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**THE OFFICE OF THE JAG: ENHANCED INSTITUTIONAL PERFORMANCE
THROUGH A CORPORATE AND LEADERSHIP OVERHAUL**

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ABSTRACT

In the last decade, the Canadian Forces' Office of the Judge Advocate General (OJAG) has successively implemented military justice reforms and new operational law services delivery modes. It might be argued that in the meantime, the OJAG has outgrown its leadership and management processes. As a result, current internal characteristics such as the alignment of resources, the career progression model and, leadership frameworks do not rest on a discernable corporate vision. Rather, they consist of a patchwork of ad hoc remedies implemented as the operational tempo left little time for internal reflection.

Faced with legal questions of increasing complexity, clients more sophisticated than ever and tough professional challenges, the OJAG must now assess how it can best accomplish its statutory mandate and deliver the highest added value to the clients and stakeholders within the Canadian Forces (CF), the Department of National Defence (DND) and the Government of Canada (GoC).

The OJAG would benefit measurably from a corporate analysis of its structure, its operations and its positioning within the CF. Such undertaking would help it to find its core operative values, shape its identity and culture, improve perception and trust within the OJAG and among its stakeholders, clarify its lines of operations thus providing a more developed sense of purpose to its members and in turn better services for its clients. Private corporate literature and military doctrine offer models that could improve some of the OJAG's managerial and leadership functions as military legal practitioners.

This thesis proceeds with five developments based on literature and doctrine. The first one looks at the factors that make the OJAG unique such as the convergence of military and legal professions' culture and identities in the context of contemporary professional challenges. The second demonstrates how the OJAG is relevant to the CF, DND and the GoC by analyzing its legislative mandate and the added value it can bring as a provider of quality military law services. The third development examines leadership theories developed in private corporate literature and in military doctrine to identify which leadership models could bring the best contribution to the OJAG based on the determinations and findings of the first two developments. The fourth development then examines corporate values that can help in determining the most optimal resource alignment and career development paths. The final development describes a corporate model that combines selected leadership and corporate theories in a model and proposes an implementation strategy.

Based on the analysis of the OJAG's character, its operating environment, literature on organizational theories and military doctrine, this thesis concludes that the OJAG can improve its institutional performance by developing and implementing a value-based corporate model of its own.

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"Strive not to be a success, but rather to be of value."

-Albert Einstein

CHAPTER 1 INTRODUCTION

Over the last fifteen years, the Office of the JAG (OJAG)¹ encountered difficult situations that required a significant re-definition of the services that it provided to the CF (Canadian Forces) and the Department of National Defence. In the area of military justice, several appeal judgments and Supreme Court decisions addressed certain aspects of the Canadian military justice system and identified areas that required legislative amendments in order to maintain the constitutionality of the primary judicial trial vehicle, the court martial. To ensure the constitutionality and integrity of the summary trial system, recommendations from former Supreme Court of Canada Justice Dickson and inquiry bodies were implemented through legislative and regulation changes. While these measures enhanced the legitimacy and efficiency of the military justice system, they required a significant and sustained effort from the OJAG to achieve successful implementation in the CF. The OJAG successfully met this challenge by creating better processes of provision of legal advice with respect to military discipline and developing an ambitious training program for the benefit of the key disciplinary actors such as the Summary Trial Presiding Officers.

Similarly, increase in operational tempo associated with the end of the Cold War put huge pressures on the OJAG in order to provide operational legal advice in particularly complex security environments. Military lawyers encountered several delicate legal issues for which no pre-existing expertise was available. Again, the operational response of the OJAG effectively

¹ The Office of the JAG (OJAG) refers to the team of legal officers delivering legal services under the command of the Judge Advocate General (JAG). This thesis does not address the corporate issues in the Office of the Chief Military Judge.

managed to commit continuously legal advisors at every command level, both in Canada and abroad in theaters of operations. The OJAG also increased its expertise and delivery capabilities in the field of military administrative law due to the recent shift in CF activities requiring administrative processes that reflect the needs of a more operationally-focused military organization.

At the same time, the working environment is also changing. Postmodern times are accompanied by heavy tendencies to fragmentation and chaos, which exercise pressures on existing structures and processes. This change is observable in the applied and social sciences of post modernity and new problem solving approaches are developed to cope with accelerated change.

This general trend is largely conveyed in mainstream media, which portrays daily how change will affect workplaces. In a recent article, the vice-president of organizational effectiveness and learning at the Conference Board of Canada described the office of 2020 as a workplace where generations will mix as older workers will stay longer, the minority will be white, connection to work through technology will be permanent, production of items for self consumption will increase, physical location of workspaces will be less relevant, management will be pushed down and decentralized, and teamwork will be a learned skill not just a desirable attitude.²

Consequently, the provision of military legal services is increasingly multi-faceted, and so is the context in which military lawyers work. It is now recognized that legal issues impact critically on operations at the tactical, operational and strategic level as reflected by the presence

² Michael Bloom, "The Office of 2020: We Need It Yesterday," The Globe and Mail, 9 April 2010, page A-13.

of legal advisors at all levels of command. It is therefore necessary for legal officers to acquire and maintain legal skills in unprecedentedly wide domains of expertise to meet the unique needs of the CF. The ability to convey professional, sound and timely legal services to military leadership is essential to the conduct of increasingly complex operations in accordance with the rule of law. Given the importance of this task, the OJAG must maximize the harnessing of the professional potential of its members.

In the face of these pressing challenges, the OJAG had little time to think about its own internal priorities. As the organization arguably outgrew existing leadership and management processes, the OJAG must now proceed to a hard and thorough corporate assessment of its structure, its resource alignment, its career and training progression model and determine what kind of management and leadership will enable the office to best fulfill its mandate and bring an added value to its clients.

1.1 The OJAG's Today

The OJAG, with its layers of culture and identity, is a unique organization defined by its military and professional character. It is operationally relevant because it ensures the legal conduct of military operations and constitutes an enabling factor for the CF in legally ambiguous environments domestically and internationally. Logically, its core operative values need to consider the requirement of competent professionals who are committed to the provision of military legal services in a unique operational context. Military and corporate models offer valuable insight on ways in which military lawyers driven by such values can best be employed, while culture change strategies teach how to best ensure their implementation.

The OJAG has started to address leadership and management issues within some of its divisions. For example, a team has recently been tasked to provide a professional assessment of the Directorate of Military Prosecutions³ and the office of the Director of Defense Counsel⁴.

However, the time is right for a comprehensive corporate analysis of the entire OJAG. While it is recognized as an essential player in military justice, the planning and execution of operations and development and the implementation of administrative policies, expectations are high on the quality and the timeliness of its professional services.

Interestingly, such initiative has been taken by the United States Navy's Judge Advocate Corps. This organization has initiated a similar study that intends to identify, implement and operationalize corporate changes to its legal service delivery model by 2020. It has also created a Special Assistant to the JAG for Transformation (SAT) which is tasked to implement and execute the continuous transformation of the UNS JAG.⁵

The OJAG is a unique institution that must continually demonstrate that it is relevant to the larger military community and to the Canadian public. This thesis argues that it can improve its institutional and individual leadership and its management processes by first identifying its own core operative values. Embodied in a mission statement and implemented throughout the career cycle, these values will guide its institutional actions as well as its member's professional conduct to enhance its effectiveness. As a result, the OJAG will bring a better added value to the CF, the DND and the Government of Canada (GoC). Military doctrine and private corporate

³ Andrejs Berzins, Q.C, and Malcolm Lindsay, Q.C., "External Review of the Canadian Military Prosecution Service", Bronson Consulting Group, Ottawa, Canada, 31 March 2008.

⁴ "External Review of the Defence Counsel Service", Bronson Consulting Group, Ottawa, Canada, 15 September 2009.

⁵ United States, Department of the Navy, *Report of the Judge Advocate of the Navy to the American Bar Association Annual Meeting*. Washington, DC: U.S. Government Printing Office, 2008, page 29; http://www.jag.navy.mil/documents/ABA%20Report%202009_FINAL.pdf ; Internet; accessed 19 April 2010.

models provide many models from which the OJAG can find inspiration itself to tailor a model that suits its internal characteristics, its legislative mandate and the operational needs of its clients.

In this corporate overhaul process, the OJAG needs to be aware of its own professional specificities such as its concurrent professional cultures and its overlapping identities. It will also need to assess what is expected from it by its clients and what it can bring to them. These determinations help to identify the core values that define what the OJAG is about as an institution and what its members are about as professionals.

1.11 Corporate Model Design

A complete corporate overhaul that includes an implementation strategy is an ambitious program. This study can only contribute in a measured way to this larger effort and does not attempt to assess the quality of the professional work currently delivered by the OJAG.

The objective of this study is instead to make a contribution in a thinking process leading to an improvement of the OJAG's performance as an institution and fully harness the professional potential of its members.

The method it proposes first looks at what makes the OJAG unique. This aim is achieved by mapping of the professional cultures present in the OJAG, the military and the legal ones and the contemporary challenges it faces as the employer of professionals. Secondly, it examines the factors that make the OJAG relevant as the CF and DND's provider of military legal services. This aim is achieved by looking at its statutory mandate and the added value it brings to its clients. Thirdly, it conducts a corporate assessment that enables to deduct the nature of the core operative values that the OJAG should seek to implement. This aim is achieved by looking at key areas of corporate performance and the role of the doctrine as an internal enabling factor.

Fourthly, it reviews military and corporate models that can inspire the design of a JAG-specific model. This aim is achieved by looking at military leadership doctrine and corporate models, including one tailored for professional services firms.

Lastly, it synthesizes a JAG-specific model and approaches its implementation similar to a military operation.

1.12 Desired Outcomes

Core values are not about motivational posters. They are the basis of any serious corporate model because they define the internal modes of operations and shape the career model from recruitment to retirement. With successfully implemented core values, the OJAG can maximize its mission accomplishment potential and its internal and external adaptability. As a result, this will impact positively on the perception that members of the OJAG have of their own institution as well as the perception that CF, DND and Government of Canada clients have of the OJAG.

The following analysis, findings, deductions and proposed model at the end contribute to a meaningful thinking process of benefit to the OJAG and aims to enhance its operational effectiveness and efficiency.

CHAPTER 2 WHAT MAKES THE OJAG UNIQUE?

Any professional firm or office embodies certain key institutional characteristics, particularly one legal in character. Professional culture and identities impact significantly on a firm's operations and shape its members inclinations. These factors deserve close attention because the understanding of its true character is an absolute pre-requisite to improve institutional and individual performance. Without this understanding, it would be impossible to tailor an appropriate corporate model or to implement it effectively.

Since its creation in 1911,⁶ the OJAG straddles two professional worlds, the legal and the military, as embodied by the expression "military lawyer". These two professional roots result in a specific identity and certain internal characteristics that underscore the OJAG's corporate culture. As a result, military lawyers operate in a framework of professional references that prosper, coexist and sometimes collide.

A proper leverage of these identities could increase its operational effectiveness as an inherently dual personality organization and boost the cohesion among its members as a body of professional uniformed lawyers. This leverage can be achieved by identifying the core operative values that best reflect the OJAG's character and building a corporate model that effectively instrumentalizes those values.

The OJAG has developed a strong institutional identity and standing within the CF as a uniformed body of lawyers offering legal advice and services as well as the administration of the military justice system. To understand its unique identity, it is necessary to explore the two professional domains that characterize it as well as the contemporary challenges faced by those two professions. A description of its internal organization provides an idea of the current

⁶ *Les avocats militaires du Canada*, R. Arthur McDonald, Ottawa : Department of National Defence, Office of the Judge Advocate General, 2002, page 18.

expression of the practical reconciliation of the military and legal professions. With the benefit of this professional portrait, it will be easier to understand how the OJAG operates to bring an added value to the military community.

2.1 Organizational Culture in the Military

Organizational culture refers to “the sum of all the shared, taken-for-granted assumptions that a group has learned throughout its history”.⁷ It “unifies the institution and distinguishes it and its members from others”.⁸ With its history, customs and cultural artifacts, the CF taken as a whole is a culturally unified institution. Uniforms, insignia and military salute are only the most visible aspects that distinguish CF members from other Canadian. The military also distinguishes itself from an organizational culture perspective, which is observable looking at its professional dimension and its officer corps.

2.11 Professional Dimension of the Military

Within the military institution, the combined effect of this system of cultural sources has developed a distinct professional military identity. This military identity is further refined and shaped by a multitude of factors such as the element, the trade, the rank, the function, the operational status and the mission, to name only a few. In this respect, military lawyers are little different than trained specialists from other occupational classifications.

The military has developed its own professional space as the sole custodian of violence management outside the realm of law enforcement on behalf of the governments it serves. The idea that the profession of arms constitutes a “profession” in the corporate sense of the term has

⁷ Edgar H. Stein, *The Corporate Culture Survival Guide*, (San Francisco: Jossey-Bass, 1999), page 29, cited in Karen Davis and Brian McKee, *Institutional Leadership in the Canadian Forces, Contemporary Issues*, (Kingston: Canadian Defence Academy), page 34.

⁸ Karen Davis and Brian McKee, *Institutional Leadership in the Canadian Forces, Contemporary Issues*, (Kingston: Canadian Defence Academy), page 37.

been explored and demonstrated at length. The search for professional military identity elements derives from different approaches.

Sir John Hackett noted that the military requires specific technical knowledge, a degree of cohesion, its own doctrine and institutions. He also observed that the profession of arms includes elements akin to a vocation, although the best paradigm to assess it is still the “profession” one.⁹ Building upon this theme, Samuel P. Huntington links the concepts of expertise, responsibility and team work to the notion of “profession”. He also views team work as the expression of a shared organic unity and the belonging to a group at the exclusion of the non-initiated.¹⁰

A third contribution by Morris Janowitz brings a few additional elements: first, he focuses further on the ethical dimension of the military as a profession. He advocates for military institutions that are integrated into the society it serves, its norms and its values.¹¹ He also thinks the notion of military professionals is larger than the “heroic warrior” and that it should be broadened to include the models of “military manager” and “military technician”¹² which appears to be closer to military legal officers. These concepts are prescient of the specialization

⁹ Sir John Hackett, *Profession of Arms*, (London: London Times Publishing), 1963, in LCol Bill Bentley, *L'idéologie professionnelle et la profession des armes au Canada*, (Winnipeg : Institut du leadership des Forces canadiennes par le bureau de publication de l'escadre, 17^e Escadre de Winnipeg), page 28.

¹⁰ Samuel P. Huntington, *The Soldier and the State: The Theory and Politics of Civil-Military Relations*, (Cambridge: The Belknap Press of Harvard University Press), 1957, in Lcol Bill Bentley, *L'idéologie professionnelle et la profession des armes au Canada*, (Winnipeg : Institut du leadership des Forces canadiennes par le bureau de publication de l'escadre, 17^e Escadre de Winnipeg), page 29.

¹¹ Lcol Bill Bentley, *L'idéologie professionnelle et la profession des armes au Canada*, (Winnipeg : Institut du leadership des Forces canadiennes par le bureau de publication de l'escadre, 17^e Escadre de Winnipeg), page 32.

¹² Morris Janowitz, *The Professional Soldier: A Political and Social Portrait*, (New-York: The Free Press), 1960, in Bill Bentley, *L'idéologie professionnelle et la profession des armes au Canada*, (Winnipeg : Institut du leadership des Forces canadiennes par le bureau de publication de l'escadre, 17^e Escadre de Winnipeg), pages 32 and 33.

of military application in the context of operations in complex security environments such as Afghanistan and quasi-diplomatic military legal mission such as rule of law oriented deployment.

Of note, these thinkers differ on fundamental issues such as the degree of cultural affinities between the military and the civilian: Huntington advocates for a cultural distance while Janowitz advocates for closer cultural ties. There is nonetheless a consistent view that the military is cohesive and united, has its own technical requirements and is guided by its own ethical framework. Even those arguing that the military in the West ceased to be a “society” of its own because of a “relative withdrawal of (its) socio-cultural specificity” point at this process coincides with “army professionalization”.¹³

These are important factors of identity for the OJAG members who need to blend into the rest of the military institution as a cohesive body, master technical requirements specific to the military profession and integrate military ethical framework to their own actions as well as to their legal thinking process.

In CF doctrine, the attributes of professionalism are identified as responsibility (including self-regulation), expertise, identity and professional ideology. Stewardship of the military profession requires a good understanding of those attributes as well as an ability to manage them simultaneously. In the current context, OJAG institutional leaders as steward of the military legal profession need to “strike the right balance between the expertise at the core of the profession (...) and the expertise necessary to direct, manage and control a large, complex

¹³ François Gresle, The « Military Society » : Its Future Seen through Professionalization, *Revue française de sociologie*, Vol 46, Supplément : An English Selection (2005); <http://www.jstor.org/stable/25130396>; Internet, accessed 4 February 2010, pages 37-57.

organization in the post-industrial era.¹⁴ In other words, they need to generate the best military legal expertise in the country while being the best at managing and leading officers with a dual military and legal professional affiliation.

2.12 Military Officership

In the military context, organizational culture draws from the military ethos as portrayed by many general, specific and personal sources. These sources shape virtually every aspect of military officers, who constitute a body of commissioned leaders subject to specific responsibilities and duties.¹⁵

From a normative perspective, the Constitution,¹⁶ the National Defence Act¹⁷ and the QR&O's¹⁸ establish the legal parameters of the CF's existence, its mandate, its organization and its regulation. From a responsibility perspective, the powers of the government and those of the Prime Minister provide a reporting relationship between the military and its civilian masters. This framework provides legitimacy to the officers as custodian of legal authority, delineates the limits of this authority and the ways in which it can be exercised.

From an education perspective, training such as the Basic Officer Training Course deliver an initial baseline indoctrination, which is deepened throughout officers' careers. This regime affirms the officers' shared identity, reinforces shared values and creates personal bonds. In that

¹⁴ *Leadership in the Canadian Forces: Leading the Institution*, (Kingston: Canadian Forces Leadership Institute, 2007), page 10. page 5.

¹⁵ Dr William Glover, "We Reposing Especial Trust and Confidence in Your Loyalty, Courage and Integrity..." The Officer Corps Of 2020", in *Contemporary Issues in Officership: A Canadian Perspective*, (Toronto: Canadian Institute of Strategic Studies, 2000), pages 41-64.

¹⁶ British North American Act, *Constitutional Act of 1867*, 30 & 31 Victoria, ch. 3 (U.K.).

¹⁷ National Defence Act (R.S. 1985, c. N-5)

¹⁸ Canada. Department of National Defence, Queen's Regulations and Orders, Volumes 1 to 4.

vein, a proper stewardship of the profession would ensure that “new members are appropriately and effectively socialized into the value system of Canadian military professional ideology”, so that its culture preserves the “legitimacy of the profession and the military as a national institution”.¹⁹

As CF’s commissioned leadership class, the ability to issue orders enables them to define operational outcome expectations, while as CF’s manager class, they can use tools such as job descriptions and personnel evaluations to define qualitative outcome expectations. In the exercise of these duties, officers can rely on a variety of doctrine and publications which provide them with unified guidance and conceptual frameworks.

Military lawyers are fully integrated in the officer class, which is a powerful enabling factor for them as specialized advisors. This is also an important factor shaping their culture and identity.

