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REPORT NO. 180

HISTORICAL SECTION

CANADIAN MILITARY HEADQUARTERS



# THE VISITING FORCES ACT 1941-4

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## APPENDICES

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CANADIAN MILITARY HEADQUARTERS

29 Jul 47

The Visiting Forces Act 1941-4

1. The early problems of legal relationship between British and Canadian military forces were dealt with in Chapter II of the Preliminary Narrative The History of the Canadian Military Forces Overseas 1939-40 (paras 41-66); certain special aspects relating to operations by the Canadian tunnellers at Gibraltar and the Canadian Forestry Corps in Scotland have also been dealt with in early Chapters of the Narrative. It is proposed now to discuss the interpretations given to certain sections of the Visiting Forces Acts during 1941-44. An account of the creation of the office of the Judge Advocate General, Canadian Army Overseas, completes this report.

ORDERS OF DETAIL

2. On several occasions during 1940 Canadian troops under General McNaughton's command were placed "in combination" with British troops. The third Order of Detail*, signed by General McNaughton on 1 Jun, prior to Canadian troops being sent to join the Second B.E.F. (Chap V, paras 113-4**), contained the significant phrase that the troops detailed to act "in combination" would remain in that status "until I shall otherwise direct". (29/Vis Forces/5; contains several drafts of Orders of Detail No. 3)

3. These three Canadian Orders of Detail had each included a detailed list of units placed "in combination". However, a supplementary Order issued by the War Office on 10 Jun placed "all His Majesty's military forces raised in the United Kingdom and serving therein" in "combination with" such Canadian forces as "may from time to time be specified for that purpose by the appropriate Canadian Service Authorities". (29/Vis Forces/5: - Order by General Ironside, 10 Jun 40). Brigadier Montague Deputy Adjutant General C.M.H.Q., therefore suggested to General McNaughton that subsequent Canadian Orders of Detail might be drawn up in a similar manner, omitting detailed references

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* The first Order of Detail, of March 1940, had referred to certain A.A. & L.M.G. crews engaged in anti-aircraft protection duties on board British ships in the North Sea (Chap IV, paras 56-63). The second Order of Detail was issued on 16 Apr 40 to place the Canadian troops who were to form part of "HAMMERFORCE" into "combination with" the British troops who were also going to Norway (Chap IV, paras 50-55).

** References to Chapters in this report allude to the Preliminary Overseas Narrative, The History of the Canadian Military Forces Overseas.

to units and formations. (Ibid: Montague to G.O.C. 1 Cdn Div, 16 Jun 40). Thus, in Order of Detail No. 4, which was issued on 19 Jun by General McNaughton, the Order of Battle was replaced by the phrase "such units and detachments of the Canadian Active Service Force as are and may from time to time be under my command". (Ibid: Order of Detail No. 4 by Major-General McNaughton, 19 Jun 40). Order of Detail No. 5 was issued on 19 Aug 40 as a result of the new Designation issued by the Minister of National Defence in Ottawa on 5 Aug, specifically naming:

(a) Lieut-General A.G.L. McNaughton, C.B., C.M.G., D.S.O., Canadian Active Service Forces, and, in the event of his being absent from the United Kingdom or otherwise not available, the next Senior Combatant Officer of the Canadian Active Service Force not below the rank of Brigadier serving under command.

(b) The Senior Combatant Officer of Canadian Military Headquarters in Great Britain, or in his absence the officer acting for him, not below the rank of Brigadier.

(c) The Senior Combatant Officer, not below the rank of Brigadier, in Command of Canadian Military Forces not under the Command of the Officers mentioned in paragraphs (a) and (b) of this Designation.

as Appropriate Canadian Service Authorities. (Ibid: Designation by the Minister of National Defence, Ottawa, 5 Aug 40). Finally, on 6 Apr 42, Order of Detail No. 6 was issued to meet the situation created by the formation of First Canadian Army.

4. Following the collapse of France provision was also made to place all troops under command of C.M.H.Q. "in combination" should the need arise. At this time arrangements were being made to include all the Canadian troops in the United Kingdom in a co-ordinated plan of defence, and early in June a draft Order of Detail was prepared for the Senior Officer, C.M.H.Q. (Ibid: Turner to Senior Officer, 5 Jun 40). This Order was, however, never signed. Subsequently it was decided to issue an "Order Preliminary to an Order of Detail" so that units which might be detailed to act " in combination" in the event of an emergency would be able to practise their operational role beforehand so as to avoid any possible loss of time. The first of such "Orders Preliminary to an Order of Detail" was prepared on 15 Apr 41 to cover the troops in the Aldershot Area. (Ibid: Order Preliminary to Order of Detail by Major-General Montague, 15 Apr 41). A similar Order, slightly modified to meet local conditions, was prepared on 14 Jul 41 in respect to the Canadian Forestry Corps. (Ibid: Order Preliminary to Order of Detail, issued by Major-General Montague in respect of Canadian Forestry Corps, 14 Jul 41)

