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## Evaluation of the Provision of Legal Services by the Judge Advocate General and Legal Advisor to the Department of National Defence and the Canadian Forces



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## Acronyms and Abbreviations

ADM(RS)	Assistant Deputy Minister (Review Services)
AFJAG	Judge Advocate General to the United States Air Force
CAF	Canadian Armed Forces
DAOD	Defence Administrative Orders and Directives
DLSU	Departmental Legal Services Unit
DND	Department of National Defence
DND/CF LA	Legal Advisor to the Department of National Defence and the Canadian Forces
DPR	Departmental Performance Report
DRMIS	Defence Resource Management Information System
FTE	Full-Time Equivalent
FY	Fiscal Year
GC	Government of Canada
JAG	Judge Advocate General
OJAG	Office of the Judge Advocate General
MOU	Memorandum of Understanding
NDA	<i>National Defence Act</i>
OPI	Office of Primary Interest
PMDSS	Performance Measurement Decision Support System

## Executive Summary

This report presents the findings and recommendations of the evaluation of legal services provided by the Office of the Judge Advocate General (OJAG) and by the office of the Legal Advisor to the Department of National Defence and the Canadian Forces (DND/CF LA). The Evaluation examines the relevance and the performance of the provision of legal services for fiscal years (FY) 2010/11 to 2014/15 inclusive.

The evaluation was conducted by Assistant Deputy Minister (Review Services) (ADM(RS)) from June 2015 to April 2016, as a component of the Department of National Defence (DND) Five-Year Evaluation Plan (2012/13 to 2016/17) and in accordance with the former Treasury Board Policy on Evaluation (2009). The new Policy on Results came into effect on July 1, 2016.

DND/CF LA reports to the Department of Justice, and the Judge Advocate General (JAG) is responsible to the Minister of National Defence. The evaluation provided an assessment of how DND and the Canadian Armed Forces (CAF) utilises the delivery model and whether it is meeting departmental needs.

### Program Description

Legal services are provided by two organizations, OJAG and DND/CF LA. The OJAG delivers independent, operationally focussed legal advice and services across the full spectrum of military law, and superintends the administration of military justice.<sup>1</sup> Appointed by the Governor in Council, the JAG is responsible to the Minister of National Defence in the performance of the JAG's duties and functions and provides advice and services to the Governor General, the Minister of National Defence, the Chief of the Defence Staff and Deputy Minister.

The Office of DND/CF LA was created in order to provide the DND/CAF with independent legal advice pursuant to the *Department of Justice Act*. The Memorandum of Understanding (MOU) signed by Department of Justice and the DND/CAF in 2013 describes the services that DND/CF LA is to provide. DND/CF LA is a departmental legal services unit (DLSU) of the Department of Justice, and it is part of the Public Safety, Defence and Immigration Portfolio. It is a unique organization at DND, led by a Department of Justice Senior General Counsel as its Level 1, and staffed with civilian lawyers from the Department of Justice, military lawyers from the OJAG and paralegals, administrative and financial personnel from DND.<sup>2</sup>

### Overall Assessment

- Demand for legal services has been increasing and the nature of the work is becoming more complex.
- Expenditures on legal services have increased annually at an average of three percent over the evaluation period.
- There does not appear to be sufficient mechanisms within the department to manage legal requests, prioritize demands, or assess overall trends in legal risk.

<sup>1</sup> *National Defence Act* (NDA), s. 9.1, 9.2(1); JAG Business Plan 2012-2013.

<sup>2</sup> DND/CF LA Business Plan 2013-2014.

DND/CF LA provides claims resolution and civil litigation support services, advisory services in all areas of the law except those related to military law, military discipline and the military justice system. Both JAG and DND/CF LA advise on matters including managing and mitigating risk, and the review and amendment of regulations or Defence Administrative Orders and Directives (DAOD). These are highly complex tasks that require knowledge of military justice and specialized legal expertise.

## Relevance and Performance

### Relevance

The provision of legal services by JAG and DND/CF LA aligns with government priorities and federal roles and responsibilities. As set out in the NDA,<sup>3</sup> the JAG is statutorily responsible to superintend the administration of the military justice system and acts as legal adviser on matters relating to military law. Further, under the *Department of Justice Act*, the Minister of Justice and Attorney General is to provide legal services to the federal government. Legal services provided by these two organizations are seen to be critical to the mission success of DND and CAF through the provision of independent legal advice.

During the past five years, the ongoing demand for legal support from both the JAG and DND/CF LA has increased and become more complex, with an overall increase in the number of requests and files by approximately 18 percent. During the evaluation period the JAG has received an average of 42,636 requests per year, while DND/CF LA has managed an average of 2,946 active files.<sup>4</sup> Files vary in length and some long-term files can carry on over several years.

### Effectiveness

Overall, the delivery model of the provision of legal services by JAG and DND/CF LA can in general be seen to be operating in an effective manner. Through the two service delivery components, the Department and CAF are receiving independent legal advice that is generally meeting its needs. Challenges do exist, and include those related to the heavy workload of both legal officers and counsel, and the retention of JAG legal officers, which in certain circumstances affects the overall timeliness of delivery. As well, the DND/CAF does not yet have in place a formal mechanism to manage the demand for legal requests and identify overall departmental legal risk, but rather it reacts on a file-by-file basis. JAG and DND/CF LA would benefit from further formal collaboration initiatives to outline roles and responsibilities and increase the efficiency of responding to requests for services.

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<sup>3</sup> NDA, s. 9.1, 9.2(1). The NDA is the legal basis for the formation of the Canadian system of military justice. It is an Act of Parliament passed under the powers reserved to the federal government to provide for national defence. As a part of the NDA, a Code of Service Discipline is established under Part III. This Code sets out the jurisdiction of the CAF and the service offences and punishments, provides for arrest and pretrial custody of service members, sets out the military tribunals empowered to hear cases under the Code and establishes a Court Martial Appeal Court composed of civilian judges.

<sup>4</sup> JAG and DND/CF LA manage their record keeping differently: While JAG records requests received, DND/CF LA records number of files managed.

While the total number of JAG personnel (which includes civilian and military staff) has remained steady, there has been an issue with recruiting and retention of JAG legal officers in the past. Since 2014/15, recruiting of legal officers has improved. Forecasted and unforecasted attrition as well as lengthy training requirements were the main contributors to the reduction in trained and effective strength of the OJAG.

## **Efficiency and Economy**

The amount of legal services provided is a direct reflection of available resources. The evaluation notes that due to resource pressures, not all legal requests by the DND/CAF are acted upon. During the evaluation period, total expenditures for the provision of legal services by JAG and DND/CF LA has increased annually by an average of three percent<sup>5</sup> per year, from approximately \$33.7 million in 2010/11 to \$37.8 million by 2014/15. During the evaluation period there was however a decrease in the amount of DND/CAF personnel, and as such, the net cost of legal services per person in the DND/CAF has increased annually at an average of six percent. The decline in personnel however does not appear to reflect a decrease in overall workload. Not included in these costs are claims against the Crown. These increased significantly during the period due to large payouts from the Manuge (pension plan) lawsuit, which were \$543,451,096 and \$204,302,924 in 2013/14 and 2014/15 respectively.

Within the evaluation period, total expenditures through JAG have increased annually at an average rate of four percent (from \$25.2 million in 2010/11 to \$29.3 million in 2014/15), caused by an increase in the number of OJAG legal officers. While the number of legal officers increased, there was a reduction in civilian support staff. As a result, the overall workload per JAG legal officer has increased. It has been noted that, with the exception of the Directorate of Defence Counsel Services and Directorate of Military Prosecutions, the OJAG does not use paralegals or legal assistants, contrary to other militaries.

DND/CF LA legal services expenditures were reduced by 13 percent since 2011 under the Deficit Reduction Plan and Directed Program Reduction, and have only grown slightly since then. A cap on the number of lawyers assigned to DND/CF LA and an increase in the salary of Department of Justice legal counsel has also impacted DND/CF LA's personnel resources. Concerns were raised on the inability of DND/CF LA to handle the increasing workload with given resources. The JAG has been able to address some of the demand, but some legal work can only be dealt with by DND/CF LA due to their unique mandate as Department of Justice legal advisors. In this regard, further screening and prioritization of requests by the DND/CAF would assist in managing the demand and eliminate unnecessary legal reviews.

## **Key Findings and Recommendations**

### **Relevance – Continued Need**

**Key Finding 1:** There is a continuing need for JAG and DND/CF LA's services.

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<sup>5</sup> Annual percentage increase is 185 percent if calculations include C125 account. The C125 account includes expenditures related to litigation, including the actual claims against the Crown.



**Key Finding 2:** The provision of legal services by JAG and DND/CF LA align with federal roles and responsibilities, government and DND/CAF priorities and strategic objectives.

### **Performance – Achievement of Expected Outcomes**

**Key Finding 3:** Clients of DND/CF LA and JAG had an overall high level of satisfaction with services received, although some challenges were noted with response time and deadlines for lower priority areas, such as legal reviews of administrative orders.

**Recommendation 1:** Due to pressures on available legal resources, the DND/CAF should work with JAG and DND/CF LA to review business processes and protocols to manage legal demand within the DND/CAF.

**Key Finding 4:** DND/CF LA conducts training activities to help their clients understand their legal responsibilities and better utilize the legal services within the DND/CAF.

**Key Finding 5:** DND/CF LA abides by Department of Justice Service Standards set forth in the MOU.

**Key Finding 6:** Recruiting and retention of JAG civilian staff and legal officers has been problematic for the duration of the evaluation period. Recently, recruiting of legal officers has improved.

**Key Finding 7:** Collaboration between the JAG and DND/CF LA has been effective.

**Key Finding 8:** Legal risk is not tracked at the department level.

**Recommendation 2:** Chief of Programme should work with the JAG and DND/CF LA to incorporate legal risk as an element of the annual update to the Organization Risk Profile.