2.13 Contemporary Factors Influencing the Military Profession

The Canadian military’s professional character is continually evolving. Structural social, political and technological changes associated to post-modernity²⁰ impact on the military profession in many ways. Its immediate environment now includes a better educated²¹ and diversified population,²² a tendency to individualism and a decline of deference towards

¹⁹ *Leadership in the Canadian Forces: Leading the Institution*, (Kingston: Canadian Forces Leadership Institute, 2007), page 10.

²⁰ Harvey J. Krahn and Graham S. Lowe, *Work, Industry & Canadian Society, Fourth Edition*, (Scarborough: Thomson, Nelson, 2002), page 25; Stephen H. Coughlan, and others, *The Future of the Legal Profession, The Challenge of Change, A Report of the Young Lawyers’ Conference*, August 2000 (Ottawa: Canadian Bar Association, 2000).

²¹ Harvey J. Krahn and Graham S. Lowe, *Work, Industry & Canadian Society, Fourth Edition*, (Scarborough: Thomson, Nelson, 2002), page 45

²² *Ibid.*, page 44

authority.²³ As an employer, the CF realizes that the work force is aging²⁴ while its younger recruits have different learning abilities and interests.²⁵ It needs to offer attractive work conditions in an environment where non-standard arrangements are increasingly available²⁶. This trend has impacts on the acquisition and application of expertise, the structure of the military community and its professional identity.

Similarly, the environments in which the CF operates also present new challenges. For example, counterinsurgencies involve a delicate balance between kinetic and non-kinetic operations as well as coherent and sustained interdepartmental efforts.²⁷ Strategic lawyering exploits the legal dimension of the battle space in challenging ways,²⁸ and domestic operations occur in a complex web of federal, provincial and municipal jurisdictions. This context requires not only a re-evaluation of military training requirements²⁹ but also a reassessment of the CF's professional attributes and core values.³⁰

²³ Lcol Bill Bentley, *L'idéologie professionnelle et la profession des armes au Canada*, (Winnipeg : Institut du leadership des Forces canadiennes par le bureau de publication de l'escadre, 17^e Escadre de Winnipeg), page 38.

²⁴ Harvey J. Krahn and Graham S. Lowe, *Work, Industry & Canadian Society, Fourth Edition*, (Scarborough: Thomson, Nelson, 2002), page 41

²⁵ Bruce Tuglan, *Not everybody gets a trophy: How to Manage Generation Y* (San Francisco: Jossey Bass, 2009).

²⁶ Harvey J. Krahn and Graham S. Lowe, *Work, Industry & Canadian Society, Fourth Edition*, (Scarborough: Thomson, Nelson, 2002), page 86.

²⁷ The United States Army and Marine Corps, *Counterinsurgency Field Manual*, (Chicago: The University of Chicago Press, 2007).

²⁸ Colonel Kelly D. Weaton, "Strategic Lawyering, Realizing the Potential of Military Lawyers at the Strategic Level", *The Army Lawyer*, (September 2006), pages 1-16.

²⁹ Major Dr. David Last, *Educating officers : Post-modern Professionals to Control and Prevent Violence*, in *Contemporary Issues in Officership: A Canadian Perspective*, (Toronto: Canadian Institute of Strategic Studies, 2000), pages 9-40.

³⁰ LCol Bill Bentley, *L'idéologie professionnelle et la profession des armes au Canada*, (Winnipeg : Institut du leadership des Forces canadiennes par le bureau de publication de l'escadre, 17^e Escadre de Winnipeg), page 39.

The OJAG needs to be aware of clients needs and stay in tune with the society from which it recruits.

2.2 Organizational Culture in the Legal Profession

The legal profession in Canada is by nature diverse. It comprises many different specialties and is practiced across various contexts. As a result, many different cultures and sub-cultures reflect the realities of private litigators, criminal lawyers, rural generalists, public sector lawyers, intellectual property specialists and so on.

To complete the portrait of the sources of legal officers' identity, it is necessary to describe how lawyers acquire a common baseline identity and the deontological frameworks that they share regardless of the professional path chosen. This portrait also requires an examination of illustrative contemporary challenges common to all lawyers, including military legal officers.

2.21 Professional Dimension in the Legal Profession

The process to become a lawyer is long and arduous. In Canada, most lawyers of common law jurisdiction provinces hold an undergraduate degree before attending a law faculty. The province of Quebec has maintained a civil law jurisdiction and has a slightly different education system. In both common law and civil law jurisdiction provinces, aspiring law students go through a fairly competitive process before enrolling to a law faculty programme of studies.

The academic mandate of law faculties at the graduate level is to provide the theory and the conceptual foundation of the law. After three to four years, graduates attend professional training provided by provincial bar associations. This process combines a formal training phase followed by an articling phase.

These years of education have a highly socializing effect on lawyers which culminates with the solemn and ritualized call to the bar. At that point, they belong a quintessentially professional body: lawyers abide by rigorous professional standards and deontological codes and can perform professional acts at the exclusion of non-lawyers.

The legal profession is statutorily recognized.³¹ It is granted protected professional acts as well as the ability to regulate the exercise of legal practices. The corollary of this statutory protection is that bar associations are mandated to protect the public from unethical or dishonoring practices. Deontological codes bind practicing lawyers and are enforced by specialized tribunals.³² Unethical actions can be investigated by disciplinary boards, which can result in temporary or permanent suspension of an offender at the outset of an administrative process.

In the OJAG context, legal officers remain subject to their parent bar deontological codes. A JAG directive³³ requires that they also to comply with the Canadian Bar Association principles,³⁴ which are not otherwise formally binding for lawyers but can be referred to for further ethical guidance.

Bar associations require that their members maintain professional competence through continuing legal education in order to keep their professional entitlements.³⁵ These activities generally reflect the fields of practice of the lawyers but also maintain an organic link with their

³¹ For example, see : Loi sur le Barreau, L.R.Q., Chapitre B-1.

³² For example, see : Code de déontologie des avocats, L.R.Q., r.1.

³³ Canada. Office of the Judge Advocate General, JAG Directive 006/00, 1 August 2000.

³⁴ Canadian Bar Association, Code of Professional Conduct, <http://www.cba.org/CBA/activities/pdf/codeofconduct.pdf> ; Internet, accessed 19 April 2010.

³⁵ For example, see : Barreau du Québec, Règlement sur la Formation continue obligatoire des avocats, <http://www.barreau.qc.ca/pdf/formation/reglement-fco.pdf> ; Internet, accessed 19 April 2010.

parent Bar association. In the context of the OJAG, professional development in military law is required by internal standards of performance and is linked to career progression.

2.22 Contemporary Challenges of the Legal Profession

The legal profession is an important dimension of private and public interactions. By nature, it has to remain closely synchronized with the society it serves. Consequently, social, political and technological trends impact on every dimension of the profession. They affect the laws it interprets and applies, its own composition, its functioning modes, the markets it exploits to mention only those.

The legal community questions itself regularly to ensure it remains relevant, efficient and effective as a professional body. Ten years ago, issues such as the aging population, immigration patterns, aboriginal persons, family structures, telecommuting and internet-based provision of services were already identified as key concerns by the Canadian Bar Association.³⁶ Challenges associated to post-modernity have questioned traditional views on legal education models.³⁷

Ten years later, demographic trends have developed further and technologies offer unanticipated possibilities while post-modernity announces an age of fragmentation, chaos and instantaneity.³⁸

³⁶ Stephen H. Coughlan, and others, *The Future of the Legal Profession, The Challenge of Change, A Report of the Young Lawyers' Conference*, August 2000 (Ottawa: Canadian Bar Association, 2000).

³⁷ Andy Boon, John Flood, Julian Webb, "Postmodern Professions ? The Fragmentation of Legal Education and the Legal Profession", *Journal of Law and Society*, Vol 32, No 3, (Sept. 2005); <http://jstor.org/stable/3557242> ; Internet, accessed 4 February 2010, pp 472-492.

³⁸ Diane Thieffoldt and Devon Scheef, *Generation X and The Millenials: What you need to know About Menrotng the New Generations*, Law Practice Today, <http://www.abanet.org/lpm/lpt/articles/mgt08044.html> ; Internet, accessed 19 April 2010; Lcol Bill Bentley, *L'idéologie professionnelle et la profession des armes au Canada*, (Winnipeg : Institut du leadership des Forces canadiennes par le bureau de publication de l'escadre, 17^e Escadre de Winnipeg), page 38.

More specifically, retention of women,³⁹ generational differences⁴⁰ and the changing face of the population⁴¹ are only some examples of the disturbing blend of challenges and opportunities that the legal profession needs to address.

In this respect, the OJAG, is subject to the same systemic trends that civilian law firms face.

2.3 Factors Shaping the OJAG'S Identity

Within the legal profession, military law is only one among several specialized practices while within the Canadian Forces, the legal military occupation is one amongst over a hundred different career paths.⁴² In both worlds, the OJAG is the only one of its kind while the convergence of professional identities makes it even more special.

In the search for the OJAG optimized corporate model, it is essential to measure how much the realities of both worlds shape the conditions in which legal officers perform their duties.

Legal officers benefit from comparative advantages inherent to their two professional poles: a healthy military ethos is an enabling factor for a legal career while inquisitive minds

³⁹ Upper Canada Bar association, Rapport de consultation sur la rétention des femmes en pratique privée, 2008, Barreau du Haut Canada, http://www.lsuc.on.ca/media/convfeb08_retention_of_women_executive_summary_fr.pdf ; Internet, accessed 16 April 2010.

⁴⁰ Virginia Grant and Marci M. Krufta, *The Young and the Restless: Understanding Generational Differences in Today's Law Firms*, Altman Weil, Inc. Report to Legal Management, July 2003. http://www.altmanweil.com/dir_docs/resource/32a60789-ae38-4c4b-8986-a2fc1c5d28f2_document.pdf ; Internet, accessed 16 April 2010, Judy Rosenblum, *What will it take to shape a new class of professionals?* Duke Corporate education, 2009, <http://www.dukece.com/elements/docs/Shaping-New-Professionals.pdf> ; Internet, accessed 16 April 2010.

⁴¹ Liwen Mah, *The Legal Profession Faces New Faces: How Lawyers' Professional Norms Should Change to Serve a Changing American Population*, California Law Review, Vol 93, No 6 (Dec 2005), pp 1721-1772. <http://www.jstor.org/stable/30038501> ; Internet, accessed 4 February 2010,

⁴² Canada. Department of National Defence. Canadian Forces Recruitment website, <http://www.forces.ca/flash.aspx?gclid=COXm1663jKECFcNX2godzI4fNw#/flash/en/80-81-81/jobs/job-explorer/job-explorer> ; internet, accessed 16 April 2010.

developed in law faculties and civilian legal practice benefit the CF. This duality also has less positive impacts. Operational tempo and associated deployments make close relations with parent bar associations and mandatory continuing legal education difficult.

The examination of the OJAG's mandate and current organization provide indications on how it approaches its legal and military practice.

2.31 The OJAG'S Mandate

Under the National Defence Act, the JAG is appointed by the Governor in Council and is mandated to superintend the administration of military justice in Canada.⁴³ This statutory mandate also entails that the JAG is the legal advisor to the Governor General, the Minister of National Defense and the CF in all matters related to military law.⁴⁴ The JAG enjoys a unique status that preserves the ability to fulfill a mandate in that is responsive to the CF chain of command but also responsible to the Minister of National Defense.⁴⁵ This is an important component of the OJAG corporate identity impacts on the identification of its core values.

⁴³ National Defence Act, R.C.S. 1985, c. N-5 Art 9.2 (1) .

⁴⁴ Canada. Department of National Defence. The First Independent review by the Right Honorable Antonio Lamer P.C., C.C., C.D. of the provisions and operations of Bill C-25, *An Act to Amend the National Defence Act and to make consequential amendments to other Acts*, as required under section 96 of Statutes of Canada 1998, c. 35. 3 Sept 2005, p 12. "Since 1911, the JAG has acted as legal advisor to the Governor General, the Minister, the Department of National Defence and the Canadian Forces. However, until Bill C-25 came into force there was uncertainty as to the qualifications, duties and responsibilities of the JAG. In addition to the duty to give specialized legal advice, the amendments put in place by Bill C-25 charge the JAG with the superintendence of the administration of military justice in the Canadian Forces". http://www.cfcb-cgfc.gc.ca/documents/LamerReport_e.pdf ; Internet, accessed 17 April 2010.

⁴⁵ National Defence Act, R.C.S. 1985, c. N-5; Canada, Department of National Defence, Ministerial Organization Order 96-082.

The OJAG possesses its own command and control structure, management tools and report mechanisms. In terms of command, “the JAG exercises command over all officers and non-commissioned officers posted to an established position within the Office of the JAG”.⁴⁶ The duties of the legal officers posted to a position within the Office of the JAG are determined by or under the authority of the JAG and, with respect to the performance of their duties, those legal officers are not subject to the command of any officer who is not a legal officer.⁴⁷ For military matters not related to the performance of their duties, legal officers, including the JAG, are subject to the orders and direction of the CF chain of command.⁴⁸

Like all CF members, legal officers are subject to the Code of Service Discipline, various regulations such as the Queen’s Regulations and Orders as well as Canadian Forces Administrative Orders and Defense Administrative Ordnances and Directives. They are bound by orders issued by the appropriate chain of command and they are expected to observe military customs and usages.

2.32 The OJAG’S CHARACTER

Any description of the OJAG’s mandate remains incomplete without understanding of the OJAG’s character. This character derives from unique practice requirements and of the consistent institutional response to these requirements. First, legal officers are subject to universality of service terms of employment and to unlimited liability. “The principle of universality of service or "soldier first" principle holds that CF members are liable to perform general military duties and common defence and security duties, not just the duties of their

⁴⁶ Canada. Department of National Defence, Queen’s Regulations and Orders, QR&O 4.081 (2)

⁴⁷ Canada. Department of National Defence, Queen’s Regulations and Orders, QR&O 4.081 (4)

⁴⁸ Canada. Department of National Defence. Office of the Judge Advocate General. JAG Annual Report, 2007-2008.

military occupation or occupational specification. This may include, but is not limited to, the requirement to be physically fit, employable and deployable for general operational duties”.⁴⁹ This articulation means that like any other CF members, they can be ordered to deploy into dangerous theatre of operations, which has happened continuously for the last decades.

Moreover, legal officers enjoy an independent chain of command and report to the JAG, which makes the Office of the JAG unique even within the CF. This independence gives them the professional autonomy to give informed advice without interference from the chain of command.⁵⁰ Moreover, this autonomy is a built-in quality control mechanism that enhances legal officer’s ability to bring an added value as advisors to the state’s sole custodian of organized violence.

All legal officers need to achieve minimum operational standards⁵¹ and maintain stipulated physical fitness level.⁵² In addition, deployed legal officers also need to master fieldcraft and small arms abilities to varying degrees depending on the assignment, but do train sufficiently so that they do not become liabilities for their own clients. This fieldcraft proficiency is not only necessary for safety reasons: it also increases credibility, trust, cultural understanding and operational competence.

From a legal practice standpoint, some activities performed within the JAG are more similar to civilian practices than others. For example, court martial practitioners, like civilian

⁴⁹ Canada. Department of National Defence, Defence Administrative Orders and Directives, DAOD 5023-0, Universality of Service, <http://www.admfincs.forces.gc.ca/dao-doa/5000/5023-0-eng.asp> ; Internet, accessed 17 April 2010.

⁵⁰ Canada. Department of National Defence. Queen’s Regulations and Orders. QR&O article 4.081

⁵¹ Canada. Department of National Defence. Defence Orders and Administrative Directives. DOAD 5023-1 <http://www.admfincs.forces.gc.ca/dao-doa/5000/5023-1-eng.asp> ; Internet, accessed 17 April 2010.

⁵² Canada. Department of National Defence. Defence Orders and Administrative Directives. DOAD 5023-2 <http://www.admfincs.forces.gc.ca/dao-doa/5000/5023-2-eng.asp>; Internet, accessed 17 April 2010.

criminal lawyers, need a high degree of knowledge in applicable federal statutes and regulations, the latest jurisprudence of Canadian criminal courts and general legal doctrine. This requirement does not alter the fact that all legal officers are military professionals who enjoy, as officers, an institutional fusion with their client. This allows them to be operational enablers, even when advising in administrative military law or military justice.⁵³

This character does not arise from promotional slogans but from the law,⁵⁴ its interpretation by the Supreme Court of Canada and a consistent practice. It therefore needs to be reflected in the core operative values to be implemented in a corporate model truly tailored to the Office of the JAG's requirements.

2.33 Current Organization

The 148 Regular and 58 Reserve force members of the OJAG⁵⁵ work in three specialized lines of operations throughout Canada and routinely deploy around the globe. Its organization is functionally and geographically complex, but for the purpose of its corporate model design, it is essential to describe its key organizational characteristics.

At present, the OJAG is a relatively flat organization since its legal officers hold ranks that typically range from Captain/Lieutenant Navy (Capt) to Brigadier-General/Commodore (BGen), with the bulk of its personnel holding the ranks of Major/Lieutenant-Commander (Maj) and Lieutenant-Colonel/Commander (LCol). While the JAG is usually a BGen, Major and LCol are often the terminal ranks for military lawyers.

⁵³ R. vs Généreux [1992] 1 S.C.R. 259. « To maintain the Armed Forces in a state of readiness, the military must be in a position to enforce internal discipline effectively and efficiently », p 303.

⁵⁴ National Defence Act, R.C.S. 1985, c. N-5.

⁵⁵ Canada. Department of National Defence. Office of the Judge Advocate General. JAG Annual Report for 2007-2008, p 2.

Legal officers primarily work in headquarters the National Capital Region where the JAG's senior leadership at the JAG Deputy level (Colonel/Captain (N)) and most of the leadership at the supervisor level (LCol) are located. The JAG also has a Chief of Staff, primarily tasked with personnel issues and a Chief Warrant Officer, primarily tasked to advise the JAG on non-commissioned members' issues.

From a command and control perspective, geography poses a significant command and control challenge because legal services are also provided on a regional basis. Legal officers posted throughout the country typically advise on general legal issues at the unit and formation levels. This decentralization therefore impacts significantly on the JAG's corporate identity and needs to be carefully considered in its resource alignment.

The OJAG exploits two sources of recruitment. Civilian lawyers are recruited as Direct Entry Officers (DEO) and CF officers from other military occupations selected for the Military Law Training Program (MLTP) which fully subsidizes the member's legal studies. This blend of background is another source of corporate identity because socialization, professional experience and personal motivations of recently recruited military members and experienced officers vary significantly.

Given the OJAG's composition, a brief overview of the main activities conducted within its lines of operations completes the organizational portrait.

2.34 Lines of Operations: Military Justice

The Canadian military justice system evolved in important ways in the 1990's. Key constitutional aspects of the court martial and summary trial system were explored by the Supreme Court of Canada⁵⁶ and various inquiry bodies.⁵⁷ As a result, amendments were brought to the NDA to ensure the constitutionality of this system, some of which involved the military police, the military prosecution, the defence counsel and the office of military judges.

At present, the Canadian Military Prosecution Service (CMPS) enjoys discretion to prefer charges and conduct prosecutions while the Defence Counsel Service (DCS) is statutorily insulated for the purpose of representing its clients⁵⁸ in court martial. For summary trials, OJAG personnel deliver mandated training and provide statutory-required legal advice at key stages of disciplinary processes.

