

Defence Legal Services

DLS MINUTE 95/2021

8 Jul 21

SAB

JOINT MILITARY PROFESSIONAL EDUCATION: WEST POINT DEPARTMENT OF LAW

Reference

- A. Email M. Schmitt to DDLS dated 16 Feb 2021
- B. Minutes of Specialist Career Development Board of 22 Jun 21
- C. Regular Force Defence Legal Officers Career Progression Model dated 12 Apr 19

Purpose

1. The purpose of this minute is to advise you of an opportunity recently brought to my attention at Ref A by Professor Michael Schmitt, Frances Lieber Distinguished Scholar at the US Military Academy, West Point. It is my view that this is an invaluable opportunity, and will provide important knowledge and development for not only one of my team, but for the NZDF. This opportunity was initially raised and discussed at Ref B, where it was directed it be raised to the SAB.

Details of Offer

- 2. The Lieber Institute is West Point's 'think tank' on Law of Armed Conflict issues, it runs regular workshops, publishes books and has a strong online presence. It is embedded in West Point's Department of Law.
- 3. Recently the West Point Law School has hosted its first allied officer on a two-year tour (from the UK Defence Force). That officer is on the faculty of the Law School and teaches, researches, and works with the Institute. He is also completing a Masters-level degree through Reading University under the supervision of Professor Schmitt. West Point consider this placement to have been a success and are looking to offer it to other nations, including NZ. Enclosed are the details of the UK arrangement for the posting, noting that each arrangement would be tailored to meet the needs of the country involved.
- 4. West Point is highly supportive of hosting an officer from the NZDF –the new Dean of the Academic Board, BG Reeves, was most recently the Head of the Department of Law, and is supportive of this initiative.

Benefit to the NZDF

Posting to West Point Department of Law

Professor Schmitt is currently the Francis Lieber Distinguished Scholar, and, in Military and International Law circles, he is widely recognised as a foremost expert in emerging areas of law, including that related to cyber warfare and Space. In particular Professor Schmitt was the director of the Tallinn Manual on the International Law Applicable to Cyber Warfare Project, and has been involved in both the Manual of International Law Applicable to Military Uses of Outer Space (MILAMOS) and the Woomera Manual on the International Law

on Military Space Operations. It is also notable that Professor Schmitt served for 20 years as a Staff Judge Advocate in the USAF, completing a number of operational tours as a legal advisor, and was on faculty at both the USAF Academy and the US Naval War College.

5. As the NZDF's work in the areas of cyber, space, and information warfare increases, NZDF legal officers must remain at the forefront of this emerging area of law. There is little, if any, opportunity for such education domestically. s. 6(a)

. This opportunity to work and study alongside Professor Schmitt will directly contribute to DLS's ability to support that work.

Postgraduate Study

6. A Master of Laws (LLM), while not a stated requirement for senior legal officers, is strongly recommended. It is accepted that to hold the position of DGDLS an LLM (or equivalent) is required (Ref C).

7. Most of my officers identify an LLM or equivalent as something they aspire to complete, with many noting their preference to do so as a full-time course of study, or in conjunction with a staff course.

8. NZDF funding of post-graduate study for legal officers has been ad hoc in the past. There have been two occasions where overseas LLM have been funded, s. 9(2)(a)

. Domestically, LTCOL Taylor and COL Emerson received funding to complete full-time studies at Auckland University and Mr Nigel Lucie-Smith attended the Australian Command and Staff Course.

9. Currently legal officers self-fund or utilise VESA to complete study part-time, noting that VESA is not often sufficient to cover the full costs. VESA is also not the appropriate mechanism for funding courses of study that are required by the NZDF.

10. It is standard for our international partners to hold an LLM - New Zealand is an outlier in this respect. Australia, for example, run courses which contribute to an LLM which must be completed at senior MAJ(E) to LTCOL(E).

11. NZDF legal officers are not often presented with opportunities for professional military education (PME), especially ones which are so clearly aligned with the speciality. There is no formal military legal education for legal officers, and opportunities for other PME, such as staff courses, are rare given the priority to G-list officers and the resourcing constraints of the DLS. This does lead to a level of dissatisfaction amongst legal officers relative to their peers, and is a contributing factor to attrition.

12. In the past Army legal officers (s. 9(2)(a)) have attended the USMC Extramural Staff Course, which has been of benefit and contributed to retention and wider utility of legal officers. This though has been limited to Army Officers, as the USMC course is administered by Army in NZ.

13. The opportunity to complete an LLM, while teaching at West Point Department of Law, and researching in areas relevant to future outputs, presents a unique opportunity for both the NZDF and individual legal officers.

Costs and Administration

14. There is an existing non-reciprocal exchange arrangement with Army in place, which, from the US perspective, makes this fairly straightforward. In terms of timing, summer 2022 is preferred - to allow for time to prepare prior to the start of the 2022 academic year.

15. As DLS is a tri-service unit, I would see this as an opportunity open to all of my officers, not just those in the Army, and would focus at the senior MAJ(E)/LTCOL(E) level. There are no concerns, as I understand it, from West Point on this. Any decision on whom would attend, should it be approved, would be made on merit.

16. There will be a cost associated with such an opportunity and the below provides a rough estimate:

- a. Return flights: \$3000.00
- b. 12-months OIA: \$4672.00
- c. Estimated Academic Fees (based upon a LLM at Victoria University, noting that there may be some costs offset due to Professor Schmitt's involvement): \$10,000

17. It is anticipated that R & Q will be covered by the US as part of this arrangement.


18. DLS will also carry a resource gap for the period of the overseas posting, noting NZDF will continue to pay the officer's REM with no allowance to backfill the role. This will be mitigated however by the application of a ROSO which would ensure the NZDF receives the benefit of the officer's time at West Point.

Recommendations

19. It is recommended that you:

- a. **Note** the current limitations around PME for legal officers; and
- b. **Approve** the proposal from West Point, pending further engagement with the US.

s. 9(2)(k)

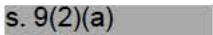


L.M. FERRIS

BRIG

DDLS

s. 9(2)(a)



Enclosure(s)

1. s. 6(b)(i)

