

PUBLIC ORDER EMERGENCY COMMISSION

INSTITUTIONAL REPORT – DEPARTMENT OF NATIONAL DEFENCE

1.0 DEPARTMENT OVERVIEW

A. Responsibilities as a department

1. The Department of National Defence (DND) is the department of the Government of Canada which supports the Canadian Armed Forces (CAF) in its role of defending Canadian national interests domestically and internationally. While the *National Defence Act (NDA)* establishes DND and the CAF as two separate and distinct entities, the two cooperate closely together in the delivery of the Defence mandate. DND is the largest department of the Government of Canada in terms of operational budget, and it has an expansive infrastructure, including various defence establishments across Canada and globally.

B. Organizational and Reporting Structure

2. The Governor General of Canada is the Commander-in-Chief of Canada. DND is led by the Minister of National Defence, a federal Cabinet Minister. The Associate Minister of National Defence supports the Minister of National Defence and is also a federal Cabinet Minister. The Deputy Minister of National Defence, Mr. Bill Matthews, is DND's senior civil servant.
3. The Minister of National Defence has legal responsibility and is accountable to Parliament for the *Visiting Forces Act*, the *Aeronautics Act* (in relation to defence), the *Canadian Forces Superannuation Act*, the *Garnishment Attachment and Pension Diversion Act* as it applies to the CAF and the *Pension Benefit Division Act* as it applies to the *Canadian Forces Superannuation Act*, and the *Community Security Establishment Act*.
4. Under section 4 of the *National Defence Act*, the Minister presides over DND and has the management and direction of the CAF and of all matters relating to national defence. The Minister is also responsible for the construction and maintenance of all defence establishments for the defence of Canada, as well as research relating to the defence of Canada.
5. The Deputy Minister is authorized by law to undertake, on the Minister's behalf, any of the Minister's duties, except making regulations or exercising powers the Minister must do personally. In so doing, the Deputy Minister is subject to the Minister's direction. However, the Deputy Minister does not act for the Minister with respect to control and administration of the CAF – this role is assigned to the Chief of the Defence Staff, as explained further below.
6. The Deputy Minister is responsible for the day-to-day management of DND on behalf of the Minister and for formulating advice for the Minister on policy matters. More

specifically, within the priorities, objectives and standards established by the Government, the Deputy Minister provides advice on the possible impact of initiatives on the public, the Department, and the Government. In managing the Department, the Deputy Minister is responsible for interdepartmental coordination in policy development and decision-making, public service renewal, and conducting international defence relations and the non-military aspects of engagement with multilateral organizations (e.g., the United Nations, the North Atlantic Treaty Organization and the North American Aerospace Defense Command).

7. The Chief of the Defence Staff serves as the primary military advisor to the Prime Minister, Cabinet and the Minister of National Defence, and is the most senior officer in the CAF. As noted above, the CAF is a separate entity from DND. Subject to the regulations in the *National Defence Act*, and under the direction of the Minister, under section 18, the Chief of the Defence Staff is charged with the control and administration of the CAF. Unless the Governor in Council otherwise directs, all orders and instructions to the CAF that are required to give effect to the decisions, and carry out the directions, of the Government of Canada or the Minister shall be issued by or through the Chief of the Defence Staff.
8. The Chief of the Defence Staff is also the commander of the CAF (while the Governor General of Canada is the Commander-in-Chief of the CAF). In this role, the Chief of the Defence Staff is responsible for all CAF operations and readiness, as well as their ability to fulfill the military commitments and obligations of the Government. The Chief of the Defence Staff advises the Minister on all of these matters. When required, the Chief of the Defence Staff advises the Prime Minister and Cabinet directly on major military developments, operations, and readiness. In addition, the Chief of the Defence Staff attends regular cabinet meetings on mission renewals, Incident Response Groups and any other meetings requested by the Minister.
9. The Chief of the Defence Staff has a role in international defence and military-to-military relations. The Chief of the Defence Staff also has a role in advising other departments on the military implications of decisions within the security and defence sphere, which require enhanced coordination between the military and other government departments within the national security community.
10. The integrated National Defence Headquarters supports the Deputy Minister and Chief of the Defence Staff in the execution of their duties. Senior advisors have direct accountabilities to the Minister of National Defence, the Deputy Minister and the Chief of the Defence Staff for the activities they perform.

2.0 ROLE IN RESPONSE TO THE BLOCKADES AND PROTESTS

11. In general, DND/CAF played a very limited supporting role to other departments and agencies during the response to the blockades and protests.

