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**National Defence – Assistant Deputy Minister (Finance)
Financial Administration Manual (FAM) Chapter 1019-3 Claims and Ex Gratia Payments**

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1. Effective Date

- 1.1 This policy is effective on **20 April 2022**.
- 1.2 This policy establishes the Department of National Defence (DND)/Canadian Armed Forces (CAF) financial management (FM) practices related to claims and ex gratia payments.
- 1.3 The policy was approved by the Assistant Deputy Minister (Finance) (ADM(Fin)) on **20 April 2022**.

2. Application

- 2.1 This policy applies to all claims, by and against the Crown, and ex gratia payments in the DND/CAF arising from government operations, except where explicitly excluded.

3. Context

- 3.1 Due to the sensitive nature surrounding claims and ex gratia payments, the DND/CAF must ensure that any payments issued can withstand public scrutiny. In addition, the DND/CAF must ensure that internal controls are in place and applied for the authorization, recording and reporting of claims and ex gratia payments.
- 3.2 The DND/CAF must manage its claims and ex gratia payments in accordance with Treasury Board (TB) policies. Due to the nature and complexity of its programs, the DND/CAF may be faced with unique situations that may not be addressed or fully articulated under the TB Directive on Payments, the TB Guide to Claims and TB Guide to Ex Gratia Payments and Honorariums (this policy does not address honorariums). This policy outlines and explains the DND/CAF requirements for the FM of claims and ex gratia payments.
- 3.3 Accordingly, this policy must be applied in conjunction with and after reading the following:
 - TB Directive on Payments;
 - TB Guide to Claims; and
 - TB Guide to Ex Gratia Payments and Honorariums.
- 3.4 All financial documentation supporting the transactions must be retained for six years from the end of the fiscal year (FY) in which the transaction takes place. All documentation is retained until the account is cleared. When a criminal, disciplinary or recovery action is taken, all documentation must be retained and protected for six fiscal years after the process is completed.
- 3.5 See Appendix A for the definitions applicable to this policy and a list of acronyms used.

4. Objectives and Expected Results

4.1 The objectives of this policy are to:

- Identify the DND/CAF key stakeholders involved with the FM of claims and ex gratia payments and outline their roles and responsibilities;
- State and explain the DND/CAF FM policies for claims that are not addressed in the TB Directive on Payments and the TB Guide to Claims; and
- State and explain the DND/CAF FM policies for ex gratia payments that are not addressed in the TB Directive on Payments and the TB Guide to Ex Gratia Payments and Honorariums.

4.2 The expected results of implementing this policy are:

- Effective governance, oversight and internal controls over DND/CAF claims and ex gratia payments;
- Key DND/CAF stakeholders are aware of and understand their roles and responsibilities with respect to claims and ex gratia payments;
- The DND/CAF's potential claims and ex gratia payments are appropriately identified, assessed and settled in accordance with this policy and the DND/CAF process detailed in Defence Administrative Orders and Directives (DAOD) 7004-1; and
- The DND/CAF claims and ex gratia payments are recorded in the departmental [financial management system \(FMS\)](#) and reported in the department's external financial reports on a timely basis.

5. Requirements

General

5.1 The DND/CAF are committed to providing reasonable and timely settlement and payment of claims made against or by the Crown and ex gratia payments.

5.2 Claims against the Crown, and any other potential request for an ex gratia payment, are identified, assessed and settled, as a liability of the DND/CAF or as an ex gratia payment in accordance with the authoritative documents listed at paragraph 3.3 and this policy.

5.3 Definitions, details on the common and special types of claims and general ex gratia payments encountered in DND/CAF operations are addressed in the following sections.

A. Claims

Definition of a Claim

5.4 "Claim" is defined as a request for compensation to cover losses, expenditures or damages sustained by the Crown (claim by the Crown) or a claimant. Claims can be requested or settled in or out of court.

- 5.5 Claims covered by other authorities, governing instruments or policies must be settled pursuant to those other authorities or instruments.

Types of Claims

- 5.6 This subsection describes the types of claims encountered within the DND/CAF.
- 5.7 Claims may be made by or against the Crown.
- 5.8 All claims must be treated in accordance with the appropriate authorities, governing instruments (e.g. legislation, Order in Council, regulation) and TB policies.
- 5.9 While most of the claim types below observe the same process for their identification, assessment and settlement, some of the types of claims listed below have additional specific requirements arising from those other governing authorities or instruments that must be addressed when processing and resolving them.

