and determined enemy. In order to maintain an edge in this operational environment, JTF 2 is continuously developing new capabilities, technologies, and tactics. The year 2001 marked an important milestone in the history of JTF 2. The unit was committed to the international Special Operations Forces coalition in Afghanistan, completing its operations there in November 2002. This deployment was the first time JTF 2 was used in a major combat role outside Canada. The unit played a critical role in coalition Special Operations Forces and earned the respect of Canada's allies for its professionalism.

13. **Accountability.** JTF 2 is a unit of the CAF and is subject to exactly the same code of conduct, military discipline and overriding Criminal Code statutes as any other military unit. Due to the strategic nature of its operations, the unit answers directly to the Commander CANSOFCOM. This allows for very timely command and control, access to strategic intelligence, and the oversight considered essential for military operations undertaken to meet national objectives. The Commander Canadian Special Operations Forces is accountable to the CDS who, in turn, is responsible to the Minister of National Defence.

14. Like other units of the CAF, JTF 2 follows ROE authorized by the CDS. Its members are entitled to the same support and health services as other service members, they are accountable to the military and civilian justice systems, and they must follow the same regulations and orders as the rest of the CAF. Like any other CAF unit, internal oversight bodies such as the Chief of Review Services, the Military Police Complaints Commission, the Pay and Allowances Review Board, the Access to Information Office and the CAF Ombudsman all have access to JTF 2, if required, to carry out their duties.

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15. **Security.** JTF 2 is subject to very stringent security procedures in order to protect the unit and its mission. Indeed, the type of operations assigned to JTF 2 naturally captures the interest of the public but there are many risks involved with information disclosure. The CAF recognizes the need to inform Canadians about the measures put in place by their Government to protect them against the threat of terrorism. Since its creation, JTF 2 has conducted numerous capability demonstrations for appropriate authorities that need to be aware of unit capabilities as part of their position or appointment. Such audiences include the CAF chain of command, Members of Parliament, government officials and police authorities. The Government has also informed Canadians about JTF 2 by notifying the public about its creation in 1992, its expansion following 11 September 2001, the JTF 2 commitment to Afghanistan in 2001 and 2005, awarding of the U.S. Presidential Unit Citation to unit members and by responding to media questions about the unit within the limits of the security policy.

16. In 2012, CANSOFCOM deployed a Special Operations Task Force for Op NANOOK, in which CANSOFCOM completed a realistic training scenario and supported a CJOC Continental capability demonstration for VVIPs and media. While CANSOFCOM participation in Op NANOOK was a success, being open and transparent about certain aspects of the unit always presents a risk and could seriously compromise the effectiveness of Canada's counter-terrorism capability. History has shown only too clearly that terrorist organizations will use information about a unit's personnel, weapons, tactics and procedures to great effect by modifying their methodologies to counter the very forces designed to defeat them.

17. JTF 2 has established itself as a well-regarded SOF unit. It has done so over its short history because of the outstanding quality and ability of its members, its proven operational effectiveness and its stringent operational security policy. This reputation has allowed the unit to develop strong relationships with its allied SOF counterparts, relationships built on trust and confidence. These relationships assist JTF 2 in providing the best possible counter-terrorism defence for Canada. The CAF security policy for JTF 2 is primarily based on Canada's situation, and is designed to safeguard information sharing and most importantly to protect Canada's counter-terrorist capability.JTF 2 must be ready to respond immediately to any task assigned by the chain of command at home or abroad. The unit maintains the highest operational readiness standards in order to defend Canada against terrorism. On land, at sea and in the air JTF 2 challenges itself to ensure it's ready to defeat a multitude of potential threats. Canadians can take great comfort in the knowledge that as an integral part of Canada's Special Operations Forces community, JTF 2 stands on guard 24 hours a day to defend Canadians, and Canadian interests at home and abroad.

18. **Canadian Joint Incident Response Unit (CJIRU).** CJIRU's mission is to provide specialized, timely and agile Chemical, Biological, Radiological, and Nuclear Defence (CBRN) response to the Government of Canada. The events of September 11, 2001, led to the immediate CBRN response capability of the CAF to be assigned to a new dedicated high readiness unit, the Joint Nuclear Biological and Chemical Defence

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Company (JNBCD). Since February 1, 2006, this unit has been a part of CANSOFCOM. CJIRU has three key mandates:

a. Respond to CBRN events in conjunction with other elements of the National Chemical Biological Radiological and Nuclear and Explosive (CBRNE) Response Team;

b. Provide an agile integral part of the CANSOFCOM Immediate Reaction Task Force (IRTF); and

c. Specialized support to CAF expeditionary operations.

19. CJIRU - CBRN is an integral component of CANSOFCOM, and provides a rapid response capability for SOF missions throughout the world. Domestically, CJIRU - CBRN is a branch of the CBRNE Response Team in association with the Royal Canadian Mounted Police (RCMP) and Public Health Agency of Canada (PHAC), responsible for CBRN counter-terrorism operations. Additionally, they provide direct and indirect CBRN support to CANSOFCOM operations. Internationally, CJIRU-CBRN provides CBRN support to CAF elements in all theatres of operations.

20. CJIRU-CBRN accepts members of the CAF, regular or reserve, in the role of operator or supporter. To apply for service with the unit, a CAF member must demonstrate a high level of teamwork and maturity. Individuals that come to CJIRU-CBRN experience a different type of atmosphere than traditional units, and will need to adapt to the challenges these changes present. Typically, members that have an interest in science or learning new technology will find the transition easier. A member of CJIRU-CBRN is committed to achieving the expectations of the unit and will demonstrate good conduct in military and personal life.

21. CJIRU-CBRN is constantly evolving and developing unique capabilities to deal with new CBRN threats. Members of the unit sustain a high level of preparedness and readiness, maintained through a comprehensive training routine. These skills are further developed through partnerships with other government organizations. The unit is comprised of a unique combination of Regular and Reserve Forces with a high level of motivation, dedication and professionalism. The unit will spearhead the development of the new CBRN Operator occupation as a trade within the CAF. As the unit grows it will become an integral part of the forces, providing trained professionals that can respond to any threat.

22. **Canadian Special Operations Regiment (CSOR).** A robust and adaptable weapon in CANSOFCOM's operational arsenal, the Canadian Special Operations Regiment (CSOR) combines mobility and firepower with a host of special operations skills required to conduct and enable CANSOFCOM operations at home and abroad. Formed in 2006, this young unit is internationally recognized for being an innovative, cutting-edge special operations force. CSOR provides CANSOFCOM with a public face representative of the CAF' very best.

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CSOR is like no other unit in the CAF. The unit proudly traces its roots to the First Special Service Force (FSSF), the fabled Canadian-American Special Forces unit that was stood-up in 1942 and earned the "Black Devils" moniker for daring night raids on Nazi forces at the Anzio beachhead. CSOR proudly carries the Black Devils' battle honours, and the Devils' spirit lives on at CSOR.

23. **427 Special Operations Aviation Squadron (427 SOAS).** On February 1, 2006, the unit became a part of CANSOFCOM. 427 SOAS provides dedicated special operations aviation effects as part of high-readiness Special Operations Task Forces for domestic and international operations. Bearers of a proud legacy, the Lions enable CANSOFCOM to be where it's needed, when it's needed, no matter how challenging the conditions may be. With a distinguished history of excellence dating back to 1942, 427 SOAS leverages aerospace power expertise for their primary role of providing dedicated SOA effects as part of high-readiness Special Operations Task Forces for domestic and international operations. The squadron also supports a secondary role of the provision of tactical and admin/utility aviation for domestic contingencies to include support to secondary Search and Rescue. Comprised of Regular, Reserve and Civilian personnel, 427 SOAS requires highly motivated and operationally fit personnel from all elements and military occupations in the CAF. Ideal members exemplify core CAF values, duty, loyalty, integrity, courage are committed to a relentless pursuit of excellence, understand shared responsibility, and possess an indomitable spirit, creativity, and humility.

Interim Summary

24. Canada's current Special Operations Forces are generated and commanded by the Canadian Special Operations Forces Command (CANSOFCOM). CANSOFCOM is a high-readiness organization, ready to deploy Special Operations Forces on very short notice to protect Canada and Canadians from threats to the national interest at home and abroad. Commander CANSOFCOM is the operational commander for all special operations. CANSOFCOM is the principal source of expertise on the development, generation and employment of SOF and is responsible for and capable of responding to terrorism and threats to Canadians and Canadian interests around the world.

25. Comd CANSOFCOM is accountable to the CDS for the force development, force generation, and force employment of SOF in CAF routine, contingency, and rapid-response operations. As such, the Commander has specific delegated authorities to plan, prepare for, and execute operations. Normally, SOF deployed on operations is employed under OPCOM Comd Canada COM or Comd CEFCOM depending on whether the mission/task is domestic or expeditionary. CANSOFCOM is responsible for providing the Government of Canada with high readiness SOF capable of conducting Counterterrorism operations, Maritime counterterrorism operations and high-value tasks.

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26. CANSOFCOM fully participates in the primary CAF mission of providing for the defence of Canada. It does so by seeking to defeat terrorist threats to Canada by providing CT forces capable of operating in all environments. CANSOFCOM also contributes to the overall defence of Canadian national interests by conducting operations abroad in support of CAF conventional forces, as well as on discrete and separate missions that support Government of Canada objectives. The high-readiness posture, skill level, and deployability of SOTFs allow for a rapid and determined response, but also serve as a building block for follow-on forces. The effects that CANSOFCOM can deliver are keyed to its unique capabilities.

27. CANSOFCOM employs an integrated operating concept that combines the capabilities of all units in a Special Operations Task Force (SOTF) capable of completing assigned missions and tasks. Therefore, depending on the tasks at hand, various combinations of personnel from JTF 2, CSOR, 427 SOAS and CJIRU are assembled into a Special Operations Task Force, as appropriate, to accomplish assigned missions. Based on the requirement to respond to specific standing tasks assigned to the CAF by the GoC, such as respond to a terrorist attack, an international crisis or a CBRN threat, CANSOFCOM has developed several standing Special Operations Task Forces: Immediate Response Task Force (IRTF), Chemical, Biological, Radiological and Nuclear (CBRN) Task Force, Task Force Arrowhead, and SOF Teams.

28. JTF 2 protects the Canadian National Interest and combats terrorism at home and abroad. JTF 2 was created on April 1, 1993, when the CAF accepted responsibility for federal counter-terrorism operations from the RCMP. Since its inception, the unit has continuously evolved to meet modern-day threats. JTF 2 is a unit of the CAF and is subject to exactly the same code of conduct, military discipline and overriding Criminal Code statutes as any other military unit. Due to the strategic nature of its operations, the unit answers directly to the Commander CANSOFCOM. Like other units of the CAF, JTF 2 follows ROE authorized by the CDS. Its members are entitled to the same support and health services as other service members, they are accountable to the military and civilian justice systems, and they must follow the same regulations and orders as the rest of the CAF.

29. JTF 2 is subject to very stringent security procedures in order to protect the unit and its mission. Indeed, the type of operations assigned to JTF 2 naturally captures the interest of the public but there are many risks involved with information disclosure. The CAF recognizes the need to inform Canadians about the measures put in place by their Government to protect them against the threat of terrorism. JTF 2 has established itself as a well-regarded SOF unit. It has done so over its short history because of the outstanding quality and ability of its members, its proven operational effectiveness and its stringent operational security policy. This reputation has allowed the unit to develop strong relationships with its allied SOF counterparts, relationships built on trust and confidence. These relationships assist JTF 2 in providing the best possible counter-terrorism defence for Canada.