This transformed military justice system expanded the OJAG's mandate to be fully integrated in its current operations. However, the harnessing of the potential of legal officers working in this line of operations can be improved. For example, delays experienced in court martial still bring discontent within the CF. Furthermore, an external review team was mandated to assess both the CMPS and DCS and revealed deficiencies in their internal functioning that underline the requirement for a larger corporate assessment.

⁵⁶ R. vs Généreux [1992] 1 S.C.R. 259.

⁵⁷ Dickson Special Advisory Group on Military Justice and Military Police Investigation Report, 1997.

⁵⁸ Canada. Department of National Defence. Office of the Judge Advocate General. JAG Annual Report for 2007-2008, pp 3-4.

2.35 Lines of Operations: Operational Law

Operational law has gained in importance over the past two decades. Complex, multi-faceted operations with complicated legal issues generated the need to provide operational law advice and to deploy an increasing number of legal officers.

Since the First Gulf War, legal advisors were part of the contingents deployed to Somalia, Rwanda, the Balkans, Haiti, East Timor and Eritrea. As a result, deployed legal officers between 1991 and 2001 pioneered the practice of operational law in expeditionary contexts. Since 2002, legal advisors have been committed in Afghanistan at the tactical, operational and strategic levels, both in national and multi-national headquarters and in conventional and non-conventional environments.

Operational law services are also delivered in support of complex domestic operations such as the contribution of the CF to the Vancouver 2010 Olympic Games, international summits and support requests from civilian agencies.

Although the OJAG managed to develop quickly a valuable expertise in this line of operation, the requirement for an assessment of the JAG's resource alignment is evidenced by certain problems. For example, operational legal advice is sometimes delivered too late or in ways that do not prove a definite operational added to the client. If corrective measures are not taken, this deficiency is likely to erode the OJAG's brand in the eyes of its clients.

2.36 Lines of Operations: Military Administrative Law

The CF is a society that governs itself through a multitude of administrative policies and processes. The services provided by the OJAG in this line of operation ensure that those policies and processes are intrinsically legal and that they are legally applied. The overarching goals are to ensure CF operations benefit from adequate administrative support and to protect the interests

of the institution as well as those of its members. General administrative issues involving legal services include service estates administration, compensation and benefits allocation and support during elections.⁵⁹

In the last decade, the area of military administrative law performed a discreet yet significant evolutionary leap. CF's operational tempo revealed inadequacies of existing administrative processes which required significant legal input to make them relevant in the new context. These recent developments are also illustrative of the distinctiveness of military administrative law as a line of the OJAG's line of operations.

Again, although the OJAG brings a great added value in this LOO, the professional distinction of military administrative law calls for a new career progression model-based on specialization.

2.37 Military Law Training

Military law training is developed and delivered to the CF and the OJAG by a team of legal advisors currently posted to the Canadian Forces Military Law Center (CFMLC)⁶⁰ in Kingston. The JAG retains authority over the legal content of the CFMLC's products and is a privileged beneficiary of CFMLC's services. From a command and control perspective however, the CFMLC is established under the authority of the Canadian Defence Academy.

2.38 Identity and Corporate Model

This description of the JAG's mandate, organization and activities is far from exhaustive. Still, it highlights that the OJAG's unique character is defined by a convergence of military and legal professional cultures. It shows that both cultures have structural characteristics, face

⁵⁹ Canada. Department of National Defence. Office of the Judge Advocate General. Annual Report for 2007-2008, p. 5.

⁶⁰ Canada. Department of National Defence. Canadian Forces Military Law Center webpage: <http://www.cda.forces.gc.ca/cfmlc-cdmfc/index-eng.asp> ; Internet, accessed 19 April 2010.

challenging trends, benefit from inherent strengths and suffer from weaknesses. Lastly, deficiencies of different natures show the requirement to proceed to a complete corporate analysis leading to the implementation of a value-based model. Since ad hoc remedies to problems seemingly unrelated did not bring the desired effects, comprehensive and integrated approach tailored to this unique character is likely to bring better results.

CHAPTER 3 WHAT MAKES THE JAG RELEVANT?

Private and public corporation's activities, commercial endeavors, scientific research, artistic expressions, virtually every human action has to be relevant for the group in which it takes place. The default to bring added value to stakeholders, shareholders, clients or the public is sanctioned by a fast or slow but sure oblivion. In today's fast paced and interconnected economies, the demise of irrelevant firms or weak competitors is observed daily.⁶¹

This implacable rule does not spare military organizations as evidenced by the long string of trades that disappeared after having fallen into obsolescence. The JAG has a statutory mandate to superintend and administer military justice within the CF and is appointed as the legal advisor for military law matters within the Department of National Defence and the Canadian Forces. Beyond this mandate, does the JAG deliver any added value to the CF, the Department of National Defence, the Government and the Canadian public?

In the course of the design of a corporate model, this determination is an essential determination to make: First, it will validate whether its activities are in line with the mandate given to the OJAG. Second, it will cast light on the current expectations and requirements of the customers of its legal services, thus allowing for a maximization of the level of service. Third, this questioning fosters organizational accountability to the OJAG's stakeholders and to the Canadian public. Lastly, it allows the deduction of ways in which the OJAG can improve its organization, its leadership and management processes and the alignment of its resources.

⁶¹ Cynthia A. Montgomery, *Putting Leadership Back into Strategy*, Harvard Business Review, January 2008, Reprint R0801C, p 3, "In the strategy portion of the Owner/President Management executive program at Harvard Business School, executives are asked to respond to the following questions: -If your company were shuttered, to whom would it matter and why? -Which of your customers would miss you the most and why? -How long would it take for another firm to step into that void?". <http://www.tcyp.ca/PDF/HBRPuttingLeadershipBack-into-Strategy.pdf> ; Internet, accessed 19 April 2010.

3.1 Performance Measurement, Governance and Accountability

The Office of the JAG has always been concerned by the satisfaction of its client. Going beyond simply the professionalism of its members, the OJAG committed time and resources to get a sense of the adequacy of its services. It assessed its performance and the perception of stakeholders through various means.

In the early years of the military justice reforms, it conducted interviews with discipline stakeholders to find the best ways to implement them.⁶² It also published strategic letters assessing the corporate state of the Office,⁶³ which also addressed the question of the stakeholder's perception of military justice.⁶⁴ It conducted impact assessments focusing on new demands and funding pressures.⁶⁵ Between 2000 and 2007, it engaged a specialized firm to probe the satisfaction of persons involved in summary trials.⁶⁶ During this period, performance reports incorporating a quantitative measurement system were also published.⁶⁷

⁶² Canada. Department of National Defence. Office of the Judge Advocate General. Final Report: Military Justice Interview Survey, 2001, <http://www.forces.gc.ca/jag/publications/surveys-sondages/Interview-Entrevue2001FinalRep-eng.pdf> ; internet, accessed 17 April 2010.

⁶³ Canada. Department of National Defence. Office of the Judge Advocate General. JAG Strategic Letter, 2000; Strategic Letter, 2001. <http://www.forces.gc.ca/jag/publications/index-eng.asp> ; Internet, accessed 17 April 2010.

⁶⁴ Canada. Department of National Defence. Office of the Judge Advocate General. JAG, 2000 Strategic Letter, 2001-2002, Initiative: Evaluate and Respond to Stakeholder Perception, p 23. http://www.forces.gc.ca/jag/publications/surveys-sondages/Strategic-Strategique-01-02_eng.pdf ; Internet, accessed 17 April 2010.

⁶⁵ Canada. Department of National Defence. Office of the Judge Advocate General. JAG Impact Assessment, 2003-2004 Internet, <http://www.forces.gc.ca/jag/publications/surveys-sondages/impact-03-04-eng.pdf> ; Internet, accessed 17 April 2010.

⁶⁶ Canada. Department of National Defence. Office of the Judge Advocate General. Surveys of the summary trial process, JAG Website, <http://www.forces.gc.ca/jag/publications/index-eng.asp> ; Internet, accessed 17 April 2010.

⁶⁷ Canada. Department of National Defence. Office of the Judge Advocate General. JAG Performance Reports, JAG Website, <http://www.forces.gc.ca/jag/publications/index-eng.asp> ; Internet, accessed 17 April 2010.

These tools are very useful to identify areas where the added value brought by the Office of the JAG is not optimal. They inform on how resources should be aligned and where training and mentoring should be focused. For example, results showed that since the reforms implemented in 1997 and 1999, stakeholders appreciate that CF units have returned as the center of gravity of the summary trial system. Discontent was voiced with respect to delays and sometimes perceived inconsistencies.⁶⁸ This finding gives a clear indication of the client's concerns.

From a corporate governance perspective, the Office of the JAG has published annual business plans since 2002.⁶⁹ The management model adopted states that the strategy, the vision, the JAG's values and its mission are aligned to the NDA.⁷⁰

As corporate literature shows, the implementation of a vision is a difficult task.⁷¹ In the this case, the values stated were "The Rule of Law, Professional & Ethical Standards, Innovative Leadership and Management" while the vision stated was "That justice be done in the defence of Canada".⁷² The actual implementation of those corporate plans does not seem to have been

⁶⁸ Canada. Department of National Defence. Office of the Judge Advocate General. Surveys of the summary trial process, JAG Website, <http://www.forces.gc.ca/jag/publications/index-eng.asp> ; Internet, accessed 17 April 2010.

⁶⁹ Canada. Department of National Defence. Office of the Judge Advocate General. JAG Business Plans, JAG Website, <http://www.forces.gc.ca/jag/publications/index-eng.asp> ; Internet, accessed 17 April 2010.

⁷⁰ Canada. Department of National Defence. Office of the Judge Advocate General. JAG Business Plan, 2008-2009, p 3. <http://www.forces.gc.ca/jag/publications/office-cabinet/Bus-Plan-Activites-08-09-eng.pdf> ; Internet, accessed 17 April 2010.

⁷¹ John P. Kotter, *Leading Change*, John P. Kotter, (Boston: Harvard Business School Press, 1996), p 16.

⁷² Canada. Department of National Defence. Office of the Judge Advocate General. JAG Business Plans, JAG Website, <http://www.forces.gc.ca/jag/publications/index-eng.asp> ; Internet, accessed 17 April 2010.

successful at the operational level because the values proposed in the plans have not been instrumentalized throughout the Office of the JAG.

From a public accountability perspective, the JAG has published since 1999 an annual report delivered to Parliament through the Minister of National Defence which accounts how military justice was administered and military law services provided to the CF during the year.⁷³ Furthermore, the conduct of a Five Year review of the provisions concerning the amendments brought to the NDA during the 1999 reforms ensures that the Parliament is accounted to and that “the NDA continues to reflect Canadian values and legal standards while preserving the CF’s ability to fulfill its essential military missions”.⁷⁴ These practices and the OJAG’s compliance to the Five Year review process not only demonstrate accountability and transparency at the JAG level, they provide updates and information from OJAG’s divisions and directorates to the Parliament, the minister and the public.

3.2 Stakeholders’ Expectations: the OJAG’S Brand Today

A strong branding enhances an institution’s credibility, its relevancy and the recognition of the added value that it brings.⁷⁵ Consequently, the OJAG needs to ensure it provides the right services in the right way. It is impossible to survey the added value provided by the Office in detail for each line of operations, so this study will focus on the summary trial process, the court martial, and military operations. The first has been retained because of its importance as a baseline competency and the interface it provides with clients early in legal officers’ careers, the

⁷³ Canada. Department of National Defence. Office of the Judge Advocate General. JAG Website, <http://www.forces.gc.ca/jag/publications/index-eng.asp> ; Internet, accessed 17 April 2010.

⁷⁴ Canada. Department of National Defence. Office of the Judge Advocate General. JAG website, <http://www.forces.gc.ca/jag/office-cabinet/role-eng.asp#Review> ; Internet, accessed 19 April 2010.

⁷⁵ Dave Ulrich and Norm Smallwood, *Building a Leadership Brand*, Harvard Business Review. July-August 2007, Reprint R0707G, <http://campaign.mla.ac.il/noa/success/hadamkmotag/Building.pdf> ; Internet, accessed 19 April 2010.

second because it is the public face of the Office and the third because legal advice provided has direct tactical, operational or strategic implications.

3.21 Added Value at the Summary Trial

The summary trial constitutes the largest proportion of the application of military justice and has been recognized as the backbone of the military discipline.⁷⁶ It is designed to render justice in accordance with statutory and Constitutional standards, thus protecting the public interest. It is also designed to maintain discipline in military units by maintaining military authority and the integrity of the chain of command. These two dimensions are reconciled in two important ways because the CF is allowed to maintain its own discipline, which in turn improves its morale, cohesion and operational effectiveness.

Legal officers are involved in virtually every aspect of the daily disciplinary life of military units including training, legal advice on unit and military police investigations, searches and seizures, pre-trial custody, pre-charge and pre-trials reviews as well as findings and sentence revisions. In particular, they deliver the Presiding Officer Training Course which is a pre-requisite for appointment as Commanding Officer and a requirement to preside over summary trials. In the 2007-2008, 42 two-day courses delivered by legal officers were given throughout the CF qualifying 797 members.⁷⁷ Summary trials stakeholders are also brought into close contact with legal officers because of mandatory legal advice in the course of the summary trial process.

⁷⁶ Canada. Department of National Defence. Dickson Special Advisory Group on Military Justice and Military Police Investigation Report, 1997.

⁷⁷ Canada. Department of National Defence. Office of the Judge Advocate General. JAG Annual Report for 2007-2008, p 46.

Military justice at the summary trial level is critical for the OJAG because discipline is a vital aspect of military life. It is a privileged occasion to establish lasting imprints and rapports with discipline stakeholders at the unit level.⁷⁸ The benefits may come later and in other lines of operations of the OJAG. The relative importance of military justice at the unit level is such that it needs to be part of the core of the competencies developed in the formative years of legal officers before they acquire a specialization in one of the three lines of operations of the OJAG.

3.22 Added Value in the Court Martial

Although there are far more summary trials held than courts martial, the latter is often much more publicized in the media, as evidence by high profile cases. Consequently, the CMPS and the DCS are the public face of the OJAG and interact with both the CF and the Canadian public. Their contribution to the perception that the Office brings an added value is therefore important.

The CMPS leads a team of prosecutors who are spread across Canada, with a larger group concentrated in Ottawa. These lawyers are responsible for the preferral of charges to court martial, the prosecution of the cases before courts martial including hearing before the court of appeal of the court martial and for the delivery of legal advice to the National Investigation Service, a special branch of the Military Police.

The CMPS has obviously plays an important role in the working of military justice. It is statutorily designated to assume the same function as civilian Crown prosecutors in civilian jurisdictions. It represents the interests of the government and the military. It has the same judicial discretion and adopts similar standards when considering laying charges against subjects of the military service code of discipline. As in civilian prosecutions, the criteria revolve around

⁷⁸ Jay W. Lorsh and Thomas J. Tierney, *Impact and influence: The World of Professional Services*, Harvard Business Review, 2007, <http://campaign.mla.ac.il/noa/success/hadamkmotag/Building.pdf> ; Internet, accessed 19 April 2010.

the sufficiency of evidence for all essential elements of an offence, the likelihood of a conviction and the public interest.

The recurring problem in the court martial is that the delays in the prosecution of some court martial are assessed to be inordinately long. The negative impact of delays in court martial on the perception of the military justice system by the public and the degree of satisfaction of CF stakeholders is obvious. This reason explains why this issue became an institutional priority within the OJAG,⁷⁹ inspired thoughtful reflections⁸⁰ and brought systemic analysis⁸¹ in order to serve public interest with a quality and timely justice and bring an added value to the CF.

A recent analysis of the organization and operations of the CMP was ordered by the JAG from a private team of consultants composed of experienced civilian practitioners. The first series of recommendations of the Bronson Report are designed to improve the efficiency, the timeliness and the professionalism of judicial steps at the investigation stage. The second series of recommendations deal with the relationship between the chain of command and their legal advisors in order to streamline the judicial process involving unit legal advisors (Deputy Judge Advocates, or DJA) and their clients and to better integrate the provision of legal services by CMPS and DJA offices. The third series address practices and policies within CMPS so that the full professional potential of military prosecutors can be harnessed, particularly by increasing the latitude of their discretion. The fourth series proposes modification to the court martial themselves in order for it to keep its military specificity while benefiting from tested criminal

⁷⁹ Canada. Department of National Defence. Office of the Judge Advocate General. JAG Annual Report for 2007-2008, p 88.

⁸⁰ Pascal Lévesque, « *La célérité de la justice militaire canadienne : vers un meilleur équilibre entre efficacité et équité* ». (master's thesis, Université d'Ottawa, 10 Nov 2009).

⁸¹ Andrejs Berzins, Q.C, and Malcolm Lindsay, Q.C., "External Review of the Canadian Military Prosecution Service", Bronson Consulting Group, Ottawa, Canada, 31 March 2008.

court practices. The last two series propose improvements to human resources management and internal organization within CMPS.⁸²

Improvements in those areas are definitely likely to increase the added value of the OJAG, improve its branding in the eyes of CF stakeholders and better leverage the professional potential of military prosecutors. In addition, these are powerful arguments in favor of a model encompassing specialization as the basis of the career progression during a significant portion of the career of military lawyers.

The DSC is just as relevant legally and institutionally as the CMPS. It is tasked to provide legal advice to persons under disciplinary investigation or accused under the military Code of Service Discipline and to provide legal counsel to subjects prosecuted before a court martial. It is composed of a team of defence counsels based in the National Capital Region who appear before courts martial across the country. They comprise legal reserve officers and on occasion retain civilian counsel.

From a constitutional perspective, the integrity of the military justice system relies on a jurisdictionally independent defence counsel service. From a corporate perspective, the CF also requires a defence counsel service that is independent, professional and committed to the interest of investigated and accused service members.

Organizational issues within the DCS were also addressed by a team of civilian expert practitioners.⁸³ The conclusions of the Bronson Report for DCS focuses on issues such as

⁸² Andrejs Berzins, Q.C, and Malcolm Lindsay, Q.C., “External Review of the Canadian Military Prosecution Service”, Bronson Consulting Group, Ottawa, Canada, 31 March 2008, pps 79-86

⁸³ External Review of the Defence Counsel Service, Bronson Consulting Group, Ottawa, Canada, 15 September 2009.

training, manning, delays, regionalization, career progression, organization delays, relationship with CMPS, the Court and Charter motions.⁸⁴

In the context of a larger corporate analysis, the recommendations of this report supports that career progression should embrace specialization and raises the question of a Legal Reserve force focusing on court work.

3.23 Added Value on Operations

It is hard to say in an original way how the events of September 11 brought a drastic change in anything. It is however the case for every aspect related to the law of operations. Almost uninterruptedly since 2002, legal advisors were committed in Afghanistan at the tactical, operational and strategic levels, both in national and multi-national headquarters and in conventional and non-conventional environments.

The degree of integration of legal officers in operational processes is indicative of the requirement for operators to know how to employ military lawyers. Legal advisors prove to be invaluable for them in contemporary highly complex domestic and international environments. Conversely, it requires from operational lawyers sufficient knowledge and proficiency in the planning and execution of military operations to provide informed advice to commanders and their staff.

In this context, there is no doubt that pressing strategic, operational and tactical requirements prove that the OJAG is relevant and brings an added value to the CF and the Canadian public, which expects that its military observe and enforce the rule of law in every aspect of its operations.

⁸⁴ External Review of the Defence Counsel Service, Bronson Consulting Group, Ottawa, Canada, 15 September 2009, pp 53-61.