Claims in Contract

- 5.10 Claims in contract are to be dealt with according to the terms and conditions of the applicable contract and pursuant to the applicable laws and subject to contractual policies. The DND/CAF must ensure that the interests of the Crown are protected and that all legal rights are exercised (for example, when the DND/CAF cancels a contract with a supplier and the supplier files a claim for contract damages).

Claims in Tort (or Extra-Contractual Liability in Quebec)

- 5.11 Claims in tort are governed by the TB Directive on Payments. They are also known as extra-contractual liability claims in Quebec and are claims that do not arise in the context of a written, oral or implied contractual agreement. They are claims resulting from the actions or inactions of the DND/CAF that causes a loss to a third party (for example, when a tree is cut on federal property and as a result damages a neighbour's personal property).

Claims under the Canadian Human Rights Act

- 5.12 Claims under the *Canadian Human Rights Act* (CHRA) are subject to the investigation and conciliation requirements under the CHRA. The negotiation and payment of settlements and tribunal orders under the CHRA are subject to the requirements of the TB Directive on Payments, except if they relate to complaints on equal pay for work of equal value lodged under section 11 of the CHRA. Those complaints are dealt with through TB policy instruments relating to people management and through other authorities.

Claims Against Visiting Forces in Canada

- 5.13 Under Part III of the *Visiting Forces Act*, claims arising out of the activities of certain visiting forces in Canada are dealt with in the same way as claims that result from other activities of the CAF in Canada. For further details, please see DAOD 7004-1, Claims and Ex Gratia Procedures.

Claims Involving NATO Countries Outside of Canada

- 5.14 Under the NATO Status of Forces Agreement, the receiving state deals with claims against the sending state that result from activities of the sending state in the receiving state in the same way as the receiving state deals with claims arising out of the activities of its own forces. For further details, please see DAOD 7004-1, Claims and Ex Gratia Procedures.

Per Quod Claims

- 5.15 If a CAF member is injured or killed due to the deliberate conduct or the negligence of another person, the Crown may be able to recover medical expenses, pay received by the member while disabled and burial expenses where applicable from the responsible party. For further details, please see DAOD 7004-1, Claims and Ex Gratia Procedures.

Claims Between Departments

- 5.16 As a general rule, one federal government department cannot claim damages and receive payment from another federal government department. Such claims are dealt with in a manner that precludes departments from seeking damages from each other (for example, on the basis of mutual forbearance).

Claims Between Departments and Crown Corporations

- 5.17 Departments and Crown corporations use negotiated settlements to settle claims. However, when a claim is pursued, each party should voluntarily supply the other with all information in its possession. If the parties themselves cannot agree on the claim's merits and liabilities, then the legal officers of both organizations should try to reach an agreement. If the legal officers cannot agree, then the matter is referred to the Deputy Attorney General of Canada for arbitration.

Drivers of the Canadian Corps of Commissionaires (Corps)

- 5.18 The National Master Standing Offer (the "Offer") between the Crown and the Corps of Commissionaires sets out the responsibilities, terms and conditions of the parties with respect to claims in the provision of Commissionaire services to the Crown. For further details, please see DAOD 7004-1, Claims and Ex Gratia Procedures.

Non-Public Property Claims

- 5.19 Incidents arising which involve non-public property as defined in section 2 of the *National Defence Act*, and which may result in claims by or against the Crown, shall be reported. For further details, please see DAOD 7004-1, Claims and Ex Gratia Procedures.

Claims Against the Crown by Crown Servants

- 5.20 Claims made against the Crown by [Crown servants](#) that are covered by other authorities, governing instruments or policies must first be managed through these other instruments. For example:

- Claims and legal proceedings covered by the Policy on Legal Assistance and Indemnification;
- Claims under section 11 of the Equal Wages Guidelines;
- Claims for damages to Crown servants' effects while on relocation or travel status; these claims are covered in instruments such as the National Joint Council (NJC) Relocation Directive and NJC Travel Directive;
- Claims related to bodily injury while on duty; these claims are covered in the Government Employees Compensation Act; and
- Claims related to the working environment and employment issues or expenses are normally dealt with in accordance with grievance procedures.

5.21 Claims against the Crown by Crown servants may arise as a result of loss or damage to personal property while conducting government business (for example, damage to personal clothing in the performance of a servant's duties). For further details, please see DAOD 7004-2, Compensation for Loss or Damage to Personal Property.