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30. CJIRU's mission is to provide specialized, timely and agile Chemical, Biological, Radiological, and Nuclear Defence (CBRN) response to the Government of Canada. The events of September 11, 2001, led to the immediate CBRN response capability of the CAF to be assigned to a new dedicated high readiness unit, the Joint Nuclear Biological and Chemical Defence Company (JNBCD). CJIRU-CBRN is constantly evolving and developing unique capabilities to deal with new CBRN threats. Members of the unit sustain a high level of preparedness and readiness, maintained through a comprehensive training routine. These skills are further developed through partnerships with other government organizations.

31. A robust and adaptable weapon in CANSOFCOM's operational arsenal, the Canadian Special Operations Regiment (CSOR) combines mobility and firepower with a host of special operations skills required to conduct and enable CANSOFCOM operations at home and abroad. Formed in 2006, this young unit is internationally recognized for being an innovative, cutting-edge special operations force. CSOR provides CANSOFCOM with a public face representative of the CAF' very best.

32. 427 SOAS provides dedicated special operations aviation effects as part of high-readiness Special Operations Task Forces for domestic and international operations. Bearers of a proud legacy, the Lions enable CANSOFCOM to be where it's needed, when it's needed, no matter how challenging the conditions may be. The squadron also supports a secondary role of the provision of tactical and admin/utility aviation for domestic contingencies to include support to secondary Search and Rescue. Comprised of Regular, Reserve and Civilian personnel, 427 SOAS requires highly motivated and operationally fit personnel from all elements and military occupations in the CAF.

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Suggested Questions

Q. What is CANSOFCOM? (Paras 2, 3)

Q. What are Comd CANSOFCOM responsibilities? (Para 4)

Q. What are CANSOFCOM responsibilities? (Paras 5 to 7)

Q. What CANSOFCOM operations abroad strive to? (Para 8)

Q. What are the effects delivered by CANSOFCOM? (Para 9)

Q. Which criteria the Comd CANSOFCOM will consider to deploy a SOFT? (Para 10)

Q. What is the Immediate Response Task Force (IRTF)? (Para 11a)

Q. What is the Chemical, Biological, Radiological and Nuclear (CBRN) Task Force? (Para 11b)

Q. What is Task Force Arrowhead? (Para 11 c)

Q. What are SOF Teams? (Para 11 d)

Q. What are Joint Task Force 2 responsibilities? (Paras 12 to 17)

Q. What are the Canadian Joint Incident Response Unit responsibilities? (Paras 18 to 21)

Q. What are the Canadian Special Operations Regiment responsibilities? (Para 22)

Q. What are the 427 Special Operations Aviation Squadron responsibilities? (Para 23)

Note to the Instructor: Encourage students to actively participate in the lesson and to reason through problems.

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PART 4 – CONCLUSION

Summary

Maritime Operations

1. The maritime domain is a complex environment within which careful consideration must be given to the rule of law in the conduct of international and domestic operations. As outlined in the *United Nations Convention on the Law of the Sea* (*UNCLOS*) and the *Oceans Act,* maritime zones are required under international law and serves to outline the sovereign rights that can be exercised by a coastal state in these areas of the sea. The Canadian territorial sea is also treated similar to land territory and Canada's sovereignty extends to the airspace, seabed, and subsoil within this zone.

2. International law is mostly composed of treaty law and customary international law. A treaty is simply any agreement between two or more states that is intended to establish obligations as a matter of international law. The *UN Charter*, the UNCLOS, the *Geneva Conventions*, their *Additional Protocols*, and the Rome Statute of the International Criminal Court all establish treaty obligations. UNCLOS defines each maritime zone as well as the rights and obligations of states with respect to each zone. Some of the key rights and zones include internal waters, the territorial sea, innocent passage in the territorial sea, contiguous zone, international straits, transit passage, archipelagic waters, exclusive economic zone, continental shelf and the high seas. Canada ratified UNCLOS on Nov 6, 2003 and it came into force in Canada on Dec 7, 2003.

3. Domestic legislation will apply in certain circumstances to international operations but predominately it applies to operations conducted in Canadian waters, particularly those conducted in the exclusive economic zone and the contiguous zone. UNCLOS is the main body of law that defines maritime zones. It is important that naval commanders and their legal advisor be able to identify the zone in which HMC Ships are located, as Canada's rights and obligations will vary with the zone. All vessels have a right to innocent passage through a coastal state's territorial sea. Passage through the territorial sea must be for the purpose of traversing the territorial sea to reach another maritime zone. Vessels are required to pass through the territorial sea without passing through the internal waters of the coastal state.

4. Warships and certain other Government operated vessels at sea and in port have immunity from the jurisdiction of the coastal State. That is, they are not subject to the enforcement jurisdiction of any state with the exception of the flag state. The high seas are open to all states including landlocked states for the purposes of navigation, the laying of pipelines and other rights within UNCLOS. A state when exercising its rights on the high seas must have due regard for the rights of other states to the freedom of the high seas. During an armed conflict at sea, operations may be

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conducted in the internal waters and territorial sea of the belligerents. In times of armed conflict, the territorial waters of a neutral state are considered neutral waters and hostile acts by belligerents are forbidden in these waters.

5. Belligerent military vessels may pass through, under or over an international strait or archipelagic sea-lane. Their passage through, under or over a strait or sea-lane does not affect the neutrality of the coastal state. Belligerents may lay mines in the EEZ, including the EEZ of a neutral state. The LOAC provides another legal basis for maritime operations, which would not necessarily be available under UNCLOS. "Leadership interdiction operations" (LIOs) occur under the authority of LOAC and are an exercise of visit and search. The Charter of the United Nations provides the legal authority to pass Security Council resolutions (SCR) that may give states the right to establish embargoes and sanctions. A SCR issued under the authority of article 41 is binding on all member states including the target state. Members must adhere to the SCR with respect to obeying and self-policing the embargos and sanctions as it relates to ships flying their flag. Ships from member states are not entitled to violate the SCR and each member state must ensure that their own ships adhere to the resolution.

6. The Proliferation Security Initiative (PSI) is an activity whose purpose is to stop the unlawful proliferation of weapons of mass destruction (WMD). PSI participating states rely on already existing national and international law to stop or impede the transfer, shipment or sale of WMD or its related materials to state or non-state actors of proliferation concern. There will be times when the CAF is requested to assist the civil authorities. The government has issued a number of orders in council providing CAF members with the authority and powers to enforce laws. The CAF and RCMP have entered into successive MOUs over the past decades, which MOUs govern the provision of CAF assistance to RCMP counterdrug operation. Assistance to law enforcement is subject to the exigencies of the service and the CDS or his/her delegate [will] determine the strength, composition, arms and equipment of any military force tasked or dispatched in response to a specific request for assistance and any subsequent changes thereto. Under the authority of section 5(2) of the *Fisheries Act,* the Deputy Minister of Fisheries has issued a certificate designating officers and non-commissioned officers of the CAF "Fishery Officers" when performing duties or functions under the *Fisheries Act* or *Coastal Fisheries Protection Acts.*

Intelligence Operations

7. The collection of intelligence is a practice of nations that lies at the heart of operational readiness. It is universally regarded as a fundamental element of every state's national security in both peacetime and war, and it is vital to the planning and conduct of military operations. Intelligence is fundamental to the conduct of any operation be it an international operation or a domestic one. Other than the enabling provisions of the *National Defence Act* (*NDA*) governing the activities of the Communications Security Establishment (CSE), the *NDA* does not specifically authorize or prohibit the conduct of intelligence gathering. Since there is no general purpose

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clause authorizing military intelligence-related activities *per se*, such activity implicitly falls within the general ambit of the national defence mandate.

8. It is universally accepted international custom and practice that states will gather intelligence in the pursuit of their national interests and for the protection of their sovereignty. Although there is no unified body of law constraining its practice, various aspects of international civil treaties, the law of armed conflict, and customary international law touch upon and restrict certain means and platforms utilized in intelligence collection. Intelligence law, an amalgamation of diverse international and domestic legal elements, is the legal framework underpinning the collection of intelligence at every level of operations. There is no prohibition under international law on most forms of intelligence gathering. Intelligence collection is recognized as accepted practice in peacetime and during periods of armed conflict. There are three basic primary sources of intelligence: human, incorporating all information secured from human sources; material, comprising all documents and other recorded information; and technical, including signals, communications, electronics and imagery.

9. The *Chicago Convention on International Civil Aviation* (1944) codifies the notion that every state has complete and exclusive sovereignty over the airspace above its territory. *UNCLOS* also codifies the right of free navigation on the "high seas", meaning all parts of the sea that are not included in the exclusive economic zone, territorial sea or internal waters of a state. The legality of their use within the context of intelligence collection is governed to a large extent by the United Nations *Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies*.

10. Secondary sources of intelligence are those gathered by parties other than the receiving state. In Canada, the vast majority of military foreign intelligence comes from these sources. In addition to information received from various government departments and agencies (such as Foreign Affairs, CSIS and CSE), the CAF also relies heavily on open sources to augment available intelligence to assist in strategic decision-making for the government and to formulate operational tactics. As a general rule, democracies avoid the use of the military in domestic operations except in cases of extreme urgency or need. Canada is no exception. The CAF is not a domestic law enforcement agency. It does not have the primary responsibility or mandate to enforce the law or to act as a primary emergency response organization for the civilian authority.

11. All legislation passed by Parliament, and indeed all action taken by federal government institutions such as the CAF, is subject to the constitutionally entrenched *Canadian Charter of Rights and Freedoms* and the limitations it places on the collection of private information. In addition to the constitutionally entrenched privacy protections built into the *Charter*, the federal *Privacy Act* places a limitation on the type of information that can be collected from Canadians, and the uses that can be made of that information. The CAF has no special status when it participates in domestic operations. Its activities, like the activities of any civilian law enforcement agency, must be conducted in accordance with all domestic law.

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Information Operations

12. Increasingly complex information systems are being integrated into all aspects of modern military operations. Today command, transport, logistics, intelligence and weapon systems rely heavily on computers, satellite communications and a host of electronic systems. Generally, the use of such systems by the military is described as "information operations" (IO). There is a wide spectrum of potential targets that IO can be directed towards. Today, it is a target rich environment. For example, an IO operation might include efforts to influence, manipulate or neutralize an adversary's key leadership, strategic communications, military infrastructure, civil infrastructure (including industry, financial and populace) along with an adversary's weapons systems. IO targeting can be accomplished by application of the basic principles of LOAC, if the situation is one of armed conflict. The body of international law is not extensive in this area, nor is it particularly reflective of this rapidly growing field of cyberspace. Certain treaties have relevance in peacetime to the use and control of communications.

13. Defensive IO involves actions to protect Canada's information and to ensure that friendly decision makers are protected from an adversary's offensive efforts. By its nature, it is a strategy that requires the coordination of policies, procedures, operations, intelligence, law and technology. Treasury Board policy, entitled, "Policy on the Use of Electronic Networks", does permit user monitoring of government computer systems under certain prescribed circumstances based on the principle of informed consent of governmental system users.

14. The adoption of Bill C-14 in 2004 introduced amendments to section 184(2) of the *Criminal Code* that provided additional exceptions from criminal liability for the intercept of private communications on a computer network. Bill C-14 also consequently amended section 161 of the *Financial Administration Act* to expressly empower Crown employees to perform duties related to the management and protection from misuse of computer networks, including similar duties permitted under the *Criminal Code*.