A. Legal Authorities in Aid of the Civil Power and for Public Service Support to Civil Authorities

12. There are several mechanisms available under the *NDA* by which the CAF may be called upon to provide support to civil authorities in appropriate circumstances.
13. The most commonly used provisions relate to the provision of “public service” support under *NDA* section 273.6(1), and the provision of assistance with respect to law enforcement matters under *NDA* section 273.6(2). Aid of the Civil Power (ACP) under Part VI of the *NDA* is very rarely used; the Oka crisis is the most known and most recent example of the use of ACP. These provisions are described in greater detail below.

B. Aid of the Civil Power

14. Part VI of the *NDA* – Aid of the Civil Power – section 275 provides that the CAF is liable to be called out for service in aid of the civil power when:
 - a. there is riot or disturbance of the peace occurring, or in the opinion of the relevant provincial attorney general, considered as likely to occur; and
 - b. the situation is beyond the powers of civil authorities to suppress, prevent or deal with, and thus is assessed to require the assistance of the CAF to resolve.
15. It is important to note that CAF engagement for ACP service can only be requisitioned by provincial authorities. The attorney general of the province in which a riot or disturbance is occurring, or is likely to occur, may requisition the support of the CAF in writing to the Chief of the Defence Staff.
16. On receiving a written requisition, the Chief of the Defence Staff shall, subject to such directions as the Minister of National Defence considers appropriate in the circumstances, and in consultation with the requesting provincial attorney general and the provincial attorney general of any other province(s) that might be affected, call out such part of the CAF that the Chief of Defence Staff considers necessary for the purpose of suppressing or preventing any riot or disturbance.¹ There is a specific form of requisition that must be utilized in the delivery of the request.
17. Pursuant to section 281 of the *NDA*, the relevant attorney general must, within seven (7) days of making a requisition, cause an inquiry to be made into the circumstances requiring the call-out of the CAF on ACP service, and subsequently send a report on the circumstances to a federal Minister designated by the Governor in Council.²
18. Finally, section 285 of the *NDA* stipulates that the costs occasioned by the calling out the CAF on ACP service, and for the services rendered by the CAF, shall be paid out of the Consolidated Revenue Fund.

¹ *National Defence Act*, section 277.

² *National Defence Act*, section 281.

19. This authority is rarely utilized and rests with the provincial attorney generals to requisition.

C. Public Service

20. A key authority for domestic operations is set out in section 273.6 of the *NDA* under the heading of “Public Service”, which came into force in 1999. This section states that:

273.6 (1) Subject to subsection (2), the Governor in Council or the Minister may authorize the Canadian Forces to perform any duty involving public service.

(2) The Governor in Council, or the Minister on the request of the Minister of Public Safety and Emergency Preparedness or any other Minister, may issue directions authorizing the Canadian Forces to provide assistance in respect of any law enforcement matter if the Governor in Council or the Minister, as the case may be, considers that

(a) the assistance is in the national interest; and

(b) the matter cannot be effectively dealt with except with the assistance of the Canadian Forces.

(3) Subsection (2) does not apply in respect of assistance that is of a minor nature and limited to logistical, technical or administrative support.

(4) The authority of the Minister under this section is subject to any directions issued by the Governor in Council.

i. 273.6(1): “Any duty involving public service”

21. Subsection 273.6(1) provides the Government of Canada with authority to assist in the performance of any duty involving public service. However, subsection 273.6(1) does not apply to the provision of CAF assistance in relation to law enforcement matters. Unlike the ACP provisions described above, subsection 273.6(1) does not involve assisting provinces with circumstances involving riots or disturbance of the peace. Historically, “any duty involving public service” has captured a wide range of authorized CAF support to other government departments and agencies (both federal and provincial), including operations related to support to requesting provincial and federal authorities in the cases of disaster response such as for floods, fires, and in response to the COVID-19 pandemic.
22. A request for assistance (RFA) involving public service may be authorized by the Governor in Council or by the Minister of National Defence. A request for assistance typically flows from the Minister of Public Safety and/or the Minister of Emergency Preparedness, as Public Safety Canada is the conduit for any emergency management assistance requests coming from provincial authorities. Public Safety Canada plays an important challenge function in relation to RFAs as the CAF is typically a resource of last resort for 273.6(1) requests.

ii. 273.6(2): “Assistance in respect of any law enforcement matter”

23. Subsection 273.6(2) provides the Government of Canada with authority for the provision of CAF assistance in respect of law enforcement matters. This provision has been utilized to provide assistance in respect of law enforcement matters for major events, such as the 2010 Winter Olympics logistical and operational support to police forces (use of armories and facilities, air support, etc.), and other federal law enforcement matters. The CAF has no standing law enforcement mandate of its own.
24. A request for CAF assistance under subsection 273.6(2) may be authorized by the Governor in Council or by the Minister of National Defence. A request for assistance typically flows from the Minister of Public Safety, as Public Safety Canada is the conduit for any law enforcement support requests coming from provincial ministerial counterparts, as well as from the RCMP or other federal law enforcement agencies. Subsection 273.6(2) contains set criteria to assess any request for CAF support for assistance to law enforcement. In order to authorize the assistance, the decision-maker (the Governor in Council or the Minister of National Defence) must determine that upon request:
- (a) the assistance is in the national interest, and
 - (b) the matter cannot be effectively dealt with except with the assistance of the CAF.

