



**OFFICE OF THE LEGAL ADVISOR TO THE
DEPARTMENT OF NATIONAL DEFENCE
AND THE CANADIAN FORCES**

August 2010

Internal Audit Branch

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STATEMENT OF ASSURANCE

We have completed the internal audit of the Office of the Legal Advisor to the Department of National Defence and the Canadian Forces (DND/CF LA). The overall objective of the audit was to review and assess the framework within which services are delivered by the DND/CF LA and to recommend improvements.

The internal audit was conducted in accordance with the requirements of the Treasury Board (TB) *Policy on Internal Audit* and the Institute of Internal Auditors' *Standards for the Professional Practice of Internal Auditing*.

The audit team assessed the management control framework against criteria derived from the TB Management Accountability Framework (MAF), the *Guidance on Control* issued by the Criteria of Control Board (CoCo) of the Canadian Institute of Chartered Accountants, and TBS audit guides.

In our professional judgment, sufficient and appropriate audit procedures have been conducted and evidence gathered to support the accuracy of the conclusions reached and contained in this report. The conclusions were based on a comparison of situations as they existed at the time of the audit, against the audit criteria. It should be noted that the conclusions are only applicable for the areas examined.

EXECUTIVE SUMMARY

The Department of Justice has established dedicated departmental legal service units (DLSUs) for most government departments and agencies. These units provide client organizations with legal advice to facilitate their operations. This audit focused on the management practices of the Office of the Legal Advisor to the Department of National Defence and the Canadian Forces (DND/CF LA), which is the legal services unit serving the DND/CF.

The DND/CF LA provides legal services to the DND/CF in all areas of the law, except those related to military law, military discipline, and the military justice system for which the Office of the Judge Advocate General (JAG) is responsible.

The scope of the audit included the operations and activities of the DND/CF LA in the National Capital Region. The planning and the on-site examination phases for this audit were carried out between June 2009 and February 2010.

Management Framework

The DND/CF LA has a well-developed management framework. It has clearly defined and communicated strategic directions and strategic objectives aligned with its mandate, established objectives and priorities annually as part of the client's annual business planning cycle, and assessed the risks it faces in achieving its objectives. This information is described in the DND/CF LA's Business Plan 2009-2010. It is also communicated to employees in the DND/CF LA's employee orientation manual and in retreats and meetings with professional and support staff in the LSU. The DND/CF LA tracks its progress through its weekly management meetings.

The DND/CF LA is appropriately organized to meet its client department's needs. As part of a three-year organizational transformation, it has been reorganized into four divisions: Litigation and Legal Advisory Services, Commercial Law Advisory Services, Public Law Advisory Services, and Support Services. Responsibilities and accountabilities are clearly defined. The Functional Responsibilities Matrix available on the DND/CF LA Web site describes the key responsibilities of the law practice teams within each division.

The DND/CF LA has published comprehensive service standards. These are detailed in the draft Memorandum of Understanding (MOU) between the Department of Justice and the DND/CF for the provision of legal services between April 1, 2009 and March 31, 2014. Client satisfaction against these service standards is monitored through a formal triennial survey (developed by the Office of Strategic Planning and Performance Measurement (SPPM)) and through discussion with client management. The workload within the DND/CF LA is monitored and distributed in a manner that supports the achievement of its service standards. Workload is high and demanding. Regular team meetings and bilateral discussions between team leaders and individual lawyers help to ensure that priority issues are addressed in a timely manner.

A range of mechanisms are used to provide both professional and support staff with the information they require to carry out their responsibilities. Nonetheless, some lawyers indicated a need for more information both on the client department and on the activities of their colleagues in other sections of the LSU. In addition, the DND/CF LA does not have an employee orientation program and its current orientation manual is out-of-date. Efforts were under way to publish an updated version of the DND/CF LA's administrative manual in early 2010. A new orientation manual is also planned. It is important that the approved manuals are communicated to all staff. A recommendation has also been made that the effectiveness of the DND/CF LA's communications practices be assessed and, if necessary, additional communication practices be implemented.

Human Resources

The DND/CF LA has developed a comprehensive human resources plan as part of its Business Plan 2009-2010. The plan describes several items that may impact on the number of lawyers and support staff in the LSU and the assignment of work.

The Senior General Counsel and Legal Advisor stated that the DND/CF LA is on track to be adequately resourced. The business plan called for the addition of five support staff positions. Some directors identified a need for additional resources. Shortfalls are managed by juggling priorities and reassigning work. Based on client feedback and the extent to which overtime was reported in iCase, this approach was found to be working satisfactorily.

The DND/CF LA's tracking of employees' professional development requires improvement. The majority of respondents to a 2008 well-being survey undertaken by the DND/CF LA indicated that they had not received adequate training for the work they were doing. The Business Plan 2009-2010 identified increased professional development and training opportunities for career advancement as one strategy to address challenges in attracting and retaining highly skilled and motivated employees. Reports on training compiled by the DND/CF LA only include

information on courses that have an associated cost. The reports do not capture information on informal training that nonetheless meets the Department of Justice's definition of professional development. As a result, the DND/CF LA cannot ensure that its employees are receiving the required amount of professional development. A recommendation has been made to implement a process to track and report all professional development taking place in the DND/CF LA.

Performance appraisals and associated individual learning plans are completed in a timely manner for most of the DND/CF LA's lawyers and support staff. Where a performance appraisal was not conducted, there was an appropriate explanation.

Financial Resources

The financial resources provided to the DND/CF LA by the Department of Justice and DND/CF have enabled it to provide satisfactory levels of service. The DND/CF LA follows the required DND financial administrative policies and procedures. Regular reports are reviewed, reconciled, and verified. Pre- and post-verifications of transactions undertaken by DND/CF in 2009 did not identify any significant compliance issues.

Materiel Resources

DND/CF provides and maintains an inventory of the key physical assets utilized by the DND/CF LA. No losses have been reported in the last four years, with the exception of three DND-supplied laptop computers. This loss was reported to the Military Police. Locks for laptop computers were issued and their use mandated in response to the incident. Access to the DND/CF LA office suite is controlled.

Information Systems

The DND/CF LA's management uses relevant information from financial and timekeeping systems to support management decision making and accountability. Because of the security requirements associated with many of the DND/CF LA's files, it has developed its own opinion database that is used to scan and store searchable national security opinions. It has also developed a standalone database of labour and employment law opinions for use by employees excluded from collective bargaining. As a result, DND/CF LA does not provide to LOPORS some opinions of precedential value where the opinions raise issues of national security confidentiality or pertain to labour relations. Since December 2009, the DND/CF LA has been working at gathering its existing documents to input them in the Department of Justice's Legal Knowledge Portal, *Justipedia*.

Information Management

Files are opened and tracked using the Recorded Information Management System (RIMS) and are closed on a regular basis. The physical location of all files selected as part of the audit sample was consistent with the information in RIMS. Even though file creation is centralized, multiple versions of the same file are sometimes created when only one is required. There is also a lack of consistency in the way files are structured. As a result, it can take significant time to find all of the relevant information in a file. There are no formal DND/CF LA-specific written policies and procedures governing information and file management. A recommendation has been made that formal procedures for the management of information be included in the new policies and procedures manuals being developed by the DND/CF LA.

Compliance with Legislation and Policies

There is compliance with key government legislation and policies including the *Financial Administration Act* and the *Official Languages Act*.

Interfaces with Other Justice Sections

The DND/CF LA's interfaces with the Department of Justice are satisfactory.