Special Forces Operations

15. Canada's current Special Operations Forces are generated and commanded by the Canadian Special Operations Forces Command (CANSOFCOM). CANSOFCOM is a high-readiness organization, ready to deploy Special Operations Forces on very short notice to protect Canada and Canadians from threats to the national interest at home and abroad. Comd CANSOFCOM is accountable to the CDS for the force development, force generation, and force employment of SOF in CAF routine, contingency, and rapid-response operations. As such, the Commander has specific delegated authorities to plan, prepare for, and execute operations. CANSOFCOM fully participates in the primary CAF mission of providing for the defence of Canada. It does so by seeking to defeat terrorist threats to Canada by providing CT forces capable of operating in all environments.

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16. CANSOFCOM employs an integrated operating concept that combines the capabilities of all units in a Special Operations Task Force (SOTF) capable of completing assigned missions and tasks. Therefore, depending on the tasks at hand, various combinations of personnel from JTF 2, CSOR, 427 SOAS and CJIRU are assembled into a Special Operations Task Force, as appropriate, to accomplish assigned missions. JTF 2 protects the Canadian National Interest and combats terrorism at home and abroad. JTF 2 was created on April 1, 1993, when the CAF accepted responsibility for federal counter-terrorism operations from the RCMP. Since its inception, the unit has continuously evolved to meet modern-day threats. JTF 2 is subject to very stringent security procedures in order to protect the unit and its mission. Indeed, the type of operations assigned to JTF 2 naturally captures the interest of the public but there are many risks involved with information disclosure.

17. CJIRU's mission is to provide specialized, timely and agile Chemical, Biological, Radiological, and Nuclear Defence (CBRN) response to the Government of Canada. Members of the unit sustain a high level of preparedness and readiness, maintained through a comprehensive training routine. These skills are further developed through partnerships with other government organizations. A robust and adaptable weapon in CANSOFCOM's operational arsenal, the Canadian Special Operations Regiment (CSOR) combines mobility and firepower with a host of special operations skills required to conduct and enable CANSOFCOM operations at home and abroad. 427 SOAS provides dedicated special operations aviation effects as part of high-readiness Special Operations Task Forces for domestic and international operations. Bearers of a proud legacy, the Lions enable CANSOFCOM to be where it's needed, when it's needed, no matter how challenging the conditions may be.

Confirmation

The instructor may ask other confirmation questions.

Conclusion

Maritime Operations

18. Over the years, CAF naval forces have conducted a number of international and domestic operations. Generally speaking, international law will apply to international operations while domestic law will apply to domestic operations. However, domestic legislation will apply in certain circumstances to international operations, particularly to those conducted in the EEZ and contiguous zone. Before CAF naval forces can undertake any operation there has to be a legal basis for the operation. This legal basis can be found either in treaty law, customary international law or domestic law. Important treaties that provide the legal basis to conduct operations include UNCLOS for peacetime operations, the UN Charter for Security Council mandated operations, and customary international law as captured in the San Remo manual for armed conflict at sea. The *Geneva Conventions* and their *Additional Protocols* also apply during armed

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conflict and create a legal framework on how force may be used. When conducting operations, it is also important that naval commanders and legal advisors be able to identify maritime zones as obligations will change as HMC Ships move from one zone to another or when the legal basis for the operation changes.

19. Conducting LIOs and MIOs is also important to CAF naval forces. HMC Ships have been called upon to conduct LIOs in the Campaign Against Terrorism and MIOs to enforce SCRs relating to Iraqi sanctions and embargoes. It is important that naval commanders and their legal advisors understand the legal basis for conducting LIOs and MIOs as the authority to enforce sanctions and embargoes or to conduct visit and search operations will depend on the legal basis. There will be times when the CAF is requested to provide assistance to civilian authorities. In recognition of this, the government has issued a number of orders-in-council and Parliament has passed legislation providing CAF members with the authority and powers to enforce laws. In the absence of this domestic legislation the CAF would not have the legal authority to conduct domestic law enforcement operations.

Intelligence Operations

20. As intelligence is fundamental to the conduct of any CAF operation, it is crucial for operational legal advisors and commanders to have a basic understanding of the domestic and international law related to intelligence collection. Although intelligence is vital to the success of a CAF operation, intelligence collection must be conducted in accordance with the law. While Canada has sufficient and competent civilian authorities to maintain national security and respond to emergencies within Canada, there will still be occasions when civilian authorities, particularly emergency response and law enforcement authorities, will request CAF assistance. This will usually result in a CAF domestic operation. Like any CAF operation, a domestic one may require intelligence. This requirement along with the CAF requirement for intelligence to protect its own assets and personnel, are important but do not in themselves provide the legal authority to conduct domestic intelligence gathering. There are significant legal issues arising from the collection of information by the CAF in Canada. The key point for operational legal advisors and commanders is to understand that the CAF has no special status or right to gather intelligence in Canada.

21. The CAF, like all civilian authorities, is bound by the law, especially the *Charter of Rights and Freedoms* and the *Criminal Code*, when collecting, using or storing intelligence. A commander's requirement for "situational awareness" is not a legal authority to gather intelligence. There must be a nexus between the CAF requirement for the intelligence and the legally authorized mandate of the CAF to become involved in a domestic operation. As the collection of intelligence in Canada is a very sensitive and complex matter, operational legal advisors and commanders must ensure all intelligence gathering, use and storage comply with the law. Failure to do so will lead to mission failure and will expose commanders and subordinates to criminal and civil liability.

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Information Operations

22. CAF Information Operations (IO) is a complex and quickly expanding area of operations. This combined with the complex operational and security environment in which the CAF operates, makes it vital for operational legal advisors and commanders to understand the basic terminology involved in IO and the legal issues related to IO. In many aspects, the law both domestic and international, related to IO is challenged to keep pace with evolving IO technology. For example, it can be difficult to conceptualize the application of the LOAC (which is largely based on hostilities using kinetic weapons) to IO (which largely is based on non-kinetic systems). Similarly, in domestic operations, it can be challenging to analyze traditional concepts of intercept of communications, when the communication occurs in a computer system. CAF IO is, and will continue to be, an important component of CAF operations. Operational legal advisors and commanders will have to remain especially vigilant in dealing with IO and associated legal issues. IO is clearly an area that could affect mission success and require a solid understanding of the technology and the legal framework.

Special Forces Operations

23. The nature of defence and security challenges Canada faces and their impact on our strategic interests require that CANSOFCOM personnel and assets contribute to Canada's defence and security as a joint and integrated force within a Defence and whole government team. Special Forces Operations will take place at home and abroad and may be conducted with the military forces of allies and coalition partners as well. Successful Special Forces Operations will result in the maintenance of re-establishment of peace and security, or in conditions that enable those strategic objectives.

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PO 027 ADVISE ON ARRANGEMENTS AND AGREEMENTS

PART 1 -- LESSON IDENTIFICATION

EO 027.01 Advise on arrangements and agreements in support of domestic CAF operations

Performance: Advise on arrangements and agreements in support of domestic CAF operations

Conditions:

Given: References including legal principles on arrangements and agreements in support of domestic CAF operations.

Denied: Direct supervision.

Standard: The legal officer shall advise on arrangements, agreements in support of CAF domestic operations.

Main Teaching Points:

- Development of arrangements and agreements relating to domestic operations

Method. This EO will be accomplished by a combination of self-study and class lectures. Students will be required to read assigned materials and be prepared to respond to questions.

Duration. One 15-minute period.

References. *B-GJ-005-104/FP-024 The Operational Law Manual (Draft),* Chapters 19, 26, 27
B-GJ-005-302/FP-001 Domestic Operations, Chapter 6
A-LG-007-000/AF-010 Military Administrative Manual, Chapter 5
DAOD 7014-0 Memorandum of Understanding
DAOD 7014-1 Memorandum of Understanding Development

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Training/ Learning Aids. Standard classroom with whiteboard and projection system/handouts; CD materials; Legal Officer Qualification Course (LOQC) Instructors Handbook – Module(s) [XXX]

Note to the instructor. The developmental lesson shall be conducted in structured manner, using a list of questions to the class. Instructors are to complement each segment of the developmental lesson by follow-up and direct questions taking into account the flow and direction of the discussion. Interim summaries shall be conducted at the end of each segment to confirm the material was learned and provide a basis from which the discussion can progress to the next segment. A review of the main teaching points will then take place at the end of the period.

PART 2 – INTRODUCTION

Objective: The instructor shall provide a lecture on arrangements and agreements in support of domestic CAF operations as outlined in Module [XXX] of the LOQC Instructors Handbook.

Introduction: Memoranda of Understanding (MOU) can significantly facilitate domestic operations by ensuring that the CAF can operate effectively in Canada without being hindered by various bodies of provincial or federal laws.

Outline:

Stage 1 – Development of arrangements and agreements relating to domestic operations

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PART 3 – BODY OF THE LESSON

Stage 1 – Development of arrangements and agreements relating to domestic operations

Introduction

1. DND and the CAF may enter into non-binding arrangements called Memoranda of Understanding (MOU) with external organizations. Examples of these organizations include other federal government departments or agencies, provincial government bodies, private businesses or industry and foreign militaries or their governments. A MOU is a non-legally binding arrangement. However, for administrative purposes, a MOU shall be treated as if it is legally binding. MOU are used when DND or the CAF wish to enter into a cooperative relationship with another organization for the purposes of carrying out a project or program.

2. **Development of MOU.** When it comes to understanding MOU, DAOD 7014-0 (MOU) and 7014-1 (MOU Development) should be consulted. These orders and directives explain the status of MOU, how MOU are prepared and who has the authority to sign them. Even though these particular DAODs should be consulted as the MOU is being prepared, legal advice should also be obtained to ensure that the MOU is the appropriate instrument to use in the given situation and that the MOU complies with the relevant law.

3. The MOU can be categorized as either 'domestic' or 'international.' A domestic MOU is used when entering into non-binding arrangements with other government departments, Crown corporations, provinces or Canadian industry. An international MOU is used when the other participant to the arrangement is a foreign government or foreign defence department. DAOD 7014-0 (Memorandum of Understanding (MOU)) states that "DND may conclude a MOU on behalf of the Government of Canada." The CAF or DND can conclude a MOU on behalf of the MND. If a MOU is to be concluded on behalf of the Government of Canada, the document must be signed by the Department of Foreign Affairs, Trade and Development (DFATD) or the MND with specific cabinet approval.

4. When entering into a MOU, either domestic or international, various internal stakeholders must be contacted. The unit legal adviser and the National Defence Memoranda of Understanding Coordinator (NDMOUC) should be contacted for guidance on how to draft a MOU. Particularly, the NDMOUC should be consulted to determine whether a MOU already exists to cover the specific situation at issue. The NDMOUC may also seek legal advice to ensure that a MOU is the most appropriate instrument to utilize under the circumstances. If there are financial obligations under the MOU, the Director Financial Operations 3-3 (D Fin Ops 3-3) should also be consulted to ensure that contemplated financial arrangements are permissible under legislative or

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government policy. The personnel noted above should be contacted before any step is taken in the preparation of the MOU.

5. When drafting a MOU, it is essential that the drafter consult DAOD 7014-1. The MOU must be structured properly. Certain information must be included in each MOU. The following sections are mandatory:

a. Introduction;

b. Objectives and Scope;

c. Financial Arrangements;

d. Settlement of Disputes;

e. Amendment;

f. Duration, Withdrawal and Termination; and

g. Effective Date and Signature.