### **Performance - Efficiency and Economy**

**Key Finding 9:** DND funding for the provision of legal services by JAG and DND/CF LA as a proportion of departmental expenditure is much lower than that of allies funding levels. The Australian Department of Defence spends more than double the amount of money on legal services per departmental employee.

**Key Finding 10:** The increases in charging rate of Department of Justice lawyers combined with flat funding resulted in a decreased level of DND/CF LA personnel resources. DND/CF LA has been managing increasing requests for services with fewer staff.

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**Note:** Please refer to [Annex A—Management Action Plan](#) for the management responses to the ADM(RS) recommendations.

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## 1.0 Introduction

### 1.1 Context for the Evaluation

#### 1.1.1 Background

This report presents the findings and recommendations of the evaluation of the provision of legal services by the Judge Advocate General (JAG) and the DND/CF LA. It examines the relevance and the performance of the provision of legal services by JAG and DND/CF LA for FYs 2010/11 to 2014/15 inclusive. The evaluation study was conducted by ADM(RS) from June 2015 to April 2016, as a component of the DND Five-Year Evaluation Plan (2012/13 to 2016/17). It was performed in accordance with the former Treasury Board Policy on Evaluation (2009)<sup>6</sup> and examined the relevance and the performance of the provision of legal services by JAG and DND/CF LA. Since the Treasury Board Policy on Results was effective only as of July 2016, this evaluation was carried out in concurrence with the Policy on Evaluation (2009).

There have been no previous ADM(RS) evaluations regarding the provision of legal services by JAG and DND/CF LA. However, ADM(RS) conducted an Audit of Court Martial Sentences in 2002 and two reports of the Independent Review Authority have been completed and submitted to Parliament.

The findings in this report are based on a review and analysis of program administrative and financial documents, literature review, country comparisons, results of an ADM(RS) client survey and interviews conducted with select program staff and/or offices of primary interest (OPI). It should be noted that as DND/CF LA reports to the Department of Justice and JAG is responsible to the Minister of National Defence, the evaluation provided an assessment of how the DND/CAF utilizes the delivery model and whether it is meeting departmental needs.

### 1.2 Program Profile

#### 1.2.1 Program Description

The OJAG delivers independent, operationally focussed; solution oriented legal advice and services across the full spectrum of military law, and superintends the administration of military justice.<sup>7</sup> Appointed by a Governor in Council, the JAG is responsible to the Minister of National Defence in the performance of the JAG's duties and functions and provides independent legal advice and services to the Governor General, the Minister of National Defence, the Chief of the Defence Staff and Deputy Minister.

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<sup>6</sup> Treasury Board Policy on Evaluation, April 1, 2009 from <http://www.tbs-sct.gc.ca/pol/doc-eng.aspx?id=15024&section=text>. Last consulted on December 2, 2013. The new Policy on Results came into effect on July 1, 2016. Treasury Board Policy on Results. <https://www.tbs-sct.gc.ca/pol/doc-eng.aspx?id=31300>. Last consulted on October 20, 2016.

<sup>7</sup> NDA section 9.1, 9.2(1); JAG Business Plan 2012-2013.



The OJAG is comprised of seven divisions: the Chief of Staff Division; the Administrative Law Division; the Military Justice Division; the Operational Law Division; the Regional Services Division; the Directorate of Defence Counsel Services; and, the Canadian Military Prosecution Services. The Director of Military Prosecutions and the Director of Defence Counsel Services, appointed by the Minister of National Defence for a fixed period, are under the general supervision of the JAG. However, they act independently from the CAF and DND authorities when exercising their roles.<sup>8</sup> This structure was established through amendments to the NDA that followed the 1997 Report of the Special Advisory Group on Military Justice and Military Police Investigative Services, led by the late Chief Justice Brian Dickson.

The Office of DND/CF LA was created to provide DND and the CAF with independent, legal advice pursuant to the *Department of Justice Act*. The MOU signed by the Department of Justice and the DND/CAF in 2013 describes the services provided by DND/CF LA. DND/CF LA is a DLSU of the Department of Justice, and it is part of the Public Safety, Defence and Immigration Portfolio. It is a unique organization at DND, led by a Justice Senior General Counsel, and staffed with civilian lawyers from the Department of Justice, military lawyers from the OJAG, and paralegals and administrative and financial personnel from DND.<sup>9</sup>

Currently, DND/CF LA provides services through four teams: Materiel, Environment and Real Property (MERP), Claims and Civil Litigation (CCL), Cadets, Health, Aboriginal, Law Advisory Services (CHALAS) and Public Law Advisory Services (PLAS) comprising National Security and Public and Labour Law (PLL). Legislative Services are delivered by the National Defence Regulations Section (NDRS). NDRS, a satellite unit of the Department of Justice Legislative Services Branch, is co-located with DND/CF LA and works closely with DND/CF LA and the JAG. In addition to its partnership with NDRS, DND/CF LA works in cooperation with regional, headquarters and DLSUs of the Department of Justice, the OJAG, the Legal Bureau at the Department of Foreign Affairs and International Trade and the Privy Council Office Legal Counsel to provide coordinated, seamless and integrated legal services to the DND/CAF.<sup>10</sup> Similarly, OJAG works in cooperation with these same departments and organizations to provide seamless and integrated legal services to the DND/CAF.

### 1.2.2 Program Objectives

The vision of the JAG is “to be an agile military team of world class, operationally focused, globally deployable and networked legal professionals, proudly contributing to a disciplined force and mission success in a manner that reflects Canadian values and the rule of law.”<sup>11</sup> Further, the mission of the JAG is “in support of the Canadian Forces and the Department of National Defence, the OJAG delivers independent, operationally focused, solution oriented legal advice and services across the full spectrum of military law, and superintends the administration

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<sup>8</sup> Annual Report of the Judge Advocate General: A Report to the Minister of National Defence on the Administration of Military Justice from April 1, 2013 to March 31, 2014. <http://jag.mil.ca/publications/office-cabinet/annrep-rappann-13-14-eng.pdf>. Last consulted on January 18, 2015.

<sup>9</sup> DND/CF Business Plan 2013-2014.

<sup>10</sup> *ibid.*

<sup>11</sup> JAG Annual Report 2013-2014.

of military justice.” In support of the mission and vision, JAG has four strategic goals and they are as follows:

- deliver responsive, force enabling legal advice and services in all areas of military law;
- lead proactive military justice oversight, responsible development and positive change;
- optimize a dynamic world class team of specialized legal professionals and support personnel;
- be vigilant leaders.<sup>12</sup>

The OJAG works on certain issues in concert with the Office of the DND/CF LA which has expertise in areas of the law, such as human rights, access and privacy law, financial law, claims and civil litigation.

DND/CF LA provides legal services to DND/CAF in accordance with the *Department of Justice Act* and the MOU between the Department of Justice and the DND/CAF. DND/CF LA’s mission, on behalf of the Department of Justice, is to provide objective, strategic and high quality legal advice to the DND/CAF to enable them to achieve their mission in accordance with the law. DND/CF LA accomplishes this by ensuring the following:

- joint legal risk management planning and priority-setting with clients;
- effectively and efficiently providing high-quality solution-oriented legal advice and services; and
- coordinating integrated legal services to DND/CAF by working cooperatively with regional, headquarters and DLSUs of Justice, the OJAG, the legal bureau at the Department of Foreign Affairs and International Trade and the Privy Council Office legal counsel.<sup>13</sup>

### **1.2.3 Stakeholders**

Primary clients of the JAG and DND/CF LA are the Minister of National Defence, Deputy Minister, Senior Associate Deputy Minister, Associate Deputy Minister, Chief of Defence Staff and the Level 1 organizations in DND/CAF.

## **1.3 Evaluation Scope**

### **1.3.1 Coverage and Responsibilities**

The provision of legal services by JAG and DND/CF LA are located within two different sub-programs of the DND Program Alignment Architecture 2014. The JAG corresponds to the program activity 4.0 Defence Capability Element Production – sub-sub activity 4.1.9 Organization – Security Protection, Justice and Safety, DND/CF LA is located within the program activity 6.0 Internal Services, and under sub-sub activity Legal Services.

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<sup>12</sup> JAG Business Plan 2012-2013.

<sup>13</sup> DND/CF LA Business Plan 2013-2014.

The focus of the evaluation is mainly upon the following issues:

- how the DND/CAF uses legal services provided by the JAG and DND/CF LA, roles and responsibilities, how legal requirements are managed, and how budgets are formed;
- the trends and a breakdown of the workload for both the JAG and DND/CF LA;
- involvement in legal risk management;
- an assessment of what is causing any changes identified; and
- the impact of any changes.

The evaluation will not assess the following:

- activities performed by the Department of Justice such as the performance of individual legal counsel, management of the Office of the DND/CF LA, and training of DND/CF LA's legal advisers. Further, any recommendations for change coming out of the evaluation will be made to DND for response, and will not be directed at DND/CF LA;
- legal issues such as case files or legality of military law and rate of pay for JAG legal officers;
- quality of legal advice;
- the Chief Military Judge; and
- the military justice system.

### 1.3.2 Resources

The combined costs of the provision of legal services by JAG and DND/CF LA for FY 2014/15 are \$37.83 million. This amount includes costs of JAG legal officers, Department of Justice lawyers, DND civilian support staff, as well as operations and maintenance costs. This amount excludes large claims in the DND/CF LA C125 account,<sup>14</sup> which peaked at \$549 million in FY 2013/14 and \$210 million in FY 2014/15 as well as the payments made to civilian Defence counsel in the JAG C125 account, which was an average of \$250,000 over the evaluation period. During the evaluation period, total expenditure for the provision of legal services by JAG and DND/CF LA has increased annually by an average of three percent<sup>15</sup> per year.

### 1.3.3 Issues and Questions

In accordance with the former Treasury Board Secretariat Directive on the Evaluation Function (2009),<sup>16</sup> the evaluation addresses the five core issues related to relevance and performance (how the DND/CAF uses the services of the JAG and DND/CF LA). An evaluation matrix listing each of the evaluation questions, with associated indicators and data sources, is provided at [Annex D](#).

