



## **CANADIAN ARMED FORCES ASSISTANCE TO LAW ENFORCEMENT AND CIVIL AUTHORITIES**

**Date:** November 24, 2022

*Disclaimer: This briefing note contains the encapsulation of views presented by the speaker and does not exclusively represent the views of the Canadian Association for Security and Intelligence Studies.*

### **KEY EVENTS**

On November 24, 2022, Lieutenant Commander (LCDR) Heidi Straarup, Deputy Judge Advocate, Maritime Fleet Pacific, Royal Canadian Navy presented on *Canadian Armed Forces Assistance to Law Enforcement and Civil Authorities*. The presentation was followed by a question-and-answer period with questions from the audience and CASIS Vancouver executives. The key points discussed were the matters and processes in which the Canadian Armed Forces (CAF) will provide assistance to law enforcement, as well as the statutory authority to provide such assistance.

### **NATURE OF DISCUSSION**

LCDR Straarup discussed the situations in which a law enforcement agency (LEA) may request or requisition the assistance of the CAF in policing and public order, specifically in cases of humanitarian assistance and disaster relief or a riot or disturbance that is beyond the powers of the civil authorities to suppress. She also presented an overview of the statutory authority within the National Defence Act (NDA) that enables the CAF to provide assistance to law enforcement agencies.

### **BACKGROUND**

#### **Presentation**

LCDR Straarup began by stating that the primary role for the CAF is the defence of Canada, and that this does not include a traditional law enforcement mandate beyond its own personnel and facilities; however, the CAF has certain capabilities that may be requested by civil authorities to assist them in effectively

dealing with a law enforcement matter. Given shared jurisdiction between Federal and Provincial governments in Canada, each order is granted exclusive authority to legislate in certain areas—for example, while the federal government has authority over the CAF and criminal law, the administration of justice is under the authority of provincial governments. There are specific circumstances, however, where CAF assistance to civil and LEAs can be requested pursuant to the National Defence Act (NDA)—namely, law enforcement pursuant to Public Service s. 273.6(2) and Aid of the Civil Power under Part VI—and the process for granting statutory authority is situationally dependent.

LCDR Straarup stated that “Public Service” is not defined within the NDA and therefore applies to a wide variety of situations, including providing humanitarian assistance and disaster relief [s. 273.6(1)] and assistance to federal law enforcement agencies (ALEA) [s. 273.6(2)]. Under Subsection 1, a request for federal assistance (RFA) is presented through a civil authority, after which the Governor in Council or Minister of National Defence (MND) approves the request—typically via written communication, though approval can be given orally if time is of the essence. Recently, Subsection 1 has been used as the legal basis for the CAF to respond to various natural disasters, including hurricane Fiona and the 2021 BC floods.

Conversely, Lcdr Straarup stated that RFAs for ALEA under Subsection 2 must be submitted by the responsible federal minister to the MND, noting that the request must first be routed through the Minister of Public Safety who determines whether the request should be brought to the MND. It must then be determined whether the assistance is in the national interest and that the matter cannot be effectively dealt with except with the assistance of the CAF. If this two-part threshold is met, the MND authorises the requested assistance through direction to the Chief of the Defence Staff (CDS) who then issues orders. Lcdr Straarup also noted that the Governor in Council retains the ability to act on their own authority, without a RFA, though they must also satisfy the aforementioned two-part test.

LCDR Straarup emphasised that CAF assistance is in the support of the LEA of jurisdiction, and that the LEA retains full responsibility for the conduct of all law-enforcement operations. CAF members will remain under military command and will continue to be required to perform their duties as military members. Lcdr Straarup noted that, in some cases, a request may be made for CAF support to law enforcement of a recurring nature, and the details are set out as

part of an administrative arrangement, such as a Memorandum Of Understanding.

LCDR Straarup stated that Aid of the Civil Power under Part IV of the NDA remains a powerful tool for the provinces, though has been rarely used in recent history. In order for Aid of the Civil Power to be triggered, there needs to be a riot or disturbance that is beyond the powers of the civil authorities to suppress, prevent, or deal with; or in the opinion of the Attorney General (AG) such a situation is likely to occur. The role of members of the CAF providing assistance in Aid of the Civil power varies by circumstance. When the CDS receives a requisition from an AG, they determine the validity of the requisition and, if circumstances warrant it, will call out the CAF in Aid to the Civil Power, subject to directions from the MND. The composition of the forces provided will be subject to the discretion of the CDS, may be increased or diminished as the riot or disturbance evolves, and continues until the provincial AG notifies the CDS that assistance is no longer required. Lcdr Straarup noted that in Aid of the Civil Power, CAF members possess powers and duties of LEA constables but remain under military command and control, and do not seek to replace civil authority but rather assist in the maintenance of law and order.

LCDR Straarup further elaborated that Peace Officer status is conferred onto CAF members when given the authority to enforce the law and that this status is applicable to both s. 273.6(2) and Aid of the Civil Power. There is no additional formality required and the status is time, situation, and duty dependent, ceasing to have effect when members are no longer engaged in law enforcement duties. Peace Officer status is required in order to perform certain duties and that without it, CAF members would have no authority to enforce the law as well as remain unprotected from criminal and civil liability within the scope of their duties. The use of force is one such example, however, any use other than that necessary for self-defence is governed by the rules of engagement authorised by the CDS and Canadian law.

LCDR Straarup concluded by emphasising that CAF assistance via s. 273.6 and Aid of the Civil Power are to be considered the force of last resort, and that other government departments should exhaust their resources before turning to the CAF for assistance.

### Question & Answer Period

During the question-and-answer period, LCDR Straarup discussed the importance of local and cultural engagement to the assistance of LEAs, noting that recent efforts by the CAF to pursue recruitment representative of Canada's diverse population is key to fostering correct communication of CAF purpose within a community. In situations where CAF assistance is provided on a long-term basis, the engagement of liaison officers with local government and schools have been beneficial in this respect.

LDCR Straarup addressed the importance of case studies and discussion-based sessions in training, as these methods enable the CAF to alter operation orders to remain relevant and respond effectively. These exercises allow for the opportunity to account for various eventualities that the CAF may encounter, whether it is in defence of Canada, responding to natural disasters, or in Aid of the Civil Power. She noted the importance of transferring skills gained in course training to "on the job" training, highlighting the recent addition of anonymous course critiques from participants as instrumental in streamlining training. In this way, the CAF is striving to respond positively to member feedback and bridge the divide between old-versus-new approaches to duty.

### KEY POINTS OF DISCUSSION

- The primary role for the CAF is the defence of Canada, and this does not include a law enforcement mandate beyond its own personnel and facilities. However, the CAF has capabilities that may be requested by civil authorities to assist them in addressing a law enforcement matter when all other avenues have been exhausted.
- Specific circumstances where CAF assistance to civil and LEAs can be requested pursuant to the National Defence Act (NDA)—namely, law enforcement pursuant to Public Service s. 273.6(2) and Aid of the Civil Power under Part VI.
- "Public Service" is not defined within the NDA and applies to a variety of situations, such as humanitarian assistance and disaster relief [s. 273.6(1)] and assistance to federal law enforcement agencies (ALEA) [s. 273.6(2)].
- For Aid of the Civil Power to be triggered, there needs to be a riot or disturbance that is beyond the powers of the civil authorities to suppress, prevent, or deal with. This constitutes a powerful tool for the provinces and has been rarely used in recent history.

- Peace Officer status is conferred onto CAF members when given the authority to enforce the law and that this status is applicable to both s. 273.6(2) and Aid of the Civil Power. Members possess powers and duties of LEA constables but remain under military command and control.



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