5. Then, on 3 Dec 41, certain specified anti-aircraft units which had been assigned to the Air Defence of Great Britain were placed "in combination" by an Order of Detail signed by General Montague as Senior Combatant Officer, C.M.H.Q. Owing to the fact that these gun detachments were being constantly changed and moved from place to place, it was, however, decided to issue subsequent Orders of Detail in respect of C.M.H.Q. troops, on the basis of employment rather than by the designation of particular units. (29/Vis Forces/5/2: Penhale to Senior Officer, 24 Feb 42). Accordingly, the next Order of Detail, dated 11 Feb 42, placed "in combination":

...such of the headquarters, units and detachments of 1 A.A. Bde., R.C.A., Canadian Army Overseas, serving under my command in the United Kingdom, as may from time to time be detailed by me in an operational order to serve under the command of the G.O.C.-in-C. Anti-Aircraft Command for A.D.G.B. purposes or under any other commander for any purpose...

(Ibid: Order of Detail by General Montague, 11 Feb 42)

The same procedure was adopted in respect of various units and formations under the command of C.M.H.Q. which were still undergoing training and had not been placed in the order of battle.

6. On 6 Apr 42, consequent upon the formation of Headquarters, First Canadian Army, General McNaughton issued Order of Detail No. 6, which placed "Headquarters First Canadian Corps and the Formations, Units and detachments attached thereto or which may have been or may in future be placed under the orders of the Commander thereof" in "combination with" all His Majesty's Military Forces in the United Kingdom, until he should otherwise direct. (29/Vis Forces/5/2: copy on file). 1st Canadian Corps, in its role of coast defence, was placed under the operational command of South Eastern Command. Units and formations under the command of Headquarters First Canadian Army or C.M.H.Q. merely were in the position of "serving together with" British forces in the United Kingdom.

## PROBLEMS OF APPOINTMENTS TO COMMAND IN A COMBINED FORCE

7. The question of appointments to command in a combined force was to vex military legal officers for some time to come. Appointments to command were dealt with in section 6, sub-sections 4 and 5 of the Canadian Visiting Forces Act, which read as follows:

(4) When a home force* and another force to which this section applies are serving together, whether alone or not:-

(a) any member of the other force shall be treated and shall have over other members of the home force the like powers of command as if he were a member of the home force of relative rank:

and

(b) if the forces are acting in combination, any officer of the other force appointed by His Majesty, or in accordance with regulations made by or by authority of His Majesty, to command the combined force, or any part thereof, shall be treated and shall have over members of the home force the like powers of command and punishment, and may be invested with the like authority to convene, and confirm the findings and sentences of, courts martial as if he were an officer of the home force of relative rank and holding the same command.

(5) For the purposes of this section, forces shall be deemed to be serving together or acting in combination if and only if they are declared to be so serving or so acting by order of the Governor in Council, and the relative rank of members of

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* The term "Home Force" should be interpreted as signifying the Canadian Force and "Other Force" as being the British Force.

> the home forces and of other forces shall be such as may be prescribed by regulations made by His Majesty.

The status of "serving together" did not present any real difficulty. As far as the question of command was concerned it involved little more than the normal military courtesies which might be accorded to British officers by the officers and men of a Canadian unit. The fact that "complete control of the Canadian Force would rest entirely with the Government of Canada" at this stage had been successfully threshed out with the War Office by General McNaughton during the winter months of 1940 (Chap II, paras 56-62).

8. On the other hand, the status of acting "in combination" implied a unified command over a combined force and was "specifically applicable to the carrying on of operations where unity of command is essential" (29/Vis Forces/1: Report of Committee on Legal and Constitutional Questions affecting Canadian Forces serving outside of Canada, C.P. Plaxton, Chairman, 26 Oct 39). Until that time, however, it was assumed that a British commander-in-chief of a combined force, as a consequence of the Visiting Forces Act, would possess the powers of command and discipline over the Canadian component, which would, nevertheless, remain under its own law, system of discipline and internal administration.

9. Although the Act granted the commander-in-chief of the combined force the powers of "command and punishment", it failed to define them. There was nothing specified in the act to indicate that his control should be limited purely to operational control; indeed, the prevailing view was, and still is, that he would possess "all the powers and functions of a Canadian commander in "G", "A" and "Q" matters", subject only to the authority of N.D.H.Q. (29/Vis Forces/5/2: Memorandum on the legal status of Commanders under the Visiting Forces Acts of the United Kingdom and Canada when their Military Forces are acting in combination, prepared by Colonel Anglin, 20 Jun 42, p.6) Owing, however, to the fact that he would possess a dual responsibility to both the Canadian and British Governments, the Plaxton Committee had suggested in its Report that the commander-in-chief of a combined force must be guided in exercising his powers of command by such instructions as were provided him by the Canadian Government. The section of this Report dealing with the powers of a commander-in-chief of a combined force stated that:

> ...In the opinion of the Committee the control of a Canadian Force by the Government of Canada, and its functioning under its own laws, would be affected only to the extent to which the Government of Canada would permit, for doubtless the matters in respect of which the Officer in Command of the combined Force would be allowed to act without reference to the Government of Canada, and the extent to which he could so act, would be set out in such Instructions as might be given him...
>
> (Ibid: p.5)

10. As regards discipline and punishment, it had been clearly understood almost from the beginning, following General McNaughton's discussions with General Lord Gort at G.H.Q., B.E.F., on 11 Jan 40 (Chap III, para 29), that the members of each of the component formations of the combined force would remain subject to their own military law. In other words, the commander-in-chief of the combined force would administor Canadian Military Law in respect of any Canadian troops under his command.