Interfaces with the Client

The DND/CF is satisfied with the legal services provided by the DND/CF LA. The 2008 survey of the DND/CF LA generally rated the delivery of services as excellent.

The relationship between the JAG and the DND/CF LA is a continuing challenge for the DND/CF LA. According to the LSU, many within the CF, including the JAG, believe the CF should only go to the JAG for legal advice. We were told that the JAG engages the DND/CF LA at its discretion, or the client must determine who to consult: the DND/CF LA, the JAG, or both. As a result, there is a risk the client may not receive adequate and/or timely legal advice. The DND/CF LA has made efforts to reach out to its client department and explain its role. A mediator was to be appointed who would identify legal areas concerning which the DND/CF LA must be involved and when the JAG must consult with it. We understand that this initiative has not gone forward. A recommendation has been made that the state of the working relationship between the DND/CF LA and the JAG continue to be brought to the attention of senior officials in the Department of Justice.

The management responses to the recommendations contained in this report were provided by the Senior General Counsel, Office of the Legal Advisor to the Department of National Defence and the Canadian Forces.

1. INTRODUCTION

1.1 Background

The Department of Justice has established dedicated departmental legal services units (DLSUs) for most government departments and agencies. These units provide client organizations with legal advice to facilitate their operations. This audit focused on the management practices of the Office of the Legal Advisor to the Department of National Defence and the Canadian Forces (DND/CF LA), which is the legal services unit serving the DND/CF.

The Minister of Defence is responsible for the DND/CF and related organizations that together provide the core services and capabilities required to defend Canada and Canadian interests. They form an important constituency within the broader Canadian national security community. CF personnel belong to air, land, sea, and special operations components.

Strategic outcomes for the DND/CF are:

- Canadians' confidence that the DND and the CF have relevant and credible capacity to meet defence and security commitments;
- success in assigned missions in contributing to domestic and international peace, security, and stability;
- good governance, Canadian identity and influence in a global community¹.

The DND/CF LA provides legal services to the DND/CF in all areas of the law, except those related to military law, military discipline, and the military justice system for which the Office of the Judge Advocate General (JAG) is responsible.

The DND/CF LA is organized into four divisions: Litigation and Legal Advisory Services; Commercial Law Advisory Services; Public Law Advisory Services; and Support Services (e.g. finance, human resources, information technology). The DND/CF LA provides legal services on issues relating to public law (e.g. human rights, Charter of Rights, Aboriginal matters, access to

¹ Department of National Defence, *2009-2010 Report on Plans and Priorities*, p.4.

information and privacy, labour and employment law, official languages), national security law, legal risk management, contracting and procurement, environmental law, real property law, claims and civil litigation, intellectual property law, Defence Administration Orders and Directives (DAOD) drafting, and legislative support². The quality of the legal services provided to the DND/CF is of critical importance to the DND/CF's achievement of its strategic outcomes.

The DND/CF LA is part of the Public Safety, Defence and Immigration (PSDI) Portfolio of the Department of Justice. A Senior General Counsel and Legal Advisor is responsible for the DND/CF LA and is accountable to the Deputy Minister, DND for the proper management of human and financial resources made available by the DND to the DND/CF LA. The Senior General Counsel and Legal Advisor reports to the Assistant Deputy Attorney General (ADAG) of the PSDI Portfolio and is accountable to the ADAG for the proper management of human and financial resources made available to the DND/CF LA by the Department of Justice, and for the quality of legal services provided by the DND/CF LA.

Planned staffing levels for 2009-10 for the DND/CF LA were 59 Department of Justice lawyers, 11 military lawyers seconded to it from the JAG, and 41 support staff who are DND employees³. Planned expenditures for regular operations and maintenance⁴ (O&M) and salaries for 2009-10 were approximately \$11.3 million. Additional contextual information on the DND/CF LA is provided in Appendix A.

Some of the key risk factors identified in selecting the DND/CF LA for audit included the impact of the legal work on the programs and activities of the DND/CF, the appropriateness of linkages with Department of Justice organizations, the ability to respond to client demand for legal services, the level of efficiencies in the organization and in workload management, the adequacy of information for decision making, the accurate reporting of performance information, the provision of consistent legal advice, the management of electronic information, and the appropriateness of linkages with the client department.

1.2 Audit Objectives and Scope

The overall objective of this audit was to assess the framework within which the DND/CF LA delivers services to the DND/CF and to recommend improvements to this framework.

² Regulatory drafting services are provided to DND/CF by the National Defence Regulations Section, which is co-located with DND/CF LA.

³ These numbers are based on the planned staffing levels identified in the 2009-10 business plan. The organization charts provided to the audit team showed that 52 of the planned 59 lawyers' positions were filled (11 positions were filled by military lawyers) and 32 of the 41 planned support positions were filled.

⁴ The DND/CF LA also manages a budget to cover claims for damages caused by the DND/CF.

The audit team examined:

- the management framework (policies, practices, and procedures relating to planning, organizing, controlling, leading, and communicating);
- the management of human, financial, and materiel resources;
- the reliability of information systems for decision-making and accountability purposes;
- the extent of compliance of systems, procedures, and practices with key legislation, regulations, and central agency/departmental policies relating to the *Financial Administration Act*, *Official Languages Act*, employment equity, and contracting;
- the appropriateness of interfaces with other sectors in the Department of Justice;
- the appropriateness of interfaces with the client department;
- the level of client satisfaction with the services provided;
- the appropriateness of interfaces, including consultations, information sharing, planning, and forecasting, with the ADAG of the Public Safety, Defence, and Immigration Portfolio.

The audit also addressed the DND/CF LA's:

- mix of resources (including use of paralegals);
- workflow processes;
- workload management;
- forecasting of demand for legal services;
- staff recruitment and retention, and succession planning;
- risk management;
- adequacy of financial resources received from the Department of Justice and the client department;
- extent of consultation by its clients on files that could have a legal issue.

The scope of the audit included the operations and activities of the DND/CF LA. The planning and the on-site examination phases for this audit were carried out between June 2009 and February 2010.

Details concerning the audit methodology employed are outlined in Appendix B.

2. OBSERVATIONS – MANAGEMENT FRAMEWORK

2.1 Governance and Strategic Directions

The DND/CF LA has appropriately described its governance and strategic directions in its Business Plan 2009-2010.

The Treasury Board Secretariat (TBS) Management Accountability Framework considers internal coherence, corporate discipline, and alignment to outcomes essential for providing effective strategic direction, supporting the Minister and Parliament, and delivering results.

As noted earlier, the DND/CF LA is accountable to the Deputy Minister of National Defence and reports to the ADAG of the PSDI Portfolio in the Department of Justice. The lines of communication with both are good (described more fully in “Interfaces with Other Justice Sectors” and “Interfaces with the Client”). Within the DND/CF LA, the Senior General Counsel and Legal Advisor, the deputy legal advisors, and the Comptroller act as the senior management team overseeing the provision of legal services.

The DND/CF LA has clearly defined and communicated strategic directions and strategic objectives aligned with its mandate in its Business Plan 2009-2010. By providing effective and responsive legal services, the DND/CF LA contributes to the Department of Justice’s strategic outcome of a federal government that is supported by effective and responsive legal services. The range of legal services that the DND/CF LA provides also supports the achievement of the DND/CF’s strategic outcomes.

One of the DND/CF’s priorities is the *Canada First Defence Strategy* (CFDS), which is a plan to rebuild the CF through balanced investment across the four pillars upon which military capabilities are built—personnel, equipment, readiness, and infrastructure. To assist the DND/CF in achieving its commitment to the CFDS, the DND/CF LA is focusing on measures “to enhance the professional capabilities of its civilian and military personnel and facilitate networking and consultation with key stakeholders”⁵.