D. Support to Requests for Assistance (RFAs)

i. RFA process

25. As noted above, all requests for CAF assistance in respect of law enforcement matters made pursuant to subsection 273.6(2) are subject to approval by either the Governor in Council or the Minister of National Defence. These requests may be made to the Minister of National Defence by either the Minister of Public Safety or any other Minister. They are usually made by the Minister of Public Safety on behalf of provincial authorities or federal department or agencies, with a recommendation.
26. During the timeframe of the protests in late January to late February 2022, two RFAs were submitted to the Minister of National Defence through the Minister of Public Safety, and were subsequently supported by DND/CAF in the National Capital Region pursuant to subsection 273.6(2). Both RFAs were solely for the provision of behind-the-scenes logistical support.
27. No other RFAs were submitted for CAF support in the National Capital Region or at any of the US/Canada border crossings. In particular, no assistance was requested, or provided, outside of the two tasks noted below. Beyond the two RFAs that were fulfilled by CAF, DND/CAF did not undertake any further tasks in relation to the protests and blockades during the January to March 2022 timeframe.

ii. RFA to Utilize the Cartier Drill Hall

28. The first RFA was an infrastructure request by the Ottawa Police Service for the use of the Cartier Drill Hall parking lot, located at 2 Queen Elizabeth Driveway, Ottawa. The Ottawa Police sought to use the location as a staging area for police units on January 29 and 30, 2022.
29. On January 28, 2022, the Solicitor General of Ontario made a request to the Minister of Public Safety and the Minister of Emergency Preparedness to utilize the Cartier Drill Hall parking lot. The Cartier Drill Hall RFA was received by Public Safety Canada through its Government Operations Centre (GOC) on January 29, 2022. Under the *Emergency Management Act*, the Ministers of Public Safety and Emergency Preparedness are responsible for exercising leadership relating to emergency management in Canada by coordinating, among government institutions and in cooperation with the provinces and other entities, emergency management activities.
30. Public Safety Canada reviewed the RFA and advanced the request for CAF support on January 29, 2022, noting that it was in the national interest and a support of last resort due to the time sensitivity of the operation.
31. Since there had been ongoing discussions between Public Safety Canada and DND/CAF during the drafting of the RFA, the Chief of the Defence Staff provided his advice and recommendations to the Minister of National Defence in advance of her formally receiving the RFA. As such, she was able to immediately approve the request upon receipt on January 29, 2022 pursuant to subsection 273.6(2), authorizing the CAF to support the Province of Ontario by providing access to the parking lot.
32. This support was provided until February 1, 2022 at which time the request for assistance was closed after department officials assessed that the assistance was no longer required.
33. On February 4, 2022, Public Safety Canada was advised by the Province of Ontario that it may be submitting a potential request for use of the Cartier Square Drill Hall parking lot and for military police to secure the parking lot. Both CAF and Public Safety Canada communicated to Ontario that utilizing the military police was not an option. This request never materialized into a formal RFA.

iii. RFA for CAF Support to Parliamentary Operations

34. The second RFA was a supply request made by the Parliamentary Protective Services (PPS) for Individual Meal Pack rations. The PPS sought to obtain a supply of 1,200 non-perishable rations for use by their personnel, given the number of extended hours being undertaken within protest areas to ensure the safety of Parliament. The PPS indicated that they had exhausted all options to obtain the rations through commercial means.
35. The rations RFA was received by Public Safety Canada, through its GOC on February 16, 2022. Following Public Safety Canada's review, consultation, and coordination with the DND, the Minister of National Defence, on the recommendation of the Minister of

Emergency Preparedness, approved the request on February 18, 2022. Due to the time sensitive nature of the request, it was determined that the CAF was best positioned to provide this support in an efficient and expedient manner. The military advice was provided to the Minister of National Defence by the Chief of the Defence Staff, and the RFA was approved on the same day pursuant to subsection 273.6(2).

36. On February 19, 2022, the rations were delivered and the RFA was closed.
37. For a more detailed chronology of the RFA process for both requests, see Annex I, below.
38. While other potential requests were raised at the working level, no other RFAs were submitted to the Minister of National Defence seeking CAF support between mid-January and March 2022 in relation to the protests and blockades. DND/CAF provided no assistance outside of the two accepted RFAs.