Claims Covered by Other Authorities, Governing Instruments or Policies

- 5.22 When a claim is governed by another authority or instrument, the claim must be treated in accordance with the other authority or instrument which contain specific requirements for the type of claims. Key examples include:
- Claims for recovery of losses of public money which are covered by the TB Directive on Public Money and Receivables;
 - Claims related to contract performance which are covered by the TB Contracting Policy;
 - Claims related to relocation and household property and travel claims which are covered by the NJC Relocation Directive and NJC Travel Directive;
 - Claims for compensations for loss of or damages to personal property under Compensation Benefits Instructions (CBI); and
 - Claims by the Crown resulting from automobile accidents and claims by or against the Crown with motor vehicle owners and their insurers in respect to collisions which are covered by provincial legislations (legal services, materiel management and/or fleet specialists should also be consulted).

Conducting an Investigation

- 5.23 The relevant responsibility centre (RC) manager, is responsible to conduct an investigation at the earliest reasonable opportunity after a claim is received. The RC manager should consider whether to request assistance from the departmental security officer, depending on the type of incident and the amount of the claim. The investigation should be formally documented.
- 5.24 The extent of the investigation depends on the type of incident, the amount of the claim and the potential cost of the investigation. If the investigation is conducted, the contents are protected by solicitor-client privilege. For further details, please see DAOD 7004-1, Claims and Ex Gratia Procedures.

Obtaining Legal Advice

- 5.25 Due to the legal nature of claims, RC managers who are involved in a claim should always seek legal advice from an appropriate member of the Office of the DND/Canadian Forces Legal Advisor (DND/CFLA) or the Office of the Judge Advocate General (OJAG).
- 5.26 When a claim involves legal proceedings, or when a payment of an amount greater than \$25,000 is being considered, the claim must be forwarded to DND/CFLA or Director, Claims and Civil Litigation (DCCL) to determine whether any potential legal liability exists.
- 5.27 Claims involving Crown servants (either a claim against the Crown by Crown servants or a claim by the Crown against Crown servants) are generally negotiated by DND/CFLA or the OJAG, or in conjunction with the Department of Justice Canada, without recourse to the courts and according to the relevant authorities and procedures.

Processing of Claims

- 5.28 When a potential claim is identified or an incident occurs that may result in a claim against the DND/CAF, it should be processed and resolved in accordance with the guidance of the TB Guide on Claims, sections 5 and 6.
- 5.29 For details on the DND procedures used to meet those requirements as part of the identification, investigation, assessment and resolution of claims, please refer to DAOD 7004-1 and the Standard Operating Procedure (SOP) – Claims and Ex Gratia Payments.

Objectives when Processing and Resolving Claims

- 5.30 The DND/CAF are committed to providing reasonable and timely settlement and payment of claims made against or by the Crown in accordance with the authoritative documents listed at paragraph 3.3 and this policy.
- 5.31 In addition, the departmental identification and processing of claims can involve many parties including RC managers, Level 1 (L1) Comptrollers, CFLA Comptroller and legal advisors from DND/CFLA and OJAG. Working with their appropriate legal advisor and other involved parties, RC managers accountable for a claim against the Crown, or considering making a claim by the Crown, should:
- Ensure the claim meets the definition of a claim as set out in paragraph 5.4 and is treated in accordance with existing authorities, governing instruments or policies, when applicable;
 - Make reasonable efforts to obtain value for money when resolving the claim;
 - Consider the legal and other merits of the claim;
 - Consider the administrative expediency and cost-effectiveness of making or settling the claim; and
 - Reduce the amount of the payment of a claim against the Crown when the acts or omissions of any person, including persons for whom a payment is being considered, contributed to the damages or loss incurred.

Settling of Claims

- 5.32 The DND/CAF may decide, in consultation with legal advisors from DND/CFLA or OJAG, to settle the claim or deny the claim. The DND/CAF shall then advise the claimant of the decision.
- 5.33 Within the department, the authority to settle claims by and against the Crown is restricted. The Delegation of Authorities Matrix and Delegation of Authorities for Financial Administration for the DND and the CAF documents must also be consulted for financial approval and expenditure initiation authorities.
- 5.34 When the Crown issues a payment to settle a claim, the DND/CAF must obtain a signed release, as required, from the claimant.