⁵ From the DND/CF LA’s Business Plan 2009-2010.

It is the audit team's opinion that the DND/CF LA has appropriately described its governance and strategic directions in the Business Plan 2009-2010.

2.2 Business Planning

The DND/CF LA has established and documented its objectives and priorities, and communicated them to staff as well as to the DND/CF.

Setting and documenting organizational objectives and priorities are important steps in ensuring that professional and support staff, as well as the client, clearly understand expectations.

The DND/CF LA sets its objectives and priorities during its client's annual business planning cycle. Each fall the DND/CF LA management team attends a retreat to discuss and review the DND/CF LA's pressures, its business risks, its client's risks, the client's management accountability framework and its *Report on Plans and Priorities*, and other guidance provided by the client as part of its planning cycle.

Areas of focus for 2009-10 include:

- working with the DND/CF to assist them in identifying their key legal risks and developing action plans to manage the identified risks;
- supporting the rule of law in Afghanistan;
- providing client training to promote more effective management of legal issues across the DND/CF;
- consolidating office transformation activities and leveraging them with a view to positioning the DND/CF LA as the most effective DLSU within the Government of Canada over the next five years;
- placing more emphasis on providing professional development and training, leveraging information technology, and mentoring junior personnel.

The DND/CF LA has documented its objectives and priorities in a variety of written formats—in the DND/CF LA's business and human resources plans, in a document resulting from the results of a vision-setting meeting, and in its employee orientation manual. Objectives and priorities are also communicated in retreats and meetings with DND/CF LA professional and support staff. Once the business plan is published, the DND/CF LA makes presentations on its contents to clients.

It is the audit team’s opinion that the DND/CF LA sets, documents, and communicates its objectives and priorities appropriately.

The DND/CF LA has assessed the significant risks it faces in achieving its objectives, identified mitigation strategies, and taken action to manage risks.

Management should conduct systematic analysis and communication of current risk exposure. Organizations need to have in place a formal, documented, and institutionalized risk management process, ideally tied to the planning process, to permit the assessment of and response to residual risk exposure.

The DND/CF LA’s Business Plan 2009-2010 contains a section on risks that includes mitigation strategies. Identified challenges that require risk management include the attraction and retention of employees, reduction in resources available as a result of the strategic review process, and significant unforeseen increases in demand for legal services. DND/CF LA weekly management meetings track progress on issues, risks, and the business plan’s mitigation strategies.

It is our view that the DND/CF LA’s risk management is satisfactory.

2.3 Organizing

The organization of the DND/CF LA is appropriate.

The clear delineation of responsibilities, delegated authorities, segregation of duties, and lines of communication support effective coordination between all parties within the organization to ensure that all are aware of, and comply with, their responsibilities.

At the time of the audit, the DND/CF LA, which consisted of approximately 52 DOJ lawyers, 11 JAG legal officers, and 32 support staff⁶, was in the second year of a three-year organizational transformation. This transformation was designed to assist the DND/CF in meeting its emerging and continuing challenges through better coordination of related legal issues and the enhancement of risk and knowledge management. A key element in this transformation has been a reorganization of the DND/CF LA into four divisions:

- Litigation and Legal Advisory Services;

⁶ These staffing levels are based on the actual positions filled. According to the 2009-10 business plan, the target was to have 70 lawyers (59 civilian and 11 military) and 41 support staff.

- Commercial Law Advisory Services;
- Public Law Advisory Services;
- Support Services (e.g. finance, human resources, information technology).

A Deputy Legal Advisor at the General Counsel level⁷ heads each division. The DND/CF LA has also created law practice area teams within the divisions to address specific areas of law.

It is the audit team's opinion that the DND/CF LA is appropriately organized.

Responsibilities and accountabilities in the DND/CF LA are clearly defined.

The Functional Responsibilities Matrix available on the DND/CF LA's Web site describes the key responsibilities of the law practice teams within each division. The deputy legal advisors have delegated financial and staffing authority, and overall responsibility for assigning and managing the workload in their division. Directors or team leaders reporting to the deputy legal advisors supervise the team members (e.g. lawyers, paralegals, and clerical staff directly supporting the team) on a day-to-day basis. These responsibilities are consistent with those set out in position descriptions. In interviews with the audit team, lawyers and staff described responsibilities that were consistent with the information in the Functional Responsibilities Matrix.

It is the audit team's opinion that responsibilities and accountabilities in the DND/CF LA are clearly defined.

2.4 Controlling

The DND/CF LA has published comprehensive service standards.

Management must establish performance objectives, targets, and indicators as part of the planning process.

The Department of Justice has developed a generic Service Level Agreement and generic Service Standards for the provision of legal services. According to its Business Plan 2009-2010, the DND/CF LA planned to customize these generic documents and implement them.

A draft Memorandum of Understanding (MOU) between the Department of Justice and the DND/CF for the provision of legal services between April 1, 2009 and March 31, 2014 describes

⁷ A senior (colonel) CF legal officer is one of the deputy legal advisors.

10 service standards and operational indicators for each service standard. The service standards detail the language in which services will be provided, the timeliness of response to requests for service, the establishment of deadlines for completion of service, ongoing feedback on requests for service, the provision of legislative and regulatory drafting options, involvement of the client in the development of legal strategy and positions, and identification of means to prevent and resolve legal disputes at the earliest opportunity.

It is the audit team's opinion that the DND/CF LA's service standards are satisfactory.

The DND/CF LA appropriately distributes and monitors workload.

Workload should be managed so that client requests for legal services can be processed efficiently while maintaining service quality.

Team leaders assign work to junior lawyers who are new to the DND/CF LA. More experienced or senior lawyers manage their own workload. The Director, Claims and Civil Litigation (CCL), in consultation with the senior paralegal, assigns work to paralegals, who provide litigation support and process claims made against the DND/CF. Managers (team leaders) conduct team meetings and bilateral discussions with individual lawyers to monitor workload and ensure high priority issues are being addressed. Paralegals have daily meetings to review critical issues regarding claims. While iCase reports on the utilization of personnel are available, the DND/CF LA does not use them in managing workload over the short term as the information is not sufficiently timely. (See "Information Systems".)

Lawyers stated that the DND/CF LA's workload is high and demanding, with shifting priorities and emergencies that must be dealt with on an urgent basis. Junior lawyers were most likely to state that they can become overwhelmed by the shifting priorities. Paralegals and support staff indicated that their workload varies, but that it is balanced overall. Management advised the audit team that the DND/CF LA can meet typical operational demand, but cannot readily address unexpected increases in demand for services. When this occurs, managers must adjust priorities and reassign work. Positive feedback from the client on the 2008 SPPM survey, particularly on timeliness and usefulness, supports management's perspective that the DND/CF LA can meet operational demand. Clients contacted by the audit team were also positive about the DND/CF LA's provision of services.

It is the audit team's opinion that the DND/CF LA's workload distribution and monitoring practices are appropriate.

The DND/CF LA monitors client satisfaction.

Management must review performance objectives, targets, and indicators. Processes need to be in place to monitor operational performance on an ongoing basis and feed this information back into the planning process.