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<sup>14</sup> C125 is a corporate account accessible and charged against by DND/CF LA. The following types of DND/CF LA expenditures are charged against the C125 budget: ex-gratia payments, legal liability payments, disbursements (travel for litigators, witness travel, printing charges, expert witness, document searches, etc.), hourly charges for Department of Justice lawyers working on DND related litigation files, travel paid directly by DND/CF LA for witness travel and legal counsel travel, and legal agents (contracting lawyers with specialties).

<sup>15</sup> Annual percentage increase is 185 percent if calculations include C125 account.

<sup>16</sup> Treasury Board Secretariat. Directive on the Evaluation Function, April 1, 2009. <https://www.tbs-sct.gc.ca/cee/pol-eng.asp>. Last consulted on July 14, 2014.

The methodology used to gather evidence in support of the evaluation questions can be found at [Annex B](#).

## 2.0 Relevance

### 2.1 Relevance—Continued Need

This section examines whether there is a continued need for the legal services provided by the JAG and DND/CF LA.

The evaluation used the following indicator “trends in requests for JAG and DND/CF LA services” to make this determination.

**Key Finding 1:** There is a continuing need for JAG and DND/CF LA’s services.

The provision of legal services by JAG and DND/CF LA plays a fundamental role for DND/CAF. The JAG is responsible for the superintendence of the administration of military justice in the CAF and delivers legal advice to the DND/CAF across the full spectrum of military law. DND/CF LA provides claim and litigation services and advisory services in all areas of the law except those related to military law, military discipline, and the military justice system. Both JAG and DND/CF LA advise on matters including managing and mitigating legal risk, provide claims and litigation services, and review and amend regulations or DAODs. These are highly complex tasks requiring specialized legal knowledge and expertise.

	2010/11	2011/12	2012/13	2013/14	2014/15	Five-year Average
<b>Number of Legal Requests from JAG</b>	34,508	40,392	42,275	44,978	51,025	42,636
Change from Previous Year (percentage)		17.1	4.7	6.4	13.4	10.4
<b>Number of DND/CF LA Actively Managed Files</b>	2,510	2,922	3,035	3,295	2,968	2,946
Change from Previous Year (percentage)		16.4	3.9	8.6	-9.9	4.7

**Table 1. Trends in Requests and Actively Managed Files.**

Source: Number of requests from JAG Performance Measurement Data System. Number of actively managed files from DND/CF LA iCase.

As per Table 1, the JAG and DND/CF LA responded to thousands of requests from clients during the evaluation period.<sup>17</sup> The JAG has received an average of 42,636 requests per year, while DND/CF LA has managed an average of 2,946 active files. Files vary in length and some long-term files can carry on over several years.

<sup>17</sup> Based upon administrative data reviewed.

Even though the number of CAF operations and number of legal officers deployed decreased considerably in the last few years, demand for legal support is increasing.<sup>18</sup> According to Business Plans (FY 2012/13 to 2014/15) and administrative data reviewed, the number of requests received by JAG has increased annually at an average rate of 10 percent. The requirements varied from operational law to a review of grievances. While the military environments have traditionally been the principal sources of demand for military justice advisory services, new, more complex requests are arising. For example, recently requests have come from the Directorate of Cyberspace Force Development for requirement of legal officers dedicated to Cyber Law.<sup>19</sup> The JAG also works with DND/CF LA, which conducts legislative drafting work. For example the drafting and implementation of Bill C-15, which aimed to strengthen the military justice system. Furthermore, a critical aspect of bringing the legislation into force is significant amendments to the Queen's Regulations Orders.

DND/CF LA administrative data also shows that actively managed files have also increased by approximately five percent since 2011. The ADM(RS) survey found that Chief Military Personnel, Assistant Deputy Minister (Infrastructure and Environment), and Assistant Deputy Minister (Human Resources – Civilian) were the largest users of DND/CF LA advisory services.<sup>20</sup> Based on review of DND/CF LA Business Plans FY 2010/11 to 2014/15, DND/CF LA has also been directly involved in many case settlements, which served to avoid costs associated with litigation and disruption to operations. Current areas that DND/CF LA is involved in include engagement with the oil and gas industry on bases in Alberta, unexploded ordnances and environmental contamination throughout Canada (e.g., at Camp Ipperwash), and ensuring that DND/CAF meet their legal and treaty obligations to Aboriginal groups.<sup>21</sup>

## **2.2 Relevance—Alignment with Federal Roles and Responsibilities**

This section examines the extent to which the provision of legal services by JAG and DND/CF LA aligns with departmental and federal roles and responsibilities. The following indicators were used in the assessment of alignment with federal roles and responsibilities:

- alignment of the provision of legal services by JAG and DND/CF LA with government acts and legislation, and
- alignment of the provision of legal services by JAG and DND/CF LA with government policies and strategies.

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<sup>18</sup> JAG Business Plan 2015-2016.

<sup>19</sup> *ibid.*

<sup>20</sup> CMP, ADM(IE), and ADM(HR-Civ) used DND/CF LA advisory services the most. CMP and ADM(IE) were the largest users of litigation services. ADM(IE) was the largest user of legislative and regulatory drafting services.

<sup>21</sup> DND/CF LA Business Plan 2015-2016.



**Key Finding 2:** The provision of legal services by JAG and DND/CF LA align with federal roles and responsibilities, government and DND/CAF priorities and strategic objectives.

Canada's military justice system is separate and parallel to the civilian justice system, and is recognized by the Supreme Court of Canada.<sup>22</sup> The *Code of Service Discipline* is central to the nature and purpose of the Canadian Forces, and to the effective exercise of operational command.<sup>23</sup> Under the *Department of Justice Act*, the role of the Minister of Justice and Attorney General is to provide legal services to the federal government in accordance with the *Department of Justice Act*. There is an MOU signed between the Department of Justice and the DND/CAF respecting the provision of legal services.

As such, the provision of legal services by JAG and DND/CF LA can be seen to be in direct alignment with federal roles and responsibilities. The OJAG delivers legal advice and services to the Governor General, the Minister, the Department, and the CAF in matters related to military law and the superintendence of the administration of the military justice in the CAF.<sup>24</sup> The JAG provides support for the conduct of regular reviews of the administration of military justice and an annual report to the Minister on the administration of military justice in the CAF.<sup>25</sup> DND/CF LA services enable the DND/CAF to pursue policy, program and service delivery priorities and objectives within a legally sound framework.<sup>26</sup> Furthermore both the JAG and DND/CF LA assist the DND/CAF in achieving its commitment to defence policy.<sup>27</sup>

### 2.3 Relevance—Alignment with Government Priorities

This section examines whether the provision of legal services is consistent with current Government of Canada (GC) and DND/CAF priorities. The following indicators were used in the assessment of alignment with federal priorities:

- alignment to GC defence priorities; and
- alignment to DND/CAF priorities.

The provision of legal services by JAG and DND/CF LA within the DND/CAF responds to legal requests related to the existing and emerging priorities of DND/CAF, which in turn, respond to the priorities and policy directions of the federal government. The JAG has contributed to defence priorities, such as ensuring sustainable operational excellence at home and abroad, maintaining training momentum in Afghanistan, and planning and developing capability to meet

<sup>22</sup> R v Généreux, [1992] 1 S.C.R. 259.

<sup>23</sup> DND. *Organization and Accountability, Guidance for Members of the Canadian Forces and Employees of the Department of National Defence*, second edition, September, 1999.

<sup>24</sup> NDA sections 9.1, 9.2(1); Program Alignment Architecture 4.1.

<sup>25</sup> NDA sections 9.1, 9.2(1), 9.2(2), and 9.3(2).

<sup>26</sup> Program Alignment Architecture 6.1.3.

<sup>27</sup> The defence policy during the observation period (FY 2012/13 to FY 2014/15) was the *Canada First Defence Strategy*.

reconstitution and readiness initiatives.<sup>28</sup> Examples of JAG support to departmental priorities are: OP RENAISSANCE in aid of the Disaster Assistance Response Team deployment to the Philippines; assistance to Canadian law enforcement authorities such as the Royal Canadian Mounted Police, Department of Fisheries and Oceans, and Canada Border Services Agency; maritime operations in the Caribbean Sea in support of the United States Coast Guard counter-narcotics law enforcement operations; legal advice with respect to the implementation of international agreements that have an impact on CAF operations; and work conducted on Bill C-24, which seeks to amend the federal *Citizenship Act*.<sup>29</sup>

The JAG also supports DND strategic outcomes. By supporting the chain of command in maintaining and enforcing discipline in the CAF and providing legal advice to the CAF chain of command and to the operational commands directly on operational issues, the OJAG contributes directly to the defence strategic outcome of “Defence Operations and Services Improve Stability and Security.” Further, by providing legal advice in matters relating to military law, primarily in the area of administrative law, military justice and operational law, the office of the JAG contributes to the defence strategic outcome of “Defence Remains Continually Prepared to Deliver National Defence and Defence Services in Alignment with Canadian Interests and Values.”

The legal services provided by DND/CF LA are key services which enable other Level 1 organizations to meet their various mandates and commitments. It provides this advice both to Level 1s as well as directly to the CAF often in collaboration with JAG officers located in the regions or outside of Canada. Examples of cases include: delivery of Health Services; defence procurement; cadets; strategic real property disposals; Aboriginal claims relating to Cold Lake Air Weapons Range; the operation of the Sexual Misconduct Resource Centre, and any civil litigation involving alleged sexual misconduct.<sup>30</sup>

## **2.4 Performance—Achievement of Expected Outcomes (Effectiveness)**

This section evaluates the achievement of the provision of legal services by JAG and DND/CF LA expected outcomes, with a focus on the following outcomes:

- Immediate outcome 1: responsive and accessible legal advice and services;
- Immediate outcome 2: legal services are well managed and supported;
- Intermediate outcome 1: mitigating risks facing DND/CAF.