6. Care must be taken to ensure that the MOU is not drafted in such a way that it would constitute a contract or appear to be a legally binding agreement. Once a MOU is drafted, it must then be reviewed, signed and distributed. The NDMOUC will review all MOU. An identification number will be assigned, the MOU will then undergo a legal review and, if the document is considered acceptable, the MOU will be recorded in the DND MOU database. If there are financial implications on the part of DND or the CAF, the responsible budget manager must review the MOU and confirm the availability of funds. Other personnel may have to review the MOU if it relates to their area(s) of responsibility. A more detailed list of personnel to be contacted during the preparation stage can be found in DAOD 7014-1.

7. After the completion of the various reviews, the MOU is ready to be signed by the parties to the arrangement. The subject matter and nature of a proposed MOU will determine who has authority to sign the MOU on behalf of the Government of Canada. For a domestic MOU, the following are signing authorities for DND and the CAF within their respective areas of responsibility:

a. Assistant Deputy Ministers (ADM);

b. Environmental Chiefs of Staff (ECSs);

c. Vice Chief of the Defence Staff (VCDS);

d. Commander of Canadian Joint Operations Command (CJOC);

(1) Deputy Commander of Canadian Joint Operations Command - Continental (CJOC Continental);

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(2) Deputy Commander of Canadian Joint Operations Command - Expeditionary (CJOC Exped);

(3) Deputy Commander of Canadian Joint Operations Command - Support (CJOC Support);

e. Commander of Canadian Special Operations Forces Command (CANSOFCOM);

f. Chief of Defence Intelligence (CDI); and

g. the responsible budget managers at the rank of LCol or above or civilian equivalent (when the MOU is in their own area of responsibility and there is no funding required or all the funding will come out of their own budget).

8. Once the MOU is created, reviewed and signed, the final step is distribution. The original and an electronic copy will be forwarded to the NDMOUC, while a paper copy, signed by all participants, will be provided to all those with an interest in the MOU. Given that MOU are intended to be non-binding arrangements, care must be taken not to use legal, contractual or treaty-related terminology in the text of the document. Such diligence will avoid creating the impression that the participants have entered into a legally binding agreement. Once a CO decides to use a MOU, the process outlined in the relevant DAODs and the Memoranda of Understanding (MOU) Writing Guidelines must be followed. The NDMOUC must be contacted prior to drafting the MOU. If the correct procedure is not followed, the draft MOU will have to be re-written.

9. While not exhaustive, the following are situations where MOU may be used by the DND or CAF:

a. Cooperative research and development;

b. Information exchange;

c. International projects involving equipment acquisition or construction, it being clearly understood that a MOU is not a procurement instrument and that any procurement resulting from, or required by, the implementation of a MOU is to be accomplished in accordance with national contracting laws and regulations;

d. Exchange, loan or attachment of personnel between countries;

e. Secondment of personnel;

f. Cooperative material support arrangements;

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g. Division of responsibilities concerning administrative arrangements for major projects;

h. Provision of services to other departments or agencies on a cost recoverable basis; and

i. Deployment and transport of military personnel and equipment.

10. A MOU should not generally be used for the following:

a. The commitment of DND resources to non-defence agencies governed by B-GS-055-000/AG-001, *Provision of Services to Non-Defence Agencies*;

b. The provision of training to foreign military forces governed by CAFAO 9-68, *Training of Foreign Military Forces*; and

c. Real estate and utility agreements or arrangements governed by C-08-005-120/AG-000, *Canadian Forces Construction Engineering Manual*, chapters 36 and 50.

11. **CAF assistance pursuant to MOU.** There are several legal instruments and interdepartmental MOUs through which the CAF may be authorized to assist law-enforcement agencies in the execution of their mandate. Municipal, provincial/territorial, or federal law-enforcement agencies, as well as other federal government departments, such as the Department of Fisheries and Oceans, are responsible for the enforcement of federal laws and may seek military assistance in discharging their assigned duties. Normally, the assistance requested is for a unique or special skill, capability, or equipment only available from within the CAF. CAF assistance, when provided, is always in support of the law-enforcement agency (LEA) of jurisdiction. That LEA always retains full responsibility for the conduct of all law-enforcement operations including the acquisition of judicial warrants, collection and retention of evidence, arrest and detention of persons, and activities associated with the prosecution of those charged with offences.

12. Assistance-to-law-enforcement-agencies (ALEA) operations are sensitive and may involve CAF members or operational equipment at or near the scene of a disturbance of the peace; therefore, requests for assistance must be properly analyzed and must be authorized at the appropriate level. A critical first step in addressing a request from a civilian law-enforcement agency is to determine: who is making the request, what type of assistance is being requested, and who has the authority to approve the request. The request process and approval authority will vary according to the legal instrument used. Analyzing the request in this way will identify which instrument (MOU, order in council, directive, etc.) is most appropriate for use in the circumstances. As RJTF HQs are the usual CAF points of contact with provincial/territorial authorities, they should normally coordinate requests for ALEA.

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13. As stated earlier, MOU are administrative arrangements that are not legally binding upon the participants. However, for administrative purposes, MOUs are normally treated as if they are legally binding. MOUs are very useful for setting out the nature, extent, and process of cooperative arrangements between the participants to the MOU. MOUs are sometimes developed to facilitate the provision of support on a periodic basis by the CAF to another department or agency of the federal government. For such support requiring MND approval, as is the case with assistance to law-enforcement agency operations, a MOU facilitates the granting of MND approval. Where CAF support is frequently sought for recurring law-enforcement operations, the MOU creates a pre-existing authorization mechanism using the overarching legal authority provided by the *NDA* subsection 273.6(2) and the Crown prerogative. The following are examples of some existing MND-authorized MOUs with OGDA relating to CAF assistance in law-enforcement operations:

a. **MOU Respecting CAF Assistance in Support of the RCMP in its Drug Law enforcement Role.** This MOU provides for CAF assistance in the form of air transportation to RCMP officers engaged in counter-drug operations.

b. **MOU between the Department of Fisheries and Oceans (DFO) and the CAF respecting Surface Ship Patrols and Aerial Fisheries Surveillance.** This MOU provides for CAF assistance in the form of CAF ship and air-surveillance patrols in support of DFO officers engaged in enforcement of the *Fisheries Act*.

c. **MOU between the CAF and the RCMP Concerning the Provision of Assistance by the CAF in Support of the RCMP in its Vessel-escort Mission.** This MOU provides for CAF assistance in the form of CAF platform/vessel transport of RCMP officers conducting escort duties for nuclear powered vessels or other foreign naval vessels while they transit through Canadian territorial waters.

d. **MOU Between the CAF and the RCMP Concerning the Provision of CAF Assistance to the RCMP in its Response to a Criminal or Terrorist CBRNE Incident.** This MOU provides for CAF deployment of operational equipment and personnel within Canada, as well as providing access to other unique CAF capabilities, expertise, or advice, to aid the RCMP in the conduct of CBRNE-incident-response operations.

14. CAF assistance pursuant to MOU has been covered previously under *EO 026.02 Advise on domestic CAF operations*. Please refer to this lecture for more details.

15. MOUs are frequently drafted by operational legal advisors and the commander's staff. MOUs are structured in a prescribed way, and as such, DAOD 7014 and its Writing Guidelines must be followed carefully when preparing a MOU. Consequently before any MOU is drafted DAOD 7014 should be consulted. Additionally, the NDMOUC

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and DIOL, for international operations, should be consulted for precedents. Importantly, any CAF officer who plans to sign a MOU on behalf of the CAF or DND must have specific authority to do so. DAOD 7014 must be consulted to determine whether the operational commander has the authority to enter into a MOU, or whether the commander can obtain a delegated authority to do so.

Suggested Questions

Q. Which DAOD are used to prepare MOUs? (Paras 2, 3) (DAOD 7014-0, 7014-1)

Q. Which sections are mandatory in a MOU? (Para 5) (Introduction, Objectives and Scope, Financial Arrangements, Settlement of Disputes, Amendment, Duration, Withdrawal and Termination, and Effective Date and Signature)

Q. Who are signing authorities for a domestic MOU? (Para 7)

Q. In which situations MOU may be used by the DND or CAF? (Para 9)

Q. In which situations a MOU might not be used? (Para 10)

Q. In which situations CAF assistance pursuant to MOU is required? (Paras 11 to 13)

Q. Give examples of some existing MND-authorized MOUs with OGDA relating to CAF assistance in law-enforcement operations. (Para 14) (Assistance in Support of the RCMP in its Drug Law enforcement Role, MOU between the Department of Fisheries and Oceans (DFO) and the CAF respecting Surface Ship Patrols and Aerial Fisheries Surveillance, MOU between the CAF and the RCMP Concerning the Provision of Assistance by the CAF in Support of the RCMP in its Vessel-escort Mission, MOU Between the CAF and the RCMP Concerning the Provision of CAF Assistance to the RCMP in its Response to a Criminal or Terrorist CBRNE Incident)

Note to the Instructor: Encourage students to actively participate in the lesson and to reason through problems.

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PART 4 – CONCLUSION

Summary

1. DND and the CAF may enter into non-binding arrangements called Memoranda of Understanding (MOU) with external organizations. A MOU is a non-legally binding arrangement. However, for administrative purposes, a MOU shall be treated as if it is legally binding. When it comes to understanding MOU, DAOD 7014-0 (MOU) and 7014-1 (MOU Development) should be consulted. These orders and directives explain the status of MOU, how MOU are prepared and who has the authority to sign them but legal advice should also be obtained to ensure that the MOU is the appropriate instrument to use in the given situation and that the MOU complies with the relevant law. The MOU can be categorized as either 'domestic' or 'international.' A domestic MOU is used when entering into non-binding arrangements with other government departments, Crown corporations, provinces or Canadian industry. An international MOU is used when the other participant to the arrangement is a foreign government or foreign defence department. When entering into a MOU, either domestic or international, various internal stakeholders must be contacted. The unit legal adviser and the National Defence Memoranda of Understanding Coordinator (NDMOUC) should be contacted for guidance on how to draft a MOU.

2. When drafting a MOU, it is essential that the drafter consult DAOD 7014-1. The MOU must be structured properly. Certain information must be included in each MOU, such as Introduction, Objectives and Scope, Financial Arrangements, Settlement of Disputes, Amendment, Duration, Withdrawal and Termination, and Effective Date and Signature. Care must be taken to ensure that the MOU is not drafted in such a way that it would constitute a contract or appear to be a legally binding agreement. After the completion of the various reviews, the MOU is ready to be signed by the parties to the arrangement. The subject matter and nature of a proposed MOU will determine who has authority to sign the MOU on behalf of the Government of Canada. Once the MOU is created, reviewed and signed, the final step is distribution. The original and an electronic copy will be forwarded to the NDMOUC, while a paper copy, signed by all participants, will be provided to all those with an interest in the MOU. Given that MOU are intended to be non-binding arrangements, care must be taken not to use legal, contractual or treaty-related terminology in the text of the document.

3. There are several legal instruments and interdepartmental MOUs through which the CAF may be authorized to assist law-enforcement agencies in the execution of their mandate. Municipal, provincial/territorial, or federal law-enforcement agencies, as well as other federal government departments, such as the Department of Fisheries and Oceans, are responsible for the enforcement of federal laws and may seek military assistance in discharging their assigned duties. Normally, the assistance requested is for a unique or special skill, capability, or equipment only available from within the CAF. Assistance-to-law-enforcement-agencies (ALEA) operations are sensitive and may involve CAF members or operational equipment at or near the scene of a disturbance of

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the peace; therefore, requests for assistance must be properly analyzed and must be authorized at the appropriate level.