As detailed in the MOU between the Department of Justice and the DND/CF, the primary measure of performance is client satisfaction. A client feedback survey developed by the Office of Strategic Planning and Performance Management (SPPM) in collaboration with Statistics Canada and the Office of the Auditor General is administered at least once every three years to measure satisfaction relative to service standards, and to provide an assessment of the quality of the legal services provided. The survey was last administered in 2008 in the DND/CF LA and showed that the DND/CF LA was generally rated as excellent. In addition to gathering formal feedback through this survey, the Department of Justice and the DND/CF also informally review and discuss, on an ongoing basis, the quality of legal services relative to the service standards and operational indicators, in order to identify opportunities for improving service.

The DND/CF LA's management team also has ongoing interactions with client executives and conducts an annual survey of individual lawyer's services that is part of the performance review and employee appraisal process.

It is the audit team's opinion that the DND/CF LA's monitoring of client satisfaction is satisfactory.

2.5 Leading and Communicating

Effective and appropriate communications are essential in any workplace. Information needs to be shared on a timely basis so that actions can be taken based on current and correct information. Furthermore, documented policies and procedures help promote the conduct of activities in a consistent, efficient, and economical manner.

Communications practices need to be assessed to ensure that information is communicated effectively to all staff.

Information is primarily communicated within the DND/CF LA through a variety of meetings (e.g. all-staff, management team, team stand-ups⁸, bilateral) and an open-door policy. Nonetheless, some lawyers raised the need for more information sharing with colleagues in the

⁸ Stand-ups are daily team meetings held to provide a status update to the team members.

LSU. The lawyers stated that, notwithstanding the meetings that take place, they lack information both on the client department and on the activities of their colleagues in other sections of the LSU. They indicated that the stand-ups focus on operational matters and the all-staff and team meetings focus more on administrative items. Lawyers advised that better legal decisions could be made if communications practices in the LSU were improved so that lawyers could exchange more information with their colleagues in other sections of the DND/CF LA.

In our view, a number of factors contribute to the need for enhanced communications practices. The DND/CF LA has both Department of Justice lawyers and military lawyers from JAG. As discussed earlier, DND/CF LA lawyers have high workload demands, which leave them little, if any, unallocated time. Also, the client department organization is particularly large and complex.⁹ We were told that Department of Justice lawyers new to the LSU have much to learn about the DND/CF organization, while JAG lawyers seconded to the LSU have much to learn about the Department of Justice. Furthermore, DND/CF LA lawyers are situated in several different offices in the National Capital Region, and space restrictions in the main office mean that some lawyers regularly telework. As a result, we were told that informal collegial dialogue is not facilitated.

In addition, the DND/CF LA does not have an employee orientation program and its current orientation manual is out-of-date. The DND/CF LA plans to publish a new orientation manual soon after the publication of an updated administrative assistants' manual early in 2010 (see below). Both documents should help those who are new to the LSU better understand the client's organization and the DND/CF LA's structure and responsibilities. The audit team is of the opinion, however, that additional measures may be needed to ensure that all lawyers and support staff have the information they require to carry out their responsibilities.

Recommendation and Management Response

- 1. It is recommended that the Senior General Counsel and Legal Advisor assess the effectiveness of the DND/CF LA's communications practices and, if necessary, implement additional communications practices.**

Agreed. The following communications practices have been put in place or will be undertaken:

⁹ According to the 2009-10 *Report on Plans and Priorities*, planned staffing levels for the CF were 69,100 Regular Force members and a primary reserve paid strength of 26,100 members for 2009-10. These military staff report to the Chief of Defence Staff. DND planned to have 28,700 civilian employees, who report to the Deputy Minister.

- Orientation Manual completed March 2010, provided to new employees, placed on the shared computer drive, will be placed on the intranet site;
- since 2008 a comprehensive training program for LA1's;
- management team "open door" policy, section meetings, directors' meetings, General Counsel meetings, lawyers' meetings, administrative staff meetings and all staff meetings ongoing;
- January 20, 2010 initiated a weekly E-newsletter;
- monthly informal "Coffee and Cake" get-togethers ongoing;
- meet separately on a regular basis with: LA-1 counsel, military lawyers (JAG legal officers on deployment to DND/CF LA), and Senior Counsel – Expert Practitioners (LA-2B Non-management);
- DND/CF LA website currently being updated (scheduled completion Fall 2010);
- effective communication will be addressed at our next Business Planning retreat September 2010, and our next all-staff meeting.

When we conduct our next well-being survey (fiscal year 2011-12), we will assess the effectiveness of these communication practices and determine whether other practices should be considered.

Plans to update the DND/CF LA's administrative manuals should proceed, and the updated manuals be communicated to all staff.

Documenting and communicating policies and procedures assist in promoting the conduct of activities in a consistent, efficient, and economical manner.

Within the DND/CF LA we found that professional staff's awareness of administrative policies and procedures varied. Many lawyers did not know whether or not a manual existed, or if one did, whether it was up-to-date. Several lawyers noted that they rely upon administrative assistants¹⁰ to conduct activities in accordance with policies and procedures. However, the lawyers further indicated that in the various sections of the DND/CF LA the same tasks (e.g. preparation of briefing notes and ministerial correspondence) are conducted differently resulting in inefficiencies. It is not known if this occurs because the administrative assistants are not familiar with the procedures set out in the manual or because the requirements have changed and the manual has not been updated. The DND/CF LA's paralegals also advised the audit team that standard operating procedures (SOP) for processing claims would be very beneficial.

¹⁰ These administrative assistants fill a similar role to that of legal assistants in other DLSUs.

The audit team was provided with the manual for administrative assistants. The manual was very detailed, containing information on a large number of administrative tasks (e.g. procedures to follow when someone is joining or leaving the LSU, booking appointments and meetings using the DND/CF electronic calendar, processing expense claims). Although the manual was out-of-date, we were told that there were plans to publish an updated version in early 2010. We were also advised that standard operating procedures (SOP) for claims were under development.

It is the audit team's view that the existence of written policies and procedures alone is not a sufficient condition for promoting the conduct of activities in a consistent, efficient, and economical manner. It is important that approved, updated procedures are communicated to all staff to assist them with their respective responsibilities.

Recommendation and Management Response

- 2. It is recommended that the Senior General Counsel and Legal Advisor ensure that plans to update the DND/CF LA's administrative manuals are implemented, and that the new/revised procedures are communicated to all DND/CF LA staff.**

Agreed. The Administrative Manual was published and provided to all administrative staff in March 2010. It will be put on our shared drive and on our intranet by Fall 2010. Standard Operating Procedures for processing claims are continuing to be developed and will be shared within the Claims and Civil Litigation section this fall. Steps have been undertaken to address inefficiencies related to the preparation and tracking of correspondence for the Deputy Minister and Minister. These procedures have been communicated by the DND/CF LA Executive Assistant to the administrative staff.

3. OBSERVATIONS – MANAGEMENT OF HUMAN, FINANCIAL, AND MATERIEL RESOURCES

TBS has established an extensive framework of policies for managing human, financial, and materiel resources. One of the requirements of these policies is that limited resources are to be managed with prudence and probity.

3.1 Human Resources

Human resources plans that support the achievement of an organization's strategic direction are a key element for organizational success. A sufficient number of people with the necessary skills to support the achievement of organizational objectives are required. An organization should therefore have controls in place to support the training and development of staff and a suitably comprehensive suite of human resources policies and practices aimed at attraction, recruitment, and retention.

The DND/CF LA developed a comprehensive human resources plan as part of its Business Plan 2009-2010.