11. One further difficulty arose as regards the appointment of a commander-in-chief to a combined force. In every instance the Canadian Visiting Forces Act states that action would be taken by the Governor-General, save in the case of the appointment to command a combined force, when the Act uses the words "any officer of the other force appointed by His Majesty" (see para 7). It is understood that this difference in terminology was due to the anticipation of the Prime Minister of Canada, (Hon. R.B. Bennett) at the time the act was passed by the Canadian Parliament, that appointments to command the combined force would be made by His Majesty upon the advice of an Imperial War Cabinet in which the Canadian Government would be represented. In any case, the Plaxton Committee decided in October 1939, that a commanding officer would possess the powers of command and punishment over Canadian troops only through appointment by His Majesty upon advice of His Majesty's Canadian as well as British Ministers. (Ibid)

## CONFERENCE AT THE WAR OFFICE 19 APR 40

12. Out of this problem of the appointment of a commander-in-chief for a combined force emerged the question of appointments of sub-commanders. Although the Visiting Forces Act covered the matter, the Report of the Plaxton Committee had not attempted to elucidate the related position and powers of command and punishment of the commanders of subordinate formations and units in a combined force.

13. In April 1940 a proposal was advanced by the War Office that a conference of British and Canadian authorities might be held to discuss the problems of appointments to command in a combined force arising out of, and the procedure to be adopted under, the Visiting Forces Acts of Canada and the United Kingdom. Such a conference took place at the War Office on 19 Apr under the chairmanship of Mr. G.W. Lambert, Assistant Under-Secretary of State for War. The Canadian Government was represented by Brigadier Montague and Mr. L.B. Pearson of Canada House, while the J.A.G.'s Branch at the War Office was represented by Lt-Col W.R.F. Osmond; the Air Ministry and Dominions Office also had representatives in attendance.

14. As chairman, Mr. Lambert submitted for consideration a draft regulation prepared in the War Office covering appointments to command in "the whole or any constituent part of a combined British force" (29/Vis Forces/5: Conference held at the War Office on Friday, 19th April 1940, at 11 a.m.). Mr Lambert suggested that, should this draft be adopted, the Canadian authorities prepare and submit to His Majesty "similar regulations under the corresponding provisions in the Dominion Visiting Forces Act".

15. Brigadier Montague explained that he "did not anticipate any objection on the part of the Canadian Government to appointments made by the United Kingdom authorities in the normal way being accepted as appointments in relation to a combined force". Continuing he pointed out that, in his own view, "it was not necessary to take any special action in this matter except in regard to the appointment of the C.-in-C., B.E.F., in France or elsewhere" and that in this instance he thought it would be sufficient if "the Canadian Government would wish to make a submission to the King in regard to this appointment, and that the validity of lower appointments to command Armies, Corps, etc., would flow from it".

16. At the conclusion of the discussion Mr. Lambert stated that "as it seemed clear that no question as to the validity of appointments would arise in practice, such regulations would not be necessary" and that "an appointment made in the normal way, either by the Canadian or the United Kingdom authorities, to command...part of a combined force, was an appointment made by 'His Majesty, or in accordance with regulations made by or by authority of His Majesty', to command part of the combined force" (Ibid). Thus, it was "finally agreed", according to the minutes of this conference "that regulations of the kind drafted were not necessary". Or to put it more simply, although the British authorities had originally taken the stand that appointments to command subordinate formations of a combined force should be made by means of reciprocal orders issued by both governments, they were now willing to accept the Canadian view that no such orders or regulations were legally required.

17. The matter proved to be far from settled, however, for after studying the report of this meeting at his leisure Mr. Pearson informed Brigadier Montague that if the Canadian Government were to subscribe without reservation to the view that no regulations of any kind were required with respect to appointing a commander-in-chief it would imply the rejection of that part of the Plaxton Committee Report which stated that the Commander-in-Chief of a combined force would be appointed by His Majesty on the advice of the Canadian Government (Ibid: Pearson to Montague, 30 Apr 40). Brigadier Montague accepted this reasoning and in a letter to Mr. Lambert, dated 2 May 40, pointed out that:

> We definitely hold the view that it will be for His Majesty to appoint the officer to command a combined force, and presumably His Majesty would, in so far as any Canadian force is concerned, act upon the advice of his Canadian Ministers.
>
> (Ibid: Montague to Lambert, 2 May 40)

18. In reply, Mr. Lambert pointed out to Brigadier Montague the inconsistency of the Canadian stand, and repudiated the latter's theory that the authority to appoint subordinate commanders "flowed" down from that of appointing a commander-in-chief to a combined force. In Mr. Lambert's opinion, if the appointment of the Commander-in-Chief of a combined force required Canadian concurrence, such concurrence would also be necessary in the matter of appointments to subordinate formations. Furthermore:

> What we feel here is that such action would throw doubt on the powers of command in relation to the "other force" of Army and Corps Commanders subordinate to the Commander-in-Chief, and render necessary some general regulation of the kind we thought could be avoided, because such subordinate commanders are appointed by the King, and do not derive their authority from the Commander-in-Chief.
>
> (Ibid: Lambert to Montague, 4 May 40)

19. On 6 May Brigadier Montague wrote to the High Commissioner enclosing the Lambert letter. Owing, however, to the critical events which followed 10 May no further discussions took place. The question of appointment of a commander-in-chief and subordinate commanders to a combined force still rested on the conclusions made at the conference on 19 Apr, although complementary orders were not made by either government to give force to this conclusion. This situation, it should be noted,

failed to satisfy either the Canadian contention with regard to the appointment of a commander-in-chief, or the British with respect to appointments of subordinate commanders.

20. The question lay dormant until the autumn of 1941. In the meantime, out in the Middle East South African troops had been declared to be "in combination" with British troops; the South African Government thereupon asked that action be taken to enable South African commanders to have powers of command and punishment over such United Kingdom troops as might come under their command during operations of a mixed nature. Accordingly, in October 1941 an urgent request was sent to the War Office by the British High Command in Libya that further action should be taken, in accordance with the Visiting Forces (British Commonwealth) Act, to legalize the position of commanders of subordinate formations in order to provide them with the necessary powers of command and punishment. A similar request was made by Australia at this time.

21. In accordance with this request a regulation was drafted in the War Office and signed by the King on 4 Nov 41, delegating to the Army Council the right to appoint Dominions Officers to command British troops. This was considered impracticable, however, since too much delay would elapse in obtaining the names of the Commanders and forwarding them to London for action by the Army Council. Furthermore, there would be times during battle when it would be impossible to obtain the names of commanders. A further suggestion from Libya therefore proposed that some method be devised whereby such powers would be vested automatically as occasion arose. (29/Vis Forces/5/2: Memorandum on the legal status of commanders under the Visiting Forces Acts of the United Kingdom and Canada when their military forces are acting in combination, by Colonel Anglin, 20 Jun 42).

22. Accordingly, on 18 Dec 41 an Order-in-Council was issued by the British Government. The pertinent section of the new Order, which had the same over-all purpose, read as follows:

> Pursuant to the provisions of Section 4(4) (b) of the Visiting Forces (British Commonwealth) Act, 1933, We do hereby appoint the following officers to be officers commanding a combined force, or any part thereof, as the case may be:-
>
> 1. Any officer of our military forces raised in the Dominion of Canada, the Commonwealth of Australia, the Dominion of New Zealand or the Union of South Africa, who is for the time being commanding a command unit, detachment or establishment in which are serving members of a home force which, under the said Act, is serving together and acting in combination with the force to which that officer belongs.
>
> (Ibid: A copy of Army Order 6, of 1942, is on the file)

23. Thereupon complementary action was taken by the South African Government by the simple process of amending its Visiting Forces Act so that the pertinent sub-section now read "any officer of the Other Force duly appointed to command the combined force, or any part thereof, shall be...". This was

similar to the original phraseology of the Australian and New Zealand Visiting Forces Acts. As a consequence, South Africa was now able to accept automatically any British officer "duly appointed" in his own force with powers sufficient for the purposes of command and punishment.

24. The acceptance of this British Order, it should be observed, would constitute a complete reversal of the Canadian policy followed since the conference of 19 Apr 40. It implied a rejection of the views put forward by the Canadian representatives at that conference and a return to the policy suggested by Mr. Lambert and the War Office representatives at that time. If the British view was to be accepted, it would be expedient for Canada to issue a reciprocal Order giving British officers the powers of command and punishment over Canadian troops who might be serving in combination with a United Kingdom force.

## THE CANADIAN REACTION TO THE BRITISH ORDERS

25. On 13 Dec, five days before the Order-in-Council referred to above had been signed, a copy of its contents was forwarded to Ottawa by telegram from C.M.H.Q. (29/Vis Forces/5/2: Tel J.36 Canmilitry to Defensor, 13 Dec 41). In this communication General Montague suggested that in "view present circumstances Cdn Corps with some Canadians serving temporarily in British units under its command, may necessary arrangements be made for His Majesty's Canadian Ministers to advise him at an early date to make a complementary regulation". It was further stated that "because of urgency High Commissioner concurs in my not waiting for similar request from Dominion to External". With this telegram General Montague included a draft submission for such an Order.