4. The following are examples of some existing MND-authorized MOUs with OGDA relating to CAF assistance in law-enforcement operations: MOU Respecting CAF Assistance in Support of the RCMP in its Drug Law enforcement Role, MOU between the Department of Fisheries and Oceans (DFO) and the CAF respecting Surface Ship Patrols and Aerial Fisheries Surveillance, MOU between the CAF and the RCMP Concerning the Provision of Assistance by the CAF in Support of the RCMP in its Vessel-escort Mission, MOU Between the CAF and the RCMP Concerning the Provision of CAF Assistance to the RCMP in its Response to a Criminal or Terrorist CBRNE Incident.

Confirmation

The instructor may ask other confirmation questions.

Conclusion

5. MOUs can be an effective tool that enhances and facilitates operations by removing ambiguities and structuring relationships with other parties that are cooperating with a deployed unit in some way. Legal advisors and commanders must ensure that any MOU complies with DAOD 7014 before it becomes final.

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PO 027 ADVISE ON ARRANGEMENTS AND AGREEMENTS

PART 1 -- LESSON IDENTIFICATION

EO 027.02 Advise on arrangements and agreements in support of international CAF operations

Performance: Advise on arrangements and agreements in support of international CAF operations

Given: References including legal principles on arrangements and agreements in support of international CAF operations.

Denied: Direct supervision.

Standard: The legal officer shall advise on arrangements, agreements in support of CAF international operations.

Main Teaching Points:

- Development of arrangements and agreements relating to international operations

Method. This EO will be accomplished by a combination of self-study and class lectures. Students will be required to read assigned materials and be prepared to respond to questions.

Duration. One 20-minute period.

References. *B-GJ-005-104/FP-024 The Operational Law Manual (Draft),* Chapters 19, 26, 27
Visiting Forces Act (R.S.C., 1985, c. V-2)
Visiting Forces Regulations (C.R.C., c. 1598)
Visiting Forces Attachment and Serving Together Regulations (C.R.C., c. 1597)
DAOD 7014-1 Memorandum of Understanding Development

Training/ Learning Aids. Standard classroom with whiteboard and projection system/handouts; CD materials; Legal Officer Qualification Course (LOQC) Instructors Handbook – Module(s) [XXX]

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Note to the instructor. The developmental lesson shall be conducted in structured manner, using a list of questions to the class. Instructors are to complement each segment of the developmental lesson by follow-up and direct questions taking into account the flow and direction of the discussion. Interim summaries shall be conducted at the end of each segment to confirm the material was learned and provide a basis from which the discussion can progress to the next segment. A review of the main teaching points will then take place at the end of the period.

PART 2 – INTRODUCTION

Objective: The instructor shall provide a lecture on arrangements and agreements in support of international CAF operations as outlined in Module [XXX] of the LOQC Instructors Handbook.

Introduction: Status of Forces Agreements and Support Agreements can significantly facilitate international operations by ensuring that the CAF can operate effectively in foreign countries without being hindered by various bodies of host nation law such as those relating to customs, immigration, fiscal, civil, criminal, weapons and motor vehicles.

Outline:

Stage 1 – Development of arrangements and agreements relating to international operations

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PART 3 – BODY OF THE LESSON

Stage 1 – Development of arrangements and agreements relating to international operations

Introduction

1. **Status of Forces and Support Agreements.** In an international operation or training scenario two general legal issues present themselves: what is the status of deployed personnel who will be in the host nation's territory, and what support will the host nation provide to the nation deploying such personnel. The two issues are interrelated because each strikes at the heart of a fundamental dichotomy at play in all cases where the military forces of one nation are present in another. On the one hand, the "law of the flag", implies that such forces will remain under the jurisdiction of the sending nation. On the other hand, the international legal norm of territorial sovereignty means that a nation will have jurisdiction over all entities physically present in its territory.

2. Canada has entered into numerous Agreements and Arrangements dealing with status of forces and host nation support. The Agreement between the Parties to the North Atlantic Treaty Regarding the Status of their Forces is a very important example of a SOFA to which Canada is a party. Recent examples of Canadian agreements with status of forces provisions include the Agreement between the European Union and Canada Establishing a Framework for the Participation of Canada in the European union Crisis Management Operations, and the Agreement on the Status of CAF in Kuwait. An example of an Agreement containing support provisions is the Agreement Between the Government of the French Republic and the Government of Canada Concerning Mutual Logistic Support. An example of an arrangement-level document covering host nation support is the MOU Between the Turkish General Staff and the DND of Canada Regarding the Provision of Host Nation Support for the Transit of CAF in Support of International Security Force. The Technical Arrangements between the Government of Canada and the Government of the Islamic Republic of Afghanistan is an arrangement that deals with both status and support issues.

3. **Status of Forces.** As a general rule, when armed forces personnel are present in the territory of a foreign state, they have the same status as tourists and are fully subject to the laws of that state. This general rule is subject to two exceptions:

a. in some cases international law exempts visiting armed forces personnel from the application of the visited state's laws, and

b. a state may expressly or impliedly agree to exempt visiting armed forces personnel from the application of its laws.

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4. An important element of exception (a) above (that international law may, in some circumstances, work to exempt a visiting force from host nation law) is that during a time of armed conflict, status of military personnel in enemy territory is governed by the law of armed conflict. In times of armed conflict, military forces in enemy territory, including occupied territories, are immune from the enemy state laws. Additionally, it is not uncommon for CAF units to be present in a state under the authority of a Security Council Resolution (SCR). At times the authorizing SCR may invoke the provisions of the UN Model Status of Force Agreement (SOFA).

5. **Status of Force Agreements (SOFA).** With respect to exception 2(b) above, express or implied agreement of a foreign state to exempt visiting forces from application of its laws is normally captured in a SOFA. The purpose of a SOFA is to capture an understanding whereby the host nation agrees to share its sovereign authority over those on its territory with the sending state by granting to the sending state certain rights over its personnel deployed in the host nation. It is important to remember that SOFAs merely define the status of military forces in the territory of friendly states and depending upon the wording contained in a SOFA may not themselves authorize the presence or activities of those forces.

6. A SOFA may deal with a wide variety of subject matters. The breadth of a SOFA will depend on many factors including the number of personnel deployed, the complexity and planned duration of the deployment, the nature of the relationship between the host and sending nations, and the system of government in the host nation. The following matters are dealt with in almost every SOFA:

a. **Criminal Jurisdiction** - This is one of the most important status issues. Normally the SOFA will grant the sending state criminal jurisdiction over its own armed forces personnel in certain circumstances;

b. **Claims** – International deployment of armed forces often results in claims for damage caused by those armed forces. A procedure for dealing with these types of claims and provisions for dealing with the sharing of liability are common;

c. **Carrying of Arms/Use of Force** - The SOFA may permit members of the sending state's armed forces to carry arms in certain circumstances. The SOFA may also provide the sending state authority to take steps to provide for the security of its deployed armed forces and facilities;

d. **Entry/Exit Procedures** - A sovereign state has the right to specify the passport and visa requirements for persons visiting its territory. However, the issuance of passports and visas to military personnel is expensive, impractical and slow – especially in an emergency situation. Therefore, the SOFA might provide that military personnel may be exempted from certain customs requirements. For example, a SOFA may state that visiting forces

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can enter and exit the receiving state using military identity cards and orders;

e. **Duties, Taxes and Other Charges** - The SOFA might provide that the sending state is exempt from duties, taxes and other charges on goods and services imported into or acquired in the receiving state for official use. The SOFA might also exempt the personnel of the armed forces of the sending state from personal income tax and other tax based upon residency in the receiving state; and

f. **Drivers' Licences, Registration and Insurance** - The SOFA may provide that visiting armed forces personnel may operate motor vehicles using drivers' licenses issued by the sending state. The sending state's armed forces personnel might also be exempt from receiving state vehicle registration and insurance requirements.

7. Other matters addressed in a SOFA may include:

a. The requirement for visiting forces' personnel to respect the law of the receiving state;

b. Wearing of uniforms;

c. Privileges regarding the use of communications equipment on host nation territory;

d. Civil jurisdiction;

e. Procedures for arrest and service of legal documents;

f. Importation and use of personal property;

g. Authority to establish base commissaries, exchanges, sales and service activities, and recreational facilities;

h. Health care;

i. Postal services;

j. Use of transportation infrastructure (*i.e.*, exemption from toll road charges, landing and port fees, navigation and over flight charges and other similar charges);

k. Use of currency and banking facilities;

l. Privileges for contractor employees;

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m. Procedures for procuring goods from local sources;

n. Utilization of local labour; and

o. Application of customs rules and regulations.

8. **Equivalent Administrative and Technical Staff Status.** The "level" of status of visiting forces' personnel in the host nation will obviously depend on the wording of the applicable SOFA and will undoubtedly differ between SOFAs. While most SOFAs will set out status through ad hoc provisions dealing with some or all of the subject matters discussed above, a SOFA may also grant administrative and technical staff status through reference to the *Vienna Convention on Diplomatic Relations*. Administrative and technical staff status (A & T status) under the *Vienna Convention on Diplomatic Relations* is intended to treat certain armed forces personnel as if they were part of the embassy staff. It is therefore appropriate to call it "equivalent A & T status".

9. Military personnel having A & T status are granted the immunities provided for in the *Vienna Convention on Diplomatic Relations* to persons of comparable rank. The most important of these are full immunity from the criminal jurisdiction of the receiving state, and immunity from the civil jurisdiction of the receiving state to the extent that the act giving rise to the action was done in the performance of official duty. A & T status is an appropriate solution, provided the receiving state will grant such status, if armed forces are being deployed to foreign territory for a short period of time (*e.g.*, a deployment of a few days for a joint military exercise or for a relief effort).

10. **Negotiation of SOFAs Governing CAF Deployments.** CAF policy is to retain criminal and disciplinary jurisdiction over deployed CAF members where possible. In many cases of international operations or exercises this will require the negotiation and conclusion of a SOFA with the host nation. Ideally a SOFA will be a "status of forces agreement" rather than an equivalent arrangement so that the terms of the understanding are legally binding on the host nation. In the event that a status of forces agreement is to be concluded between Canada and another state, such an agreement will normally be negotiated by Foreign Affairs, with DND/CAF playing a very significant supporting role. Such an agreement will ultimately be signed by the executive, usually the relevant ambassador, the Minister of Foreign Affairs, or the Minister of National Defence.

11. In other cases Canada will send a diplomatic note in advance of a deployment requesting the host nation confirm status arrangements. Again, as these types of agreements are done by the executive and have binding force at international law, Foreign Affairs will be the lead department in the drafting of and follow up on Diplomatic Notes of this sort, with the DND/CAF providing advice to ensure its requirements are met.

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12. Finally, in certain cases MOUs or other arrangement-level documents will be concluded with the host country to set out status. As has been touched upon, this method of obtaining special status for CAF deployments is not favoured since such arrangements are not legally binding but are merely morally or politically binding. The advantage to this method is expediency: DND will typically develop and ultimately sign such arrangements, with minimal if any input from Foreign Affairs.

13. **Visiting Forces in Canada.** Once Canada has agreed to the presence in its territory of personnel of a foreign military, the issue of the status of those foreign military personnel also arises. As discussed above, personnel of a foreign military in Canadian territory will have the status of tourists and will be subject to Canadian law in the absence of additional authority. However, Canada has a long history of welcoming the armed forces of its allies into its territory and has concluded many general and specific agreements and arrangements with foreign states granting special status to visiting military personnel.