The DND/CF LA provides detailed input to the PSDI Portfolio's human resources plan and prepares a separate human resources plan as part of the DND/CF LA's annual business plan. The human resources plan includes information on the DND/CF LA's main priorities for human resources. Key challenges are recruiting, developing, and retaining qualified personnel (in particular, civilians from DND for support positions) and providing a sufficiently graduated workforce position structure to allow for effective succession planning and career development. Results from an internal official languages training questionnaire (conducted in 2008-09) and a well-being survey (conducted in May 2008) were used to identify priority areas.

It is the audit team's opinion that the DND/CF LA's human resources planning is comprehensive.

The DND/CF LA has an appropriate mix of resources in relation to current demand for its services.

The DND/CF LA's Business Plan 2009-2010 called for the Office to consist of 59 Department of Justice lawyers, 11 JAG lawyers, and 41 DND (civilian) employees in finance, administration, records, and support staff positions, including 10 paralegals and 15 administrative assistants (who fill a role similar to that of legal assistants in other DLSUs). This represented a growth of five support staff positions from 2008-09. The majority of support staff positions were also converted from temporary to indeterminate positions.

At the time of the audit, the Senior General Counsel and Legal Advisor stated that the DND/CF LA is on track to be resourced adequately in relation to its current demand and that no trade-offs are needed. The DND/CF has a ratio of less than five lawyers for every administrative assistant. Within individual divisions, the ratio of lawyers to administrative assistants varies.

Some directors told us that there was a need for additional resources, either lawyers or support staff, and that they manage shortfalls by juggling priorities and reassigning work. This approach was found to be working satisfactorily, as clients contacted by the audit team stated that service from the DND/CF LA has been efficient, timely, thorough, and professional. These testimonials mirror the findings of the SPPM 2008 Client Feedback Survey. Furthermore, our examination of time reporting in iCase found that regular overtime required for members of the management team (i.e. team leaders and above) or lawyers in positions classified at the same level was not excessive (an hour a day or more on average). We found only one exception to this pattern.

It is the audit team's view that the DND/CF LA's mix of resources is appropriate.

The DND/CF LA's tracking of employees' professional development requires improvement.

The Department of Justice's *Learning Policy* states that every employee shall receive at least five days of professional development per year. As defined in the policy, professional development encompasses a wide range of activities, including classroom training, formal education, conferences, seminars/workshops, practice forums, practice groups, coaching, mentoring, short-term assignments, secondments, job shadowing, job rotation, and reading.

The DND/CF LA has responded to concerns raised by staff in the 2008 well-being survey. The majority of respondents indicated that they had not received adequate training for the work they were doing. The Business Plan 2009-2010 identified increased professional development and

training opportunities for career advancement as one strategy to address challenges in attracting and retaining highly skilled and motivated employees.

Lawyers stated that professional development is encouraged and that there is a training budget (per lawyer) for external courses and conferences. However, lawyers noted that finding appropriate external courses and, critically, the time to attend them given the operational workload can be problematic. Time constraints also present challenges to paralegals, administrative assistants, and other support staff. Nonetheless, according to the DND/CF LA's Business Plan 2009-2010, 96 percent of the support staff who are required to have an Individual Learning Plan (ILP) have completed their current plan. JAG lawyers seconded to the DND/CF LA stated that the availability of legal training in the Department of Justice was superior to that in the DND/CF.

In accordance with the departmental *Learning Policy*, DND/CF LA management are responsible for reporting on three key learning performance indicators. These include the percentage of base salary invested in learning, percentage of Department employees with individual learning plans, and the percentage of employees receiving a minimum of five days of professional development per year. The DND/CF LA management appropriately reports on the first two of these indicators. However, although the DND/CF LA maintains a list of the courses taken by each employee for each fiscal year, the report currently compiled includes for the third performance indicator only those courses taken by staff that have an associated cost. The report does not capture informal training taken such as coaching, mentoring, short-term assignments, secondments, job rotation, and reading. As indicated above, these are all professional development as defined within the *Learning Policy*.

In the absence of thorough tracking of all professional development activities taking place in the Office, the DND/CF LA cannot ensure that its employees are receiving the required amount of professional development. It is also not compliant with the Department of Justice *Learning Policy*.

Recommendation and Management Response

- 3. It is recommended that the Senior General Counsel and Legal Advisor implement a process to track and report all professional development taking place in the DND/CF LA.**

Agreed. We have initiated procedures in January 2010 to track all professional training whether or not there is a cost. This procedure is still being refined so as to increase

efficiency. We have also begun to track professional training given internally and to report this to the portfolio. We have reminded all counsel and paralegals to record their time in relation to both training received and training provided in the specific files provided in iCase for such purpose. We have informed our lawyers and paralegals that the Department of Justice wants not only time spent for formal training and professional development courses recorded, but also time spent for other professional development opportunities (e.g. mentoring, reading the law, professional developmental secondments, and job-shadowing). By September clarified instructions will be provided to staff about the procedures to be followed for recording all time for professional development in iCase. I have also instituted a procedure with our Human Resources Section to record other professional development opportunities (e.g. secondments, job-shadowing, short-term assignments, and job-rotation).

Performance appraisals are completed in a timely manner.

Performance appraisals for all DND/CF LA staff should be prepared annually. Appraisals are important tools for setting objectives, providing feedback on performance, and identifying training requirements.

The audit team was provided with a list of all the performance appraisals conducted for 2008-09 for both Department of Justice and DND/CF employees. Where a performance appraisal was not conducted, there was an explanation (e.g. employee on sick leave, leave without pay, maternity leave). We confirmed that all performance reviews and employee appraisals conducted were received at the Department of Justice. ILPs have been completed for both Department of Justice and DND/CF employees.

3.2 Financial Resources

The financial resources provided to the DND/CF LA by the Department of Justice and its client department have enabled it to provide satisfactory levels of service.

Like most DLSUs, the DND/CF LA receives funding from the Department of Justice A-Base and from its client. Almost 85 percent of the salary costs for lawyers, all of the salary costs for support staff, and all of the regular O&M budget are provided by the DND/CF. Planned expenditures for regular O&M and salaries for 2009-10 were approximately \$11.3 million. (The DND/CF LA also manages a budget to cover claims for damages caused by the CF.)

In its Business Plan 2008-2009, the DND/CF LA identified requirements to create two new senior legal manager positions. The Business Plan 2009-2010 identified requirements for five additional support staff positions as well as for the reclassification of seven other support staff

positions to a higher level. The senior legal manager positions were staffed by the time our on-site examination phase had started, and the support staff positions were being filled during that phase of the audit.

The Senior General Counsel and Legal Advisor advised the audit team that most of the resourcing that the DND/CF LA identified as necessary was complete, and that the LSU was on track to be resourced adequately in relation to the current demand for legal services.

The audit team is of the opinion that the DND/CF is adequately resourced to provide satisfactory levels of service to its client department.

The DND/CF LA follows the required DND financial administration policies and procedures.

The DND/CF, with over 90,000 full-time equivalent (FTE) staff across Canada and around the world, has a very decentralized financial management system. Therefore, in following DND financial administration policies and procedures, the DND/CF LA can have O&M expenditures processed against its budget for legal staff who are on travel status or deployed in international operations. The largest O&M expenditures tend to be associated with payments related to claims.

The DND/CF has implemented pre- and post-verifications of transactions based on the perceived risk. The organization of the DND Assistant Deputy Minister (ADM) Finance and Corporate Services regularly reviews credit card invoices, claims, and travel expenditures. Any procurements and associated invoices that cannot be paid for with a corporate credit card are processed by the organization of the DND ADM Materiel. Some areas where procedures and control mechanisms needed to be corrected to comply with policy had been identified in 2007 and 2008. However, reports prepared for the DND/CF LA by these organizations in 2009 did not identify any significant compliance issues.