Tax Implication for Claims

- 5.35 When issuing a claim payment, the RC manager must ensure that the payment is in compliance with the Canadian *Income Tax Act*, and applicable provincial or territorial income tax acts, and with respect to withholding, remitting and filing requirements, by providing the appropriate DND operations organization with the necessary supporting information.
- 5.36 The of taxability of an claim payment can only be determined after reviewing all of the relevant facts and circumstances of a particular case, and what the claim payment is intended to compensate for. For example, a settlement payment that compensates for the loss of an amount that would have been income, from business, property or employment sources, will be generally taxable as income in accordance with the relevant legislation.
- 5.37 When issuing or receiving a claim payment, the RC manager must ensure that the payment is in compliance with commodity (sales) tax legislation, for example the Canadian Excise Tax Act (ETA) and applicable provincial or territorial tax legislation, with respect to paying/charging or claiming/accepting exemption from any applicable commodity taxes, and maintaining supporting documentation.
- 5.38 The applicability of commodity (sales) tax to a claim payment can only be determined after reviewing all of the relevant facts and circumstances of a particular case, and what the claim payment is intended to compensate for. For example, a settlement payment that provides compensation related to the provision of goods or services may be considered taxable as payment for said good or services.

Recording and Disclosure of Claims

- 5.39 When a signed release has been received, as required, the claim must be recognized in the departmental FMS.
- 5.40 When pursuing a recovery action resulting from a claim by the Crown, the collection process must be consistent with the requirements of the TB Directive on Public Money and Receivables. An accounts receivable must be recorded in the FMS.

- 5.41 According to the Public Accounts of Canada and the Receiver General's (RG) specific guidelines for reporting, all claims must be reported and disclosed. For full reporting and disclosure requirement for claims, please refer to the RG's Public Account of Canada instructions.

B. Ex Gratia Payment

Definition of an Ex Gratia Payment

- 5.42 An “Ex Gratia Payment” is defined as a benevolent payment made by the Crown and used only when there is no other statutes, regulations or policy vehicle to make such a payment. The payment is made in the public interest for loss or expenditure incurred where the Crown has no obligation of any kind or has no legal liability, or where the claimant has no right of payment or is not entitled to relief in any form.
- 5.43 Note this policy does not address honorarium payments that can take the form of an ex gratia payment or transfer payment.

Obtaining Legal Advice

- 5.44 When a potential ex gratia payment is being considered at any level, consultation with legal advisors of DND/CFLA or OJAG is mandatory. For a valid exercise of the ex gratia authority, it must be determined that the Crown has no obligation of any kind and has no legal liability. It must also be determined that there is no other statutory or other vehicle to make the payment.

Processing Ex Gratia Payments

- 5.45 When processing ex gratia payments under the TB Directive on Payments, the RC manager must ensure that the payment is not covered by another governing instrument and/or is not being used to fill a gap in another instrument.
- 5.46 When processing an ex gratia payment under Ministerial Authorities as outlined in paragraphs 5.54 to 5.55, the Chief Financial Officer (CFO) must confirm that the payment falls within the department's mandate and the Office of the Comptroller General (OCG) has been consulted and provided comments on applicable financial management policies and procedures.
- 5.47 When processing an ex gratia payment under TB or Governor in Council (GIC) authority as outlined in paragraph 5.56, TB and/or GIC preapproval is required.
- 5.48 For details on the DND procedures used as part of the ex gratia payment process, please refer to DAOD 7004-1 and the SOP – Claims and Ex Gratia Payments.

Objectives when Processing and Resolving Ex Gratia Payments

- 5.49 DND and the CAF are committed to providing reasonable and timely settlement and payment of ex gratia payments in accordance with the authoritative documents listed at paragraph 3.3 and this policy.

- 5.50 In determining the amount for an ex gratia payment, the DND/CAF should consider the underlying costs of amounts paid under comparable situations, what is fair under the circumstances and any contributing factors, including any actions or omissions by the potential recipient.
- 5.51 Ex gratia payments should be managed with prudence given that they closely resemble gifts. The following are key considerations for the use of ex gratia payments:
- They should be used only in exceptional or urgent circumstances;
 - They are not intended to be used as a mechanism to deliver a program and are not appropriate for making recurring payments;
 - The purpose for which the ex gratia payment is intended must fall within the mandate of the DND/CAF;
 - They should not be used if there are any legal restrictions to doing so (for example reimbursing interest payments); and
 - They should not be used to address claims or situation where a liability exists.