14. **History of Visiting Forces Legislation.** The first Canadian legislation to address the status of foreign armed forces in Canada was the *Visiting Forces (British Commonwealth) Act* enacted in 1933. This legislation had limited reach as it applied only to the armed forces of the British Commonwealth present in Canada. The Second World War brought significant U.S. military personnel to Canada. Their status was considered of sufficient importance that a reference on this issue was made to the Supreme Court of Canada in 1943. During the Second World War, the status of U.S. armed forces in Canada was governed by wartime regulations. In 1947, however, U.S. military forces were granted status comparable to British Commonwealth armed forces by the *Visiting Forces (United States of America) Act*. In 1949 Canada became one of the founding members of the North Atlantic Treaty Organization (NATO). In 1951 NATO members agreed on a multilateral SOFA that would apply within the territory of all member states. The NATO SOFA was partly implemented in Canada by the *Visiting Forces (North Atlantic Treaty) Act* enacted in 1951. This legislation was replaced by the *Visiting Forces Act* (*VFA*) in 1968.

15. ***Visiting Forces Act* and *Regulations.*** The *VFA* and *Visiting Forces Regulations* (*VFR*) are applicable to armed forces from a "designated state" present in Canada in connection with official duties. Such armed forces are styled "visiting forces" in the *VFA*. The *VFA* and *VFR* address matters such as:

a. disciplinary jurisdiction over visiting forces;

b. waiver of primary jurisdiction over a member of visiting forces;

c. procedural matters with respect to service courts of visiting forces;

d. arrest of members of visiting forces;

e. incarceration of members of visiting forces;

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f. authority of visiting forces to perform police functions;

g. the right of visiting forces to possess explosives, ammunition and firearms;

h. claims for personal injuries and property damage caused by visiting forces;

i. application of the *Security of Information Act* to visiting forces;

j. exemption of visiting forces from certain forms of taxation;

k. licensing and registration of service vehicles of visiting forces;

l. duty-free importation of equipment, provisions, supplies and other goods for visiting forces;

m. duty-free importation of private motor vehicles, furniture and personal effects belonging to members of visiting forces;

n. duty-free fuel, oil and lubricants for use in service vehicles, aircraft or vessels of visiting forces; and

o. attachment of visiting forces to the CAF and of the CAF to visiting forces.

16. Under the *VFA* the executive retains the discretion to determine which countries will be designated such that the *VFA* and associated regulations have application to forces visiting from that state, and to determine the extent to which the *VFA* and regulations apply to such forces. The executive will designate states by proclamation.

17. **Support agreements.** Above, the issue of status of military personnel deployed internationally was reviewed. A concurrent issue concerns the support that the host nation will provide visiting forces. An understanding governing such support can be captured in a broad Mutual Support Agreement (MSA) or in a more focused Host Nation Support Agreement (HNSA).The two are discussed in turn. Given the breadth of subject matter that may be addressed by each type of Agreement, they are discussed here through reference to support agreements involving the CAF.

18. **Mutual Support Agreements (MSA).** The bulk of Canadian MSAs are concluded with NATO-member countries. DND has entered into reciprocal MSAs for various types of logistic support. CAF MSAs include:

a. NATO Standardization Agreements (STANAGS);

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(1) STANAG 3381 (to be replaced by 2034) (NATO Standard Procedures for Compensation). Actual means and methodology of payment for services and facilities are detailed in this STANAG.

(2) STANAG 3113 (Provision of Support to Visiting Personnel, Aircraft and Vehicles). Details of those materials and services provided free of charge by the host nation and those for which the sending nation will pay, are prescribed in Annex A to STANAG 3113.

(3) STANAG 2135 (Procedures for Requesting and Providing Logistic Assistance). Simplified procedures for handling the standard NATO Invoice/Claim form are detailed in this STANAG.

b. CAF-United States Air Force Petroleum, Oils and Lubricants Suspense Account Arrangement (CAF-USAF POL Suspense Account Arrangement);

c. CAF-United States Navy-United States Marine Corps Fuel Exchange Agreement (CAF-USN-USMC Fuel Exchange Agreement).

19. **Host Nation Support Arrangements (HNSA).** Host Nation Support (HNS) is an important factor in any operational or military exercise scenario. In many cases MSAs will not cover the field for a planned international operation or exercise. In such cases HNSAs might be made with participating nations. Not only can HNS reduce the amount of organic support that sending nations need to deploy on operations, but such support can result in coordinated planning and provisioning resulting in overall resource efficiency.

20. **Form of HNSAs.** Formal HNSAs will be entered into only when the support requirements are of a continuing nature or when a formal HNSA is requested by the forces or agency providing the support. Short-term or ad hoc arrangements for logistic support to cover individual exercises or deployments may be made through informal means including correspondence or, occasionally, verbal arrangement. HNSAs will always be developed with reference to existing SOFAs or other relevant Agreements and arrangements

21. **Authority to enter into HNSAs.** The Minister of National Defence (MND) has been authorized to enter into inter-government or inter-service arrangements for the provision of logistical support to the CAF deployed or operating outside of Canada. With this authorization the MND may conclude HNSAs with the appropriate authorities of:

a. any friendly state, for exercise purposes only; or

b. states that are parties to the North Atlantic Treaty, for any purpose other than exercises.

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22. Requests for authority to enter into short-term or *ad hoc* HNSAs shall be submitted to NDHQ. The request shall contain sufficient particulars to permit proper consideration including:

a. types of support and estimated cost;

b. number of personnel requiring support;

c. period of deployment; and

d. source of support.

23. NDHQ may authorize the commander concerned to enter into a short-term or ad hoc HNSA on behalf of the MND. In these circumstances, the commander signs the HNSA on behalf of the MND. NDHQ will normally negotiate in detail a formal HNSA. A draft HNSA, agreed to by the commander and the appropriate authorities of the other state, shall be prepared with appropriate legal advice and submitted to the Senior Assistant Deputy Minister (Material) [NDHQ/Sr ADM (Mat)] for consideration and signature by or on behalf of the Minister. The appropriate commander will normally negotiate in detail the implementation plans for an approved HNSA.

24. **Parties to a HNSA.** In some countries, the CAF will be expected to use the services of the host nation military authorities in arranging for local contracting. This can benefit the CAF; obviously, where the host nation military authorities have favourable contracting rates, it makes sense to request to use the same contract to meet the needs of the CAF. Further, when goods and services are procured through host nation sources, contract claims will be dealt with by the host nation, rather than by Canada and a third party contractor. For other countries, the CAF will be authorized to contract directly with local private sources. This said, there are potential problems with dealing directly with trade. The CAF must avoid competition for scarce resources between the CAF and the civilian population. In addition, dealing directly with local trade means that contract conflicts will be addressed between Canada and the third party contractor, with resolution of such conflicts coming through host nation legal mechanisms.

25. **Key NATO Documents.** This section provides a brief description of the key NATO documents.

a. **North Atlantic Treaty** - The North Atlantic Treaty was done at Washington D.C. on 4 April 1949 and is the framework for the North Atlantic Treaty Organisation.

b. **Paris Protocol** - The Protocol on the Status of International Military Headquarters set up pursuant to the North Atlantic Treaty (known as the "Paris Protocol") was done in Paris on 28 August 1952, and defines the status of international military headquarters, and their personnel, in NATO

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territory. It is important to note that although Canada has signed the Paris Protocol, it has not yet ratified it.

c. **NATO SOFA -** The Agreement between the Parties to the North Atlantic Treaty Regarding the Status of their Forces ("NATO SOFA") was done in London on 19 June 1951, and defines the status of one NATO party's forces while they are deployed on another NATO party's territory. The Supplementary Agreement to the NATO SOFA, between Germany and those NATO states with forces stationed in Germany, elaborates on the basic provisions of NATO SOFA and implements arrangements suited to the German context.

d. **PfP SOFA -** The Agreement among the States Parties to the North Atlantic Treaty and the other states participating in the Partnership for Peace Regarding the Status of their Forces ("PfP SOFA") was done in Brussels on 19 June 1995, and defines the status of one PfP party's forces while they are deployed on another PfP, or NATO, party's territory.

e. **Further Additional Protocol** - The Further Additional Protocol to the Agreement among the States Parties to the North Atlantic Treaty and the other states participating in the Partnership for Peace regarding the Status of their Forces was done in Brussels on 19 December 1997, and applies the provisions contained in the Paris Protocol to PfP nations.

26. There may be other relevant agreements or arrangements between NATO and other individual nations that impact forces operating in or transiting through foreign territory. It is imperative to become familiar with the various authorities that may affect an operation or exercise. Moreover, it should be remembered that not all nations have signed and/or ratified either the PfP SOFA, the Paris Protocol or the Further Additional Protocol.

27. **Memoranda of Understanding and Non-Legally Binding Arrangements.** Often the CAF during international operations will enter into non-legally binding written arrangements. While not legally binding these instruments are useful for they remove ambiguities by defining arrangements in writing and create moral and political commitments to abide by the written undertaking. MOUs often facilitate operations by providing a shared understanding on matters such as personnel exchange, provision of services, transport and intelligence sharing.

28. **Memoranda of Understanding (MOU).** States and other entities enter into arrangements that are not legally binding. Such arrangements are normally referred to as MOU or "arrangements". In Canadian practice, MOU are sharply differentiated from treaties in legal effect. For Canada, MOU create commitments of a political and moral character but are not formally binding in, or governed by law internationally. Consequently a conscious effort is made to ensure that MOU do not use language of legal obligation. For example, "will" is used instead of "shall" and "participants" is used

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instead of "parties". The form of the instrument is also kept as simple as possible. The Canadian practice is to register these instruments in a Register of Understandings and Arrangements separate from the Treaty Register.

29. The CAF and the DND frequently enter into MOU arrangements, primarily with government departments or ministries of other states, but never with the states themselves. DAOD 7014-0 defines MOU for the DND and CAF as "written, approved, non-contractual, non-legally binding arrangements that may be developed at any level within the DND and/or the CAF, whereby the DND and/or the CAF and other participants agree to cooperate in a project, program or similar undertaking". A registry of all MOU entered into by DND/CAF is kept by the National Defence MOU Coordinator (NDMOUC).

30. For administrative purposes, a MOU is treated as if it is legally binding. The term "MOU" also applies to amendments and annexes thereto, and other related documents, such as implementing arrangements, supplementary arrangements, technical arrangements or another similar documents, whether they are stand-alone documents or based upon an existing MOU. MOU are restricted to arrangements with participants which are external to the DND and the CAF.

31. In the context of international arrangements, the "other participants" in a MOU may include, but may not necessarily be limited to:

a. Foreign armed forces;

b. Departments or ministries of foreign governments;

c. North Atlantic Treaty Organization (NATO) agencies.

d. North American Aerospace Defence (NORAD) agencies;

e. Non-government organizations (NGOs); and

f. UN Agencies.

32. Because other participants in a MOU are guided by their own policies, DND and CAF negotiators shall compromise, within the limits of governing policy, to achieve an arrangement satisfactory to both participants, but in particular, satisfactory to the DND and the CAF. Legal and financial advice shall be obtained before any MOU is approved. The NDMOUC should also be consulted to determine whether a suitable arrangement already exists. In any event, the status and validity of all MOU shall be reported annually to NDMOUC.