### **2.4.1 Immediate Outcome 1 – Responsive and accessible legal advice and services**

The evaluation used the following indicators to assess this outcome:

- overall stakeholder satisfaction;
- degree of availability/accessibility of legal advice;
- support to DND/CAF legal issue management; and

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<sup>28</sup> JAG. Business Plans from FYs 2010/11 to 2014/15.

<sup>29</sup> DND. Departmental Performance Reports (DPR) for 2011-2012, 2012-2013 and 2013-2014.

<sup>30</sup> DND/CF LA. Business Plans for FYs 2014/15 to 2016/17.

- evidence of service standards.

**Key Finding 3:** Clients of DND/CF LA and JAG had an overall high level of satisfaction with services received, although some challenges were noted with response times and deadlines for lower priority areas, such as legal reviews of administrative orders.

### Overall Stakeholder Satisfaction

To determine stakeholder satisfaction ADM(RS) conducted a survey of JAG and DND/ CF LA clients which included over 200 respondents. The ADM(RS) survey (Table 2), indicates that when asked about the quality, response time, usefulness and engagement process of the services provided by the JAG, on average 93 percent of JAG’s clients responded that they were satisfied or very satisfied.

	Not Satisfied	Somewhat Satisfied	Undecided	Satisfied	Very Satisfied
Quality (%)	0	2	3	39	56
Response Time (%)	3	5	3	33	55
Usefulness (%)	2	4	1	27	66
Process (%)	2	2	2	43	51

**Table 2. JAG Client Satisfaction Rates.**<sup>31</sup>

Similarly, clients of DND/CF LA rated their satisfaction quite high. The ADM(RS) survey (Table 3), indicates clients rated usefulness of DND/CF LA services similar to clients of JAG (92 percent). A client feedback survey conducted by the Department of Justice in 2011 also showed a high rate of satisfaction with the usefulness of DND/CF LA services.<sup>32</sup> Based on the results of the client survey, many clients of the DND/CF LA services reported that service was generally quick and excellent. However, they added that in the recent past, survey respondents experienced challenges in relation to timeliness of services provided (42 percent of respondents)<sup>33</sup> and the level of expertise of legal counsel (16 percent of respondents).<sup>34</sup>

<sup>31</sup> ADM(RS) Client Survey.

<sup>32</sup> Department of Justice, Client Feedback Survey – Department of National Defence and the Canadian Forces Results. Results presented September 2011.

<sup>33</sup> While 82 percent clients of DND/CF LA were satisfied or very satisfied with the response time of DND/CF LA overall, the survey also asked about challenges that may have occurred one or more times, which is why 42 percent of clients also reported challenges with the timeliness of services provided by DND/CF LA.

<sup>34</sup> Eleven of 66 respondents to the survey question on challenges experienced in relation to DND/CF LA responded that “level of expertise” was a challenge. Two comments expressed a general lack of expertise due to changing legal counsel and one comment mentioned specific lack of expertise in the area of non-public property.

	Not Satisfied	Somewhat satisfied	Undecided	Satisfied	Very Satisfied
Quality (%)	0	4	9	22	65
Response Time (%)	4	4	9	43	39
Usefulness (%)	0	4	4	22	70
Process (%)	4	4	9	22	61

**Table 3. DND/CF LA Client Satisfaction.**

Source: ADM(RS) Client Survey

### **Degree of Availability/Accessibility of Legal Advice**

The ADM(RS) survey noted 72 percent of the clients of JAG strongly agreed and 19.8 percent somewhat agreed that JAG has been accessible<sup>35</sup> to their unit’s or organization’s needs. Clients underlined that JAG’s availability on short notice was a critical success enabler. In the case of operations both deployed overseas and domestic, units have almost daily access to a JAG officer – from the planning stage to execution. JAG officers also have been imbedded in some organizations to enable interactions on a quasi-daily basis.

Concerns were raised however with respect to non-operational services that did not have operational deadlines. This would include legal reviews of administrative orders.

Clients of the JAG provided mixed responses to the issue of “respecting deadlines” and “providing progress reports.” As per the survey, only 38 percent of the clients agreed and 35 percent somewhat agreed that JAG respected deadlines. In some cases, prompting was required before any action was taken. For example, a client of a training organization underlined the importance of laying charges quickly before the student leaves course. This example is reflective of a number of comments made by survey respondents about JAG services. Respondents commented that challenges experienced were due to reductions and turnover of JAG legal officers which led to reduced access to legal advice. Overall, respondents to the survey agreed that they knew how to access legal services and were satisfied with the services once received, but sometimes, there were challenges in the timeliness of receiving legal services.

In the case of DND/CF LA, clients mentioned that generally, the response received was good and deadlines were respected; although some concerns (42 percent of respondents) were raised about delays that occurred in the recent past. The Department of Justice survey of DND/CF LA clients also reflected a high satisfaction rate with respecting deadlines.

<sup>35</sup> “Accessible” means that clients knew where to go to receive legal advice. Survey questions were also asked about response time of legal advisors.

## Support to DND/CAF through CAF member and client training

**Key Finding 4:** DND/CF LA conducts training activities to help their clients understand their legal responsibilities and better utilize the legal services within the DND/CAF.

DND/CF LA provides a number of training activities to their clients to raise awareness of legal risk and “to promote more effective management of legal issues throughout the CAF.”<sup>36</sup> Training initiatives include the following:

- Training for clients of the Materiel, Environment and Real Property Section to assist them in avoiding legal problems related to contracting, procurement, intellectual property, non-public property and the environment;
- Training to the Directorate of Access to Information and Privacy personnel on solicitor and client privilege issues;
- Training by the Cadets, Health, Aboriginal and Law Advisory Services on the duty to consult (Aboriginal);
- Training to JAG officers on the administration of claims against the Crown.

DND/CF LA also conducts the Legal Risk Management course and delivers it in person and online. The JAG does not conduct similar legal risk awareness training for their clients, but indicated that informal ad-hoc training could be provided on request. Potential training might include assisting the client to identify when legal advice is needed, and how to deal with legal issues that come up routinely.

JAG provides support to training programs. The Chief Military Personnel/MILPERSGEN is responsible for the delivery of training on the military justice system and the Law of Armed Conflict at all levels of officer development. The JAG works with the Canadian Forces Military Law Centre to design and develop training courses. Responding to the ADM(RS) client survey on the effectiveness of the Presiding Officer Training, 96 percent of officers agreed that they received appropriate training.<sup>37</sup> However, the JAG underlined that CAF professional development training programs need to dedicate more time to legal training, including administrative law in addition to operational law and military justice.

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<sup>36</sup> DND/CF LA Level One Business Plan 2010-2011.

<sup>37</sup> Some suggestions that the respondents offered for further improvement of training are: (1) compilation of most common errors during summary trials; (2) presentation of a more detailed procedures to be followed, particularly for a fair trial system; (3) inclusion of more case studies – perhaps online versions; (4) inclusion of a mock summary trial to set a national standard to help standardize the process across the CAF.

## Service Standards

**Key Finding 5:** DND/CF LA abides by Department of Justice service standards set forth in the MOU.

The main criteria of DND/CF LA service standards set forth in the MOU signed between the DND/CAF and the Department of Justice are: timeliness of services; responsiveness of services; and usefulness of services. The Department of Justice has adopted a standardized survey that measures satisfaction relative to service standards and provides an assessment of the quality of legal services provided.<sup>38</sup> To assess DND/CF LA's recent compliance with these service standards, the evaluation team consulted a recent evaluation conducted by the Department of Justice, which concluded that DND/CF LA had met these service standards.<sup>39</sup>

JAG currently gathers client satisfaction feedback through ad-hoc, informal meetings. A formal mechanism that might include terms of agreement with clients would allow the OJAG to track their performance and client satisfaction, alert the OJAG to issues (as noted in the ADM(RS) client survey) as they arise, and manage the demand for services.

### ADM(RS) Recommendation

1. Due to pressures on available legal resources, the DND/CAF should work with JAG and DND CF LA to review business processes and protocols to manage legal demand within the DND/CAF.

**OPI:** VCDS, JAG, DND/CF LA

**OCI:** Corporate Secretary

### 2.4.2 Immediate Outcome 2 – Legal services are well managed and supported

The evaluation used the following criteria to assess this outcome:

- Recruiting and retention; and
- Collaboration/management of DND/CF LA and JAG responsibilities.

<sup>38</sup> MOU signed between the Department of Justice and the DND/CAF, 2012.

<sup>39</sup> Department of Justice. Public Safety, Defence and Immigration Portfolio Evaluation, August 2015.

<http://www.justice.gc.ca/eng/rp-pr/cp-pm/eval/rep-rap/2015/psdi-spdi/index.html>. Last consulted on April 7, 2016.



## Recruiting and Retention

**Key Finding 6:** Recruiting and retention of JAG civilian staff and legal officers has been problematic for the duration of the evaluation period. Recently, recruiting of legal officers has improved.

A recurring issue mentioned in recent JAG Human Resources Plans was “the ability to recruit and retain qualified civilian and military personnel. The organizational design for civilian employees has been predominantly made of entry-level positions with a nominal amount of mid-level and executive positions. The limited number of career advancement opportunities for civilians has been a constant challenge, which in turn has affected retention levels. JAG noted that many of the new civilian recruits that joined the organization left just over a year later.<sup>40</sup> JAG was 21 officers below their preferred manning level in 2015. Director General Personnel Requirements predicts that legal officers will be 40 officers below the preferred manning level by FY 2017/18.

Based on interviews with the JAG, the OJAG’s trained effective strength (TES) reflects both release from the CAF along with the extent of training and experience necessary for military legal officers to reach Occupational Functional Point.<sup>41</sup> The JAG Business Plan FY 2014/15 stated that a recruitment and retention strategy was to be developed to attract new recruits. Part of this strategy involved standardizing the legal officer recruitment process to be in compliance with the CAF Recruitment Centre Headquarters, which would involve improving the pre-screening process for recruits.<sup>42</sup> According to the JAG OPI, in the last year the Canadian Forces Recruiting Group has done effective work in recruiting highly qualified candidates. As a result, the trained effective strength (TES) of the branch, which was reduced to 80 percent, is expected to improve.