Determining the Amount of an Ex Gratia Payment

- 5.52 In determining the amount for an ex gratia payment, the DND/CAF should consider the following:
- The underlying costs of amounts paid under comparable situations;
 - What is fair under the circumstances;
 - The existence of contributing factors, including any actions or omissions by the potential recipient; and
 - The availability of funds to the recipient from other reasonable means of compensation.

Tax Implications for Ex Gratia Payments

- 5.53 When issuing an ex-gratia payment, the RC manager must ensure that the payment is in compliance with the Canadian *Income Tax Act*, and applicable provincial or territorial income tax acts, and with respect to withholding, remitting and filing requirements, by providing the appropriate DND operations organization with the necessary supporting information.
- 5.54 The taxability of an ex gratia payments can only be determined after reviewing all of the relevant facts and circumstances of a particular case, and what the ex gratia payment is intended to compensate for. For example, a settlement payment that compensates for the loss of an amount that would have been income, from business, property or employment sources, will be generally taxable as income in accordance with the relevant legislation.
- 5.55 When issuing an ex-gratia payment, the RC manager must ensure that the payment is in compliance with commodity (sales) tax legislation, for example the Canadian Excise Tax Act (ETA) and applicable provincial or territorial tax legislation, with respect to paying or claiming exemption from any applicable commodity taxes, and maintaining supporting documentation.

5.56 The applicability of commodity (sales) tax to an ex gratia payment can only be determined after reviewing all of the relevant facts and circumstances of a particular case, and what the ex gratia payment is intended to compensate for. For example, a settlement payment that provides compensation related to the provision of goods or services may be considered taxable as payment for said good or services.

Authorities for Ex Gratia Payments

5.57 Within the department, the authority to make ex gratia payments is restricted. The Delegation of Authorities Matrix and Delegation of Authorities for Financial Administration for the DND and the Canadian Forces CAF documents must also be consulted for financial approval and expenditure initiation authorities.

Individuals with Delegated Authority

5.58 Individuals with Delegated Authority under Column 29 of the Delegation Matrix must ensure that the payment meets the definition of an ex gratia payment, that no other governing instrument exists to make the payment and that the payment is less than \$2,000.

Deputy Minister's Authority

5.59 In exercising this authority, the Deputy Minister must ensure that the payment meets the definition of an ex gratia payment and that no other governing instrument exists to make the payment but there is no limitation on the amount, as per the delegation of authorities.

Ministerial Authority

5.60 As agents of the Crown, ministers may be able to exercise the Crown's authority to authorize ex gratia payments in relation to matters falling within their mandates. Ministerial authority is normally required for payments that do not meet the requirements of the TB Directive on Payments and are only in exceptional circumstances.

5.61 When considering ex gratia payments, the L1 Comptroller should engage with the DND/CFLA Comptroller. DND/CFLA will advise if further consultation with Treasury Board Secretariat (TBS) and the OCG is required to determine suitability of Ministerial authority or provide further clarification as required. The Director of Financial Accounting (DFA) may need to be engaged to consult with TBS and the OCG.

Treasury Board or Governor in Council Authority (GIC)

5.62 Generally, TBS or GIC approval may be required when some or all of the following characteristics apply:

- The payment does not meet the requirements of the TB Directive on Payments;
- The payment falls outside the Minister's authority; and/or

- There is significant risks associated with the payment (for example, the payment is controversial, merits political approval, has a public profile, sets a precedence, requires a degree of transparency, or is a significant amount).

Recording and Disclosure of Ex Gratia Payments

5.63 According to the Public Accounts of Canada and the RG specific guidelines for reporting and disclosure, all ex gratia payments must be reported. For full reporting and disclosure requirement for ex gratia payments, please refer to the RG Public Account of Canada instructions.

6. Roles and Responsibilities

6.1 The following identifies the roles and responsibilities of various DND/CAF organizations related specifically to claims and ex gratia payments.

Deputy Minister

6.2 The Deputy Minister (DM) is responsible for:

- Establishing an effective departmental governance and oversight framework to ensure that a risk-based departmental system of internal financial control over claims and ex gratia payments is established, monitored and maintained;
- Ensuring L1 Advisors and the Assistant Deputy Minister (Finance)/Chief Financial Officer (ADM(Fin)/CFO) are aware of their responsibilities and have the necessary knowledge to carry them out;
- Approving all ex gratia payments over \$2,000; and
- Ensuring that the ADM(Fin)/CFO advises the OCG on a timely basis where there are difficulties in complying with this policy.