26. This change in the British viewpoint created considerable concern at Ottawa. In a memorandum of 18 Dec to Brigadier Orde, the Judge Advocate-General, Mr. J.E. Read, K.C.* of the Department of External Affairs pointed out that:

> For two years, we have acted upon the assumption that the words - "Any Officer of the other Force appointed by His Majesty, or in accordance with the Regulations made by or by authority of His Majesty, to command the combined Force," - mean any officer appointed by the King to a Command within which the combined forces are operating.
>
> To put it in concrete form we have been assuming that the officer who was Aldershot Command satisfies the requirements of the statute in so far as Canadian Forces within his Command may be concerned. Similarly, where the Canadian Corps is designated to act in combination with the Home Army in England, we consider that the Officer Commanding the Home Army is an Officer appointed by the King to command the combined forces.
>
> (Ibid: A folio of documents on the Visiting Forces Act brought over from Ottawa by General McNaughton when he returned latter part of March 1942, Read to Orde, 18 Dec 41)

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* Mr. J.E. Read had been a member of the Plaxton Committee.

He argued that the changed British viewpoint "would throw doubt upon the position of the R.A.F. Schools in Canada over the past year" and "upon the position of Canadian forces serving in places like Hong Kong, and the Near East"; complications would be created "anywhere in the world where visiting forces may be operating". (Ibid). These arguments were embodied in a telegram sent to C.M.H.Q. on 26 Dec. (Ibid: Tel AG 711, Defensor to Canmilitry, 27 Dec 41).

27. Meanwhile, on 23 Dec 41, the Secretary of State for the Dominions had informed Prime Minister Mackenzie King, in the latter's capacity as Secretary of State for External Affairs, of the issue of the British Order, and concluded the message with the statement that:

> His Majesty's Governments in the Dominions will no doubt wish to consider whether for the purposes of their Visiting Forces legislation they would desire to advise His Majesty to issue similar Instrument regarding position of any officers of United Kingdom military or air forces who may be placed in command of Dominion personnel.
>
> (Ibid: A folio of documents on the Visiting Forces Act brought over from Ottawa by General McNaughton when he returned latter part of March 1942; Tel Circular D.757, Secretary of State for Dominion Affairs to Secretary of State for External Affairs, Canada, 23 Dec 41)

This communication was followed on 13 Jan 42 by a telegram from C.M.H.Q. explaining the circumstances under which the British Order-in-Council had been issued and stating that the:

> British J.A.G....maintaining that no formation or unit commanders in combined force have any powers of operation command or of punishment over members of the other force or forces in combination unless such regulation or appointment is made by His Majesty under the Visiting Forces Act of each force concerned.
>
> (Ibid: Tel J.39, Canmilitry to Defensor, 13 Jan 42)

This telegram not only recommended that the Canadian Government should pass a reciprocal Canadian Order-in-Council along the lines of the British Order but suggested further that other Dominions might be included in the Canadian Order by His Majesty "so that this particular matter is cleared up for the duration when Canadians are at any time in combination with other Dominion troops under an appropriate Order similar to P.C. 1066 of 3rd April 1940".

28. These suggestions were given careful consideration in Ottawa. On 7 Feb Mr. Read prepared a detailed memorandum for the Prime Minister, pointing out that the "problem is legal in its character and it may very well be the most difficult and embarrassing legal problem with which the Government has been confronted in many years". He further stressed the fact that for two years the military forces of the United Kingdom and Canada had worked and trained together without any serious legal difficulties arising. If the policy hitherto followed with respect to command in a combined force was to be radically altered it might imply that such a policy had lacked legal authority and

that, in consequence:

> ...there must be numberless instances in which actions would lie against British and Canadian officers, commissioned officers, warrant officers, and non-commissioned officers which would need to be covered by Acts of indemnity.
>
> (Ibid: A folio of documents on the Visiting Forces Act brought over from Ottawa by General McNaughton when he returned latter part of March 1942: A Memorandum for the Prime Minister on the Visiting Forces (British Commonwealth) Act, 1933, by Mr. J.E. Read, 7 Feb 42)

This memorandum also expressed some dissatisfaction over the fact that Canada had not been consulted by the British Government before either the Orders of 4 Nov and 18 Dec had been issued. Continuing, Mr. Read wrote that:

> It should be pointed out that the British Judge Advocate-General departed from the ordinary constitutional practice in abruptly terminating the existing legal foundation for co-operation without any preliminary consultation with the Canadian Government, and his action in thus abruptly breaking away from a legal position approved by the Canadian Minister of Justice and, indeed, by the Canadian Government as a whole, may well be open to criticism apart altogether from the merits of the case.

He further contended that the remedial measures suggested by the British authorities were "inadequate", and he concluded by recommending

> ...the discussion of these questions in London and the working out of a series of reciprocal Orders in Council and, if necessary, amendments to the statutes in Order to be able to maintain military discipline without danger of successful challenge in the courts.