33. While not exhaustive, the following are situations where MOU may be used by the DND or CAF:

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a. Cooperative research and development;

b. Information exchange;

c. International projects involving equipment acquisition or construction, it being clearly understood that a MOU is not a procurement instrument and that any procurement resulting from, or required by, the implementation of a MOU is to be accomplished in accordance with national contracting laws and regulations;

d. Exchange, loan or attachment of personnel between countries;

e. Secondment of personnel;

f. Cooperative material support arrangements;

g. Division of responsibilities concerning administrative arrangements for major projects;

h. Provision of services to other departments or agencies on a cost recoverable basis; and

i. Deployment and transport of military personnel and equipment.

34. MOUs are frequently drafted by operational legal advisors and the commander's staff. MOUs are structured in a prescribed way, and as such, DAOD 7014 and its Writing Guidelines must be followed carefully when preparing a MOU. Consequently before any MOU is drafted DAOD 7014 should be consulted. Additionally, the NDMOUC and DLaw/I, for international operations, should be consulted for precedents. Importantly, any CAF officer who plans to sign a MOU on behalf of the CAF or DND must have specific authority to do so. DAOD 7014 must be consulted to determine whether the operational commander has the authority to enter into a MOU, or whether the commander can obtain a delegated authority to do so.

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Suggested Questions

Q. What is the purpose of a SOFA? (Para 5)
(The purpose of a SOFA is to capture an understanding whereby the host nation agrees to share its sovereign authority over those on its territory with the sending state by granting to the sending state certain rights over its personnel deployed in the host nation)

Q. Which matters are dealt with in almost every SOFA? (Para 6)
(A SOFA may deal with a wide variety of subject matters, such as criminal jurisdiction, claims, carrying of arms/use of force, entry/exit procedures, duties, taxes and other charges, drivers' licences, registration and insurance)

Q. Which other matters may be included in a SOFA? (Para 7)

Q. Describe the history of Visiting Forces Legislation in Canada. (Para 14)

Q. Which matters are address in the *Visiting Forces Act* and *Regulations*? (Para 15)

Q. What are the Mutual Support Agreements (MSA) that DND entered into for logistic support? (Para 18)

Q. What are the key NATO documents? (Para 25)
(North Atlantic Treaty, Paris Protocol, NATO SOFA, PfP SOFA, Further Additional Protocol)

Q. What is the Paris Protocol? (Para 25)

Q. What is the Partnership for Peace Protocol? (Para 25)

Q. In the context of international arrangements, "other participants" may include? (Para 31)

Q. In which situations a MOU might be used? (Para 33)

Note to the Instructor: Encourage students to actively participate in the lesson and to reason through problems.

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PART 4 – CONCLUSION

Summary

1. Status of Forces Agreements and Support Agreements can significantly facilitate international operations by ensuring that the CAF can operate effectively in foreign countries without being hindered by various bodies of host nation law such as those relating to customs, immigration, fiscal, civil, criminal, weapons and motor vehicles. As a general rule, when armed forces personnel are present in the territory of a foreign state, they have the same status as tourists and are fully subject to the laws of that state. This general rule is subject to two exceptions: in some cases international law exempts visiting armed forces personnel from the application of the visited state's laws, and a state may expressly or impliedly agree to exempt visiting armed forces personnel from the application of its laws.

2. The purpose of a SOFA is to capture an understanding whereby the host nation agrees to share its sovereign authority over those on its territory with the sending state by granting to the sending state certain rights over its personnel deployed in the host nation. A SOFA may deal with a wide variety of subject matters, such as criminal jurisdiction, claims, carrying of arms/use of force, entry/exit procedures, duties, taxes and other charges, drivers' licences, registration and insurance. The "level" of status of visiting forces' personnel in the host nation will obviously depend on the wording of the applicable SOFA and will undoubtedly differ between SOFAs. While most SOFAs will set out status through ad hoc provisions dealing with some or all of the subject matters discussed above, a SOFA may also grant administrative and technical staff status through reference to the *Vienna Convention on Diplomatic Relations*. CAF policy is to retain criminal and disciplinary jurisdiction over deployed CAF members where possible. In many cases of international operations or exercises this will require the negotiation and conclusion of a SOFA with the host nation. Once Canada has agreed to the presence in its territory of personnel of a foreign military, the issue of the status of those foreign military personnel also arises.

3. The first Canadian legislation to address the status of foreign armed forces in Canada was the *Visiting Forces (British Commonwealth) Act* enacted in 1933. This legislation had limited reach as it applied only to the armed forces of the British Commonwealth present in Canada. In 1951 NATO members agreed on a multilateral SOFA that would apply within the territory of all member states. The NATO SOFA was partly implemented in Canada by the *Visiting Forces (North Atlantic Treaty) Act* enacted in 1951. This legislation was replaced by the *Visiting Forces Act* (*VFA*) in 1968. Under the *VFA* the executive retains the discretion to determine which countries will be designated such that the *VFA* and associated regulations have application to forces visiting from that state, and to determine the extent to which the *VFA* and regulations apply to such forces. The executive will designate states by proclamation.

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4. The bulk of Canadian Mutual Support Agreements (MSA) are concluded with NATO-member countries. DND has entered into reciprocal MSAs for various types of logistic support. Host Nation Support (HNS) is an important factor in any operational or military exercise scenario. In many cases MSAs will not cover the field for a planned international operation or exercise. Not only can HNS reduce the amount of organic support that sending nations need to deploy on operations, but such support can result in coordinated planning and provisioning resulting in overall resource efficiency.

5. Formal HNSAs will be entered into only when the support requirements are of a continuing nature or when a formal HNSA is requested by the forces or agency providing the support. The Minister of National Defence (MND) has been authorized to enter into inter-government or inter-service arrangements for the provision of logistical support to the CAF deployed or operating outside of Canada. The appropriate commander will normally negotiate in detail the implementation plans for an approved HNSA. In some countries, the CAF will be expected to use the services of the host nation military authorities in arranging for local contracting. This can benefit the CAF; obviously, where the host nation military authorities have favourable contracting rates, it makes sense to request to use the same contract to meet the needs of the CAF.

6. Key NATO Documents are the North Atlantic Treaty, Paris Protocol, NATO SOFA, PfP SOFA and Further Additional Protocol. There may be other relevant agreements or arrangements between NATO and other individual nations that impact forces operating in or transiting through foreign territory. It is imperative to become familiar with the various authorities that may affect an operation or exercise. Moreover, it should be remembered that not all nations have signed and/or ratified either the PfP SOFA, the Paris Protocol or the Further Additional Protocol.

7. Often the CAF during international operations will enter into non-legally binding written arrangements. While not legally binding these instruments are useful for they remove ambiguities by defining arrangements in writing and create moral and political commitments to abide by the written undertaking. MOUs often facilitate operations by providing a shared understanding on matters such as personnel exchange, provision of services, transport and intelligence sharing. The CAF and the DND frequently enter into MOU arrangements, primarily with government departments or ministries of other states, but never with the states themselves. For administrative purposes, a MOU is treated as if it is legally binding. The term "MOU" also applies to amendments and annexes thereto, and other related documents, such as implementing arrangements, supplementary arrangements, technical arrangements or another similar documents, whether they are stand-alone documents or based upon an existing MOU.

8. MOUs are frequently drafted by operational legal advisors and the commander's staff. MOUs are structured in a prescribed way, and as such, DAOD 7014 and its Writing Guidelines must be followed carefully when preparing a MOU. Consequently before any MOU is drafted DAOD 7014 should be consulted. Additionally, the NDMOUC and DLaw/I, for international operations, should be consulted for precedents. Importantly, any CAF officer who plans to sign a MOU on behalf of the CAF or DND

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must have specific authority to do so. DAOD 7014 must be consulted to determine whether the operational commander has the authority to enter into a MOU, or whether the commander can obtain a delegated authority to do so.

Confirmation

The instructor may ask other confirmation questions.

Conclusion

9. SOFAs and other types of support agreements are treaties, which create binding obligations upon states. A SOFA, if ratified prior to an international deployment into another country, can literally save significant staff time and financial expense as various administrative and legal obstacles relating to visas, customs, immigration, motor vehicle use, weapons carriage, liability under local host state domestic law are waived or negotiated. A well-crafted SOFA will not only facilitate operations and be of financial benefit but it will also protect CAF members abroad in foreign countries from exposure to potential liability under local laws.

10. MOUs can be an effective tool that enhances and facilitates operations by removing ambiguities and structuring relationships with other parties that are cooperating with a deployed unit in some way. Legal advisors and commanders must ensure that any MOU complies with DAOD 7014 before it becomes final.

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PO 027 ADVISE ON ARRANGEMENTS AND AGREEMENTS

PART 1 -- LESSON IDENTIFICATION

EO 027.03 Liaise with governmental and non-governmental authorities relating to international and domestic operations

Performance: Liaise with governmental and non-governmental authorities relating to international and domestic operations

> **Given:** References including legal principles on arrangements and agreements on liaison with governmental authorities on legal issues related to international and domestic operations and on legal policy pertaining to operations.
>
> **Denied:** Direct supervision.

Standard: The legal officer shall advise on arrangements, agreements pertaining to liaison with governmental and non-governmental authorities relating to international and domestic operations.

Main Teaching Points:

- The role of the legal officer in liaison

Method. This EO will be accomplished by a combination of self-study and class lectures. Students will be required to read assigned materials and be prepared to respond to questions.

Duration. One 5-minute period.

References. *B-GJ-005-104/FP-024 The Operational Law Manual (Draft)*, Chapter 40
B-GJ-005-302/FP-001 Domestic Operations, paras 315, 514
B-GJ-005-307/FP-030 Peace Support Ops, paras 306, 308
B-GJ-005-307/FP-040 Humanitarian Operations and Disaster Relief Operations, paras 201, 404

Training/ Learning Aids. Standard classroom with whiteboard and projection system/handouts; CD materials; Legal Officer Qualification Course (LOQC) Instructors Handbook – Module(s) [XXX]

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Note to the instructor. The developmental lesson shall be conducted in structured manner, using a list of questions to the class. Instructors are to complement each segment of the developmental lesson by follow-up and direct questions taking into account the flow and direction of the discussion. Interim summaries shall be conducted at the end of each segment to confirm the material was learned and provide a basis from which the discussion can progress to the next segment. A review of the main teaching points will then take place at the end of the period.

PART 2 – INTRODUCTION

Objective: The instructor shall provide a lecture on the role of the legal officer in liaison as outlined in Module [XXX] of the LOQC Instructors Handbook.

Introduction:

Outline:

Stage 1 – The role of the legal officer in liaison

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PART 3 – BODY OF THE LESSON

Stage 1 – The role of the legal officer in liaison

Introduction

1. The role of the legal advisor is unique in legal practice. There is no equivalent role in private practice or in government service. The role of the CAF legal advisor is to facilitate the lawful conduct of operations, either at the domestic or international level by providing timely and accurate legal services and advice to commanders at the strategic, operational and tactical levels during all phases of the operation.

2. **Responsibilities of Legal Advisors.** The Judge Advocate General (JAG) selects all legal officers for positions within the Office of the JAG and those on deployed operations. Some legal advisors are posted to positions which are already designated as "deployable" (*e.g.* Deputy Judge Advocates (DJAs) posted in support of operational formations and units). Others are selected in response to requests from operational commanders to have a legal officer deployed with a specific operation, including requests from coalition or alliance forces (*e.g.* NATO) to provide a CAF legal officer to a coalition or alliance legal billet. Those legal officers selected for international operations will usually receive Terms of Reference (TORs) from the JAG confirming their selection and detailing their roles and responsibilities.