Assistant Deputy Minister (Finance)/Chief Financial Officer

6.3 The Assistant Deputy Minister (Finance)/Chief Financial Officer (ADM(Fin)/CFO) is responsible for:

- Establishing, maintaining and monitoring a risk-based system of internal controls over financial management within the DND/CAF to ensure the appropriate identification, management, mitigation and reporting of all claims and ex gratia payments;
- Providing financial functional direction and guidance across the department and the CAF on matters related to claims and ex gratia payments; and
- Ensuring that corrective actions are taken to address instances of non-compliance with this policy by a civilian, or in the case of a CAF member, notifying the military chain of command that corrective actions must be taken.

Level 1 Advisors

6.4 Level 1 (L1) Advisors (ADM and Military L1s) are responsible for:

- Ensuring that this policy is properly applied within their organization; and

- Ensuring RC managers within their organization are aware of their responsibilities and have the necessary knowledge to carry them out.

Director General Strategic Financial Governance

6.5 The Director General Strategic Financial Governance (DGSFG) is responsible for:

- Ensuring that this policy takes into consideration the unique situations and circumstances of the DND/CAF;
- Ensuring that the development of financial controls, systems and procedures adequately support the identification, management and reporting of claim and ex gratia payments in accordance with this policy; and
- Bringing to the ADM(Fin)/CFO's attention any significant compliance issues with this policy that they become aware of and providing recommendations on how to address them.

Director Financial Policy

6.6 The Director Financial Policy (DFP) is responsible for:

- Defining and developing departmental FM policy for claims and ex gratia payments; and
- Providing policy interpretation and clarification when appropriate.

Director Financial Control

6.7 The Director Financial Controls (DFC) is responsible for:

- Assessing the effectiveness of key controls related to in-scope business processes and systems and making recommendations based on the results of the assessments;
- Reporting on the status of the assessments and completing the annual summary for inclusion as an Annex to the departmental financial statements; and
- Tracking and reporting on the status of remediation action plans.

Director Financial Systems Integration

6.8 The Director Financial Systems Integration (DFSI) is responsible for:

- Creating and maintaining financial business process documentation on claims and ex gratia payments;
- Assisting with the development and design of business processes as well as remediation assistance through financial business process re-engineering and transformation activities when requested or required; and
- Establishing and issuing mandatory procedures in compliance with this policy that provide a standardized process of how activities related to claims and ex gratia payments are performed across the DND/CAF.

Director General Financial Operations and Services

- 6.9 The Director General Financial Operations and Services (DGFOS) is responsible for:
- Supporting the implementation and overseeing the day-to-day application of this policy including by ensuring that appropriate procedures are in place; and
 - Bringing to the attention of the ADM(Fin)/CFO any significant compliance issues with this policy that they become aware of and providing recommendations of how to address them.

Director Financial Accounting

- 6.10 The Director Financial Accounting (DFA) is responsible for:
- Reviewing claims and ex gratia payment details reported by L1s for overall reasonableness, as required, to help ensure they are appropriately recorded and disclosed in the department's external financial reports;
 - Disclosing the claims and ex gratia payments of the department appropriately in the department's external financial reports;
 - Reviewing, preparing and submitting the balances of the claims and ex gratia payments and their respective allowances to the RG; and
 - Providing procedure guidance on reporting requirements to Corporate Departmental Accounting Office (CDAO), Regional Departmental Accounting Offices (RDAOs) and L1 Comptrollers to support the appropriate recognition and reporting of claims and ex gratia payments.

Level 1 Comptrollers

- 6.11 Level 1 (L1) Comptrollers are responsible for:
- Ensuring all staff within their organization who are involved with claims and ex gratia payments understand and properly apply this policy and supporting procedures;
 - Providing financial direction and guidance on the department's claims and ex gratia payments policy and procedures within their L1 organization;
 - Engaging the CFLA Comptroller when potential claims and ex gratia payments are identified within their L1's areas of responsibility in order for CFLA to provide legal advice and recommendations for their resolution; and
 - Ensuring that compliance with this policy is monitored.

Departmental Chief Security Officer (DCSO)

- 6.12 Departmental Chief Security Officer (DCSO) is responsible for:
- Ensuring that procedures are in place for investigation of claims, as required; and
 - Ensuring staff within their organization who are involved with claims understand and effectively apply this policy.

