

MEMO / NOTE DE SERVICE



To / Destinataire	Councillor Doucet	File/N° de fichier:
From / Expéditeur	M. Rick O'Connor, City Solicitor	
Subject / Objet	Inquiry - Military Rights	Date: March 19, 2007

Background

The Canadian Forces conduct various training exercises to prepare for combat, disaster relief, fighting terrorism and other activities that they perform. On occasion, these exercises are performed within the boundaries of municipalities. It has been suggested that they have recently conducted such an exercise in an Ontario city without permission of the local council. The purpose of this short memorandum is to address the following issue:

Could the Canadian Armed Forces conduct a training exercise in Ottawa without the City's permission?

Conclusions

- 1) Neither federal nor provincial law appears to require the Canadian Armed Forces to seek permission of a local government prior to conducting training exercises in a municipality. However, the *National Defence Act* requires the military to provide notice of "manoeuvres", by appropriate publication, to the inhabitants of any area concerned and in some circumstances, administrative law principals might require that they carry out consultations or other steps before holding such an exercise.
- 2) The Canadian Armed Forces are publicly committed to enhancing their relations with local authorities and City staff were unable to find evidence that the military is imposing training exercises on unwilling municipalities.

These conclusions are set out below in greater detail.

Discussion

1) *National Defence Act*

Section 257 of the *National Defence Act* gives the Canadian Forces the ability to conduct manoeuvres anywhere in Canada and to "do all things reasonably necessary for the execution of the manoeuvres" including stopping or controlling "all traffic". This provision also allows the military to remove "[a]ny person who wilfully obstructs or interferes" with the manoeuvres.

Subsection 257(2) imposes a notice requirement for manoeuvres, but there is no apparent requirement for consultation with either the people affected or the local authorities. Further, Subsection 257(5) gives the military immunity from lawsuits brought for damages caused by these manoeuvres. For convenience, Section 257 is set out below in its entirety:

257. (1) For the purpose of training the Canadian Forces, the Minister may authorize the execution of military exercises or movements, referred to in this section as “manoeuvres”, over and on such parts of Canada and during such periods as are specified.
- (2) Notice of manoeuvres shall, by appropriate publication, be given to the inhabitants of any area concerned.
- (3) Units and other elements of the Canadian Forces may execute manoeuvres on and pass over such areas as are specified under subsection (1), stop or control all traffic thereover whether by water, land or air, draw water from such sources as are available, and do all things reasonably necessary for the execution of the manoeuvres.
- (4) Any person who wilfully obstructs or interferes with manoeuvres authorized under this section and any animal, vehicle, vessel or aircraft under the person’s control may be forcibly removed by any constable or by any officer, or by any non-commissioned member on the order of any officer.
- (5) No action lies by reason only of the execution of manoeuvres authorized under this section.

Finally, Sections 296 and 297 of the Act create offences for obstructing or hindering training or manoeuvres and are punishable on summary conviction by fines no greater than \$100.

2) Constitutional Separation of Powers

Subsection 91(7) of the *Constitution Act, 1867* gives the Federal Government exclusive legislative authority over “Militia, Military and Naval Service, and Defence”. Similarly, Subsection 92(8) gives the provinces exclusive authority over “Municipal Institutions in the Province”.

Under the doctrine of paramountcy, when federal and provincial legislation conflict in areas where both have jurisdiction, the federal law generally prevails. This would likely mean that any provincial or municipal law that attempted to limit the Canadian Forces’ ability to conduct manoeuvres without permission from local authorities would likely not survive a legal challenge.

3) DND Policy - Urban Training

Numerous news articles, press releases and policy papers mention an increased need for the military to train in urban settings in order to better prepare for the roles they perform in the post 9-11 world. In “*Canada’s International Policy Statement: A Role of Pride and Influence in the World “Defence”*”, the Department of National Defence highlighted these roles and called for enhancing cooperation with civil authorities in the following fashion:

Future Tasks of the Canadian Forces

To support more effectively the Government's essential role in providing for the safety and security of Canadians, and in keeping with a fully integrated and unified approach to operations, the Canadian Forces will focus their efforts in the following areas.

With respect to *national assets*, the Canadian Forces will:

- establish a single national command structure (Canada Command) to respond to national contingencies; and
- enhance their relationships with civil authorities. This will include sharing information as well as developing and exercising plans, so that, in the event of a crisis, the Forces can make a timely, effective contribution to the Government's overriding objective to protect Canadians.

With respect to *special operations forces*, the Canadian Forces will:

- enhance the national counterterrorism response force (Joint Task Force 2) to deal with emergencies in different parts of the country;
- enhance the Joint Nuclear, Biological and Chemical Defence Company to support civilian first responders in reacting quickly to a major incident in Canada; ...

The *Land Forces* (Regular and Reserve) will:

- build on the mix of military and non-military skills resident in the Reserves (e.g., chemical, biological, radiological and nuclear response, information operations and civil-military cooperation), as well as their presence nationwide, to support civilian authorities in responding to domestic emergencies in Canada; ...
- provide forces to the Special Operations Group for domestic operations;
- provide forces to the Standing Contingency Task Force to respond to domestic emergencies; and
- provide immediate-response units to Mission-Specific Task Forces to respond to domestic crises.

In the area of *disaster relief*, the Canadian Forces will:

- provide an enhanced Disaster Assistance Response Team, or its component parts, for humanitarian assistance missions at home.

4) Urban Training without Permission

Searches of several databases of Canadian newspapers and periodicals for articles on urban training failed to uncover any that identified a conflict between the Canadian Forces and local authorities. In particular, no reference was found with respect to stories about St. Catharines or other Ontario municipalities that referred to such a conflict with municipal councils. Reported urban training exercises ranged in scale from small exercises by a single Reserve units to large exercises involving multiple regiments, forces from different branches and even the involvement of troops from allied countries. The articles that were available gave the impression that the people in the area affected supported the exercises. In fact, some local businesses expressly appreciated the possibility of increased sales.

City of Ottawa Experience

I can advise that the City of Ottawa's Office of Emergency Management ("OEM") has conducted joint training exercises with the military in the past. Operational staff in the OEM suggest that the most recent one occurred in Ottawa in the fall of 2005. As such, John Ash, Manager, Office of Emergency Management, is the manager who deals with the Canadian Forces.

I trust the above is satisfactory. Should you have any questions with respect to same, please do not hesitate to contact me.

"Original signed by"

M. Rick O'Connor

RO/ds