However, expansion of the operational law field of professional practice implies that legal officers must acquire abilities unique to this environment. It also implies that operators will accept the advice of a legal specialist more easily if they share a common language and mutual trust.⁸⁵

3.3 Added Value and Model Design

All the lines of operations of the JAG aim at the conduct of military activities within the rule of law while supporting the overall operational preparedness of the CF. This is one of the reasons why uniformed lawyers are necessary agents in a military force operating in accordance with the Constitution, the law, the jurisprudence, governmental policies and Canadian values while at the same time maximizing its operational potential.

Added value determination indicates how the Office of the JAG is relevant, where to maximize efforts and training, how to align resources and what professional output should be harnessed from its professionals.⁸⁶

⁸⁵ Jay W. Lorsh and Thomas J. Tierney, *Impact and influence: The World of Professional Services*, Harvard Business Review, 2007, <http://campaign.mla.ac.il/noa/success/hadamkmotag/Building.pdf>; Internet, accessed 19 April 2010.

⁸⁶ Cynthia A. Montgomery, *Putting Leadership Back into Strategy*, Harvard Business Review, January 2008, Reprint R0801C, p 3. <http://www.tcyp.ca/PDF/HBRPuttingLeadershipBack-into-Strategy.pdf>; Internet, accessed 19 April 2010.

CHAPTER 4 CORPORATE ASSESSMENT OF THE OJAG

Although the OJAG is a unique and relevant entity, a critical assessment of its current structure and internal operations remains a useful exercise, if only to ensure that it harnesses the maximum of available potential to fulfill its mandate and bring the best added value to its clients. In the private sector, many corporations seek regularly to enhance their competitiveness constantly and rigorously assess their own ways to do business. In fact, corporate literature suggests that core operative values conveyed by an appropriate mission statement and implemented at the individual and institutional level can unify a team, mobilize its resources and improve its external perception.

JAG-specific values inferred from the previous discussion are important for the OJAG from a corporate performance perspective. In several key areas, a set of core operative values tailored around the OJAG's specificities, its mandate and its key role within the CF can assist it in meeting its goals.⁸⁷

4.1 A Corporate Assessment Method

Successful corporate assessment of an institution's needs identify its core operative values. These needs can be implicit and inferred from the institution's successes and shortcomings or explicitly encapsulated in a mission statement. Once they have been identified, the building of the corporate model can begin.

⁸⁷ J. David Signer, "*Individual Values, National Interests, and Political Development in the International System*", chapter in "*The Correlates of War*", Vol 1: Research Origins and Rationale (New York: Free Press, 1979), cited in Laure Paquette, "*Strategies of Individuals: How Individuals Make Extraordinary Changes to Organizations or Society*", (New York: Nova Science Publishers Inc, Hauppauge 2002), p 27: "*Four basic routes to establishing values: 1. Operationalize the revealed wisdom, handed down either by deities or the elite, 2. Conduct opinion surveys, asking people what they desire in life, 3. Try to identify the particular or universal needs of people, 4. Use the analyst's judgment of what universal needs of people are*".

This step is an important part of the process because as guiding principles, values reflecting an organizational culture can translate into two subsets: terminal values driving desired outcomes, and instrumental values driving desired behaviors⁸⁸. To assess how the Office of the JAG can achieve this leverage, institutional challenges in key areas can be contrasted to operative values. This exercise validates if their identification was correct and provides insight on ways to implement them.

4.2 The OJAG'S Core Operative Values in 2010

The OJAG is a small and flat organization involved in every level of operational planning. Military lawyers advise sophisticated operators in areas regarded as critical for mission success by providing advice in the stated lines of operations. At times, the use of legal skills shapes the battle space directly by creating effects in operational theatres rather than through the provision of legal advice. This work requires motivated and specialized professionals organized in a unique way and bound by distinct unifying values. What kind of organization and values does the OJAG aspire to have?

The requirements and expectations of military legal services beneficiaries should be considered. The OJAG's clients such as the CF and DND and the stakeholders with whom it interacts such as the Government as a whole, require and expect a military legal service that able to provide timely and informed legal advice that is found nowhere else in Canada.⁸⁹ Not only is this type of advice specialized, it needs to be couched, framed and delivered in a very unique fashion in order to remain useful and effective for the military user. The key desired

⁸⁸ Gareth R. Jones, Albert J. Mills, Terrance G. Weatherbee and Jean Helms Mills, *Organizational design theory, Design and Change*, Canadian Edition, (Toronto: Pearson, Prentice Hall, 2006), pp 213-214.

⁸⁹ Canada. Department of National Defence. The First Independent review by the Right Honorable Antonio Lamer P.C., C.C., C.D. of the provisions and operations of Bill C-25, *An Act to Amend the National Defence Act and to make consequential amendments to other Acts*, as required under section 96 of Statutes of Canada 1998, c. 35. 3 Sept 2005.

characteristics from the user's end are accuracy in unique fields of law, timely to meet operational tempo requirements and concise to be processed in operational planning flows that integrate vast amount of information and intelligence. It needs to be operationally sound and blended into a process that considers operational risk, sensitive (and sometimes competing) values or interests and solution oriented so that it contributes to mission accomplishment rather than creates operational friction. By delivering legal advice in this manner, military lawyers will secure their full integration into the running of the CF and DND.

At the individual level, this demanding context calls for legal advisors who are culturally attuned to the operator's realities while protecting their professional latitude. They need to assume responsibility, distinguish legality and legal risk management and demonstrate expertise in specific fields as well as recognize professional boundaries.⁹⁰

At the institutional level, the OJAG must avoid duplication of effort and conflict of advices provided by different legal officers. It must marshal resources in a way that maximizes the depth, redundancy and resiliency of its teams and moreover is conducive to streamlined processes.

In general, the operative values best tailored to the OJAG's needs focus primarily on three attributes: professional competence, ownership of the trade, and the ability to deliver an operational added value. More practically, the first leads to specialization, the second to the generation of an elite group and the third to timely mission accomplishment focused delivery. Should the OJAG foster this kind of mentality throughout its career progression cycle, it could generate a work force that perceives itself and is perceived by others as the custodian of the standard of excellence in the country.

⁹⁰ Jay W. Lorsh and Thomas J. Tierney, *Impact and influence: The World of Professional Services*, Excerpted from: *Aligning the Stars: How to Succeed When Professionals Drive Results*, (Boston: Harvard Business School Press, 2007).

Successful implementation of those values requires dedication and consistency from the OJAG's leadership.⁹¹ This implementation can take the form of written rules and standards but the "most powerful and crucial values of an organization are not written down. They exist in the form of shared norms, beliefs, assumptions, and ways of thinking and acting that people within an organization use to relate to each other and to outsiders and to analyze and deal with problems facing the organization".⁹² Once internalized, they become engrained in every facet of its corporate and individual actions.

4.3 Key Areas of Corporate Performance

Those values can improve the OJAG's corporate performance if they are translated into a consistent recruitment strategy, a career progression model, an alignment of resources and ways to harness professional potential.

4.31 Recruitment

An Office of the JAG guided by competence, ownership and operationally focused legal services would pursue recruitment strategies that attract and develop legal officers fitting with its institutional values. Suitable candidates come from both the direct entry and the military legal training program selection, each of which require a deliberate method based on named criteria and consistency in the selection process.

One approach is to trigger an interest early in law students and military officers so that they can have an accurate understanding of the OJAG's activities and show dedication and

⁹¹ Dave Ulrich and Norm Smallwood, *Building a Leadership Brand*, Harvard Business Review. July-August 2007, Reprint R0707G, <http://campaign.mla.ac.il/noa/success/hadamkmotag/Building.pdf> ; Internet, accessed 19 April 2010.

⁹² Gareth R. Jones, Albert J. Mills, Terrance G. Weatherbee and Jean Helms Mills, *Organizational design theory, Design and Change*, Canadian Edition, (Toronto: Pearson, Prentice Hall, 2006), p 215.

consistency in their personal efforts to join it. A good external branding improves the Office's attractiveness and facilitates targeting candidates early and aggressively.

Another approach is to choose candidates for the specific skills and experience that they can bring to the OJAG as a member who will contribute within one of its lines of operations. Candidates with a strong interest and potential in criminal law, in public international law and in administrative law can be considered for a career within the relevant line of operation. The common denominator is the aspiration and the ability to be part of a demanding and rewarding elite group. However, to attract such candidates, the OJAG must be perceived as an employer of choice. Consequently, its leaders are not only first class performers within their legal field of expertise but also in the management of their personnel.

The key to this strategy is to strike a balance between the requirement for the candidate to show interest and dedication for the OJAG's activities and the OJAG's ability to make persistent and coherent efforts to reach the best candidates. Lack of consistency and concerted efforts can only be detrimental to the generation of new talents.

4.32 Career progression

To succeed in its ambition to exploit fully the potential of its resources as a competency, ownership and operationally oriented service, the OJAG should consider embracing and implementing a career progression model based on specialization. This model appears to be the best answer to the findings on the legal profession's contemporary challenges, which are in part reflected by the OJAG's clients and stakeholders' expectations and requirements.

As discussed, literature and reports from law societies show the increasing complexity and specificities of legal issues.⁹³ The impact of this complexity is easily observable in the military law context when considering the OJAG's three lines of operations. While they require a common understanding of military realities, they have distinct legal foundations and practice environments. Court room work is about convincing a judge based on evidence and criminal law, the provision of legal advice in operational law requires an understanding of military planning and execution of operations and relates to a distinct set of law and working in military administrative law requires a deep understanding of a multitude of regulations, processes and policies.

With strong unifying values, the members of the OJAG can develop a sense of shared identity as professional military officers and legal practitioners. They should acquire a specialized skill set once they have spent a few formative years during which this sense of identity is forged.⁹⁴ During this stage, they will also acquire a common operating knowledge necessary to perform in each of the line of operation is acquired. As a result, this experience will in time contribute to the internalization of the Office of the JAG's values at the individual and institutional levels.⁹⁵

4.33 Resource alignment

Better optimization of internal resources leverages existing potential and provides benefits to the customer. For an organization based on competency, ownership and operation

⁹³ Andy Boon, John Flood, Julian Webb, Postmodern Professions ? The Fragmentation of Legal Education and the Legal Profession, *Journal of Law and Society*, Vol 32, No 3, (Sept. 2005); <http://jstor.org/stable/3557242> ; Internet, accessed 4 February 2010, pp 472-492.

⁹⁴ Gareth R. Jones, Albert J. Mills, Terrance G. Weatherbee and Jean Helms Mills, *Organizational design theory, Design and Change*, Canadian Edition, (Toronto: Pearson, Prentice Hall, 2006, Chapter 7, pp 213-251

⁹⁵ *Ibid.*, p. 215.

focused service, adequate resource alignment eliminates duplication, streamlines service delivery processes and facilitates information mobility and mass competence wherever feasible.

Whereas many levels of review authority can be considered as quality control mechanisms, they also constitute an obstacle to many of the goals pursued by an operationally focused organization by slowing the process down. Furthermore, literature on the composition of professional services firms indicate that professionals such as lawyers crave for trust and autonomy, which is better achieved in a system that is organically designed to maintain proper oversight while avoiding unnecessary controls.

A possible alignment could see pools of specialists gathered within the lines of operation. This feature could bring a critical mass of specialists who can be mobilized on surges, interact amongst each other on routine operations, cover for each other during temporary duties and deployments, and avoid the spread of specialists throughout the CF. These pools could support the CF as their corporate client and provide a robust and continuous technical network for the legal officers advising outside the pool or in a different line of operations.

This arrangement could be achieved by concentrating the resources in functional teams within their respective lines of operation and minimize as much as possible the spreading of legal advisors. As a result, commands currently served by three to four legal advisors would retain only one experienced lawyer who would act as a first line advisor and a liaison officer with the pool of specialists on more complex issues. From a client's expectations perspective, a demonstration that this new alignment actually delivers an enhanced mission oriented added value could convince CF leadership of the validity of this concept.⁹⁶

⁹⁶ Jay W. Lorsh and Thomas J. Tierney, *Impact and influence: The World of Professional Services*, Excerpted from: *Aligning the Stars: How to Succeed When Professionals Drive Results*, (Boston: Harvard Business School Press, 2007).

Internally to the OJAG, the pool system gives more depth, redundancy, flexibility in contingency team gathering and allows for more creative management. Measures such as part-time and work from home arrangements could make the OJAG a more attractive recruiter and a more competitive employer. It would therefore be less vulnerable to attrition which is becoming a growing area of concern in the legal profession.

4.34 Harnessing of Potentials

The competency, ownership and operationally focused motivations are not limited to the OJAG's output to the CF and the DND. An integral implementation of those values is equally devoted to internal operations, which include leading and managing its own members. Elite practitioners must therefore aspire to be elite leaders and managers to perpetuate the cycle of value internalization at the individual and institutional levels.

Corporate literature identifies a problem frequently encountered by professional services firms: they are most often composed of practitioners who are not selected or trained for formal leadership or management. These firms end up being led by senior members who did not develop the necessary skill sets to maximize the harnessing of human potential within the firm. As a result, the personnel are not inspired or motivated, resources alignment and professional output is not optimal and the relative added value brought by the firm decreases.

Selection and development of military lawyers along the identified values would mitigate the competence gap that lawyers have in leadership and management. It would likely generate leaders at all levels that see the accomplishment of the JAG's mission involves an understanding of its workforce's key characteristics, including its composition, its requirements, its professional motivations and its concerns.

To generate such leaders, the OJAG must promote a corporate culture based on an institutional leadership tailored to the specific requirements of its mission.⁹⁷ It can inspire itself from the CF leadership doctrine concept of transformational leadership⁹⁸ akin to leadership theories developed in the corporate literature such as the integrated⁹⁹ and adaptive leadership.¹⁰⁰

By doing so, the Office of the JAG could position itself favorably to face systemic challenges such as generational, bilingualism, gender and diversity issues and see the potential that can be harnessed in each situation rather than see and manage them as problems.¹⁰¹

4.4 OJAG Specific Doctrine

There are many ways to guide the conduct of an organization's operations. Formal direction enforces leader's short term expectations while the implementation of a corporate vision through a mission statement inspires value-guided actions. Between those two extremities, doctrine offers a common understanding of the ways in which missions should be executed.

⁹⁷ Tamara J. Jackson and Lynda Gratton, *What it Means to Work Here*, in *Harvard Business Review on Talent Management*, (Boston: Harvard Business Press, 2008), pp 1-22.

⁹⁸ Canada. Department of National Defence. *Leadership in the Canadian Forces: Conceptual Foundations*, (Kingston: Canadian Forces Leadership Institute, 2005).

⁹⁹ Thomas J. Delong, John J. Gabarro and Robert J. Lees, *When Professionals have to lead: A New Model for High Performance*, (Boston: Harvard Business School Press, 2007).

¹⁰⁰ Ronald Heifetz, Alexander Grashow and Marty Linsky, *The Practice of Adaptive Leadership: Tools and Tactics for Changing Your Organization and the World*, (Boston: Harvard Business School Press, 2009).

¹⁰¹ Fiona Kay, "Crossroads to innovation and Diversity: The Careers of Women Lawyers in Quebec", *McGill Law Journal/Revue de droit de McGill* (Vol 47) pp 700-747, 2002, <http://lawjournal.mcgill.ca/documents/47.4.Kay.pdf> ; Internet, accessed 18 April 2010.

In the military context, it is defined as “the fundamental principles by which the military forces guide their actions in support of objectives. It is authoritative but requires judgment in application”.¹⁰²

More specifically, while the CF regards doctrine as guidance rather than as orders, it considers that “departure from doctrine should normally be undertaken only after the doctrine has been considered in light of the particular circumstances of an operation”.¹⁰³ While it is not a binding source such as the law or legitimate orders, it aspires to provide a corporate textbook solution based on the best practices and the latest contextual developments.

At present, there is no JAG-specific doctrine providing a comprehensive set of reference and authoritative guidance on how it should conduct its operations. The Office of the JAG has issued a series of JAG Directives¹⁰⁴ which are rather akin to Standard Operating Procedures as they relate to the JAG’s expectation on standardized procedures.¹⁰⁵ It has also published a series of manuals on various aspects of military law.¹⁰⁶ These manuals aspire to provide the CF community with an overview of the existing applicable law that pertains to the application of military justice, the conduct as well as the support of operations. They are not meant, however, to provide military legal practitioners a common doctrine applicable to the conduct of the OJAG’s operations.

¹⁰² North Atlantic Treaty Organization, NATO Glossary of Terms and Definitions, AAP-6.

¹⁰³ Canada. Department of National Defence. Canadian Forces Joint Publication CFJP-A1 Canadian Forces Experimentation Center, May 2008, A-AE-025-000/FP-000, page 1-1.

¹⁰⁴ Canada. Department of National Defence. Office of the Judge Advocate General website. <http://www.forces.gc.ca/jag/publications/directives-eng.asp> ; Internet, accessed 13 April 2010.

¹⁰⁵ North Atlantic Treaty Organization, NATO AAP-10 (2006), <http://www.nato.int/docu/stanag/aap006/aap-6-2010.pdf> ; Internet, accessed 13 April 2010.

¹⁰⁶ Canada. Department of National Defence. Office of the Judge Advocate General website. <http://www.forces.gc.ca/jag/publications/index-eng.asp> ; Internet, accessed 13 April 2010.

Force structure and doctrine play critical roles; both are crucial to successful transformation in an forces service's ability to wage war.¹⁰⁷ Similarly, a complete corporate overhaul of the OJAG leading to its organizational transformation should contemplate the generation of JAG policies on its mandate and domain of activities supplemented by JAG-specific doctrine. This doctrine could, for example, provide a clear understanding of its standard practices, its internal line of reports and responsibilities at each level of leadership and provide guidance on emerging areas of practice. For example, legal skills are increasingly employed to shape the battle space directly as opposed to the traditional provision of legal advice to operators. This change is observed on missions promoting the rule of law, state and capacity building, quasi-diplomatic duties and in some unconventional operations contexts.

In the absence of existing capstone or keystone doctrine that envisages JAG-specific doctrine, the Office of the JAG could generate its own doctrine at a level conceptually equivalent to subordinate doctrine as it pertains to particular subject matter areas.¹⁰⁸

Doctrine pertaining to internal operations and to the provision of legal services to the CF needs to be informed by a variety of factors that are constantly evolving such as those found in Figure 5-1. It is a time and resource consuming exercise, but it also has the potential to create economy of effort once implemented and publicized. The factors on which this doctrine would impact as a result are found at Figure 5-2 which provides examples of some of the effects that can be achieved.

¹⁰⁷ Wildenberg, Thomas "Midway : Sheer Luck or Better Doctrine?" Naval War College Review, Vol 58, No 1 (Winter 2005), p 121-135.

¹⁰⁸ Canada. Department of National Defence. Canadian Forces Joint Doctrine, Publication CFJP-A1 Canadian Forces Experimentation Center, A-AE-025-000/FP-000, May 2008, page 1-7.

Figure 5-1¹⁰⁹Figure 5-2¹¹⁰

Any study of the Office of the JAG focused on a corporate assessment method draws upon leadership models proposed by military and civilian literature that can support its operations will now be analyzed. One military and two corporate ones will now be reviewed, analyzed and placed in the context of the military law services provision.

¹⁰⁹ Canada. Department of National Defence. Canadian Forces Joint Doctrine, Publication CFJP-A1Canadian Forces Experimentation Center, A-AE-025-000/FP-000, May 2008, page 1-6.