Regional Departmental Accounting Office Comptrollers

6.13 Regional Departmental Accounting Office (RDAO) Comptrollers are responsible for:

- All responsibilities identified in paragraph [6.11](#) of this policy for L1 Comptrollers;

Department of National Defence / Canadian Forces Legal Advisor (DND/CFLA)

6.14 The Department of National Defence / Canadian Forces Legal Advisor (DND/CFLA) is responsible for:

- Providing legal advice and assistance regarding claims and ex gratia payments, including litigation support and instructions to litigation counsel at the Department of Justice or to agents of the Crown where DND/CAF is involved in litigation;
- Where more than one department or other external party is named in a legal claim, ensuring that the DND portion of the estimated potential amount is appropriate given the claim details; and
- Updating DND/CFLA records for items assessed as required on an ongoing basis to support reporting of claims and ex gratia payments to DFA.

Canadian Forces Legal Advisor Comptroller

6.15 The Canadian Forces Legal Advisor CFLA Comptroller is responsible for:

- All responsibilities identified in paragraph [6.11](#) of this policy for L1 Comptrollers;
- Providing support and guidance to L1 Comptrollers and forwarding claims and ex gratia payments to the appropriate CFLA staff;
- Supporting the DND/CFLA in fulfilling their responsibilities to ensure the appropriate identification, assessment and reporting of all claims and ex gratia payments; and
- Providing reports to DFA and providing additional details when required.

Office of the Judge Advocate General

6.16 Office of the Judge Advocate General (OJAG) is responsible for:

- Providing legal advice regarding claims and ex gratia payments and handling them, within the parameters set out in the DND/CAF Delegation of Authorities for Financial Administration Matrix; and
- Updating OJAG records for items assessed as required on an ongoing basis to support reporting of claims and ex gratia payments to DFA.

Responsibility Centre Managers

6.17 Responsibility Centre (RC) Managers are responsible for:

- Engaging their L1 Comptroller, through the financial chain of command, when claims and ex gratia payments are identified within their area of responsibility in order that their L1 Comptroller can seek CFLA's advice and assessment of the potential items.

7. Consequences of Non-Compliance

- 7.1 Under the TB Policy on Financial Management the DM is responsible for investigating and acting when significant issues regarding policy compliance arise. The DM must also ensure that appropriate remedial actions are taken to address such issues within the DND / CAF. The TB Framework for the Management of Compliance provides guidance on the considerations for determining the possible mix of consequences, which include; the impact of the non-compliance, whether there is a history of non-compliance, whether there was intent and whether there are other circumstances.
- 7.2 To support the DM's responsibility under the TB Policy on Financial Management, the ADM (Fin) / CFO or in the case of a member of the CAF, the military chain of command at the ADM (Fin) / CFO's direction, must ensure corrective actions are taken and that consequences are commensurate with the nature of the non-compliance with this policy. Corrective actions and consequences can include a requirement for additional training, changes to procedures or systems, removal or suspension of delegated spending and financial authorities, disciplinary action or other measures as appropriate. For additional information refer to the TB Framework for the Management of Compliance.

8. References

8.1 Legislation

Canadian Human Rights Act
Crown Liability and Proceedings Act
Excise Act
Financial Administration Act
Income Tax Act of Canada
Income Tax Regulations of Canada
Tax Act of Quebec
Tax Administration Act Regulations of Quebec
National Defence Act
Queen's Regulations and Orders (Chapter 21)
Visiting Forces Act

8.2 Treasury Board and Central Agency FM Policy Instruments

[TB Directive on Payments](#)
[TB Directive on Public Money and Receivables](#)
[TB Policy on Financial Management](#)
[TB Guide to Claims](#)
[TB Guide to Collecting and Paying Federal and Provincial Sales Taxes](#)
[TB Guide to Ex Gratia Payments and Honorariums](#)
[Instructions related to Volume III of the Public Accounts of Canada for Claims - RG - PSPC \(tpsgc-pwgsc.gc.ca\)](#)
[Instructions related to Volume III of the Public Accounts of Canada for Ex Gratia Payments- RG - PSPC \(tpsgc-pwgsc.gc.ca\)](#)
[Order in Council, P.C. 2012-861](#)

8.3 DND/CAF FM Policies

[Delegation of Authorities for Financial Administration for the Department of National Defence \(DND\) and the Canadian Armed Forces \(CAF\)](#)
[Delegation of Authorities for Financial Administration Matrix](#)