The DND Chief, Review Services, who is responsible for internal audit and evaluation, has also implemented a continuous auditing regime to provide ongoing assurance on the adequacy of the financial controls within the DND/CF.

The audit team is of the opinion that the DND/CF LA is following the required financial administration policies and procedures.

3.3 Materiel Resources

Key physical assets are protected in an appropriate manner.

The DND/CF LA's key physical assets are provided by the DND/CF, which is also responsible for keeping an inventory of these assets. When items are purchased, the DND ADM Materiel's organization is responsible for ensuring that these items are inventoried. No losses have been reported in the last four years, with the exception of three DND-supplied laptop computers. The loss was reported to the Military Police at that time. Locks for laptop computers were issued and their use mandated in response to the incident.

Moreover, adequate measures are in place to protect the DND/CF LA's assets. The DND/CF LA is housed in a secure DND/CF building. All visitors must present themselves to a reception desk on the ground floor. Reception staff verify the visitor's identity (a photo ID must be surrendered in exchange for a badge). Reception staff also call the appropriate DND/CF LA staff member to verify the appointment. Visitors are escorted to and from the DND/CF LA's suite of offices and must swipe their visitor's badge on entry and exit to the elevators. Signs in the building's lobby notify visitors that they may be subject to search as a condition of going to office floors.

We are of the opinion that the measures taken by the DND/CF LA to protect key physical assets are appropriate.

4. OBSERVATIONS – INFORMATION SYSTEMS

4.1 Information Systems

The DND/CF LA relies on DND and Department of Justice information systems for decision-making and accountability purposes.

Management requires reliable and timely information on which to base decisions and provide accountability. A significant amount of that information comes from various computerized information systems.

The DND/CF LA receives regular financial reports produced by the Department of Justice's Salary Management System (SMS) and the DND Financial and Managerial Accounting System (FMAS). The DND/CF LA's Comptroller reviews these reports to ensure that they are accurate. Correcting entries are submitted when errors are found. The Comptroller reviews the SMS report, in particular, with the senior management team to ensure that all have a clear understanding of the DND/CF LA's incurred expenditures in relation to the planned budget.

The DND/CF LA receives regular iCase reports on the amount of time lawyers spend on different files. The audit team was advised that lawyers are much more diligent about recording their time on a monthly basis in iCase since 2009, when performance information started to be included in the annual business plan. We found in our review of iCase reports that the information was complete, with the single exception of a military lawyer who frequently travelled. Since these reports track time spent by lawyers on files on an after-the-fact basis, the DND/CF LA does not use them to manage workload over the short-term. However, it was noted that they could be used to support requests for additional resources.

Because the Legal Opinions and Precedents On-Line Retrieval System (LOPORS) is not suitable for national security files that require a high level of clearance, the DND/CF LA saves fewer opinions of precedential value than it might otherwise do. Instead, the DND/CF LA has developed a standalone Knowledge Management system premised on a secure database (two

removable, TEMPEST¹¹ hard-disk drives on a TEMPEST computer) that can scan and store searchable national security opinions. According to the May 4, 2010 update from the Law Practice Management Committee (LPMC), the DND/CF LA became involved in the Department of Justice's pilot of *Justipedia*¹², the Legal Knowledge Portal, subsequent to the LPMC's December 2009 update.

The DND/CF LA is also developing a database of labour and employment law opinions for use by lawyers who occupy positions that are excluded from collective bargaining. In conjunction with consultation with colleagues and appropriate experts elsewhere in the Department (e.g. in the Public Law Sector) and appropriate review of legal advice by senior lawyers, information in these databases assists in ensuring consistency in the legal advice provided.

It is the audit team's opinion that the DND/CF LA can rely on the information in its key systems for decision-making and accountability purposes.

4.2 Security of Electronic Information

The DND/CF LA has taken reasonable steps to ensure the security of its electronic information.

Electronic information is very transportable and can be easily compromised without an obvious indication. It is important that appropriate physical and logical security¹³ controls be in place to ensure that electronic information is protected.

Networked computers within the DND/CF LA are subject to controls implemented by the DND/CF. The key risk occurs when information is transported on laptops or electronic storage devices, or transmitted electronically.

The DND/CF LA places considerable emphasis on the security of electronic information and provides periodic presentations on security. An April 2009 presentation examined such topics as laptop physical security, spam, encryption, protected vs. classified information, solicitor-client

¹¹ Most electronic equipment radiates electromagnetic signals into free space or surrounding conductive objects such as metal cabinets, wires and pipes. Equipment that meets TEMPEST requirements have extra shielding in order to keep data signals from escaping and being picked up by unauthorized listeners.

¹² The purpose of *Justipedia* is to consolidate all existing knowledge-related systems and repositories (e.g. Gaspard, LOPORS, ARN) into a single integrated portal providing easy and dependable access to legal opinions, precedents, models case law, and other legal reference materials as well as a directory of expertise. In October 2009, it was launched as a pilot for the correctional law community.

¹³ Logical security consists of software safeguards such as user identification and password access, authentication, access rights, and authority levels to ensure that only authorized users are able to perform actions or access information in a network.

privilege, electronic transmission of protected or classified information, electronic file storage, removable media, and destruction of removable media.

The audit team is of the opinion that the DND/CF LA has taken reasonable measures to ensure the security of its electronic information.

4.3 Information Management

The DND/CF LA's file management practices are generally appropriate but require some improvements.

The efficient management of legal files and records is critical for any legal practice so that relevant information and precedents can be quickly retrieved.

The DND/CF LA's records office opens new files as requested¹⁴, enters the required information in the Recorded Information Management System (RIMS), prints labels for file folders, and provides them to the lawyers¹⁵. Lawyers advise the records office when a file is closed.

Even though file creation is centralized, multiple versions of the same files are sometimes created (e.g. one file for a claim and one for labour relations when they both relate to the same incident) when only one is required. The audit team was told that there are no formal DND/CF LA-specific written policies and procedures governing information and file management. Neither the current employee orientation nor administrative manuals contain sections on information and file management. The DND/CF LA's records staff stated that they provide new employees with information on filing based on Department of Justice and DND guidelines.

The audit team is of the opinion that the lack of formal DND/CF LA-specific written procedures on information and file management also contributes to the lack of consistency in the way files are structured. We were told that it sometimes takes significant time to find all the relevant information in a file or claim, or even to determine its stage of progress (e.g. pleading or research).

The DND/CF LA's records staff follow a regular cycle to ensure that only required files are kept on site and that closed files are moved off site. Archived material is kept on site for three years. Closed files are kept in a storage room in the building or an off-site secure facility. Each year, the records office transfers one year's worth of files to the appropriate location, with older material

¹⁴ A request to open a file can be made by a lawyer, paralegal, and/or administrative staff on their behalf.

¹⁵ At the off-site satellite offices, legal assistants print the labels on site but the records office opens the file in RIMS.

going to Library and Archives Canada (LAC). The records office uses RIMS to track the location of files (i.e. the records room, storage, or LAC). We were told that during an annual records clean-up day, the entire LSU goes through its filing cabinets to identify material that can be archived or destroyed. We were also told that there is a yearly self-review to ensure that files are being stored where they are recorded as being located.

A sample of active files was selected as part of our audit to verify that the files were located where they were recorded as being in RIMS. We found that all files could be traced from the file room to RIMS or from RIMS to their location.