¹¹⁰ Canada. Department of National Defence. Canadian Forces Joint Doctrine, Publication CFJP-A1Canadian Forces Experimentation Center, A-AE-025-000/FP-000, May 2008, page 1-6.

CHAPTER 5 LEADERSHIP MODELS FOR THE OJAG

Leadership conceptually transcends time and culture as it ultimately deals with universal human attributes such as needs, fears, ambitions and motivations. It can be defined in a value neutral fashion without reference to the positive or negative implications of the purpose it serves. For example, the current CF definition of leadership is “directly or indirectly influencing others, by means of formal authority or personal attributes, to act in accordance with one’s intent or a share purpose”.¹¹¹ This implies that for the Office of the JAG, leadership is a tool to put vision in practice, not an end in and of itself.

In practical application however, leadership requires a high degree of contextualization to maximize human potential harnessing. Questions such as geography, the type of organization, its level of maturity, hierarchy, socio-demographics and the nature of the tasks are only some factors that will determine the kind of leadership that is adapted to a given context.

The Office of the OJAG operates in a unique context. It has a dual professional identity, a relatively flat hierarchy, educated members aspiring to a large professional autonomy, three lines of operations, geographic, cultural and linguistic challenges. Not surprisingly, the OJAG has to develop a leadership model that addresses these characteristics to succeed in maximizing their inherent enabling factors and minimize their inherent challenges.

Relevant and authoritative sources of leadership theories can provide interesting elements that can inform the design of a model adapted and implementable for the OJAG. These sources comprise military leadership doctrine and corporate leadership theories.

¹¹¹ Canada. Department of National Defence. *Leadership in the Canadian Forces: Conceptual Foundations*, (Kingston: Canadian Forces Leadership Institute, 2005), p 3.

5.1 Military Leadership Models

As part of the Canadian military, members of the Office of the JAG are military officers and leaders in a hierarchical institution. Therefore, it has to look at the recent CF doctrinal developments with respect to military leadership. Various factors such as the traumatic events in Somalia initially triggered the adoption of sounder leadership doctrine. The importance of leadership within the CF as an institution was such that the Canadian Forces Leadership Institute was created in 2001 under the authority of the Canadian Defence Academy, which edited several publications addressing leadership issues.¹¹²

Military leadership is multi-dimensional and encompasses a vast domain. The Military Leadership Handbook alone comprises 39 chapters, each addressing an essential aspect of applied leadership in the military context.¹¹³ The most relevant aspects of the CF leadership model relate to the CF effectiveness framework, the CF leadership model itself and, more specifically, the notion of transformational leadership in the dimension of leading people and leading the institution.

5.11 Canadian Forces Effectiveness Framework

The CF realized it had to develop a doctrinal approach to address its increasingly complex operating environment. The approach taken was the development of a framework that enhances mission success and balances external adaptability, internal integration, members' well

¹¹² Canada. Department of National Defence. *Leadership in the Canadian Forces: Conceptual Foundations*, (Kingston: Canadian Forces Leadership Institute, 2005), Canada. Department of National Defence. *Leadership in the Canadian Forces: Leading the Institution*, (Kingston: Canadian Forces Leadership Institute, 2007), Canada. Department of National Defence. *Leadership in the Canadian Forces: Leading People*, (Kingston: Canadian Forces Leadership Institute, 2007).

¹¹³ Col Bernd Horn and Robert W. Walker, *Précis de leadership militaire*, (Toronto: Dundurn Press, 2008) Table of Content, pp 5-8.

being and commitment.¹¹⁴ To achieve this balance, and attain an effective leadership, the CF focus on a value-based approach that instrumentalizes “belief(s) about what is centrally important and hence that should take precedence in guiding decisions and actions”.¹¹⁵

With time, practice and institutional consistency, a set of shared conduct values can become the institutional compass that will guide decision-making, actions and behaviors in a flexible and adaptable way while remaining consistent with desired institutional outcomes.

Figure 5-3¹¹⁶ illustrates the interplay between enabling outcomes such as internal integration, external adaptability and member well being and commitment. Guided and inspired by conduct values embodied by CF’s military ethos, the enabling outcomes facilitate the attainment of mission success as a primary outcome and through “perceived effectiveness and legitimacy”, secondary outcomes in the form of reputation, trust, confidence and support.¹¹⁷

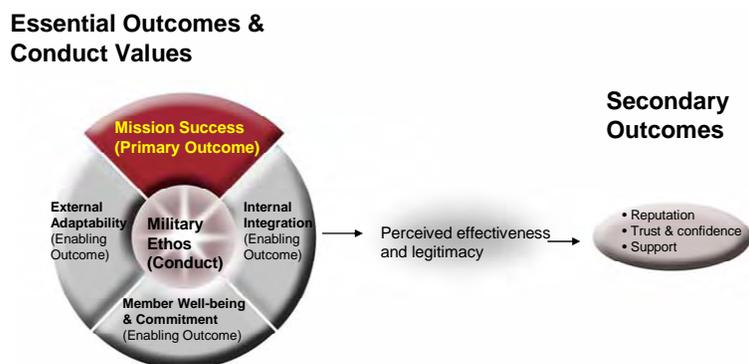
¹¹⁴ Canada. Department of National Defence. *Leadership in the Canadian Forces: Conceptual Foundations*, (Kingston: Canadian Forces Leadership Institute, 2005), p 3.

¹¹⁵ Canada. Department of National Defence. *Leadership in the Canadian Forces: Conceptual Foundations*, (Kingston: Canadian Forces Leadership Institute, 2005), p 18.

¹¹⁶ Canada. Department of National Defence. *Leadership in the Canadian Forces: Conceptual Foundations*, (Kingston: Canadian Forces Leadership Institute, 2005), p 19.

¹¹⁷ *Ibid.*

Fig 5-3 CF effectiveness framework.



This framework conceptually offers the flexibility to face many evolving challenges. Internally, dimensions such as organization, policies, procedures and information sharing ultimately affect cohesion and must be addressed through the CF's set of shared values in order to remain an effective enabling outcome. Externally, the Canadian public, the government and agencies, operating environments, other militaries and societies also constitute factors to which the CF has to adapt. The other enabling outcome is CF's members' well being and commitment which, properly maintained, produces the human potential necessary to mission success.

A proper tuning of the enabling outcomes and conduct values promotes mission success. It is also conducive to a military institution that is cognizant of the larger Canadian public because of the perceived efficiency (public service in the eyes of the taxpayer) and legitimacy (actions and decisions guided by a military ethos fed by Canadian civic, legal and ethical values).

In the CF's effectiveness framework, the product of this synchronization is a gain in reputation, trust, confidence and support.¹¹⁸

Value-based leadership includes an aspect particularly interesting for the OJAG, namely the subordination leadership exercise to the rule of law. In fact, the CF's own doctrine states the legal requirement to make decisions and take actions within the democratically adopted Canadian legal framework, including Constitutional, statutory and regulatory norms as well as other laws and social values. It also positively recognizes the subordination of the CF to civil authority and regards proper self-regulation, internal discipline and sound exercise of discretion as essential tenets of obedience to the rule of law.¹¹⁹

In the context of the Office of the JAG's practice, this means that mission success (lawful military operations) will be the result of external adaptability (for example, the ability to bring an added value with operationally focused advice) and internal integration (for example fostering shared identity and a sense of institutional ownership). These outcomes will be facilitated and guided by JAG-specific ethos (embodied in its values and its mission statement) and will bring a better reputation, trust and support as secondary outcomes (favorable branding with the clients, DND and GoC).

5.12 Transformational Leadership Concepts

The effective influence of behaviors within a military group is another important aspect of the CF's leadership model. Its doctrine aims at producing leaders that possess five key characteristics: technical competence (knowledge and skills), problem solving ability (cognitive

¹¹⁸ Canada. Department of National Defence. *Leadership in the Canadian Forces: Conceptual Foundations*, (Kingston: Canadian Forces Leadership Institute, 2005), page 20.

¹¹⁹ *Ibid.*, chapter 3.

ability), interpersonal skills (social capacities), personal integrity (personality) and military motivations (motivation and values).¹²⁰

These characteristics are necessary to produce effective leaders in a value-based framework. They possess the inherent competence, motivation and stamina to thrive in creating the enabling outcomes and achieve mission success. Observed from the angle of motivation and human potential harnessing, leaders who possess these characteristics will be able to influence behaviors effectively by adequately drawing from each segment of the spectrum of influence as dictated by the situation. They will know when and how to exercise control and to delegate in order to obtain the most from subordinates¹²¹.

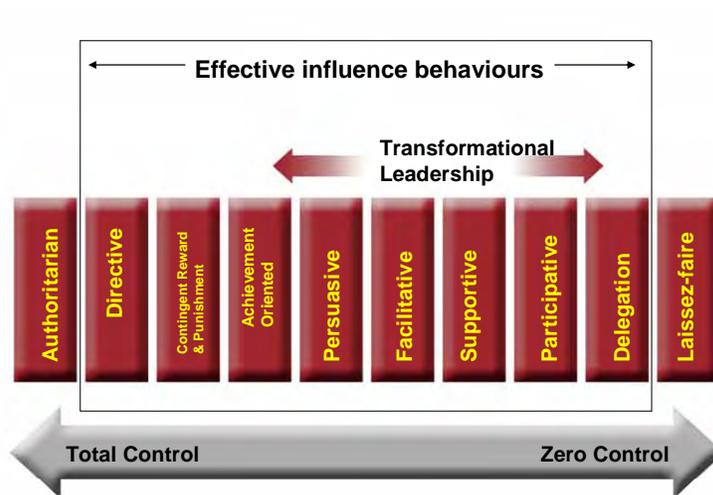
Figure 5-4 illustrates this full spectrum and identifies the zone in which behaviors are most effectively influenced.¹²² This excludes needlessly authoritarian exercises of control and excessive laissez-faire through abdication of authority. More specifically, the CF's value-based framework assesses the zone of transformational leadership to be, at least aspirationally, the area where leaders exercise the most effective behavior influence. This type of leadership implies a high degree of trust, sophistication of subordinates, cohesion within the group, but is also likely to build trust, sophistication and cohesion.

¹²⁰ Canada. Department of National Defence. *Leadership in the Canadian Forces: Conceptual Foundations*, (Kingston: Canadian Forces Leadership Institute, 2005), pp 60-62.

¹²¹ Thomas J. Delong, John J. Gabarro and Robert J. Lees, *When Professionals have to lead: A New Model for High Performance*, (Boston: Harvard Business School Press, 2007), chapter 8, *The Essential B Player*, pp 171-186.

¹²² Canada. Department of National Defence. *Leadership in the Canadian Forces: Conceptual Foundations*, (Kingston: Canadian Forces Leadership Institute, 2005), p 64.

Figure 5-4 Spectrum of leader influence behaviours.



Transformational leaders are seen to lead by example, inspire followers and peers, stimulate intellectual achievements, provide rationale for tasks they give to co-opt followers buy-in and increase potential harnessing by displaying individual consideration and empathy.¹²³ This type of leadership complements the transactional approach in which the follower's incentive is to receive a certain retribution for his or her efforts by appealing to a higher order of needs among the followers.¹²⁴

For the CF, transformational leadership constitutes the golden standard as it consecrates the symbiosis of interests among leaders, peers and followers and the sharing of conduct values that will guide the individuals and the institutions' decision making and actions in complex environments replete with adaptive challenges.¹²⁵ In other terms, while the CF's doctrine does

¹²³ Canada. Department of National Defence. *Leadership in the Canadian Forces: Conceptual Foundations*, (Kingston: Canadian Forces Leadership Institute, 2005), p 68.

¹²⁴ *Ibid.*, p 69.

¹²⁵ *Ibid.*, p 70.

not exclude directive leadership as an appropriate vector of influence in some circumstances, the institution aspires to generate leaders and followers who thrive better in the transformational zone of the leadership spectrum.

Similarly, for the Office of the JAG, a flat organization composed of well trained professionals who seek autonomy and latitude, transformational leadership emerges as the most suitable approach. The exercise of this type of leadership is a contributor to the implementation of a new corporate model because it instills a facilitative and supportive way to operate. At the same time, transformational leadership is the result of the implementation of a new model because legal officers selected, trained and developed according to appropriate core values will be more susceptible to respond to this type of leadership as leaders and followers. They will not require excessive control as followers nor impose micro managing as leaders and will not abdicate responsibility with a laissez-faire approach.

5.13 Leading People and Leading the Institution

CF leadership doctrine stipulates that leadership is exercised within two constructs: leading individuals and leading the institution. The former relates primarily to lower-to-middle levels of leadership and focuses on problem solving, task performance and mission accomplishment while the latter relates to higher leadership and focuses on the creation of conditions for success at the institutional level.¹²⁶

¹²⁶ Canada. Department of National Defence. *Leadership in the Canadian Forces: Conceptual Foundations*, (Kingston: Canadian Forces Leadership Institute, 2005), Chap 6 and 7; Canada. Department of National Defence. *Leadership in the Canadian Forces: Leading the Institution*, (Kingston: Canadian Forces Leadership Institute, 2007), Canada. Department of National Defence. *Leadership in the Canadian Forces: Leading People*, (Kingston: Canadian Forces Leadership Institute, 2007).

Figure 5-5 summarizes CF leaders' responsibilities and breaks them into the effectiveness framework's categories. It provides a complete map of the goals that, when attained, ensure effectiveness and bridge the individual and institutional governance of a military institution.

| Figure 5-5 Responsibilities of CF Leaders as They Relate to Major Functions and Effectiveness Dimensions ¹²⁷ | | |
|---|---|--|
| Effectiveness Dimensions | Major Leadership Functions | |
| | Leading People | Leading the Institution |
| Mission success | Achieve professional competence & pursue self-improvement. Clarify objectives & intent. Solve problems; make timely decisions. Plan & organize; assign tasks. Direct; motivate by persuasion, example, & sharing risks and hardships. Secure & manage task resources. Train individuals & teams under demanding & realistic conditions. | Establish strategic direction & goals. Create necessary operational capabilities (force structure, equipment, command & control). Exercise professional judgment in relation to military advice & use of forces. Reconcile competing obligations & values, set priorities, & allocate resources. Develop the leadership cadre. |
| Internal Integration | Structure & coordinate activities; establish standards & routines. Build teamwork & cohesion. Keep superiors informed of activities & developments. Keep subordinates informed; explain events & decisions. | Develop a coherent body of policy. Support intellectual inquiry & develop advanced doctrine. Manage meaning; use media & symbolism to maintain cohesion & morale. Develop & maintain effective information & administrative systems. Develop & maintain audit & evaluation systems. |

¹²⁷ Canada. Department of National Defence. *Leadership in the Canadian Forces: Conceptual Foundations*, (Kingston: Canadian Forces Leadership Institute, 2005), pp 48-49.

| | | |
|--------------------------------|---|--|
| | <p>Understand & follow policies & procedures. Monitor; inspect; correct; evaluate.</p> | |
| Member Well-being & Commitment | <p>Mentor, educate, & develop subordinates. Treat subordinates fairly; respond to their concerns; represent their interests. Resolve interpersonal conflicts. Consult subordinates on matters that affect them. Monitor morale & ensure subordinate well-being. Recognize & reward success.</p> | <p>Accommodate personal needs in professional development/career system. Enable individual & collective mechanisms of voice. Ensure fair complaint resolution. Honour the social contract; maintain strong QOL & member-support systems. Establish recognition & reward systems.</p> |
| External Adaptability | <p>Maintain situational awareness; seek information; keep current. Anticipate the future. Support innovation; experiment. Learn from experience & those who have experience. Develop effective external relationships (joint, inter-agency, multi-national).</p> | <p>Gather & analyze intelligence; define future threats & challenges. Initiate & lead change. Foster organizational learning. Master civil-military relations. Develop external networks & collaborative strategic relationships. Conduct routine external reporting.</p> |
| Military Ethos | <p>Seek and accept responsibility. Socialize new members into CF values/conduct system, history, & traditions. Exemplify and reinforce the military ethos;</p> | <p>Clarify responsibilities; enforce accountabilities. Develop & maintain professional identity; align culture with ethos; preserve CF heritage. Exemplify and reinforce the military ethos; develop & maintain military justice system. Establish an ethical culture.</p> |

| | | |
|--|---|--|
| | maintain order & discipline; uphold professional norms. Establish climate of respect for individual rights & diversity. | |
|--|---|--|

In the context of the OJAG, each of the goals of the template reflects an area where the OJAG can optimize the exercise of its institutional leadership and that of its members, both vertically and laterally. Figure 5-6 offers examples of actions fitting within a deliberate value based institutional strategy.

| Figure 5-6 Example of Exercise of Leadership Functions in the Context of the OJAG | | |
|---|--|---|
| Mission success / Leading people | | Targeted selection of new legal officers. Strong unifying generalist based acquired as junior legal officer. Proficiency within each LOO as individual career plan is implemented. Coherent training progression model. |
| Mission success / Leading the institution | | Coherent value-based organization in the pursuit of a specific mission statement. Creation of a JAG specific doctrine delineating its field of practice, its institutional command intent and its measures of effectiveness. |
| Internal integration / Leading people | | Maximized resource alignment at all levels. Promotion of lateral leadership, mentoring and community of practices. Selection and development of individuals in accordance to operative values and mission statement. Sense of ownership and shared identity. |
| Internal integration / Leading the institution | | Management of flat organization composed of professional seeking latitude in their practice. User friendly and relevant knowledge sharing processes. Assessment of lateral leadership and mentoring. JAG specific doctrine on internal operations. Senior leadership focusing on longer term strategic horizon. |
| Members' well being / Leading people | | Maximized and diversified professional rewards at the supervisor's level. Promotion of independent thinking. Promotion of bilingualism. Becoming a competitive employer of choice. |
| Member's well | | Leverage of flat organization's potential. Diversification |

| | |
|---|---|
| being / Leading the institution | of professional rewards at the institutional level. Enforcement of work-life balance, bilingualism, diversity, gender issues policies. |
| External adaptability / Leading people | Promotion of interoperability with clients, operational culture, language and processes. Development of operationally focused individual abilities such as baseline fieldcraft. Individual awareness of Canadian social realities (politics, demography and economy). Awareness of governmental environment and JAG's positioning within it. External branding of individuals and networking. |
| External adaptability / Leading the institution | Resource alignment in tune with client's requirements. Commitment to the generation of an added value for clients (operators and CF-DND stakeholders) and Canadian public (Public interest). Strategic awareness of Canadian social realities (politics, demography and economy). External branding of the institution and strategic networking. Strategic awareness of the lawfare dimension in domestic and international environments. |
| Military Ethos / Leading people | Promotion of a JAG specific ethos through cultural artifacts (traditions, shared identity, unifying values, LOO sub-cultures), specific culture with respect to its flat organization (relative weight of the rank, individual competence, experience and achievements). |
| Military Ethos / Leading the institution | Implementation of a corporate change through a coherent and deliberate strategy based on a clear enunciation of the vision, the building of commitment, the monitoring of the initial steps taken, adequate measures of effectiveness and consistent personal example by senior leaders. |

The benefit provided by the primary and enabling outcomes approach is that it allows a comprehensive way to envisage what are the most relevant and useful measures that could contribute to the achievement of mission accomplishment in the specific context of the OJAG. The measures found in Figure 5-6 are far from exhaustive, but as they are indicative of the type of leadership that needs to be promoted, developed and emulated to achieve the OJAG's primary outcome.