[FAM Chapter 1024-1 Goods and Services Tax \(GST\) / Harmonized Sales Tax \(HST\)](#)
[FAM Chapter 1024-9, Taxable Benefits and Allowances](#)

8.4 DND/CAF FM Guides, Forms, Tools and Other References

[Receiver General Specific guidelines for individual plate reporting - Public Accounts of Canada](#)

Standard Operating Procedures (SOP) – Claims and Ex Gratia Payments

[DAOD 7004-0, Claims By or Against the Crown and Ex Gratia Payments](#)

[DAOD 7004-1, Claims and Ex Gratia Procedures](#)

[DAOD 7004-2, Compensation for Loss or Damage to Personal Property](#)

[Compensation and Benefits Instructions \(CBI\) 210.03, Claims for Compensation](#)

9. Enquiries

- 9.1 Questions on policy interpretation and clarification are to be addressed to the appropriate Comptroller.
- 9.2 If the local Comptroller requires assistance, the question will be escalated through the financial chain of command.
- 9.3 If the L1 Comptroller needs guidance on the matter(s) raised, the L1 Comptroller may contact the CFLA Comptroller for assistance in determining whether a possible claim or potential ex gratia payment needs to be assessed and potentially recognized or disclosed as claims and ex gratia payments. In cases where the L1 Comptroller needs guidance regarding the financial reporting of claims and ex gratia payments, the L1 Comptroller may contact DFA.
- 9.4 If DFA needs guidance on the matter(s) raised, they may contact DFP.

Appendix A – Definitions and Acronyms

The following definitions apply to this policy:

Definitions

Crown Servants (Fonctionnaire de l'État) is defined as:

- An individual employed (or formerly employed) in a department as defined in section 2 of the Financial Administration Act and to other portions of the federal public administration named in Schedule IV of the Financial Administration Act, in the Canadian Forces and the Royal Canadian Mounted Police;
- An individual appointed (or formerly appointed) by the Governor in Council or by the Treasury Board or by a minister, except for former and serving directors or officers of Crown corporations;
- A former and serving prime minister, lieutenant-governor, governor general, minister, deputy head and ministers' exempt staff;
- A representative authorized in writing to act on behalf of a serving prime minister, minister or deputy head;
- An incoming participant or former incoming participant in a program under the Policy on Interchange Canada; or
- An estate of an individual mentioned above.

Financial Management System (Système de gestion financière) is any combination of business processes (end-to-end, automated and manual), procedures, controls, data and software applications, all of which are categorized as either a departmental financial and materiel management system or program system or central system that produces financial information and related non-financial information. DND's departmental FMS includes Defense Resource Management Information System (DRMIS) and would also include any future replacement of DRMIS.

Responsibility Centre (RC) Manager (Gestionnaire de centre de responsabilité (CR)) for this Financial Administration Manual (FAM) is defined as the manager and the commanding officer who are also RC managers.

Acronyms

ADM(Fin) – Assistant Deputy Minister, Finance

CAF – Canadian Armed Forces

CBI – Compensation Benefits Instructions

CDAO – Corporate Departmental Accounting Office

CFLA – Canadian Forces Legal Advisor

CFO – Chief Financial Officer

CHRA – *Canadian Human Rights Act*

DAOD – Defence Administrative Orders and Directives

DCCL – Director, Claims and Civil Litigation

**National Defence – Assistant Deputy Minister (Finance)
Financial Administration Manual (FAM) Chapter 1019-3 Claims and Ex Gratia Payments**

DCSO – Departmental Chief Security Officer
DFA – Director Financial Accounting
DFC – Director Financial Controls
DFSI – Director Financial Systems Integration
DFP – Director Financial Policy
DGFOS – Director General Financial Operations and Services
DGSFG - Director General Strategic Financial Governance
DM – Deputy Minister
DND – Department of National Defence
DRMIS – Defense Resource Management Information System
FAM – Financial Administration Manual
FM – Financial Management
FMS – Financial Management System
GIC - Governor in Council
L1 – Level 1
NJC – National Joint Council
OCG – Office of the Comptroller General
OJAG – Office of the Judge Advocate General
RDAO – Regional Departmental Accounting Office
RC – Responsibility Centre
RG – Receiver General
SOP - Standard Operating Procedures
TB - Treasury Board
TBS – Treasury Board Secretariat