29. As has been already noted (para 3), on 6 Apr 42 General McNaughton issued his 6th Order of Detail, placing 1 Canadian Corps "in combination" with "all His Majesty's Military Forces raised in the United Kingdom and serving therein until I shall otherwise direct." (Ibid: Order of Detail No. 6 by Lt-Gen McNaughton, 6 Apr 42). The question of command, however, remained indeterminate; since the Canadian Government had not yet fallen in line with the suggestion that an Order-in-Council complementary to the British Order of 18 Dec 41 should be issued. On 13 May 42 Major-General J.N. Kennedy, Director of Military Operations and Planning at the War Office, wrote to General Paget, C.-in-C. Home Forces, that despite the Order of Detail issued by General McNaughton "there is some doubt as to whether this Order of Detail is sufficient to place 1 Canadian Corps legally under your operation command." (Ibid: Kennedy to C-in-C, Home Forces, 13 May 42). Upon receipt of a copy of this letter, General Montague sent a memorandum to General McNaughton to the effect that C.M.H.Q. was "now considering what representations we should make to N.D.H.Q. as to the making of a complementary order which if eventually passed would remove all doubts in anybody's mind." (Ibid: Montague to McNaughton 25 May 42)

30. The question of Canadian participation in "future operations outside this country involving the use of land forces on a large scale on the Continent of Europe" necessitated an early clarification of the question of the legal relationship of the Canadian and British forces. (Ibid: Memorandum from Dominions Office, 12 Jun 42). Accordingly, on 30 May, the War Office requested the Dominions Office to discuss the matter on a diplomatic level through the Canadian High Commissioner. It was pointed out that the Commander-in-Chief Home Forces considered that the question of his operational control over 1 Canadian Corps should no longer be left in doubt and the War Office letter suggested that the Canadian Government be asked to confirm "that 1 Canadian Corps is under the operational control of C.-in-C. Home Forces, and that in the event of operations outside the U.K. such Canadian Forces as it is decided to send are employed operationally whenever and wherever required under C.-in-C. British Expeditionary Force". (Ibid: Rigby to Holmes, 30 May 42). This request was forwarded to Canada House by the Rt. Hon. Mr. Attlee on 12 Jun and through Canada House to the Department of External Affairs in Ottawa. (Ibid: Attlee to Massey. 12 Jun 42 and Tel 1630, Massey to External, 16 Jun 42)

31. During the course of a discussion on 2 Jun 42 at G.H.Q. Home Forces General McNaughton had satisfactorily explained his position with regards the Visiting Forces Act to General Paget. As a result of this meeting General Paget wrote to Major-General J.N. Kennedy at the War Office on 12 Jun to the effect that:

> ...from the practical point of view I do not anticipate difficulties over the question of operational control; and I suggest it is best to leave it to McNaughton and me to carry on as we are now doing in close co-operation and not to attempt further to define our position by means of legal definitions.
>
> (Ibid: Paget to Kennedy, 12 Jun 42)

## THE ANGLIN MEMORANDUM

32. During the time this matter had been under discussion Colonel W.A.I. Anglin, D.J.A.G. at C.M.H.Q. had been preparing a memorandum on this whole question. After reviewing the different problems of command and punishment, this memorandum recommended the enactment of a regulation specifiying as Commander-in-Chief of a combined force:

> (1) Any officer of Our naval, military or air forces raised in the United Kingdom, the Commonwealth of Australia, the Dominion of New Zealand or the Union of South Africa, who may be appointed, by name or by reference to his command, by or by authority of Our Governor-in-Council to command a combined force in which are serving members of a military force raised in Canada which, under the said Act, is serving together and acting in combination with the force to which that officer belongs. Such appointment shall have effect until Our Governor-in-Council sees fit to signify the termination thereof.

and as subordinate commanders in a combined force:

(2) Any officer of Our naval, military or air forces raised in the United Kingdom, the Commonwealth of Australia, the Dominion of New Zealand or the Union of South Africa, who may be appointed, by name or by reference to his command, either by the Senior Combatant Officer of Our Canadian Militia serving with Our Canadian Army Overseas or by the Senior Combatant Officer of Canadian Military Headquartors in the United Kingdom as may be appropriate, to command any part of a combined force in which are serving members of a military force raised in Canada which, under the said Act, is serving together and acting in combination with the force to which that officer belongs. Any such appointment shall have effect until Our Governor-in-Council or such Senior Combatant Officer as made the appointment sees fit to signify the termination thereof.

(Ibid: Memorandum by Anglin on the legal Status of Commanders under the Visiting Forces Acts of the United Kingdom and Canada when their Military Forces are acting in combination, 20 Jun 42)

33. Such a regulation would make clear that the Commander-in-Chief of a Combined Force would be an appointee of the Canadian Government, and would give the Senior Combatant Officers of the Canadian Army power to control policy by withholding or withdrawing their approval of any sub-commander. All that would be necessary, in effect, would be the approval of the present or prospective Commander-in-Chief and a statement of "such modifications" of the powers of command as the Canadian Government might wish to lay down.