3. Legal advisors are required and expected to provide independent legal advice to the operational commander and the commander's staff. Generally, such advice during international operations will address, though not be limited to, the following:

a. legal basis for the operation;

b. international law issues;

c. the LOAC;

d. ROE;

e. targeting;

f. use of specific weapons;

g. military justice and discipline;

h. administrative law issues;

i. status of forces (SOFA) issues;

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j. claims;

k. contracting and procurement;

l. personnel issues;

m. civil-military relations; and

n. all other legal matters of particular interest to the commander and staff.

4. All legal advisors should be proactive is identifying potential legal issues and responsive when advice is sought. The key is to ensure the commander is able to successfully execute the mission within the legal framework by facilitating prompt, accurate and practical legal advice.

5. **Command and Control of Legal Advisors.** The JAG has, pursuant to the QR&O 4.081 command over all officers and non-commissioned members posted to a position established within the Office of the JAG, and whose duty it is to provide legal services to the CAF. Moreover, pursuant to CFAO 4-1 all legal advisors are, regardless of where they are employed, directly responsible to the JAG through the appropriate Deputy Judge Advocate General (DJAG) for the performance of their duties and the execution of their responsibilities. Accordingly, in order to ensure the provision of effective and independent legal advice to the commander, legal advisors must have direct and unfettered access to the commander.

6. While commanders and their staffs must recognize the requirement for a legal advisor to be able to provide independent legal advice, practicalities dictate that a legal advisor will be a fully integrated member of the mission and of the commander's staff. This is a reality given that the key role of an operational legal advisor is to facilitate the commander's ability to successfully complete the mission in accordance the rule of law. There is no doubt that when legal advisors are deployed on missions, they are subject to orders and instructions issued by or on behalf of the commander. However, no such order or instruction shall result in any situation that would interfere substantially or conflict with the legal advisor's duties as a legal officer.

7. **Channel of Communication.** A legal advisor will be responsive to the requirements of the commander and the commander's senior staff officers. Furthermore, the legal advisor will be responsible to the JAG through the appropriate senior Legal Advisor at NDHQ (usually the Director of Law/Operations (DLaw/Ops)). If, in the course of executing duties as a legal advisor, an issue arises which cannot be resolved between the legal advisor and the commander, the legal advisor shall immediately report the matter to the JAG (via the appropriate senior operational legal advisor) using the most secure and confidential means available. No one shall interfere with the legal advisor's duty to report such incidents to the JAG.

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8. **Deployment to Coalition and Alliance Legal Positions.** Today the CAF frequently participates with, or contributes to, coalition or alliance operations. This includes the deployment of CAF legal advisors to coalition or alliance legal billets. While there will be differences in the way in which coalitions or alliances function, the legal issues are usually the same as those arising in CAF operations. Accordingly, there will be little practical differences in the roles and responsibilities of CAF legal advisors working in coalition or alliance legal positions. In particular, the same essential command and control and channel of communication as noted above still apply. Some modification will be required to account for the coalition and alliance context. Such modification will usually be reflected in the TORs issued by the JAG.

9. **Liaison during Operations.** During domestic or international operations, the legal officer will liaise with foreign government agencies, intergovernmental organizations, and nongovernmental organizations (NGOs), including liaison with the International Committee of the Red Cross (ICRC) and with the legal staff of partner forces and coalition or allied headquarters legal staff.

10. **Response to requests for CAF assistance.** During domestic operations, when circumstances arises for which the DND is the primary department, such as an armed attack, the CAF will respond as authorized by the Minister and as directed by the CDS and/or Commander CJOC as appropriate. Under these circumstances, the provision of advice and options to the Minister will often entail extensive liaison and discussion with OGDs coordinated by the Privy Council Office (PCO), and within DND by the Deputy Minister (DM). In this situation, the legal advisor might have to provide legal advice in order to assist in the liaison process.

11. **Provision of humanitarian assistance.** The extent of CAF assistance in a domestic situation necessary and available to support a humanitarian-assistance operation must be determined as quickly as possible following the emergency or incident. Nevertheless, the aim is to deliver strategic effects expeditiously anywhere in Canada. The initial response should include the dispatch of liaison officers to establish contact with the local lead civil authorities in charge of the emergency. These officers will obtain or confirm whatever information is available and relay as appropriate. In addition, they will assist in further defining and confirming requirements for CAF assistance, coordinate arrangements for initial military response activities, and offer military advice to those civil authorities in organizing and preparing for CAF assistance.

12. **Peace Support Operations (PSO).** At the international level during PSO, there will be a proliferation of NGOs in humanitarian crises, meaning that co-ordination and the harmonization of activities will be complex and time consuming. In the early part of a crisis, and before the appointment of a UN Humanitarian Co-ordinator, NGOs generally form some kind of ad hoc network, umbrella group or consortium to co-ordinate their activities. As emergencies escalate and the number of NGOs and donor funding increase, there is a commensurate increase in the need for co-ordination, and accountability to donors. This has the potential to develop into competition for funding and other resources, which can distort relationships and cause friction. The need to

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counter-act such negative pressures places an emphasis on regular liaison and communication at all levels. Thus, the legal advisor shall ensure to be available if the commander requires his/her advice when it will be the time to liaise with those NGOs.

13. **Unity of Effort.** The complexity of PSO and the demands for continual military interaction with a large number of IGOs, NGOs, and PVOs will make co-ordination with their activities one of the most difficult challenges. Unity of effort recognises the need for a coherent approach to a common objective between the various military contingents and between the military and civilian components of an operation. Co-ordination and liaison with civilian agencies can only be achieved by dialogue and consensus and not by command. Unity of effort can best be achieved by the development of a multifunctional planning approach. At the operational and tactical levels, close and early liaison between the military and civilian components of the operation is essential. Effective liaison at all levels and regular conferences and meetings involving all agencies and parties will be essential to achieving unity of effort. The legal officer should be involved every time that liaison will occur.

14. **Relations with Humanitarian Relief Organizations and NGOs.** The humanitarian consequences of natural and human-made disasters often exceed the coping mechanisms and aid resources of an individual nation. Most often, in the nation most vulnerable to these events, UN agencies, international and regional organisations, and non-governmental organisations (NGOs) will already be working on development projects prior to the onset of the disaster. The scope and scale of the precipitous disaster may prompt international agencies to re-focus from development to emergency relief and require additional international aid. Close cooperation should be established with humanitarian relief organizations and other NGOs. Subject to reasonable security restrictions, coordination of the performance of humanitarian functions with governmental and NGOs is to be encouraged. The legal advisor should be consulted in respect of any inter-agency cooperation arrangements, or in respect of any questions concerning the status of the ICRC or any other NGO.

Suggested Questions

Q. What are the Responsibilities of Legal Advisors deployed internationally? (Paras 2, 3)

Q. Explain the Command and Control process for Legal Advisors. (Paras 5, 6)

Q. What are the duties of the Legal Advisor with regards to liaison during domestic and international operations? (Paras 9 to 14)

Note to the Instructor: Encourage students to actively participate in the lesson and to reason through problems.

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PART 4 – CONCLUSION

Summary

1. The role of the legal advisor is unique in legal practice. There is no equivalent role in private practice or in government service. The role of the CAF legal advisor is to facilitate the lawful conduct of operations, either at the domestic or international level by providing timely and accurate legal services and advice to commanders at the strategic, operational and tactical levels during all phases of the operation. Legal advisors are required and expected to provide independent legal advice to the operational commander and the commander's staff. All legal advisors should be proactive is identifying potential legal issues and responsive when advice is sought. The JAG has, pursuant to the QR&O 4.081 command over all officers and non-commissioned members posted to a position established within the Office of the JAG, and whose duty it is to provide legal services to the CAF.

2. While commanders and their staffs must recognize the requirement for a legal advisor to be able to provide independent legal advice, practicalities dictate that a legal advisor will be a fully integrated member of the mission and of the commander's staff. A legal advisor will be responsive to the requirements of the commander and the commander's senior staff officers. Furthermore, the legal advisor will be responsible to the JAG through the appropriate senior Legal Advisor at NDHQ (usually the Director of Law/Operations (DLaw/Ops)). Today the CAF frequently participates with, or contributes to, coalition or alliance operations. This includes the deployment of CAF legal advisors to coalition or alliance legal billets.

3. During domestic or international operations, the legal officer will liaise with foreign government agencies, intergovernmental organizations, and nongovernmental organizations (NGOs), including liaison with the International Committee of the Red Cross (ICRC) and with the legal staff of partner forces and coalition or allied headquarters legal staff. During domestic operations, when circumstances arises for which the DND is the primary department, such as an armed attack, the CAF will respond as authorized by the Minister and as directed by the CDS and/or Commander CJOC as appropriate. The extent of CAF assistance in a domestic situation necessary and available to support a humanitarian-assistance operation must be determined as quickly as possible following the emergency or incident. The initial response should include the dispatch of liaison officers to establish contact with the local lead civil authorities in charge of the emergency.

4. At the international level during PSO, there will be a proliferation of NGOs in humanitarian crises, meaning that co-ordination and the harmonization of activities will be complex and time consuming. In the early part of a crisis, and before the appointment of a UN Humanitarian Co-ordinator, NGOs generally form some kind of ad hoc network, umbrella group or consortium to co-ordinate their activities. Thus, the legal advisor shall ensure to be available if the commander requires his/her advice when it will be the time to liaise with those NGOs. The humanitarian consequences of natural

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and human-made disasters often exceed the coping mechanisms and aid resources of an individual nation. Most often, in the nation most vulnerable to these events, UN agencies, international and regional organisations, and non-governmental organisations (NGOs) will already be working on development projects prior to the onset of the disaster. The legal advisor should be consulted in respect of any inter-agency cooperation arrangements, or in respect of any questions concerning the status of the ICRC or any other NGO.

Confirmation

The instructor may ask other confirmation questions.

Conclusion

5. The role of the legal advisor is unique in legal practice. There is no equivalent role in private practice or in government service. The legal advisor is not a member of a law firm, but, rather, a member the CAF Legal Branch. The legal advisor is a legal officer, not a lawyer in uniform.

6. It is critical that legal advisors and commanders understand the role and responsibilities of the legal advisor. Given the inherent nature of providing legal advice (*e.g.* existence of solicitor/client privilege) and the statutorily mandated role of the JAG, commanders and their staffs must appreciate the requirement for legal advisors to be able to provide independent legal advice. Without such independence, there is a clear risk that the legal advisor may not be able to provide the commander with prompt, accurate and balanced advice. This will increase the risk of mission failure.

7. On the other hand, legal advisors must appreciate the often fluid and complex nature of operations. They must understand military operations in general and the commander's intent for a specific mission. The legal advisor's role is to facilitate the commander's ability to successfully execute the mission within the rule of law. This can only truly be achieved if the advisor is a fully integrated member of the mission and the commander's staff. The legal advisor should make every effort to ensure the commander's direction is executed promptly, effectively and within the law. While there may be occasions when a legal advisor may have to advise a commander that a particular course of action or direction is unlawful, such occasions will be rare. On such occasions commanders have welcomed the advice, as they want to ensure that operations are conducted lawfully. However, illegality should not be confused with operational activities that may contain acceptable levels of legal risk. The legal advisor should be able to offer the commander alternative solutions that will be in compliance with the law in cases where a proposed course of conduct would be unlawful.

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