ANNEX I

Request	Requestor	Request	Chronology of Events
Use of the Cartier Drill Hall Parking Lot	Solicitor General of the Province of Ontario	<p>The Ottawa Police Service (OPS) requested access to the Cartier Drill Hall parking lot at 2 Queen Elizabeth Driveway, Ottawa.</p> <p>The parking lot would be used for staging of OPS public order units, including partner law enforcement agencies.</p>	<p>Request jointly sent to Minister of Emergency Preparedness (MEP) and Minister of Public Safety (MPS) by Ontario Solicitor-General – January 28, 2022³</p> <p>Chief of Defence Staff (CDS) briefing to Minister of National Defence (MND) of anticipated RFA – January 28, 2022 17:27⁴</p> <p>Internal approval by MND – January 28, 2022 18:51⁵</p> <p>Approval by MND communicated to PS – January 29, 2022 10:28⁶</p> <p>RFA communicated by Public Safety Canada (PS) to CAF along with approval from MEP and MND – January 29, 2022 10:35⁷</p> <p>Approval communicated to Joint</p>

³ “Re: Request for Assistance to Utilize the Cartier Drill Hall,” Letter from the Solicitor General of Ontario to Minister Bill Blair and Minister Marco Mendicino dated January 28, 2022 (PB.CAN.00001060_REL.0001)

⁴ “Pre-emptive RFA Authorization – Cartier Square Drill Hall and other NCR Infrastructure” Email from General Wayne Eyre to Minister Anita Anand dated January 28, 2022 (PB.CAN.00001049_REL.0001)

⁵ “Re: Pre-emptive RFA Authorization – Cartier Square Drill Hall and other NCR Infrastructure” Email from Minister Anita Anand to General Wayne Eyre dated January 28, 2022 (PB.CAN.00001049_REL.0001)

⁶ “Fwd: Pre-emptive RFA Authorization – Cartier Square Drill Hall and other NCR Infrastructure” Email from Colonel Robbin Dove to Desmond Challenger, January 29, 2022 (PB.CAN.00001049_REL.0001)

⁷ “00009-22 RFA for CAF Infrastructure in Ottawa – Jan 28” Email from Desmond Challenger to Colonel Robbin Dove dated January 29, 2022 (PB.CAN.00001048_REL.0001)

			Operations Command (CJOC) January 29, 2022 10:51 ⁸
Supply of Rations to PPS	Parliamentary Protective Services of Canada (PPS)	<p>PPS sought logistical support for ongoing operations on Parliament Hill</p> <p>Specifically, PPS requested that non-perishable rations be provided</p>	<p>Request sent to Government Operations Centre (GOC) – February 16, 2022 23:24⁹</p> <p>CDS briefing to MND regarding the RFA – February 17, 2022 23:46¹⁰</p> <p>Acting Judge Advocate General advice provided to MND regarding the RFA – February 18, 2022 17:22¹¹</p> <p>Confirmation to GOC that rations would be delivered February 19, 2022 – February 18, 2022 18:48¹²</p> <p>RFA forwarded by MEP to MND – February 18, 2022 20:52¹³</p>

⁸ “Re: 00009-22 RFA for CAF Infrastructure in Ottawa – Jan 28” Email from Brigadier-General Eric Laforest dated January 29, 2022 (PB.CAN.00001048_REL.0001-2)

⁹ “Inquiry/request for support – rations to support PPS operations” Email from Larry Brooks on to Alexandre Juneau dated February 16, 2022 (PB.CAN.00001056_REL.0001)

¹⁰ “CDS Advice to MND: Public Safety Request for Federal Assistance with Respect to Protest Blockades in Ottawa” Email from General Wayne Eyre to Minister Anita Anand dated February 17, 2022 (PB.CAN.00001051_REL.0001)

¹¹ “Subject Redacted” Email from Colonel Rob Holman to Minister Anita Anand dated February 18, 2022 (PB.CAN.00001053_REL.0001)

¹² “FW: 00009-22: PPS RFA for CAF Support to Parliamentary Operations” Email from Colonel Robbin Dove to Peter Hoy and Brigadier-General Eric Laforest dated February 18, 2022 (PB.CAN.00001054_REL.0001)

¹³ “FW: For Approval: RFA for Parliamentary Protective Service” Email from Minister Bill Blair to Minister Anita Anand dated February 18, 2022 (PB.CAN.00001057_REL.0001)

			<p>Request approved by MND – February 18, 2022 22:34¹⁴</p> <p>Request from GOC for RFA to be actioned – February 18, 2022 23:07¹⁵</p>
--	--	--	---

¹⁴ “Re: RFA Support to LEA – Rations” Email from Minister Anita Anand to General Wayne Eyre dated February 18, 2022 (PB.CAN.00001052_REL.0001)

¹⁵ “00009-22: PPS RFA for CAF Support to Parliamentary Operations” Email from Peter Hoy to Brigadier-General Eric Laforest dated February 18, 2022 (PB.CAN.00001055_REL.0001)