34. On 15 Jun 42 this Memorandum was discussed by Generals McNaughton, Montague and Crerar at Headquarters, First Canadian Army. It was decided to send a copy to N.D.H.Q. by bomber mail and to invite Brigadier Orde and Mr. Read to pay a visit to London to confer with the legal officers at the War Office and C.M.H.Q. (Ibid: Memorandum on a Discussion on Interpretation of Visiting Forces Act at H.Q. First Cdn Army, 15 Jun 42, by Lt-Col Rodger. 16 Jun 42). This proposal was followed up on 20 Jun by a telegram from General McNaughton stating that both he and General Montague were of the opinion that the procedure outlined by Lt-Col Anglin would make "certain that the B.E.F. commander is one appointed by Canada in the manner proposed by the Plaxton Report of 26 Oct 39 and that the powers of command and punishment over Canadians under any U.K. commander in a combined force may be formally modified under the authority of the regulation if and when the necessity arises." (Ibid: Tel J. 54 Canmilitry to Defensor, 20 Jun 42). The telegram further stated that

> ... Such regulation will at least reciprocate the courtesy extended our commanders by the UK Order of 18 Dec 41 and also serve to make a UK commander feel that he is not running the risk of law suit by a Canadian whom he might discipline under an informal arrangement even though your legal advisors may be right in their opinion which differs from that of the UK legal advisors to the Army Council. In view of Lord Gort having convened and confirmed five field general courts martial since 7 Nov 41 it is suggested that such regulation be made retroactive.
>
> (Ibid)

35. Meanwhile the question of Canadian participation in a continental operation was becoming more urgent. On 30 Apr General McNaughton had been approached regarding the inclusion of Canadian troops in a composite British and Canadian force for a raid on Dieppe and by 13 May this proposal had become firm. (Report No. 100, Hist Offr, 16 Jul 43). Although there is no specific reference to operations "RUTTER" and "JUBILEE" (i.e. Dieppe) in the Visiting Forces Act files at C.M.H.Q. it may be presumed that this latter impending operation emphasized the necessity for clarifying the legal question at an early date.

36. The anxiety of the Canadian Government that its troops should not be excluded from any approaching operations led to an answer being sent to Mr. Massey on 25 Jun while the Anglin Memorandum and General McNaughton's telegram of 20 Jun were still being studied. This telegram of 25 Jun advised concurrence with the British request of 12 Jun (see para 30); the reservation was made, however, that "control over discipline, organization, administration, training and equipment...should continue to be reservedfor Canadian authorities" and that the Commander-in-Chief's operational control "would be subject in each case to the retention by the Canadian Commander of his right of reference to the Canadian Government." (29/Vis Forces/5/3: Tel 1226, External to Dominion, 25 Jun 42)

37. Before the contents of this telegram were made known to the Dominion Office, however, they were shown by Mr. Massey to Generals McNaughton and Montague. There are no minutes of this meeting of 1 Jul 42, but a draft reply to the Ottawa telegram, prepared by General McNaughton to serve as a basis for discussion, gives an indication of their views on the Canadian Government's suggestion. (Ibid: Draft reply to telegram No. 1226 from External to Dominion drafted 25 Jun 42. Prepared as a basis for discussion with the High Commissioner for Canada and the Senior Officer, C.M.H.Q. on 1 Jul 42. Dictated by General McNaughton, 1 Jul 42). This draft stated in part that the Canadian Government's telegram to Mr. Massey would

> ...be interpreted by groups in War Office and Home Forces as a surrender by the Canadian Government of effective control over Canadian Army. If it were presented I anticipate that by a series of small encroachments or our autonomy (no one of which by itself would justify reference to Canadian Government) they will seek to impose subordination. I have evidence of this attitude already in relations Seco to Canadian Corps and resistance to measures proper to re-establishment Canadian control even in matters which are clearly our exclusive domestic concern.*

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* This refers to the issue of South Eastern Command Operation Instruction No. 30, 8 Feb 42 which stated that the 5th Canadian Armoured Division was in G.H.Q. Reserve and South Eastern Army Operation Instruction No. 32, 13 Feb 42 which stated that 400 and 414 Sqns RCAF were under command of 35 Wing RAF for all purposes except operational control. The 5th Canadian Armoured Division had not yet been placed in Combination and General Crerar wrote to Lt-Gen Montgomery, G.O.C.-in-C. South Eastern Army, pointing out that owing to the responsibility of the Canadian Corps Commander to the Government of Canada for the training and employment of all Canadian field formations and units serving in Great Britain, it had "been recognized by both the War Office and G.H.Q. Home Forces that no Canadian field formation would be allotted an operational role without the prior knowledge and consent of the Senior Canadian Combatant Officer." He also pointed out that "Constitutionally, neither the War Office nor G.H.Q. have authority to issue orders directly to 5th Canadian Armoured Division as such Division had not yet been placed in combination".

(29/Vis Forces/5/2: Crerar to Montgomery, 24 Feb 42)

General McNaughton also emphasized that:

> Further there must remain provision that in the last resort Canadian troops can be taken out of combination. Under existing authority of Canadian Orders in Council and Designations made by Minister my Orders of Detail include the words 'until I otherwise direct'. It is the existence of this power and the knowledge that I would not hesitate to use it in an extreme case in the discharge of my duty to the Government of Canada that has enabled us to maintain our position. Without it I believe the Military Forces of Canada would shortly be dissipated no doubt for quite plausible reasons.