According to interviews with the OJAG, the JAG recruiting model relies on recruiting through two different models: direct entry and component transfer. While direct entry is the recruitment of practicing civilian lawyers, component transfer is the recruitment of military members (both officers and non-commissioned members) from other occupations into the legal occupation. The evaluation examined recruiting and training strategies of allied countries. The British Royal Air Force and Army only recruit civilians who are already qualified lawyers. Recruits are provided basic military training, military legal training, and on the job training.<sup>43</sup> The British Royal Navy recruits logistics officers who perform a wide variety of tasks; select logistics officers are then chosen to become legal officers.<sup>44</sup> The Australian Defence Force recruits both qualified lawyers as well as non-lawyers, who are then provided with a fully funded

<sup>40</sup> JAG Human Resources Plan 2012-2013.

<sup>41</sup> Interviews with the JAG OPI; JAG Business Plan 2013-2014.

<sup>42</sup> JAG Business Plan 2014-2015.

<sup>43</sup> Royal Air Force, retrieved March 18, 2016, <https://www.raf.mod.uk/recruitment/roles/roles-finder/personnel-support/legal-officer/>; The British Army. <https://www.army.mod.uk/rolefinder/role/8/legal-officer>. Last consulted on March 18, 2016.

<sup>44</sup> The Royal Navy. <http://www.royalnavy.mod.uk/careers/role-finder/roles/logisticsofficer>. Last consulted on March 18, 2016.

undergraduate degree and a graduate diploma in legal practice. Recruits complete basic military training and progress through the legal levels, which involve increasing levels of independence, responsibility, and specialization.<sup>45</sup>

Retention of JAG legal officers has been equally problematic over the years. The JAG OPI indicated that experienced JAG officers were in high demand with some legal officers leaving as soon as their obligatory service was complete for private organizations, law societies, and other GC departments. A recommendation was made to give serious considerations on “Special Assignment Pay Plan.” Accordingly, these assignments could be used for special recruitment; special projects; training or development of employees; or pre-retirement assignment of employees approaching retirement.<sup>46</sup>

### **Collaboration/management of DND/CF LA and JAG responsibilities**

**Key Finding 7:** Collaboration between the JAG and DND/CF LA has been effective.

A key aspect of the dual nature of the provision of legal services to the DND/CAF is to ensure a proper division of roles and responsibilities, and to ensure that in areas of joint responsibility, that a common legal position is presented. While there has been a history of dispute over the division of responsibilities, both the JAG and DND/CF LA have indicated that collaboration between the two organizations has improved over the years. Currently, managers in both organizations discuss various files with each other and are aware of each other’s responsibilities. The size, organizational structure, and military context of the DND/CAF as well as the complexity of the activities within also present a steep learning curve for Department of Justice counsel. Therefore, a good working relationship is essential between military legal officers and civilian counsel. The evaluation noted that this is the case – DND/CF LA supervises both Department of Justice and JAG lawyers who are posted to support DND/CF LA and communication is kept continuous between the two groups. JAG legal officers remain under JAG command according to Queen’s Regulations and Orders 4.081.

During interviews, it was mentioned that even though the two organizations may work on the same issues, the roles were complementary and rarely did they overlap. In cases of overlap, both the JAG and DND/CF LA opinions are provided for consideration.

In response to increasing workload of DND/CF LA, in 2014 an addendum to the MOU between the Department of Justice and the DND/CAF came into force. As a result, DND/CF LA services were streamlined and the responsibilities were further clarified.<sup>47</sup> Going forward, to ensure

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<sup>45</sup> Australian Defence Force, ADF Legal Officers’ Specialist Officer Career Structure (LOSOCs) Policy, 2015. <http://www.defence.gov.au/Legal/pdf/cm/ADF%20LOSOCs%20Policy%20as%20at%2014%20August%202015.pdf>. Last consulted on March 18, 2016.

<sup>46</sup> JAG Human Resources Plan 2012/13.

<sup>47</sup> In 2013/14, a review of all legal services was conducted by the Department of Justice with a view to managing the demand in order to reduce spending and ensuring those services would be sustainable in the long term. An addendum to the MOU between the Department of Justice and the DND/CAF came into force on April 1, 2014. As a

continued collaboration and avoidance of duplication of work, more needs to be done to further formalize the relationship between the two organizations.

### 2.4.3 Intermediate Outcome 1 –DND/CAF legal risk is mitigated

**Key Finding 8:** Legal risk is not tracked at the department level.

OJAG legal officers are engaged in the delivery of advice at all levels and during all phases of domestic and international operations. For example, the OJAG supports CAF readiness and operations by providing military commanders with legal advice concerning the conduct of Canadian sovereignty operations.<sup>48</sup> Similarly legal officers support training missions to guide, educate and advise commanding officers and their staff on all aspects of operations in mitigating legal risk. The DND/CF LA also mentioned that the Deputy Minister was briefed on high profile cases on a regular bases and regular briefing notes have also been sent up to the Deputy Minister’s office.

Responding to the ADM(RS) survey, 91 percent of the respondents somewhat or strongly agreed that they had a good understanding of the key legal risks concerning their organization and DND as a whole. In terms of avoidance of legal risk, 82 percent agreed that JAG and/or DND/CF LA assisted their unit/organization in this area. However, concerns were raised about receiving advice that was too risk averse to make a decision. DND/CF LA notes that legal counsel are only responsible for providing a legal assessment, the client must make the ultimate decision which may include consideration of this legal opinion. In the 2011 Department of Justice survey, DND/CF LA clients were generally satisfied that DND/CF LA “involved [them] in the review/development of legal options to mitigate identified legal risks.” The ADM(RS) survey of DND/CF LA reported that clients (11 of 70 survey respondents) had specific concerns about legal risk assessments, such as making advice more “granular” and practical to enable a selection of a course of action or management decision. These issues raised could have an impact on DND/CAF’s ability to manage and mitigate legal risk.

While these activities manage risk on a case by case basis, a concern is that legal risk is not tracked at the departmental level.<sup>49</sup> The JAG has indicated that while it had done so in the past, it no longer tracks legal risk across the DND/CAF using a legal risk register. During interviews

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result, DND/CAF LA no longer provides legal services in some low risk areas including: (1) review of MOUs, DPRs, Business Plans; (2) review/drafting of transfer payment agreements; (3) review and drafting of internal delegation instruments; (4) approval of briefing notes; (5) review and drafting of low legal risk draft ministerial correspondence; (6) attending parliamentary committees in relation to DND/CAF matters. The implementation of legal review began in FY 2014/15 and will continue into 2015/16.

<sup>48</sup> JAG Business Plan 2012-2013. Issues include: legal basis for the conduct of Canadian sovereignty operations and rules of engagement, levels of force, use of certain weapons, intelligence activities, investigation of alleged violations of law, review of operational plans, training, resolution of damage claims and liaison with law enforcement forces and civilian authorities.

<sup>49</sup> There is an Organization Risk Profile that is the responsibility of the Chief of Programme and DND/CF LA contributes to it. This profile is a report on risk and does not actively track legal risk on a daily, weekly, or monthly basis.

with key informants, it was noted that the “legal risk management” committee no longer existed. Although both the JAG and DND/CF LA are present at many senior committees, including the Defence Management Committee, the Defence Capability Board and the Project Management Board, there is concern that they are no longer part of the Defence Strategic Executive Committee. This issue has been raised as a significant legal risk as decisions may be taken without the benefit of legal advice.<sup>50</sup>

A file and risk management tool, that records the type, nature and other pertinent project management information would also allow the JAG to prioritize requests based on the level of legal risk, and respond to the most pressing requests for services in a timely manner. Without a file management and the prioritization of requests, management of legal risk could be jeopardized. Further, resource management for future resources must depend on such relevant information. The JAG OPI commented that this type of tool would not be useful as the office deals mostly with high volume, quick turn-around requests that are difficult to track.

DND/CF LA Business Plans (FY 2010/11 to 2014/15) stated that they have been continuously working on developing the Organization Risk Profile which identified key legal risks facing Level 1 organizations and developed action plans to manage this risk.<sup>51</sup> Work continues in order to integrate legal risk management with the DND/CAF Integrated Risk Management Process, which would “provide DND/CAF with a more risk informed and coordinated approach to management throughout the organization.”<sup>52</sup> In addition, The JAG Business Plan FY 2014/15 stated that the JAG would work with DND/CF LA in the Legal Risk Management integration process. The Organization Risk Profile is under the responsibility of the Chief of Programme. DND/CF LA expressed that more needs to be done to incorporate legal risk as an element in the annual update to the Organization Risk Profile.

### **ADM(RS) Recommendation**

2. Chief of Programme should work with the JAG and DND/CF LA to incorporate legal risk as an element of the annual update to the Organization Risk Profile.

**OPI:** VCDS, JAG, DND/CF LA

## **2.5 Performance—Demonstration of Efficiency and Economy**

The following section examines the extent to which the provision of legal services by JAG and DND/CF LA provides value for money by using the most efficient and economical means to achieve the outcomes expected of it. The Evaluation Policy (2009) defines efficiency as

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<sup>50</sup> The DND/CF LA regularly attend the Program Management Board, Assistant Deputy Minister Council, Defence Capabilities Board, Defence Management Board, DIMC – Intelligence, National Defence Headquarters Coordinating Committee (NC2) as well as several lower level functional committees. The JAG is a member of the Armed Forces Council, Armed Forces Council Executive, Defence Management Committee, Defence Capabilities Board, and the National Defence Headquarters Coordination Committee.

<sup>51</sup> DND/CF LA Business Plan 2010-2011.

<sup>52</sup> DND/CF LA Business Plan 2014-2015.