In practical terms, these measures impact on selection, promotion criteria, training, and professional requirements and personal evaluation items. A less tangible aspect they impact of

the generation of an institutional style that is closer to a mission command philosophy in which subordinates rely on the commander's intent to determine what needs to be done and on the organization's values to decide how to get it done.

5.2 Corporate Leadership Models

There is abundant literature addressing human resources in general including leadership and corporate models.¹²⁸ This literature targets destined to various audiences and is conveyed in a wide variety of formats, from the daily article in the business pages of the morning newspaper to in-depth survey from prestigious academic institutions. It includes motivational publications based on popular authors' empirical experiences as well as studies publishing findings backed by scientific observations that can be useful to maximize the competitiveness of an institution.

It may appear counterintuitive to think of the OJAG as an organization seeking to achieve a better competitiveness. It does not seek to attract clients, amass profit or outperform competitors offering similar services on the market of legal military services. A reading of relevant corporate literature nonetheless provides interesting ideas to enhance the OJAG's ability to better accomplish its mandate and bring an added value to the military community. In the context of the provision of public services, even in a military environment, there are direct equivalent concepts to the private sector's 'clients', 'profitability', 'market' and 'competitiveness'.

Therefore, the review of the latest insight on leadership theories developed for the private sector has the potential to be highly relevant for the OJAG's efforts to give itself the best leadership and management tools. Two theories developed by the Harvard Business School

¹²⁸ Gareth R. Jones, Albert J. Mills, Terrance G. Weatherbee and Jean Helms Mills, *Organizational design theory, Design and Change*, Canadian Edition, (Toronto: Pearson, Prentice Hall, 2006); Haridimos Tsoukas and Christian Knudsen, *The Oxford handbook of Organization Theory*, (Oxford: Oxford University Press, 2003); and Diana C. Phesey, *Organizational Cultures*, (London: Routledge, 1993).

appear to suit particularly well the JAG's professional characteristics and its need for a flexible exercise of authority: the adaptive leadership and the integrated leadership.

5.21 Adaptive Leadership Theories

The concept of adaptive leadership emerged a decade and a half ago and has since been developed for various applications, including specific professional contexts, early childhood education and institutional churches reforms.¹²⁹ “This work grows from efforts to understand in practical ways the relationship among leadership, adaptation, systems, and change, but also has deep roots in scientific efforts to explain the evolution of human life”.¹³⁰

The corporate applications of the concept aim at creating organizations that are organically designed to “foster processes that will generate new norms that enable the organization to meet the ongoing stream of adaptive challenges posed by a world ever ready to offer new realities, opportunities, and pressures”.¹³¹ At its core, the theory focuses on change as an ability to thrive, on building-up on the past rather than rejecting it, on experimentation, on diversity and on patience.

More practically, it calls for accurate diagnosis of problems that need fixing in order to foster the appropriate changes as organizations often rush needlessly changes without distinguishing if the problem they are attempting to solve is of a technical or an adaptive nature. Figure 5-7 indicates the focus of work for technical and adaptive challenges. The former can normally be addressed by existing capabilities within existing frameworks, while the latter

¹²⁹ Ronald Heifetz, Alexander Grashow and Marty Linsky, *The Practice of Adaptive Leadership: Tools and Tactics for Changing Your Organization and the World*, (Boston: Harvard Business School Press, 2009), p 13.

¹³⁰ *Ibid.*, p 13.

¹³¹ *Ibid.*, p 17.

impacts on stakeholders' interests, which are the barometer of the degree of change needed to remain relevant and keep giving an added value.

Figure 5-7.¹³²

| Kind of challenge | Problem definition | Solution | Locus of work |
|------------------------|--------------------|-------------------|----------------------------|
| Technical | Clear | Clear | Authority |
| Technical and adaptive | Clear | Requires learning | Authority and stakeholders |
| Adaptive | Requires learning | Requires learning | Stakeholders |

Organically adaptive organizations promote a corporate culture that distinguishes leadership from authority. A flat organization that seeks to leverage leadership potential at every level horizontally and vertically like the OJAG will benefit from a corporate culture that encourage its members to exceed formal expectations by demonstrating creativity, even if this involves challenging authority. This trait also meets the characteristics of the composition of the OJAG whose members typically are or should be self starters requiring little monitoring in the execution of their work, regardless of rank or position.

This fluidity in exchanges between formal leaders and their subordinates reduces the issues that are too sensitive to be addressed within the organization, thus increasing its adaptability.¹³³ The organizational culture that it reflects also increases members' shared sense responsibility for the organization's future, which fits neatly in the OJAG's interest in promoting the sense of ownership of its legal officers. Taken from another angle, it also indicates that independent judgment is valued, which means that individual excellence of legal officers who

¹³² Ronald Heifetz, Alexander Grashow and Marty Linsky, *The Practice of Adaptive Leadership: Tools and Tactics for Changing Your Organization and the World*, (Boston: Harvard Business School Press, 2009).

¹³³ *Ibid.*, p 102.

develop a high degree of competence in an area of practice could be leveraged by less knowledgeable formal leaders, particularly in a model promoting specialization.

There are many beneficial side effects of this cultural trait: leaders can focus on leading, followers are motivated through professional satisfaction, leadership capacity is expanded vertically and horizontally, reflection and continuous learning are institutionalized. As an institution looking for incentives other than promotion to formal authority positions, this kind of corporate culture appears to suit the OJAG's needs.

One approach to leadership building is to consider talent development as a key component of an organization's adaptive potential. For example, talent may be achieved with rigorous selection, formal and informal training, on-the-job guidance, frequent quality feedback, praise for good work and public credit.¹³⁴ Other approaches include ensuring the right person is in the right position or career path to extract the best contribution and maximize professional development and implementation of talent development programs including succession plans.¹³⁵ In all cases, leadership building and talent development will be truly integrated only if they are not perceived as a strictly human resource issue, but rather as a shared responsibility.¹³⁶

Achieving this end logically requires an organizational culture promoting certain behavior models. Behaviors guided by core operative values like competency, ownership and operational focus appear to be conducive to the desired organizational culture, which can be induced by the OJAG senior leadership through its own actions, its expectations towards the intermediate leadership.

¹³⁴ Ronald Heifetz, Alexander Grashow and Marty Linsky, *The Practice of Adaptive Leadership: Tools and Tactics for Changing Your Organization and the World*, (Boston: Harvard Business School Press, 2009), pp 104, 105.

¹³⁵ Jeffrey M. Cohn, Rakesh Khurana and Laura Reeves, *Growing Talent as If Your Business Depended on It*, in *Harvard Business Review on Talent Management*, (Boston, Harvard Business Press, 2008), pp 43-62.

¹³⁶ *Ibid.*, p 52.

5.22 Integrated Leadership Theories

The requirement for flexible and adaptable organizations has been studied for the specific benefit of professional services firms. Whether accountant, consulting, legal or architect in nature, these firms share several common internal characteristics and face many similar challenges. For example, they are typically composed of members selected and trained as professionals in their area of practice. As long as the bulk of the workload is limited to the area of practice, the professionals operate in a zone of relative comfort as they are performing tasks for which they were selected, trained and developed.

However, when the firm reaches a certain point in its growth, reach or development, it requires leaders and managers who can competently face the organizational tasks inherent to larger or more complex organizations. Not having been selected, trained or developed to perform those tasks, the professionals within the firms are often ill prepared to harness successfully their organization's potential or meet increasingly demanding requirements from its clients. In some cases, senior leaders in professional service firms are unable to achieve a proper balance between tasks within the realm of their professional affiliation and tasks of a corporate leadership nature that may be disconcerting for them but necessary to the organization's competitiveness and development and as well as its member's morale and well being.

Some firms were cognizant of their governance deficiencies and referred to traditional corporate models developed in the nineteenth century for mass production companies. These models operated a "clean separation of managerial roles and producing roles".¹³⁷ Specific characteristics of the professional service firms such as its composition (trained professionals), the nature of its activities (intellectual and intangible) and the needs of their clients (fluid and

¹³⁷ Thomas J. DeLong, John J. Gabarro and Robert J. Lees, *When Professionals have to lead: A New Model for High Performance*, (Boston: Harvard Business School Press, 2007), p 49.

rapidly evolving) quickly showed the limitations of the product heavy corporate models in environments where such clear delineations are not easily established.¹³⁸

The integrated leadership theory was developed to help professional service firms to better manage their institutional development. It postulates that four leadership activities are instrumental to the generation of integrated leaders who would help fill the gap between professional service delivery and professional service firm governance: setting direction, gaining commitment to the direction, execution holding professionals accountable at all levels and displaying consistent personal examples.

The classic problem within professional service firms is the tension between managerial tasks and service delivery tasks. Firms who successfully manage to reconcile those two imperatives within an integrated mode of management and production have been described as “ambidextrous”¹³⁹ as they manage themselves at the production level by grooming talent while simultaneously managing themselves at the firm level by using some aspects of the corporate model.¹⁴⁰

There are three main difficulties in establishing the proper balance between those two poles. First, professional service firms do not generate functional specialists who are trained to tackle the technical aspects of the firm’s management. They need to establish what should be accomplished by non-producing specialists and what should be accomplished by selected professionals.¹⁴¹ In the JAG context, the question of non-JAG managers within the office of the Chief of Staff illustrates this difficulty. One solution is to task non-lawyers to duties better

¹³⁸ Thomas J. DeLong, John J. Gabarro and Robert J. Lees, *When Professionals have to lead: A New Model for High Performance*, (Boston: Harvard Business School Press, 2007), chap 3.

¹³⁹ *Ibid.*, p 64.

¹⁴⁰ *Ibid.*, p 64.

¹⁴¹ *Ibid.*, p 65

suited to functional specialists and include management training to the career development models for the legal officers who need it.

Second, management structures implemented at the firm level tend to be replicated at the production level. This replication can create an additional bureaucracy that impedes the firm's effectiveness in meeting the client's expectations.¹⁴² In the context of the JAG, this feature is illustrated by the multiple layers of supervision and oversight, for example in the operational law area. Advice provided at the tactical level can be reviewed at the operational level and at the strategic level only to go back to the tactical level, thus creating understandable friction with the operators in need of timely legal advice.

Third, professional service firms reach a point where they cease to be agile and flexible by adopting protocols, targets and compliance requirements conducive to a loss of identity among its members.¹⁴³ In the context of the JAG, these burdens could be avoided by eliminating micro- management as much as possible and adopting a command intent attitude that is framed by a clear enunciation of responsibility and responsiveness lines of reports. JAG-specific doctrine could delineate its field of practice and professional standards that promote rather than inhibits its members' sense of belonging to an elite family of practitioners.

To avoid the burdens of the superposition of an excessive bureaucracy to the performance of professional acts, the integrated leadership model suggests that "clearly understood strategies, a strong culture, and a set of shared values make *these* dangers less likely and facilitates the transition to an "ambidextrous organization".¹⁴⁴ The rationale behind such organizations

¹⁴² Thomas J. Delong, John J. Gabarro and Robert J. Lees, *When Professionals have to lead: A New Model for High Performance*, (Boston: Harvard Business School Press, 2007), p 66.

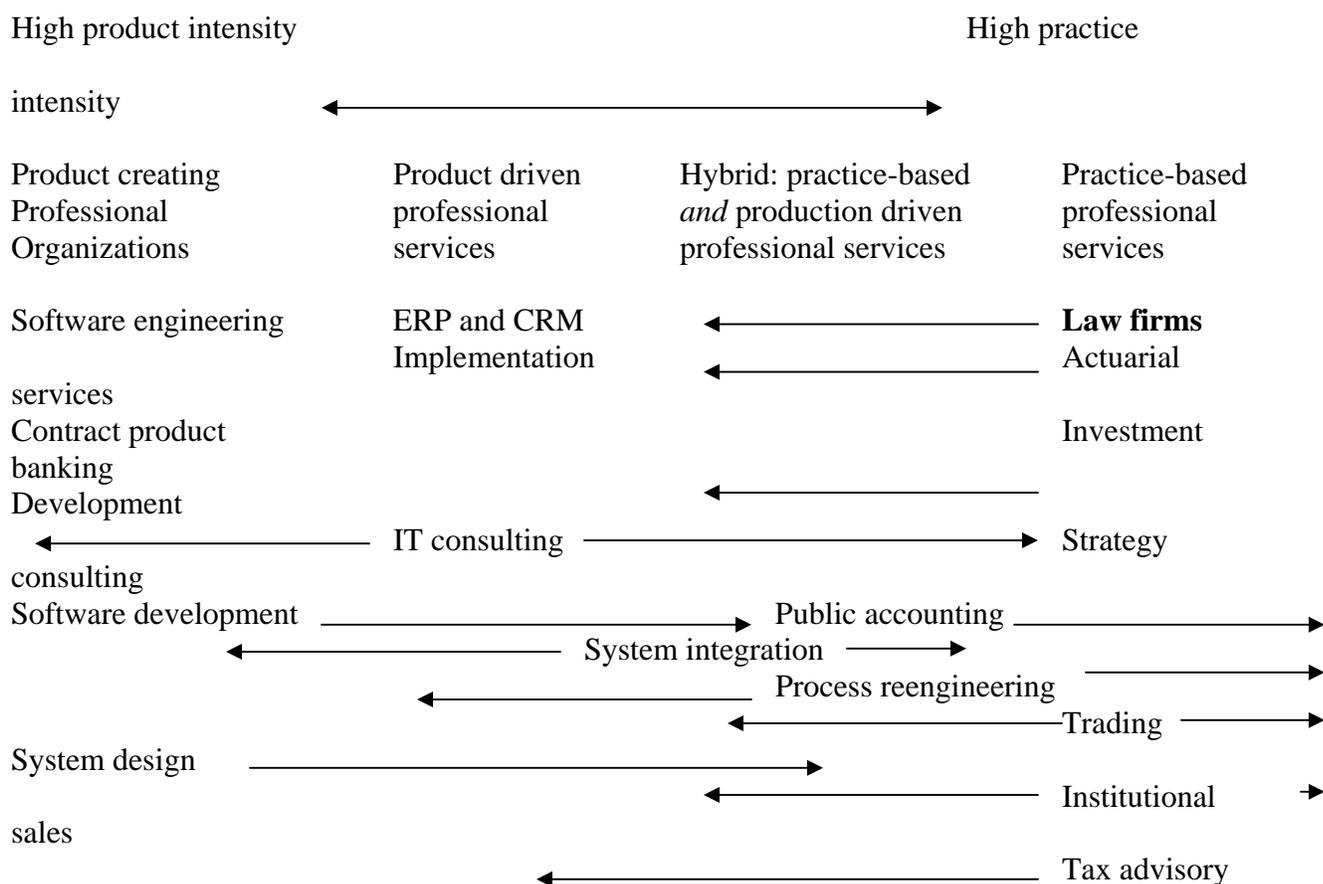
¹⁴³ *Ibid.*

¹⁴⁴ *Ibid.*, p 67.

reinforces the promotion of clear operative values enunciated in a clear mission statement and implemented throughout the career cycle in the key areas of corporate performance.

An interesting way to determine how and where to implement an integrated leadership within a firm as opposed to a standardized and codified performance and knowledge system is to locate the firm on the product/practice production intensity scales.

Figure 5-8 Product intensity of professional services (1)¹⁴⁵



¹⁴⁵ Thomas J. DeLong, John J. Gabarro and Robert J. Lees, *When Professionals have to lead: A New Model for High Performance*, (Boston: Harvard Business School Press, 2007), p 74.

As illustrated on the chart, law firms are typically high practice-based professional service organizations that may occupy the hybrid practice field depending on the nature of their activity. In the context of the OJAG, the provision of legal advice and most of its traditional military justice activities are located on the practiced-based end of the spectrum, while the production of reference documents such as training tools, manuals, legislative drafting lean towards the hybrid section of the scale. This awareness may prove useful when considering which areas should be driven by more rigid standards of production (for example, courses development and doctrine generation need to follow an established process) and those that are better executed by a command-intent and value-based framework.

Characteristics of a practiced based firm are also better understood when contrasted to its product producing firm counterpart as illustrated in Figure 5-9.

Figure 5-9 Product intensity of professional services (2)¹⁴⁶

| High product-intensive (product producing) | | Highly practice-intensive (professional services) |
|---|----------------------------------|--|
| Corporate | ← Organizational Model → | Partnership |
| High | ← Capital intensity → | Low |
| Formal training/offline Acquisition of knowledge And skills | ← Type of training → | Informal on-the-job apprenticeship/real time coaching |
| Managers do little or no Professional work | ← Managerial role → | Managers also produce and practice |
| High codification of Knowledge and extensive reuse of knowledge using formal systems, backed up by relational transfer of | ← Codification of knowledge → | Low codification of knowledge, relational transfer of knowledge backed up by knowledge reuse systems knowledge |

¹⁴⁶ Thomas J. DeLong, John J. Gabarro and Robert J. Lees, *When Professionals have to lead: A New Model for High Performance*, (Boston: Harvard Business School Press, 2007), p 79.

As illustrated, professional service firms are organized on a partnership model, which works best with members who identify themselves with the firm's development. Their capital intensity is low as production relies on little infrastructure. Their training is largely delivered in house as the area of expertise and the context of practice is unique to the firm. Their managers also produce and practice while completing their managerial duties as the two aspects of their role feed each other. Lastly, their knowledge management is not highly codified because its application is rapidly evolving, but its transfer needs to be fluid to be effectively spread among practitioners.

In the context of the JAG, the partnership model can be exploited with the ownership value, which can be implemented by a vast array of incentives adapted to a flat organization. Training methods can include a blend of formal training to convey the basis of its three lines of operations specificities but complemented by mentoring and communities of practice, which would achieve both professional proficiency and cohesion goals.¹⁴⁷ Production and managerial duties can be reconciled by having leaders who are role models conveying the JAG's operative values in their corporate actions as well as in their legal service delivery.¹⁴⁸ Lastly, knowledge management should rely on a user friendly corporate data base whose clear added value to practitioners elicits a wide buy-in.

One last angle that offers insight on the maximization of a professional service firm's competitiveness is to assess if it is oriented toward efficiency on common problem solution,

¹⁴⁷ Thomas J. DeLong, John J. Gabarro and Robert J. Lees, *Why Mentoring Matters in a Hypercompetitive World*, Harvard Business Review, Reprint R0801H. http://www.internetgroup.ca/clientnet_new/docs/Why%20Mentoring%20Matters.pdf ; Internet, accessed 20 April 2010.

¹⁴⁸ "External Review of the Defence Counsel Service", Bronson Consulting Group, Ottawa, Canada, 15 September 2009: Recommendation that the director of the Defence Counsel Service acts both a practitioner and a manager.

experience to provide customized solution to generic problems, or unique solutions to unique problems. Such determination suggests which staffing model is best aligned to the client's demands. Again, in identifying the Office of the JAG's practice segments and comparing it to other segments helps to validate problem-solving approaches tailored to the challenges it faces and discard others.