The audit team is of the opinion that many of the processes used by the DND/CF LA to open, store, and archive its legal files are appropriate. Improvements are required, however, to reduce the likelihood of duplicate files and to facilitate the expeditious retrieval of key information from files by different users.

Recommendation and Management Response

- 4. It is recommended that the Senior General Counsel and Legal Advisor ensure that the new policies and procedures manuals being developed by the DND/CF LA include formal procedures for the management of information assets.**

Agreed. DND/CF LA is bound by and complies with legislative requirements as well as Justice protocols with respect to information and file management. Lawyers and paralegals are responsible for opening and closing files. As part of orientation, DND/CF LA will ensure that all lawyers, paralegals, and support staff are aware of procedures for opening and closing files, including cross-referencing files where appropriate. This information will also be made available on the DND/CF LA intranet site.

5. OBSERVATIONS – COMPLIANCE WITH LEGISLATION AND POLICIES

There is compliance with key government legislation and policies.

The DND processes the DND/CF LA's O&M-related transactions, including all procurements valued at \$5,000 or more. Based on pre- and post-transactional processing testing undertaken by the ADM Finance and Corporate Service's organization in 2009, the DND/CF was found to be in compliance with the requirements of the *Financial Administration Act*. No significant issues were identified that the DND/CF LA needed to address.

The DND/CF LA complies with the requirements of the *Official Languages Act*. Services are provided to the client in the language of choice, and many of the staff are bilingual. Audit team meetings with DND/CF LA's lawyers alternated between discussions in English and French. There are visible minorities working in the DND/CF LA and the 2009-2010 Business Plan notes that there are no gaps in any designated employment equity groups.

It is the opinion of the audit team that the DND/CF LA is in compliance with these key government legislative and central agency policy requirements governing its operations.

6. OBSERVATIONS – INTERFACES WITH OTHER JUSTICE SECTORS

The DND/CF LA's interfaces with the Department of Justice are satisfactory.

DND/CF LA lawyers described their interfaces with the Department of Justice as professional and helpful. DND/CF LA management advised us that these interfaces are appropriate. Interviews with a sample of departmental representatives corroborated these views of the interactions. PSDI Portfolio representatives stated that the relationship with the DND/CF LA is good, despite the fact that they have assigned new tasks to the DND/CF LA that it was not required to carry out when it was part of the Business and Regulatory Law Portfolio. The PSDI Portfolio Office further indicated that both the quality and timeliness of input from the DND/CF LA are good.

It is the audit team's opinion that the DND/CF LA's interfaces with the Department are satisfactory.

7. OBSERVATIONS – INTERFACES WITH THE CLIENT

The DND/CF is satisfied with the legal services provided by the DND/CF LA.

Respondents to the 2008 SPPM Client Feedback Survey who reported using Department of Justice legal services in the 12 months preceding the survey generally rated the delivery of these services as excellent. Individual ratings for responsiveness, usefulness, timeliness, and non-criminal litigation met or surpassed the departmental target. The survey report also identified a best practice that had been implemented by the DND/CF LA: a legal risk awareness program that involves both on-line and classroom components.

A sample of client representatives interviewed by the audit team stated that service from the DND/CF LA has always been efficient, timely, thorough, and professional.

It is the audit team's opinion that the DND/CF LA's services to its client department are satisfactory.

Appropriate interfaces exist with the client department, but the relationship between the JAG and the DND/CF LA is a continuing challenge for the DND/CF LA and for some of its clients.

The Senior General Counsel and Legal Advisor of the DND/CF LA is a member of the DND Departmental Executive Committee and the Departmental Management Committee. She also sits on a number of ADM-level committees in the DND. She stated that she has a good relationship with the DND Deputy Minister and with the DND ADMs to whom the DND/CF LA provides services. Interviews with client ADMs corroborated this.

Despite these relationships, the DND/CF LA has limited visibility within the CF. For example, it has no presence on CF bases. There is also an ongoing difference of opinion with the JAG concerning the split of responsibilities between the DND/CF LA and the JAG for providing legal services to the DND/CF. The DND/CF LA receives requests for legal services both directly from clients within DND/CF and from the JAG. According to the LSU, many within the CF, including the JAG, believe the CF should only go to the JAG for legal advice. The JAG, in turn, will

involve the DND/CF LA if it thinks it is appropriate. Clients contacted during the course of the audit corroborated this. They noted that the JAG does not engage the DND/CF LA except at its discretion, or the client must determine who best to consult: the DND/CF LA, the JAG, or both. In one case, a civilian reporting to a military officer indicated that he had been instructed to deal only with the JAG and not to consult the DND/CF LA directly.

Because the JAG specializes in military law and military justice, in our view there is a risk that it will not fully appreciate that some files have other legal implications with respect to which the DND/CF LA should be consulted. Furthermore, clients may mistakenly contact the JAG for advice on issues of domestic law when they should consult the DND/CF LA. In both situations, the client is at risk of not receiving adequate and/or timely legal advice.

We were told that when the DND/CF LA is consulted by the JAG, it is often on a last-minute, urgent basis. This creates problems of low morale in the DND/CF LA, as well as challenges in managing operational workload.

The DND/CF LA has made efforts to reach out to its client department and explain its role and potential contribution to the DND/CF. Its legal risk awareness program, for example, has provided training to over 6,000 DND/CF employees since its inception. Despite these efforts, the relationship between the DND/CF LA and the JAG remains strained. In an effort to reduce the strain, senior management in the DND/CF planned an initiative to clarify the respective responsibilities of the two units. A mediator was to be appointed who would identify legal areas concerning which the DND/CF LA must be involved and when the JAG must consult with it. We were told that this initiative has not gone forward. However, interviews with client representatives within the DND/CF revealed that some are concerned by the lack of clearly understood responsibilities between the DND/CF LA and the JAG.

It is our opinion that while appropriate interfaces exist with the client department, the relationship between the JAG and the DND/CF LA is a continuing challenge for the DND/CF LA and for some of its clients. Ongoing efforts will be necessary to resolve this issue.

Recommendation and Management Response

- 5. It is recommended that the Senior General Counsel and Legal Advisor continue to bring the state of the working relationship between the DND/CF LA and the JAG to the attention of senior officials in the Department of Justice.**

Agreed. Senior officials at the Department of Justice and the Department of National Defence and the Canadian Forces are aware of this issue and discussions continue. In the

meanwhile legal analysis has been undertaken of the respective statutory roles of JAG and DOJ and comparative analysis is underway of how counterpart organizations function in other partner countries.

In the meantime, also, DND/CF LA seeks to improve relations and communications with JAG lawyers by working collaboratively with JAG officers and DOJ counsel on legal advice, having regular meetings between the JAG and the DND/CF LA, ensuring that DOJ speaks with one voice when advising the DND/CF client, and by sharing training opportunities and participating in joint social activities with JAG.

8. OBSERVATIONS, RECOMMENDATIONS AND MANAGEMENT RESPONSES

The DND/CF LA has appropriately described its governance and strategic directions in its Business Plan 2009-2010.

The DND/CF LA has established and documented its objectives and priorities, and communicated them to staff as well as to the DND/CF.

The DND/CF LA has assessed the significant risks it faces in achieving its objectives, identified mitigation strategies, and taken action to manage risks.

The organization of the DND/CF LA is appropriate.

Responsibilities and accountabilities in the DND/CF LA are clearly defined.

The DND/CF LA has published comprehensive service standards.

The DND/CF LA appropriately distributes and monitors workload.

The DND/CF LA monitors client satisfaction.