“maximizing the outputs produced with a fixed level of inputs.” Economy is defined as “minimizing the use of resources to achieve expected outcomes.”<sup>53</sup> Economy also considers whether the resources allocated to the provision of legal services are reasonable and sustainable.

The evaluation team considered whether processes and mechanisms were in place for managing and ensuring the efficiency and economy of resources used by the JAG and DND/CF LA during the period of FYs 2010/11 to 2014/15.

## Legal Services Expenditures

**Key Finding 9:** DND funding for the provision of legal services by JAG and DND/CF LA as a proportion of departmental expenditure is much lower than that of allies funding levels. The Australian Department of Defence spends more than double the amount of money on legal services per departmental employee.

The total cost of JAG and DND/CF LA, excluding C125 (liabilities and civilian defence counsel),<sup>54</sup> increased by approximately 8 percent between 2010/11 and 2011/12, but has not increased significantly since then. As the DND/CAF budget decreased over those subsequent years, the amount of funds spent on legal services as a share of the DND/CAF budget has therefore increased from 0.17 percent of the total budget to 0.2 percent. By way of comparison, the Australian Department of Defence spends approximately 50 percent more on legal services than DND, with legal services amounting to 0.3 percent of the defence budget.

	2010/11	2011/12	2012/13	2013/14	2014/15
DND/CF LA expenditure (salaries and operating expenses)	8.44	9.79	8.70	9.31	8.51
JAG expenditure (salaries, operating expenses, and other costs)	25.25	26.70	28.52	29.57	29.32
<b>Total Cost (JAG and DND/CF LA, excluding C125) (\$ million)</b>	<b>33.70</b>	<b>36.49</b>	<b>37.22</b>	<b>38.88</b>	<b>37.83</b>
Legal expenditure as a share of DND Budget (%)	0.17	0.18	0.19	0.21	0.21
Total Cost of Australian Defence Legal Services (\$ million) <sup>55</sup>	76.19	95.60	83.34	79.13	78.37
Legal expenditure as a share of Australian Defence Budget (%)	0.3	0.4	0.3	0.3	0.3

**Table 4. Trends in Total Cost of the Provision of Legal Services by JAG and DND/CF LA and Trends in Total Cost of the Australian Defence Legal Program.**<sup>56</sup>

<sup>53</sup> Treasury Board Policy on Evaluation, April 1, 2009.

<sup>54</sup> Civilian defence counsel are hired due to conflict of interest that could occur from an accused being represented by Defence Counsel Services legal officer.

<sup>55</sup> Australian Department of Defence, Australian Defence Annual Reports 2010/11 to 2014/15 in the corresponding year’s Canadian dollar.

<sup>56</sup> Ibid. In the corresponding year’s Canadian dollar. DND values are from Defence Resource Management Information System (DRMIS).

Similarly, as per Table 5, the cost of legal services per DND/CAF staff and military is significantly lower than that of what the Australian Department of Defence spends. In 2014/15, the Australian Department of Defence spent \$1,020 on legal services per employee (military and civilian), whereas DND spent \$429 per employee.

It is difficult to determine if DND is spending the right amount on legal services in comparison to its allies. The outputs of Australia’s legal services spending could not be assessed by the evaluation team as there was limited open source information available in this area. However, given the concerns raised over workload within the JAG and DND/CF LA, the comparison does reinforce the opinion that additional resources may be needed.

FY 2014/15	DND	Australia
Total legal services Cost (\$ million)	37.83	78.37
Total Defence personnel (includes military and civilian)	88,141	76,854
<b>Legal \$ per Defence personnel</b>	<b>429.24</b>	<b>1019.69</b>

**Table 5. Cost of Legal Services in FY 2014/15 per DND/CAF and Australian Department of Defence Member.**<sup>57</sup>

### Program Resources

While the overall expenditures for legal services within the DND/CAF have increased modestly since 2011, they have not offset significant reductions which occurred in 2011, nor the increased salaries of the legal professionals. With respect to DND/CF LA, the office’s operating budget has been affected by a 13 percent reduction since 2011, attributable to the Directed Program Reduction and Deficit Reduction Action Plan cuts from DND. The Legal Services Review and Deficit Reduction Action Plan cuts on the Department of Justice side resulted in a cap on full-time equivalents (FTE) and a reassessment of the types of services that DND/CF LA would provide to DND/CAF. As a consequence, the number of Department of Justice counsel has declined since 2011/12 from 56 counsel positions to a total of 45 counsel positions.<sup>58</sup> DND/CF LA’s financial situation was also affected by an overall increase of seven percent in the charging rates for Department of Justice legal services approved by the Treasury Board Secretariat in February 2013, which came into effect in 2013/2014. Simultaneously, the number of JAG legal officers assigned to DND/CF LA has declined from eight legal officers in 2011/2012 to five legal officers in 2015/2016. This equates to a total reduction of 14 positions or 22 percent of the lawyer complement.

<sup>57</sup>Total Cost of DND Legal services from DRMIS, Number of DND/CAF members from the DPR. Cost of Australian legal services and number of personnel form Australian Department of Defence Annual Report 2010/11 to 2014/15. All dollar amounts are in March 31, 2015 Canadian Dollars. Total cost of legal services is the combined cost of JAG DND/CF LA excluding C125 account. DND/CAF member total includes Regular Force, Primary Reserve (Class C), and civilian FTEs.

<sup>58</sup>Note that the table refers to FTEs, or the amount of time that Department of Justice staff were paid, which differs from positions allotted to the Office of the DND/CF LA.



Due to funding pressures, there have been changes in the mix of resources. Within the JAG, the total overall number of personnel has been static; however the JAG has increased the number of military personnel and decreased the number of civilian personnel. The increase in legal officers drove the overall increase in OJAG expenditures by an annual average of four percent. DND/CF LA personnel have decreased by 14 percent over the evaluation period.

	2010/11	2011/12	2012/13	2013/14	2014/15
JAG Regular Force	127	129	147	152	147
JAG Civilians	97	99	84	78	81
<b>Total JAG personnel</b>	<b>224</b>	<b>228</b>	<b>231</b>	<b>230</b>	<b>228</b>
Change from previous year (%)		1.8	1.3	-0.4	-0.9
Department of Justice Lawyers	48.2	53.9	51.2	47.1	44.9
DND civilian administrative support <sup>59</sup>	31.3	30.1	30.5	29.7	23.6
<b>Total DND/CF LA personnel</b>	<b>79.5</b>	<b>84.0</b>	<b>81.6</b>	<b>76.8</b>	<b>68.5</b>
Change from previous year (%)		5.6	-2.8	-5.9	-10.8

Table 6. DND/CF LA and JAG Personnel Resources.<sup>60</sup>

## Workload

**Key Finding 10:** The increase in charging rates of Department of Justice lawyers combined with flat funding resulted in a decreased level of DND/CF LA personnel resources. DND/CF LA has been managing increasing requests for services with fewer staff.

Table 7 describes the DND/CF LA's trends in workload and/or actively managed files per FTE. During the evaluation period, DND/CF LA's FTE levels have consistently declined at an average rate of three and a half percent, while the workload per FTE has increased at an average rate of eight and a half percent. Hours recorded have also declined, but at a slower rate than FTEs, resulting in an average increase in the number of hours per FTE. In 2014/15 DND/CF LA was producing more outputs (hours and actively managed files) per unit of input (FTE) than it was in 2010/11.<sup>61</sup> It would appear that increasing requests have placed significant pressures on the DND/CF LA, prompting the organization to adopt new processes. As noted earlier in the report, DND/CF LA has maintained a high level of satisfaction with their provision of services. The challenges reported by some client survey respondents could be a result of DND/CF LA reduced personnel resources and increased workload. This finding was also corroborated by interviews

<sup>59</sup> DND civilian administrative support employees include paralegals, secretaries, administrative assistants, financial and records clerks, and students.

<sup>60</sup> DND/CF LA salary costing forecast for DND and the Department of Justice, Regular Force from Central Computerized Pay System, civilians and the Reserve Force are from the Human Resources Management Information System. Note: Civilian numbers are considered FTEs, while Regular Force and Reserve Force numbers are in counts.

<sup>61</sup> iCase serves as the web-based national application that supports the practice of law and the management of legal services provided by the Department of Justice Canada.

with DND/CF LA where it was indicated that requests for legal services are sometimes turned away due to the office’s inability to handle the workload with their given resources.

	2010/11	2011/12	2012/13	2013/14	2014/15
Number of Actively Managed Files	2,510	2,922	3,035	3,295	2,968
Hours Recorded in iCase	71,885	77,528	74,475	69,580	66,525
Total FTEs	79.5	84.0	81.6	76.8	68.5
Active Files per FTE	31.6	34.8	37.2	42.9	43.3
Hours per FTE	904.0	922.8	912.2	905.9	970.9
Number of hours per actively managed files	29	27	25	21	22

**Table 7. Trends in DND/ CF LA Workload in Comparison to Staffing Levels.**

Source: Number of actively managed files and hours from DND/CF LA iCase and total FTEs from DND/CF LA Salary Costing Forecast for DND and Department of Justice

JAG’s performance management system, Performance Measurement Decision Support System (PMDSS), records requests from clients. A request is any inquiry that requires legal advice in response, and according to interviews conducted with the JAG OPI, the response could range from a simple reply to being part of a larger activity involving multiple requests. It should be noted that JAG only records requests; there is no record of the hours of work performed in relation to these requests. Therefore it is difficult to get a full sense of the workload handled by the OJAG.

Table 8 compares the number of requests received by JAG from 2010/11 to 2014/15 with a number of JAG personnel. Accordingly, the number of requests received continually increased. The resulting trend is that workload per JAG staff member increased significantly while legal officers received less support from civilian personnel. This was confirmed through interviews with the JAG OPI.