5-10 Maister's Spectrum of Practice¹⁴⁹

| | Efficiency (Procedures) | Experience (Gray hair) | Expertise (Rocket science) |
|---|--|---|--|
| Client problem | Efficient solutions to common problems | Customized solutions to generic problems | Unique solutions to unique problems |
| Application | Skill | Judgment | Creativity/innovation |
| Critical success factors | Established systems, methods and methodologies Efficient delivery | Experience Depth Knowledge | Unique analysis Creativity State-of-art-knowledge Pioneering concepts |
| Selling proposition | "Faster, better, cheaper" | "We've been there before; we can help you through this" | "Smartest brains around" |
| Source: compiled from David Maister, <i>Managing the professional service firms</i> (New York: Free Press, (1993); chapter 1, from "Balancing the professional service firm", <i>Sloan Management Review</i> 24 (1); chapter 2, from "The Three E's of Professional Life", <i>Journal of Management Consulting</i> 3 (2); 39-44 | | | |

A firm can not be everything to everyone. It should focus on its natural field of practice when establishing its staffing structure, its supervision style and its production priorities.¹⁵⁰

¹⁴⁹ Thomas J. Delong, John J. Gabarro and Robert J. Lees, *When Professionals have to lead: A New Model for High Performance*, (Boston: Harvard Business School Press, 2007) p 90.

Law firms appear to be centered on the experience model as they rely on parameters of relative stability such as the law, the jurisprudence and a certain commonality of its clients' problems. One impact on its staffing alignment is reflected in the ratio between junior and senior members on a given project. For example, efficiency based firms can employ junior members relatively early on its projects as the complexity is lower and the solution known. In experience-based firms, the ratio between junior members and a senior partner will be much different. This ratio is estimated as one partner for seven or eight non partners in professional consulting and on to three or four in the law.¹⁵¹

Another impact is on the way the main effort of a firm should be identified. For law firms, service delivery may not always address every potential issue raised by a given problem because the client is interested in a customized solution to a generic problem, not an extensive survey of the applicable law to hypothetical situations or to questions that are not of primary interest to the client.

Even knowing where a firm stands on the spectrum, it remains delicate to implement the proper problem solving procedures. Four determinations can help,¹⁵² all of which are linked to a firm's mandate, added value to the client and its core operative values as the foundation of its identity:

1. What is the economic equation that will drive this practice?
2. What will differentiate the practice from our competitors?
3. What can we do better than everybody else?
4. What are we *absolutely passionate* about?

¹⁵⁰ Thomas J. DeLong, John J. Gabarro and Robert J. Lees, *When Professionals have to lead: A New Model for High Performance*, (Boston: Harvard Business School Press, 2007), p 90.

¹⁵¹ *Ibid.*, p 92.

¹⁵² *Ibid.*, p 97.

In the context of the OJAG, the economic equation lies in the wise use of limited resources to maximize the fulfillment of its mandate and the added value to its client. The economic dimension can ultimately translate itself into the allocation of more resource, personnel or budget if required to maintain or increase the level of legal service provision. It also has to demonstrate that although it has no competition in the market sense of the term, the OJAG has to brand itself as the reference in every aspect of its mandate and area of practice. It has to focus on the area in which it is indeed better than everybody else. Selecting and maintaining this objective makes sense from an internal resource allocation and is responsible from the perspective of the use of public resources. Lastly, knowing what the OJAG's members are passionate about leads to a better targeted recruitment strategy and the implementation of tailored career training and progression models.

In practical terms, the OJAG's mandate and its clients' requirements do not call for better production of mass generated generic advice where efficiency is the primary measure of success. They require either elaborate overly long, complex and systemic advice that monopolizes resources at the expense of pressing operational legal issues. As a rule, the OJAG is expected to provide competent, timely and operationally oriented advice that will ensure lawful internal administration and discipline and enable the lawful conduct of operations. This spectrum of practice will dictate resource alignment, the setting of priorities, training requirements and general modes of operations. Consequently, an understanding of the spectrum of practice is an important element of the design of an OJAG-tailored corporate model.

5.3 Applicability of Private Corporate Principles to the Military

Professional militaries are trained to use violence to achieve state ends. They are required to manage violence within the law and guided by operational principles. The nature of

this mission is unparalleled in the civilian world because of the magnitude of the destructive power that it can potentially release. Given this unique mandate, the applicability of leadership theories and corporate models designed for civilian organizations to military forces may be questioned. Civilian businesses operate in a predictable legislative and regulatory environment. While they face cyclical and unforecasted economical challenges, it is normally their ability to outsmart their competitors on the market that ensures survival rather than the ability to degrade physically its fighting potential on the battlefield.

Leadership is at core the ability to harness human individual and collective potential to achieve a determined goal, from the most modest tasks to the most ambitious endeavors. As such, leadership is a key factor in any institutional mission accomplishment, whether those missions are performed in a military context, a private competitive economy or a public service environment.

With the necessary contextual adaptations leadership theories apply to civilian and military applications alike. However, within the military itself, these contextual adaptations are important to ensure a successful implementation of leadership theory concepts, whether they come from civilian literature or military doctrine.

CHAPTER 6 CASE MODEL IMPLEMENTATION

Corporate theories such as adaptive and integrated leadership theories and military doctrine and publications can inform a practical and unified model tailored to the specific requirements of the OJAG. Adequately formulated, communicated, implemented and enforced, this model can contribute to position the OJAG as a world class provider of military law services.

There are many ways to envisage how the OJAG could govern itself. This study suggests one practical model that synthesizes leadership and management principles previously described and links them to associated potential benefits.

6.1 Corporate Model Implementation Seen as a Military Operation

Implementing a corporate model in an institution is in many regards akin to the conduct of a military operation. They both involve multiple constants and variables that need to be identified and managed. More specifically, both require from the planner to identify clearly objectives, to master adequate planning tools, to understand the environment and its implications, to identify what should be done and to assess the effectiveness of the measures taken. Following a methodology inspired from the CF Operational Planning Process,¹⁵³ it is possible to identify and analyze the decisive aspects of a corporate model implementation. This effort will help in anticipating inherent challenges and see how they can be faced.

6.11 First Decisive Point: Recruitment Designs

Recruitment constitutes a logical first decisive point to analyze because it is situated at the beginning of the training cycle. At this stage, the OJAG generates the human capital required

¹⁵³ Canada. Department of National Defence. The Canadian Forces Operational Planning Process, Change 2, Strategic Joint Staff, April 2008.

for the successful accomplishment of its mission while considering its mandate, its performance requirements and its corporate identity.

| Figure 6-1 Recruitment designs as a decisive point | |
|--|--|
| Main objective | Selection competent candidates likely to develop a sense of ownership and demonstrating operation-focused potential |
| Adaptive and integrated leadership principles | Fit with core operative values. Right person in the right place. Talent grooming. |
| Military literature and doctrine principles | Mission success as a primary outcome, internal integration and military ethos as enabling outcomes. |
| Key environmental factors | Generational issues, increasing diversity, Canadian geography, bilingualism, competition from recruiting law firms, staffing requirements. |
| Deductions | Requirement for positive external branding, the display of a coherent corporate structure, a competitive employer profile and a long term staffing planning. |
| Main effort | Aggressive targeted recruitment early in academic programs (DEO) and military careers (MLPT). Discussion of career plan with candidates. MLTP to produce military law related papers to MLTP and represent the OJAG on the campus. Leverage of available technology. |
| Measures of effectiveness | Number of applicants, hits on recruiting websites, calls of interest, number of quality candidates, retention rates, number of contracts not renewed. |

At this stage, the main effort concentrates on finding candidates who fit in the OAJG's core values.¹⁵⁴ Therefore, prospective candidates need to have an understanding of what those values are and what distinguishes a military legal career to other legal careers for DEO ones and other military careers for MLTP ones. Law firms and military legal employers succeed to various degrees to convey their values to prospective candidates. For reference purposes, the

¹⁵⁴ For the US Navy recruitment approach, see: United States. Department of the Navy. US Navy JAG Corps. *A New Approach to evaluating JAG Corps Applicants*. JAG 2020, http://www.jag.navy.mil/news/jag_mag/jag_magazine.htm ; Internet, accessed 20 April 2010.

OJAG can learn from Canadian Lawyer's Top Ten law firms' websites¹⁵⁵ as well as those of civilian and military law employers.

6.12 Second Decisive Point: Career Progression Model Design

The next logical decisive point to reach in the corporate model implementation is to devise a career progression geared on the generation of military lawyers who develop themselves in accordance to the OJAG's core values. A coherent model progression is a key enabling factor for the OJAG to accomplish its mandate and deliver the desired added value to its clients.

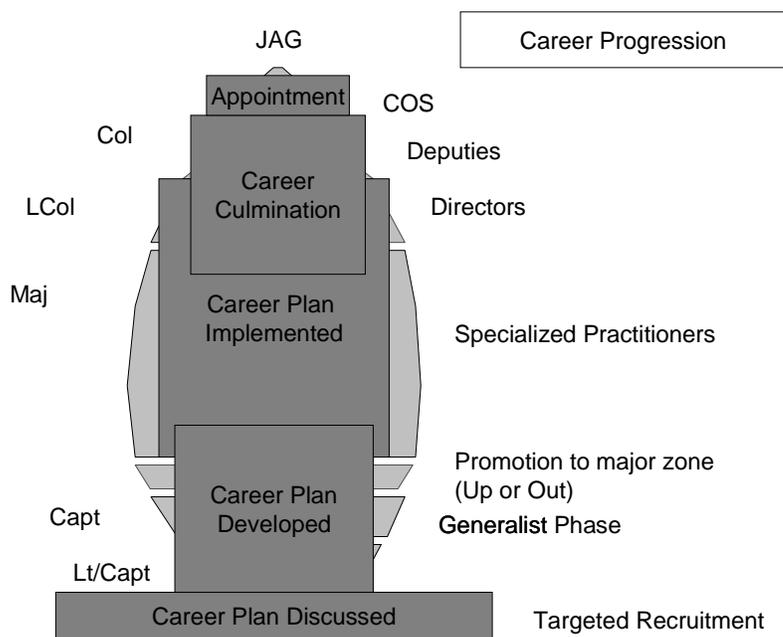
| Figure 6-2 Career progression model design as a decisive point. | |
|---|--|
| Main objective | Development of a competent, ownership driven and operations focused team of military lawyers. |
| Adaptive and integrated leadership principles | Operative value-based professional conduct. Talent grooming. Balance between production and managerial roles. Professionals naturally seek autonomy. Harnessing A and B players' talents. Exploitation of the right segment of practice. Ambidextrous organization. |
| Military literature and doctrine principles | Internal adaptability and members' well- being as enabling outcomes. Conduct value-based professional conduct. Promotion of transformational leadership. Leading people (mentoring) and the institution (enforcing it). |
| Key environmental factors | Military law as unique field of practice. Operational tempo driven work schedule. OJAG is a flat organization. Dual professional identity. Civilian support staff. |
| Deductions | Each rank can be terminal. Captains not retained for promotion will not be renewed. Promotion as motivational factor is relative. Specialization grooms professional satisfaction. Supervisors need to monitor subordinate's potential and progression within the career plan. |
| Main effort | Long term staffing planning. Career plan discussed and revisited. Short term initial contracts. Diversified professional rewards. |

¹⁵⁵ Top Ten Central Canada Law Firm Ranking, Canadian Lawyer Magazine, website, <http://www.canadianlawyermag.com/Central-Canada-Law-Firm-Rankings.html> ; Internet, accessed 20 April 2010, For corporate value projection, see recruitment web pages of the 10 firms: <http://www.mcmillan.ca/Career.aspx> ;<http://www.casselsbrock.com/Section/Careers/Overview> ; <http://www.goodmancarr.com/> ; <http://www.steinmonast.ca/carrieres/> ;<http://www.airdberlis.com/Templates/Careers.aspx?page=10> ; <http://lavery.ca/employment-opportunities-careers/> ; <http://www.weirfoulds.com/careers.aspx> ;<http://foglerrubinoff.com/page.aspx?id=careers.htm> ;<http://www.siskinds.com/content/careers.asp> ;<http://www.lerners.ca/careers/> ; For US Navy JAG recruitment web page: <http://www.jag.navy.mil/careers/>

| | |
|---------------------------|---|
| Measures of effectiveness | Generalized perception that careers culminating at the rank of Major are successful. Retention rates. Administrative burden staffing issues avoided by not renewing sub-standard legal officer's contracts. |
|---------------------------|---|

In schematic terms, this career progression approach highlights the requirement of planning individual career plans that are developed when junior legal officers acquire the OJAG's values, develop their professional competency in military law and their sense of ownership. This career plan is then implemented as they increase their ability to deliver an added-value to the client as they acquire specialization and experience. It then culminates at the rank of Major, Lieutenant-Colonel or Colonel after a career perceived to be successful by the individual and his or her peers.

Figure 6-3 Career Progression Model



As discussed, the OJAG is a flat decentralized organization pursuing three distinct lines of operations. This framework implies that every means available to reward is members that do

not involve promotion to the next rank should be explored. The OJAG's organizational culture could evolve to be similar to that of the pilot's community, where flying is often preferred to Squadron administration, or the Special Forces, where professional skills and peer recognition is often more rewarding than promotion. This skill oriented organizational culture would also fit nicely into a career model based on specialization.

6.13 Third Decisive Point: Specialization Models

The next decisive point is a successful resource alignment. As argued, the OJAG's environment and its clients' requirements call for a model aiming at the specialization of its members. Furthermore, doctrine, literature and environmental factors and their logical deductions also point to a specialization model.

| Figure 6-4 Resource alignment: specialization model as a decisive point | |
|---|---|
| Main objective | Generation of world class practitioners in military justice, law of operations and military administrative law. |
| Adaptive and integrated leadership principles | Segmentation of the practice. Added value to the clients and its requirements. Complex operating environment. Professional development as a source of individual satisfaction. |
| Military literature and doctrine | Mission success as a primary outcome. External adaptability to complex operating environments. Reputation, trust, confidence and support as secondary outcomes. Concentration of effort. |
| Key environmental factors | Requirement of cultural affinities with operators. Sophisticated clients, complex environments and lawfare conducted by persistent groups require specialized services. Each LOO requires a distinct skill set. Clients operating in various locations. Multiple levels of legal review impair efficiency. |
| Deductions | Requirement for culturally attuned practitioners. Requirement for specialized practitioners organized in pools of experts. JAG specific training requirements. Requirement for long term staffing and training planning and cross LOO senior leaders. Emergence of LOO-based sub-cultures. Longer postings. JAG-specific doctrine would contribute to the mapping of its area of expertise and the conduct of its operations. |
| Main effort | Developing junior legal officers during a generalist phase to prepare them for a pre-identified LOO. Long term staffing and training planning. Development of managerial skills within the LOO. Institutionalization of communities of practices and mentoring that |

| | |
|---------------------------|---|
| | will groom them into their destined LOO. Ensure client's adhesion to a pool of experts' model. Prioritize doctrine requirements and initiate doctrine generation. |
| Measures of effectiveness | Pools of experts in the LOO's various directorates have been created. Duplication of legal review levels has been eliminated. Specialized directorates operate as centers of excellence in their own field. Individual practitioners emerge as experts in their own field. Benefits from enhanced external branding start to be observed. |

In schematic terms, the specialization model proposed for the OJAG would begin by producing skill sets enabling junior legal officers to advise on general legal issues such as those encountered at the tactical level. At that stage, they acquire the cultural affinities that will enable them to understand their client and deliver legal advice effectively to demanding operators at the operational level.

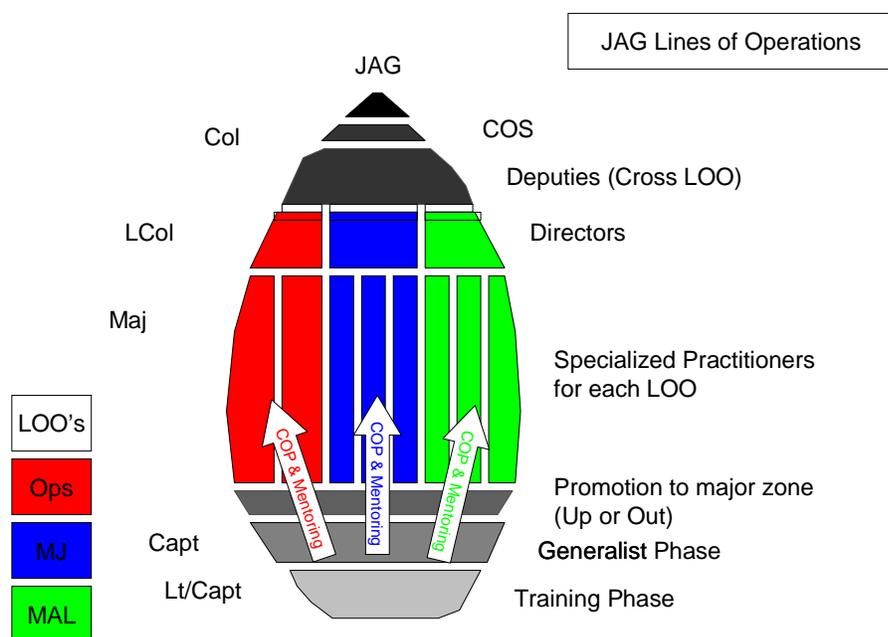
Communities of practice (COP) will include junior legal officers in discussion and thinking processes related to their destined line of operation. Mentoring at the individual level will provide role model and lead to the realization of the OJAG's values. These processes will also confirm that junior officers in development can achieve proficiency when their specialist phase will commence. Input from mentors and peers from the COP will be considered at the renewal of the first short term contract.

Specialization entails longer term staffing planning and longer postings. It is conducive to a higher added value from a production perspective. As they gain seniority, supervisors will need to get acquainted to other lines of operations as the senior leadership must govern the OJAG as a whole. Succession plan, cross training and the implementation of strong corporate values and identity will facilitate the transition towards a new generalist phase for senior leaders.

As discussed, the creation of pools of experts within each line of operation could accentuate the generation of expertise and bring the specialization model to maturity more easily.

Finally, specialization also provides the client with a better added value, which supports the OJAG's mission accomplishment as a primary outcome and enhances its branding within and outside the CF as a secondary outcome.

Figure 6-5



6.14 Fourth Decisive Point: Training Progression Designs

Training is an integral part of a corporate model, particularly in the context of a specialized professional service firm. Although the current custodian of training responsibility for military law within the CF is the Canadian Forces Military Law Center established under the Canadian Defence Academy, the OJAG has to establish its professional training requirements in order to generate competent specialized practitioners.

Figure 6-6 suggests how those training requirement could be identified and prioritized.