Communications practices need to be assessed to ensure that information is communicated effectively to all staff.

- 1. It is recommended that the Senior General Counsel and Legal Advisor assess the effectiveness of the DND/CF LA’s communications practices and, if necessary, implement additional communications practices.....11**

Agreed. The following communications practices have been put in place or will be undertaken:

- Orientation Manual completed March 2010, provided to new employees, placed on the shared computer drive, will be placed on the intranet site;
- since 2008 a comprehensive training program for LA1's;
- management team "open door" policy, section meetings, directors' meetings, General Counsel meetings, lawyers' meetings, administrative staff meetings and all staff meetings ongoing;
- January 20, 2010 initiated a weekly E-newsletter;
- monthly informal "Coffee and Cake" get-togethers ongoing;
- meet separately on a regular basis with: LA-1 counsel, military lawyers (JAG legal officers on deployment to DND/CF LA), and Senior Counsel – Expert Practitioners (LA-2B Non-management);
- DND/CF LA website currently being updated (scheduled completion Fall 2010);
- effective communication will be addressed at our next Business Planning retreat September 2010, and our next all-staff meeting.

When we conduct our next well-being survey (fiscal year 2011-12), we will assess the effectiveness of these communication practices and determine whether other practices should be considered.

Plans to update the DND/CF LA's administrative manuals should proceed, and the updated manuals be communicated to all staff.

- 2. It is recommended that the Senior General Counsel and Legal Advisor ensure that plans to update the DND/CF LA's administrative manuals are implemented, and that the new/revised procedures are communicated to all DND/CF LA staff.13**

Agreed. The Administrative Manual was published and provided to all administrative staff in March 2010. It will be put on our shared drive and on our intranet by Fall 2010. Standard Operating Procedures for processing claims are continuing to be developed and will be shared within the Claims and Civil Litigation section this fall. Steps have been undertaken to address inefficiencies related to the preparation and tracking of correspondence for the Deputy Minister and Minister. These procedures have been communicated by the DND/CF LA Executive Assistant to the administrative staff.

The DND/CF LA developed a comprehensive human resources plan as part of its Business Plan 2009-2010.

The DND/CF LA has an appropriate mix of resources in relation to current demand for its services.

The DND/CF LA's tracking of employees' professional development requires improvement.

3. It is recommended that the Senior General Counsel and Legal Advisor implement a process to track and report all professional development taking place in the DND/CF LA.....17

Agreed. We have initiated procedures in January 2010 to track all professional training whether or not there is a cost. This procedure is still being refined so as to increase efficiency. We have also begun to track professional training given internally and to report this to the portfolio. We have reminded all counsel and paralegals to record their time in relation to both training received and training provided in the specific files provided in iCase for such purpose. We have informed our lawyers and paralegals that the Department of Justice wants not only time spent for formal training and professional development courses recorded, but also time spent for other professional development opportunities (e.g. mentoring, reading the law, professional developmental secondments, and job-shadowing). By September clarified instructions will be provided to staff about the procedures to be followed for recording all time for professional development in iCase. I have also instituted a procedure with our Human Resources Section to record other professional development opportunities (e.g. secondments, job-shadowing, short-term assignments, and job-rotation).

Performance appraisals are completed in a timely manner.

The financial resources provided to the DND/CF LA by the Department of Justice and its client department have enabled it to provide satisfactory levels of service.

The DND/CF LA follows the required DND financial administration policies and procedures.

Key physical assets are protected in an appropriate manner.

The DND/CF LA relies on DND and Department of Justice information systems for decision-making and accountability purposes.

The DND/CF LA has taken reasonable steps to ensure the security of its electronic information.

The DND/CF LA's file management practices are generally appropriate but require some improvements.

- 4. It is recommended that the Senior General Counsel and Legal Advisor ensure that the new policies and procedures manuals being developed by the DND/CF LA include formal procedures for the management of information assets.....24**

Agreed. DND/CF LA is bound by and complies with legislative requirements as well as Justice protocols with respect to information and file management. Lawyers and paralegals are responsible for opening and closing files. As part of orientation, DND/CF LA will ensure that all lawyers, paralegals, and support staff are aware of procedures for opening and closing files, including cross-referencing files where appropriate. This information will also be made available on the DND/CF LA intranet site.

There is compliance with key government legislation and policies.

The DND/CF LA's interfaces with the Department of Justice are satisfactory.

The DND/CF is satisfied with the legal services provided by the DND/CF LA.

Appropriate interfaces exist with the client department, but the relationship between the JAG and the DND/CF LA is a continuing challenge for the DND/CF LA and for some of its clients.

- 5. It is recommended that the Senior General Counsel and Legal Advisor continue to bring the state of the working relationship between the DND/CF LA and the JAG to the attention of senior officials in the Department of Justice.....30**

Agreed. Senior officials at the Department of Justice and the Department of National Defence and the Canadian Forces are aware of this issue and discussions continue. In the meanwhile legal analysis has been undertaken of the respective statutory roles of JAG and DOJ and comparative analysis is underway of how counterpart organizations function in other partner countries.

In the meantime, also, DND/CF LA seeks to improve relations and communications with JAG lawyers by working collaboratively with JAG officers and DOJ counsel on legal advice, having regular meetings between the JAG and the DND/CF LA, ensuring that DOJ speaks with one voice when advising the DND/CF client, and by sharing training opportunities and participating in joint social activities with JAG.

APPENDIX A – CONTEXTUAL INFORMATION

Departmental legal services units (DLSUs) are responsible for providing client organizations with legal advice and assistance to facilitate their operations, and ensuring that their policies, programs, and operations conform to the law. The DLSUs interact with other sectors of the Department of Justice with respect to litigation that their clients may be involved in, and to obtain advice on specialized matters, such as compliance with the Canadian Charter of Rights and Freedoms.

A close relationship typically develops between DLSUs and their clients. DLSUs are generally located in the same building as the client's senior management team. Most DLSU heads regularly attend their client's departmental management committee meetings.

The DND/CF LA in the DND/CF was established in 1998 as a hybrid organization. Unlike other DLSUs, not all of the DND/CF LA's lawyers are Department of Justice employees. Instead, the DND/CF LA is staffed by Department of Justice lawyers, CF military lawyers from the JAG, and DND civilian employees.

The costs of the Department of Justice's DND/CF LA lawyers are covered by a TB-approved rate structure formula that applies across government to all DLSUs. All Department of Justice lawyers working in the DND/CF LA are costed according to this rate structure, whether they are classed as funded by the Department of Justice or funded by the client. This allows a total cost for all such lawyers working in each DLSU to be calculated. The DND/CF LA A-Base is then subtracted from that total cost, and the client department is billed quarterly for the difference.

The client department is also billed for services provided via the DND/CF LA by lawyers in the Department of Justice's headquarters units, such as the Constitutional and Administrative Law Section. In addition, the client directly funds the salaries of the support staff and furnishes office materials, supplies, and accommodation.

APPENDIX B – METHODOLOGY

The criteria for the audit were based on:

- the TBS Management Accountability Framework
- the Canadian Institute of Chartered Accountants' *Guidance on Control*
- other TBS guidance on auditing management frameworks

Information for this audit was obtained employing the following methods:

- a review of relevant documentation concerning the operations of the DND/CF LA;
- interviews and focus groups with management, staff and legal counsel (JAG and DOJ) of the DND/CF LA, and with management within the Department of Justice's PSDI Portfolio;
- requests for information from others within the Department of Justice (Human Resources and Professional Development Directorate);
- telephone interviews with client and Department of Justice representatives.