	2010/11	2011/12	2012/13	2013/14	2014/15
Number of Requests	34,508	40,392	42,275	44,978	51,025
Change from previous year (%)		17.1	4.7	6.4	13.4
Total staff (civilian and military)	224	228	231	230	228
Change from previous year (%)		1.8	1.3	-0.4	-0.9
<b>Requests per staff member</b>	<b>154.1</b>	<b>177.2</b>	<b>183.0</b>	<b>195.6</b>	<b>223.8</b>
Change from previous year (%)		15.0	3.3	6.9	14.4

Table 8. Trends in Requests versus JAG Staffing Level.<sup>62</sup>

## Support Personnel

DND/CF LA lawyers are supported by paralegals at a rate of 5.7 lawyers per paralegal in FY 2014/15. This ratio has decreased since FY 2010/11 due to a decrease in the number of lawyers and a slight increase in the number of paralegals within DND/CF LA. Based on the DND/CF LA Business Plan FY 2015/16, there are no significant funding pressures for paralegals, administrative and financial personnel in 2015/16, though process optimization initiatives could lead to pressures in the future.

	2010/11	2011/12	2012/13	2013/14	2014/15
Department of Justice Lawyers	48.2	53.9	51.2	47.1	44.9
Paralegals	7.2	7.3	6.9	7.7	7.9
<b>DND/CF LA Lawyers supported per Paralegal</b>	<b>6.7</b>	<b>7.4</b>	<b>7.5</b>	<b>6.1</b>	<b>5.7</b>

Table 9. Number of Department of Justice Lawyers Supported by Each DND/CF LA Paralegal.

Source: DND/CF LA Salary Costing Forecast for DND

It was noted during interviews that JAG has considered incorporating paralegals in their civilian support staff. Director Defence Counsel Services and Director Military Prosecutions employ paralegals, but the remainder of the OJAG does not. Due to workforce adjustment, the OJAG has had to reduce civilian FTEs by 13.5 percent.<sup>63</sup> Therefore, adding paralegals to its workforce could only be done by reducing civilian staff in another area. Due to reduced civilian support staff, legal officers had to perform administrative work<sup>64</sup> that could be better handled by a legal assistant or paralegal. It should be noted that legal officers come at a significant cost to the department. Increasing the number of support staff instead of legal officers could result in savings.

<sup>62</sup> Number of Requests from JAG's PMDSS, total personnel from the Human Resources Management Information System and the Central Computerized Pay System.

<sup>63</sup> OJAG. Civilian HR Plan for FYs 2015/16 to 2017/18.

<sup>64</sup> *ibid.*

By comparison, the United States has done significant work in incorporating paralegals into their military justice system. More than twenty percent of personnel in the Judge Advocate General to the United States Air Force (AFJAG) are active duty paralegals; in addition the AFJAG is supported by civilian and reserve paralegals.<sup>65</sup> AFJAG paralegals are present within many areas of the organization, such as the Strategic Policy and Requirements Division, Administrative Law Directorate, Military Justice Division, and Civil Law and Litigation Directorate.<sup>66</sup> While the CAF does not have an occupational qualification for paralegals and thus cannot employ military paralegals, the AFJAG's initiatives show that it is possible for civilian paralegals to assist in many areas of military law. The JAG could explore and identify areas of legal practice where paralegals could be employed. The DND/CAF should consider allowing the JAG to employ more civilian support staff (administrative assistants, legal assistants, or paralegals) to handle the increasing workload.

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<sup>65</sup> AFJAG. 2014 Annual Report.

<sup>66</sup> *ibid.*

## Annex A—Management Action Plan

### ADM(RS) Recommendation

1. Due to pressures on available legal resources, the DND/CAF should work with JAG and DND CF LA to review business processes and protocols to manage legal demand within the DND/CAF.

### Management Action

- OJAG will refine its existing processes to ensure regular review and prioritization of DND and CAF work requests;
- DND CF LA will formalize a process to ensure regular review and prioritization of DND and CAF work requests and, if applicable, amend its MOU with the CAF accordingly; and
- Both DND CF LA and OJAG will regularly review these processes to ensure their efficacy.

**OPI:** VCDS, JAG, DND/CF LA

**OCI:** Corporate Secretary

**Target Date:** November 2017

### ADM(RS) Recommendation

2. Chief of Programme should work with the JAG and DND/CF LA to incorporate legal risk as an element of the annual update to the Organization Risk Profile.

### Management Action

Chief of Programme will consult with JAG and DND/CF LA to determine what is needed in order to incorporate legal risk as an aspect of the Organization Risk Profile. Alternatively, Chief of Programme will develop a formal mechanism by which it will identify and manage departmental legal risk. Chief of Programme will implement the results of this consultation in upcoming Organization Risk Profiles.

**OPI:** VCDS, DND/CF LA, JAG

**Target Date:** Implementation of legal risk into the Organization Risk Profile will be completed by November 2017.

## Annex B—Evaluation Methodology and Limitations

### Methodology

The evaluation team used multiple lines of evidence and complementary qualitative and quantitative research methods to help ensure the reliability of information and data to support evaluation findings. In order to ensure the validity of data captured through different methodologies, a data triangulation approach was used. The methodology established a consistent approach in the collection and analysis of data to support findings, conclusions and recommendations. Based on the evidence from available sources, the evaluation reviewed the achievement of expected outcomes, and the efficiency and economy of the provision of legal services, to develop a balanced picture of the relevance and performance of the provision of legal services by JAG and DND/CF LA. Information and data were correlated to each evaluation question and corresponding indicators.

#### 1.1 Overview of Data Collection Methods

Data collection methods were selected based on the data required to address performance indicators in the Evaluation Framework (Annex D). The following data collection methods were used to gather qualitative and quantitative data for each type of operation in the evaluation:

- literature and document review;
- client survey;
- key informant interviews;
- comparative research analysis with allies; and
- administrative, financial, and human resource data reviews.

#### 1.2 Details on Data Collection Methods

##### 1.2.1 Literature and document review

A preliminary document review was conducted as part of the planning phase of the evaluation to garner a foundational understanding of the provision of legal services by JAG and DND/CF LA. A comprehensive document review was undertaken as a part of the conduct phase of the evaluation, focusing on the relevance and performance of the provision of legal services by JAG and DND/CF LA.

The following documents were reviewed during the planning and conduct phases of the evaluation:

- Legislation and bills: NDA, *Department of Justice Act*, Bill C-25, Bill C-15, and Bill C-71
- Supreme Court decision *R. v. Généreux*
- Government and departmental documents: DPRs, Reports on Plans and Priorities, DAODs, and Queen's Regulations and Orders
- Program documents: annual reports and business plans



### **1.2.2 Client Survey**

A bilingual (English and French) client survey developed by ADM(RS), in collaboration with Director General Military Personnel Research and Analysis was distributed to clients of the JAG and DND/CF LA. Recipients were identified using the Microsoft Outlook Address Book/Global Address List (GAL). Military recipients were all CAF members holding the position of Commanding Officer, Commander, Regimental Sergeant Major, or Coxswain at the time the survey was distributed. Civilian recipients were all DND employees holding the position of Director, Director General, or Project Lead for large projects. The survey was distributed to 702 recipients, was online for two weeks, and had a response rate of 30 percent.

The survey asked about client satisfaction with legal services provided by DND/CF LA and JAG and the perception of legal services within the DND/CAF in general.

For the client survey, the evaluation study used the following scale throughout the report to indicate the relative weight of the responses for each of the respondent groups:

- almost all: findings reflect the opinions of 90 percent or more of respondents;
- many: findings reflect the views and opinions of at least 60 percent of respondents;
- some/several: findings reflect the views and opinions of at least 25 percent of respondents; and,
- a few: findings reflect the views and opinions of at least two respondents but fewer than 25 percent.

### **1.2.3 Key Informant Interviews**

Interviews were conducted in person and over the phone. Interviewees were provided with an interview guide in advance. During interviews, clarifying questions were asked. Notes were taken by the evaluators during interviews, with the consent of the interviewees. The evaluators transcribed the notes taken during the interviews and compared them with one another, with a view to establishing a common record.

Over the course of the evaluation study, the JAG OPI was interviewed four times, and one other interview within the JAG was conducted. DND/CF LA was interviewed four times, but was not available for interviews during the final phase of the evaluation. The CMJ was also interviewed prior to being scoped out of the evaluation.

### **1.2.4 Comparative research analysis with allies**

Information from international partner organizations (United Kingdom and Australia) was solicited in order to assess relevance and performance of the provision of legal services by JAG and DND/CF LA. Requests for information were distributed through Canadian High Commission contacts, however due to operational demands of these offices, responses were not received.

The evaluation team also sought open source information to use for benchmarking purposes. Program websites, annual reports, government budget documents, and external news sources and

reviews were used to conduct research on the United States, United Kingdom and Australian legal services and military justice systems.

### **1.2.5 Review of administrative, financial, and human resources data**

The JAG and DND/CF LA human and financial resources data was reviewed in order to determine the degree of efficiency and economy of the program activities. The data covered FYs 2010/11 to 2014/15 and was extracted from official systems and reports (DRMIS and Human Resources Management Information System) and cross referenced with financial documents and business plans provided by the JAG and DND/CF LA. Salary Costing Forecasts from DND/CF LA were used as a source for both DND and Department of Justice FTEs within that organization. Counts for Regular Force members were taken from the Central Computing Pay System.

Administrative data for DND/CF LA was provided to the evaluation team for the full five year evaluation period. The data was extracted from the Department of Justice tracking system called iCase and covered data on number and types of files as well as hours recorded by DND/CF LA personnel. The JAG provided administrative data on the number of requests received by their office for the full five year evaluation period. This data came from JAG's PMDSS.