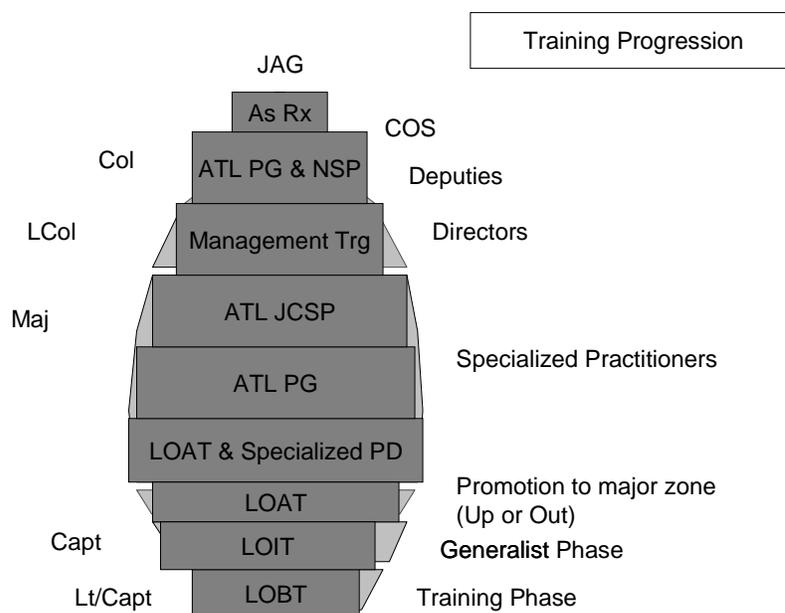
| Figure 6-6 Resource Alignment: Training Progression Designs as a Decisive Point | |
|---|--|
| Main objective | Establishment of training requirements and priorities based on a specialization model. |
| Adaptive and integrated leadership principles | Adaptive qualities of the organization enhanced by formal and informal training and on-the-job guidance. Integrated leadership supported by apprenticeship and coaching. Achievement of ambidextrous organization with adequate management training. Core operative values as professional development incentives. |
| Military literature and doctrine | Mission success as primary outcome and external adaptability as enabling outcome. Military ethos as conduct including pursuit of excellence. |
| Key environmental factors | Complex operating environment. Segmentation of the practice. Sophisticated and demanding client. Existing civilian and military training products. CFMLC's potential as a training provider. In house mentorship and coaching potential. Lawyers are not trained as managers. |
| Deductions | Junior legal officers require general training. More senior legal officers require specialized training. Advising at the operational and strategic level requires advanced training regardless of their rank. Senior leaders require managerial abilities. Training requirements forecasted in the long term. |
| Main effort | Identification of job requirements for each position in a specialization model. Identification of the adequate training provider. Implementation of an integrated and assessed in-house training and outsourced education models. |
| Measures of effectiveness | Qualification standards established. Assessment of mentorship performance model established. Quantitative and qualitative improvement of in-house trained junior legal officers and advanced training list graduates at senior levels. Management trained supervisors and senior leaders. |

In schematic terms, this training progression could maintain the existing legal officer basic training (LOBT) that would lead to an initial qualification followed by an intermediate training (LOIT) that would provide the ability to advise at the tactical level. Specialized streams could appear at the advanced training level (LOAT). This model sees post-graduate studies happen rather early in legal officers' careers in order to maximize their added value for a longer

period and instill the sense of belonging to an elite group. Management training in the form of MBA, MPA and other corporate-oriented education could be provided at senior levels.

Lastly, further advanced formal leadership and management training could be contemplated for senior leaders in order to maximize the competency in the provision of legal advice at the policy and strategic level, thus maximizing the OJAG's added value in the eyes of CF's senior leadership, within DND and GoC. At lower ranks, limited but constant leadership and management training could ultimately result in an "ambidextrous" organization, which would in turn reduce bureaucratic impediments in mission accomplishment and promote integrated leadership.¹⁵⁶

Figure 6-7



¹⁵⁶ Thomas J. Delong, John J. Gabarro and Robert J. Lees, *When Professionals have to lead: A New Model for High Performance*, (Boston: Harvard Business School Press, 2007), p 64.

A training progression model should be tailored on the specialization model and provide specialized training early enough to get a valuable corporate benefit from this investment. It will also target candidates for external training based on the requirements of the appropriate line of operation. As a result, a long term training planning cycle with an appreciable input from the leadership within the lines of operation would help in integrating the management of staffing requirements, career progression and training schedules.

6.15 Fifth Decision Point: Review Legal Reserve's Role

The Legal Reserve constitutes an important component of the OJAG's potential to deliver quality legal services to the CF community. As it is operating with distinct requirements, enabling factors and limitations, the Legal Reserve should be considered through an analysis of its own.

| Figure 6-8 Resource Alignment: Review of the Legal Reserve's Role as a Decisive Point | |
|---|--|
| Main objective | Maximize the contribution of the Legal Reserve to an OJAG driven by competency, ownership and operation focused legal service delivery. |
| Adaptive and integrated leadership principles | Fit with core operative values. Right person in the right place. Talent grooming. |
| Military literature and doctrine | Mission success as a primary outcome, internal integration and military ethos as enabling outcomes. Selection and maintain of objectives. |
| Key environmental factors | Criminal law shares many legal, skill set and intellectual affinities with military justice and can be employed more easily in this LOO. Competent civilian practitioners have little time to devote the development of new segments of practice. Criminal lawyers do not require extensive training in operational and military administrative law to be employable in military justice. Civilian specialists in operational and military administrative law are rare. Regular force prosecutors and defence counsel are strained by temporary duties. Qualitatively and quantitatively high contributions of regionally based reservists are difficult to maintain consistently. |
| Deductions | The Legal Reserve's mandate should focus on military justice and should be structured primarily to supplement the OJAG's efforts in this LOO. Contributions of civilian specialists in other LOO should supplement regular force as contractors without a formal structure. |

| | |
|---------------------------|---|
| Main efforts | Formulation and promulgation of a vision and mission statement for the Legal Reserve. Recruit reservists who fit within the OJAG's core values. Structure the Legal Reserve as a robust provider of military justice services with a national mandate and a mission statement focusing on court work. Contract operational and administrative military law specialists through flexible administrative arrangements. Revise the training requirements for career progression within the Legal Reserve to reflect the LOO in which its members are employed. |
| Measures of effectiveness | Number of cases handled by reservists. Number of temporary duties spared by employing reservists. Number of reserve contract awarded to reserve specialists. |

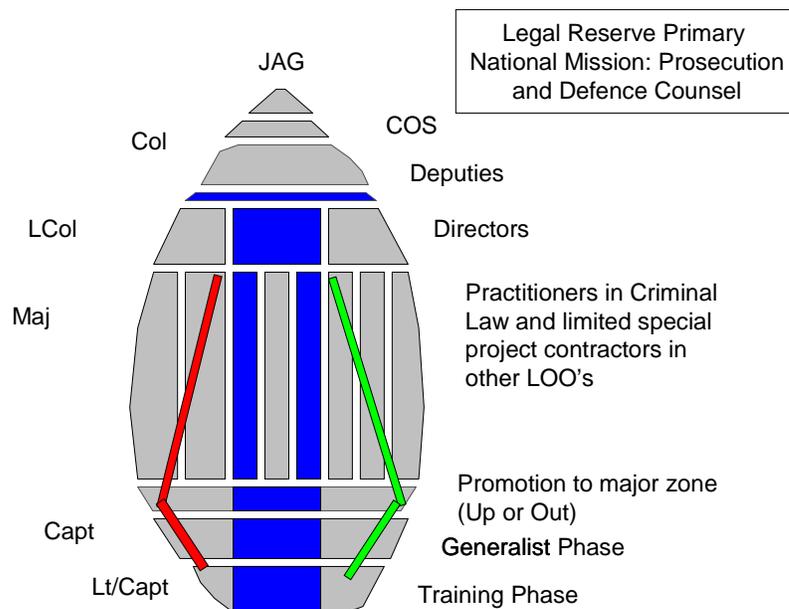
Criminal lawyers share many common characteristics with military justice legal officers, especially those working in the court martial. Consequently, the largest pool of talent that can be exploited in civilian practices lies in the criminal law practitioners. They could more easily and rapidly be employed within a court martial environment after a legal military training focusing on military law.

Therefore, the structure of the Legal Reserve could be organized so that it supplements the reserve force in this field. By analogy, the Legal Reserve, like the Naval Reserve, could have a national mandate that plays a significant role in the OJAG's overall efforts. Following the same analogy, the reserve and regular force cadre could be seamlessly integrated in one national service of prosecution and one direction of defence counsel.

This avenue has been explored by the Australian Defence Forces' legal reserve, which primarily supplements its regular force counterpart in military justice. The Australian Senate's rationale is to alleviate the regular force burden while tapping into the most readily available resources offered by the civilian lawyer community.¹⁵⁷

¹⁵⁷ Australia. The Senate, Foreign Affairs, Defence and Trade References Committee, *The effectiveness of Australia's Military Justice System*, June 2005; see also: Australia. Department of Defence. *Government Response to the Senate Foreign Affairs, Defence and Trade References Committee: Report on the Effectiveness of Australia's Military Justice System*, October 2005.

Figure 6-9



A Legal Reserve model based on a national mandate is highly compatible with the specialization approach, taps into expertise that serves the OJAG mission accomplishment as a primary outcome and its branding as a secondary outcome, particularly in the larger civilian legal community. This in turn could bring third order benefits such as enhanced attractiveness as an employer and credibility in criminal law circles across the country.

6.16 Sixth Decision Point: Model Implementation Design

Many corporate overhaul initiatives fail at the implementation stage, which necessitates a carefully planned and executed strategy.¹⁵⁸ The next decisive point focuses on the factors to consider in the implementation strategies within the OJAG.

http://www.defence.gov.au/mjs/docs/MJI_GOVERNMENT_RESPONSE_4oct052.pdf ; Internet, accessed 20 April 2010.

¹⁵⁸ John P. Kotter, *Leading Change*, (Boston: Harvard Business School Press, 1996), p 16: “*The eight common errors: 1. Allowing too much complacency, 2. Failing to create a sufficiently powerful guiding coalition, 3. Underestimating the power of vision, 4. Undercommunicating the vision, 5. Permitting obstacles to block the new*

| Figure 6-10 Corporate Model Implementation as a Decisive Point | |
|--|--|
| Main objective | Successful implementation of a corporate model based on competency, ownership and operation oriented services within four years |
| Adaptive and integrated leadership principles | Culture change strategies. |
| Military literature and doctrine | Internal and external adaptability as enabling outcomes. Culture change strategies. |
| Key environmental factors | OJAG's current focus is not on maximization of leadership and management processes. Culture change is based on a clearly enunciated and communicated vision, the building of commitment, the implementation of small quick changes, the monitoring of the changes, constant effectiveness monitoring and personal examples from the leaders. Resource alignment at the senior level is critical. The COS position's potential is not fully exploited at the senior level. Resistance to change is unavoidable. |
| Deductions | Leadership and management processes are the OJAG's institutional priority. Current values and mission statement are not identity unifying factors. The COS should be employed as the JAG's gatekeeper. The JAG should focus on long term institutional and political strategic issues. Change should be monitored by a mandated and responsible transformation cell. Quick payoff changes should be identified and implemented immediately. |
| Main effort | Promulgation and communication of a vision and a mission statement. Establishment of a transformation cell, an implementation timeline with scheduled goals. Enforcement of quick visible changes at the supervisor level. Redefinition of leadership requirements, responsibilities and performance assessment criteria at the supervisor level. Redefinition of recruitment criteria. Shortening of initial contracts. Changes publicized only once their success is convincing. |
| Measures of effectiveness | Vision and mission statement are reflected in the OJAG's individual and collective actions. Scheduled goals are met on time. Observable improvements in mission success as a primary outcome and in reputation, trust, confidence and support as secondary outcomes. |
| Center of gravity | By analogy with the OPP, the center of gravity of this organizational change process is the instrumentalization of the OJAG's core values because the whole model implementation draws its potential from them. |

vision, 6. Failing to create short-term wins, 7. Declaring victory too soon, and 8. Neglecting to anchor changes firmly in the corporate culture"; Jeffrey D. Ford and Laurie W. Ford, *Decoding Resistance to Change*, Harvard Business Review, April 2009, Reprint R0904J, Resistance to Change; Canada. Department of National Defence. *Leadership in the Canadian Forces: Conceptual Foundations*, (Kingston: Canadian Forces Leadership Institute, 2005), p 108.

| | |
|-------------------|--|
| Desired end state | Successful implementation of a corporate model based on competence, ownership and operation focused service delivery that provides an integral institutional flexibility in facing internal and external challenges. |
|-------------------|--|

Both corporate and military literatures provide examples of culture change implementation.¹⁵⁹ The main constant observed are that institutional leaders should promulgate and communicate their vision effectively, build commitment, implement small observable changes, monitor and assess their success and show a personal example that is consistent with the desired changes.¹⁶⁰

Many institutions seek to improve their performance and proceed to honest and non-complacent self examination as dominant mentalities, existing structures or ongoing processes impede institutional performance. However, even with advice and guidance from literature or consultants, culture change remains an ambitious project. It requires a careful examination of the problems to solve, the moving parts involved, patience and consistency. For example, the CF initiated its transformation inspired by the approach advocated by Professor John P. Kotter from the Harvard Business School. Although carefully planned and boldly executed, CF transformation remains an ambitious ongoing project that needs to be constantly questioned and reassessed to provide the CF with the best resource alignment.

The US Navy JAG Corps identified the need to implement a complete corporate overhaul in order to keep bringing an added value to the US Navy and to adapt continually to its operating environment.¹⁶¹ As part of this redefinition process, the US Navy JAG published a strategic

¹⁵⁹ Lt General Michael K. Jeffery, *Inside Canadian Forces Transformation: Institutional Leadership as a Catalyst For Change*. (Winnipeg: Canadian Academy Press, 2009).

¹⁶⁰ John P. Kotter, *Leading Change*, John P. Kotter, (Boston: Harvard Business School Press, 1996).

¹⁶¹ United States. Department of the Navy. US Navy JAG Corps, JAG Corps 2020: Executive Summary.

vision for the provision of legal support in the US Department of the Navy.¹⁶² Perhaps considering its mandate, its size and its operational tempo, it created the JAG's Special Assistant for Transformation (SAT).

The SAT is a standing team of four members notably tasked to monitor institutional issues such as operations, accountability, performance management and metrics, personnel policy, recruitment, professional development, accountability, personnel and institutional legal readiness, organizational issues, reserve integration, personnel policy, professional development, knowledge management and information technology, facilities, performance and metrics and efficiency.¹⁶³

The magnitude of the corporate assessments and the mandate given to the transformation team illustrates the necessity to approach corporate change as a broad and continuous challenge.

Similarly, the OJAG should revisit the composition and the mandate of the JAG's Chief of Staff (COS) and task a few members to plan and execute a corporate culture change by identifying key decisive points leading to a desired end state within an established timeline under the COS's authority.

This team could be responsible to advise senior leadership on practical implementation steps, monitor progress and propose alternative as required. This team could also provide a permanent transformation monitoring capability within the COS office. A COS, acting as the JAG's gatekeeper with a mandate similar to that of the SAT, would ensure a continual monitoring of the OJAG's transformation and enable the JAG to focus on strategic issues.

¹⁶² United States, Department of the Navy, *Report of the Judge Advocate of the Navy to the American Bar Association Annual Meeting*. Washington, DC: U.S. Government Printing Office, 2008, page 29; http://www.jag.navy.mil/documents/ABA%20Report%202009_FINAL.pdf ; Internet; accessed 19 April 2010.

¹⁶³ United States. Department of the Navy. US Navy JAG Corps. JAG Mag, Vol III, *Transformation Year in Review, by the numbers*.

CHAPTER 7 CONCLUSION

Every sphere of activity, civilian and military alike, are impacted by structural changes in the society. The world is increasingly smaller, interconnected, complex and chaotic. In the military context, the challenges associated with post-modern times are reflected in the domestic and international theatres in which military forces operate as well as the work spaces in which their members perform their duties. As a result, the military profession requires savvy operators who plan and execute missions while taking into account a vast diversity of constants and variables, considering often competing values and moral standards, and apply a complex web of laws and regulations. It requires equally savvy military lawyers to advise them on the conduct of lawful operations.

7.1 The OJAG and its changing battle and work spaces

These requirements mean that the CF, as the military expression of Canada's national policy, needs legal services that are sound legally to ensure that its operations are lawfully executed and that military justice is done in accordance with the highest constitutional and legal standards. The CF also requires legal services that are delivered in a timely fashion and couched in a way that makes it seamlessly integrated in operational cycles in order to be operationally relevant.

The contemporary social environment also brings important challenges to the legal profession, which needs to adapt to different professional practice requirements linked to generational, gender and diversity issues. While those dimensions bear promising opportunities, they necessitate the implementation of sometimes difficult organizational adaptations within law firms in the private, public and military contexts.

The OJAG is mandated to provide legal services in support of the CF's military law requirements and to superintend the administration of the Canadian military justice system. To address this task, it developed its very own professional identity and characters, being a dual professional organization whose members are subject to the universality of service and unlimited liability. Within the CF, the OJAG enjoys a distinct chain of command, which constitutes an enabling factor for it to deliver independent advice.

This unique identity and character are the result of the legislative source of the mandate as well as the evolution of the military law practice within the CF. In functional terms, the OJAG developed three lines of operations which address the CF's needs in military justice, operational law and military administrative law. All three lines of operations bring added value to the CF and other stakeholders. However, OJAG has to ensure that internal characteristics such as recruitment, career progression, resource alignment and harnessing of its members' professional potential remains organized in a way that maximizes this added value.

7.11 The OJAG's challenges

To maintain and increase its contribution, the OJAG has to adapt to the evolution of both battle and work spaces. This endeavour is ambitious but necessary because it involves every facet of its institutional activities and of its members' professional actions. As value-based models emerge to be those who can address these actions systemically, the OJAG needs to clearly identify values that will guide what needs to be done and how it must be done. Then, it has to instrumentalize those values consistently in every of its institutional and individual actions.

The CF doctrine and civilian literature on leadership, management and organizational issues offer many useful elements that the OJAG can consider to tailor a value-based corporate

model adapted to its character and identity, the requirements of its clients and the composition of its work force. For example, the CF leadership model, based on the alignment of a military ethos conduct, internal and external integration as enabling factors bring mission accomplishment as a primary outcome.

Integrated leadership theories teach how to maximize professionals' potential in environments where they need to perform their essential tasks while at the same time managing their organization. Lastly, adaptive leadership helps in addressing constant evolution of the work environments and the clients' requirements.

7.12 The design of an OJAG specific model

This thesis supports the view that elements found in both military and civilian sources can be adapted to the OJAG's unique professional context in order to design a corporate model that will translate into better legal services and an added value for the CF. This statement is consistent with military doctrine and civilian literature as they both relate to organizational and motivational principles of general application.

In practice, the OJAG's model will identify its core values and implement them at the institutional and individual levels. Considering those factors, the OJAG's values should seek competency because military law is complex, institutional ownership because its character is unique and demanding and operationally oriented services because this is a primary concern to the client and the accomplishment of its mission.

Once its own core operative values are identified, the OJAG will be able to plan and execute an implementation strategy, which will translate into recruiting, developing, training and aligning its legal officers consistently with its values.

7.13 The way ahead

The design and implementation of an integrated corporate model designed to exploit fully the professional potential of the OJAG requires careful planning, bold execution and constant monitoring of progress. Visible corporate changes such as senior leadership discourse, recruitment strategies, postings, formal expectations and personnel evaluations will in time bring more intangible but critical changes. Organizational culture changes such as new internal perceptions of the OJAG as a flat structured professional organization, distinct from both other legal practices and military trades, could bring a more coherent set of references, definition of success, professional rewards and norms of behaviour. In simple terms, it involves that selection personnel, performance standards, evaluation norms, professional advancement and promotion criteria would be guided by what really counts for the OJAG, which is answering its client's needs. The legislative mandate is the OJAG's source of authority, its distinct chain of command is its enabling tool and its character is the expression of its identity.

To maintain this process towards a more unified, integrated and therefore more competitive organization, the OJAG will require perseverance in actions and personal examples, especially from the senior leadership. It will also require a sustained commitment, perhaps in the form of a standing team tasked to monitor and implement transformation.

The result however far exceeds the cost. The OJAG would become a far more competitive employer and a specialized provider of military legal services that adds value to Canadians through its military and its government. In the end, it is by striving to bring value that the OJAG is the most likely to achieve success.

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