## **2.0 Limitations**

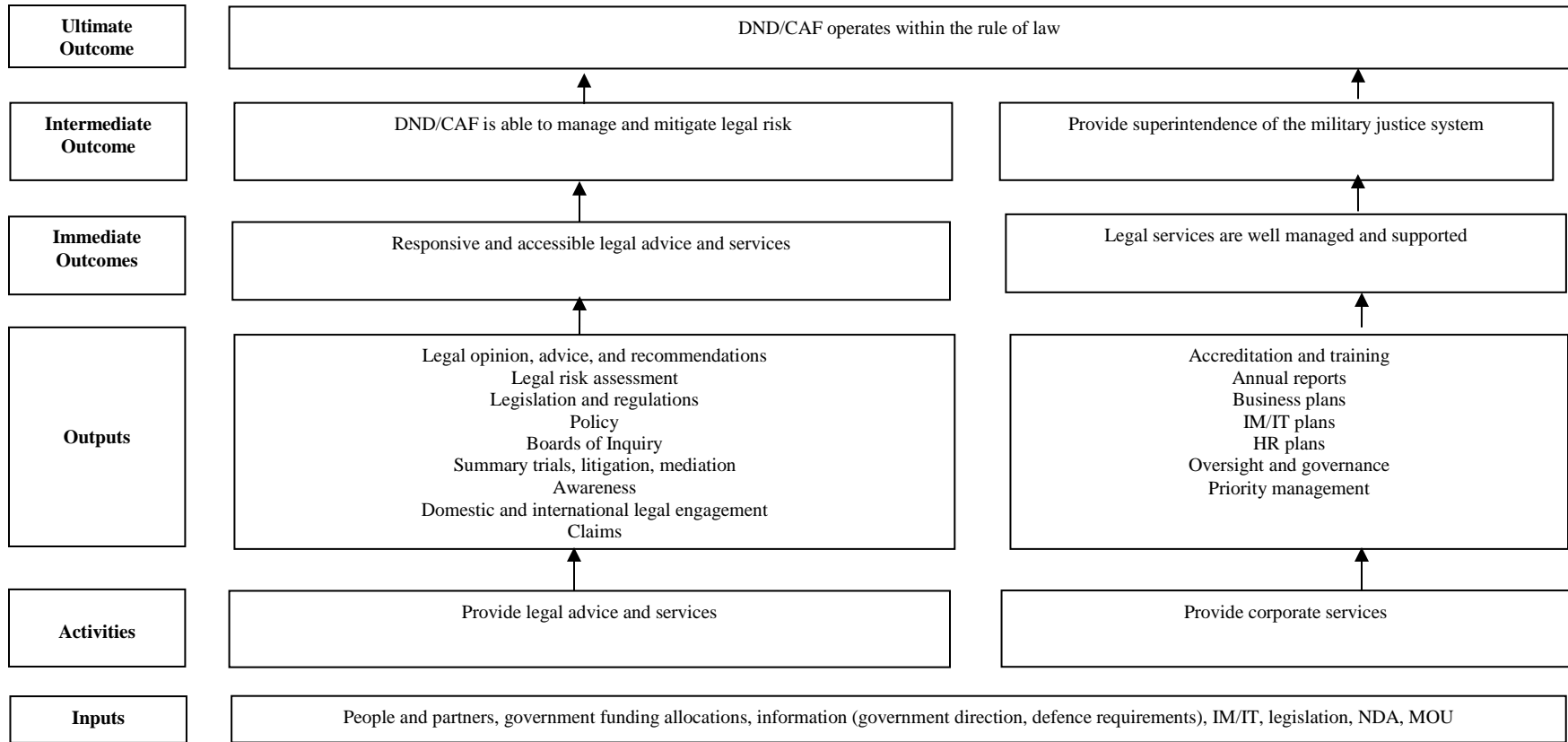
Like all evaluations, the evaluation of the provision of legal services by JAG and DND/CF LA has had its limitations.

Table B-1 describes the limitations and mitigation strategies employed in the evaluation of the provision of legal services by JAG and DND/CF LA:

Limitation	Mitigation Strategy
<p><b>Reporting relationships.</b> The JAG reports to the Minister of National Defence and DND/CF LA reports to the Department of Justice. However, both are responsible to DND for the administration of their resources.</p>	<p>The scoping stage of the evaluation was thorough to ensure the evaluation team only assessed areas where DND could affect change. Recommendations are directed toward DND for action.</p>
<p><b>No previous evaluations.</b> The provision of legal services by JAG and DND/CF LA as a whole had never been evaluated or audited. The evaluation team had difficulty in gathering background information about the program and its component organizations.</p>	<p>Various sources of information were triangulated to gain a full picture of the provision of legal services by JAG and DND/CF LA, including legislation, court decisions, annual reports, and business plans.</p>
<p><b>Access to interview subjects.</b> Interviews were limited to a small number of staff from JAG and DND/CF LA</p>	<p>The information gained from interviews was triangulated with documentation and financial information in order to gain a full picture of the provision of legal services by JAG and DND/CF LA.  Throughout the report, the evaluation made clear the sources of information used to form conclusions and findings.</p>
<p><b>Access to documentation and administrative data.</b> The evaluation team had limited access to documentation from the program</p>	<p>Documentation provided by DND/CF LA and the JAG was supplemented with documents from outside the Department and CAF, departmental level documents, and a review of legislation and court decisions.</p>
<p><b>Assessment of high-level outcomes.</b> Attribution of activities and outputs of the program to intermediate and ultimate outcomes was difficult due to the high level of influence of external factors, lack of data, and interview subjects.</p>	<p>Focus was placed on measuring immediate outcomes. Deductions were made to assess the achievement of the intermediate outcomes, assisted by client survey results. The evaluation report noted where information was not available.</p>

**Table B-1. Evaluation Limitations and Mitigation Strategies.** List of the limitations of the evaluation and the corresponding mitigation strategy.

### Annex C—Logic Model



**Figure C-1. Logic Model for the Provision of Legal Services by JAG and DND/CF LA.** This flowchart shows the relationship between the program’s main activities, outputs and expected outcomes.

## Annex D—Evaluation Matrix

Evaluation Matrix – Relevance					
Evaluation Issues/Questions	Indicators	Program Data	Document Review	Client Survey	Key Informant Interviews
1.1 Continued need for the provision of legal services by JAG and DND/CF LA <ul style="list-style-type: none"> <li>• Is there a continuing need for the legal services provided by the JAG and DND/CF LA?</li> </ul>	1.1.1 Trends in requests for JAG and DND/CF LA services.	Yes	Yes	Yes	No
1.2 Alignment with federal roles and responsibilities <ul style="list-style-type: none"> <li>• How does the provision of legal services by JAG and DND/CF LA align with federal roles and responsibilities?</li> </ul>	1.2.1 Alignment between the provision of legal services by JAG and DND/CF LA and federal government priorities and strategic outcomes.	No	Yes	No	No
1.3 Alignment with government priorities <ul style="list-style-type: none"> <li>• How does the provision of legal services by JAG and DND/CF LA align with government priorities and departmental strategic outcomes?</li> </ul>	1.3.1 The provision of legal services by JAG and DND/CF LA aligns with GC priorities and DND/CAF strategic objectives.	No	Yes	No	No

**Table D-1. Evaluation Matrix—Relevance.** This table presents the data collection methods that were used to address the evaluation issues/questions which determine how relevant it is for JAG and DND/CF LA to provide legal services.

<b>Evaluation Matrix—Performance: Achievement of Expected Outcomes (Effectiveness)</b>						
<b>Evaluation Issues/ Questions</b>	<b>Indicators</b>	<b>Program Data</b>	<b>Document Review</b>	<b>Client Survey</b>	<b>Key Informant Interviews</b>	<b>Allied Country Comparison</b>
2.1 Immediate Outcome: Responsive and accessible legal advice and services. • To what extent does the JAG and DND/CF LA provide responsive and accessible legal advice?	2.1.1 Evidence service standards are followed.	No	Yes	No	No	No
	2.1.2 Trends in response time and requests for services.	No	No	Yes	No	No
	2.1.3 Degree of client satisfaction.	No	No	Yes	No	No
	2.1.4 Degree of availability of legal advice.	No	Yes	Yes	No	No
	2.1.5 Degree of awareness and effective training activities.	No	Yes	Yes	Yes	No
2.2 Immediate outcome: Legal services are well managed and supported. • To what extent are legal services well managed and supported?	2.2.1 Ability to recruit and retain.	No	Yes	No	Yes	Yes
	2.2.2 Degree of duplication and overlap of responsibilities.	No	Yes	Yes	Yes	No
	2.2.3 Evidence of performance management framework used for planning and decision making.	Yes	Yes	No	No	No



2.3 Intermediate outcome: DND/CAF legal risk is managed. • Is the DND/CAF able to manage and mitigate legal risk?	2.3.1 Presence in departmental committees.	No	Yes	No	Yes	No
	2.3.2 Evidence of whole of department legal risk management activities.	No	Yes	Yes	Yes	No

**Table D-2. Evaluation Matrix—Performance (Effectiveness).** This table presents the data collection methods that were used to address the evaluation issues/questions which target the outcomes that are achieved when JAG and DND/CF LA provide legal services.

<b>Evaluation Matrix— Performance: Demonstration of Efficiency and Economy</b>					
<b>Evaluation Issues/Questions</b>	<b>Indicators</b>	<b>Program Administrative and Financial Data</b>	<b>Document Review</b>	<b>Key Informant Interviews</b>	<b>Allied Country Comparison</b>
3.1 Economy • Are resources allocated to the provision of legal services by JAG and DND/CF LA reasonable, economical, and sustainable?	3.1.1 Total cost of the provision of legal services by JAG and DND/CF LA.	Yes	Yes	No	Yes
	3.1.2 Cost of the provision of legal services by JAG and DND/CF LA separately.	Yes	Yes	Yes	No
3.2 Efficiency • Are the most appropriate and efficient means being used to deliver legal services?	3.2.1 Trends in workload versus trends in staffing	Yes	Yes	Yes	No
	3.2.2 Staff distribution	Yes	Yes	Yes	Yes

**Table D-3. Evaluation Matrix—Performance (Efficiency and Economy).** This table presents the data collection methods that were used to address the evaluation issues/questions which determine how efficient and economical it is for JAG and DND/CF LA to provide legal services.