38. On 7 Jul 42 Mr. Massey informed the Canadian Government of the substance of the above discussion and suggested that the "reservations" referred to in its telegram of 25 Jun should include the concurrence of the Canadian Army Commander on "any task or plan of operation assigned the Canadian troops." (2[illegible]/Vis Forces/5/3: Tel 1790, Massey to External, 7 Jul 42). He pointed out that by virtue of P.C. 1066, dated 3 Apr 40, Canadian troops would automatically be placed "in combination" upon proceeding to the Continent of Europe and could be withdrawn only by the lengthy method of repealing the Order; he suggested, therefore, that this difficulty might be obviated by the adoption of a procedure similar to that recommended in the Anglin Memorandum. Furthermore:

> The Senior Canadian Combatant Officer has been instructed to place himself in contact with the C.-in-C. designate of the British Expeditionary Force and with him to concert the plan for the employment of Canadian Forces...
>
> I concur in McNaughton's views and regard the clarification of the position as highly important. There is I feel no doubt that the proposed definition of the relationship between Canadian Army Command Overseas and the War Office will do much to ensure the continuance of full and satisfactory co-operation and also that it would be wise to clarify the position now and not later when circumstances might make the consideration of the problem difficult.

These suggestions were approved "in principle" by the Canadian Government; Mr. Massey was instructed to consult with the appropriate British authorities when presenting these views as they raised an important question of policy. (Ibid: Tel 1310. External to Dominion, 9 Jul 42). On 14 Jul Mr. Massey therefore communicated with Mr. Attlee, Secretary for the Dominions.

39. A telegram of 17 Jul informed Canada House that Brigadier Orde and Mr. J.E. Read were coming overseas to confer with the High Commissioner, Generals McNaughton and Montague, and Lt-Col Anglin "with regard to basic problem of co-operation under Visiting Forces Act"; it was presumed that this would also involve conferring with United Kingdom authorities "including Judge Advocate General and possibly Attorney General." (Ibid: Tel 1361, External to Dominion, 17 Jul 42). Following their arrival a draft Order was prepared on 8 Aug along the lines of the Anglin Memorandum and Mr. Massey's telegram of 7 Jul 42.

40. The War Office was not inclined to give unqualified approval to the Canadian proposals. It was felt, for instance, that the phrase "and any task or plan of operation assigned to the Canadian troops will be subject to the approval of" (the Senior Canadian Combatant Officer) should be deleted and that

the reservation of training to the Canadian authorities should continue to be subject to what was described as the "existing arrangements." (Ibid: Kennedy to Machtig, 31 Jul 42 and Attlee to Massey, 31 Jul 42).

41. A cable from Ottawa of 6 Aug instructed Mr. Massey to "explore informally" with the British Government before despatching a reply to Mr. Attlee's letter of 31 Jul, in order to ascertain the degree of importance from the point of view of operations really attached by the War Office to "our reserving the requirement of approval of the Senior Canadian Combatant Officer Overseas for detailed tasks of plans arising in the course of operations." (Ibid: Tel 1490 External to Dominion, 6 Aug 42). Above all the Canadian Government wished to avoid:

> any possibility of an impasse arising which might conceivably result in the United Kingdom and the United States coming to the conclusion that it would be preferable to have Canadian Forces serve in the Defence of the United Kingdom rather than participate in other theatres of war under conditions which they might consider constituted a divided command.
>
> (Ibid)

42. After discussions with various officers at the War Office, including the Judge Advocate General, Sir Henry D.F. MacGeagh, and the Vice Chief of the Imperial General Staff, Lt-Gen Sir Archibald Nye, these objections were withdrawn and Mr. Massey was able to inform the Department of External Affairs on 13 Aug that all difficulties had been clarified; the Canadian draft Order-in-Council might now be transmitted to the Dominions Office. In so doing, it was pointed out that the Canadian proposals with respect to approving or withdrawing approval of Canadian participation in an operation merely be given powers de jure which General Currie assumed in the last war de facto. (29/Vis Forces/5/3: Tel 2071, Massey to External, 13 Aug 42).

42. It was therefore possible on 21 Aug for Mr. Massey to despatch an official memorandum* to Mr. Attlee, setting forth the policy of the Canadian Government as to the "employment of Canadian military forces in the United Kingdom and as part of an expeditionary force." (29/Vis Forces/5/3: Massey to Attlee, 21 Aug 42). He assured Mr. Attlee that both the Canadian Government and military commanders fully appreciated the need for unity of command and that the Commander-in-Chief of Home Forces and the Commander-in-Chief of a B.E.F. would be accorded "the fullest support and co-operation." Mr. Massey pointed out further that

> ...We are confident that the policy advanced by the Canadian Government of reserving to its commanders the approval on its behalf of all tasks or plans arising in the course of operations will not prejudice the operational control of the Commander-in-Chief, British Expeditionary Force. It is to be realised that the Canadian service authorities are responsible to the Government and the people of Canada for the forces entrusted to their commands, and, accordingly, it is clear that a corresponding measure of authority and discretion must be accorded those so responsible. We have placed our full confidence in your

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* This memorandum was drafted by Colonel Anglin for Mr. Massey at the request of General McNaughton; approval was obtained from Ottawa before Mr. Massey despatched the letter to Mr. Attlee.

> officers commanding combined forces, and I am sure the Government of the United Kingdom is prepared to place equal confidence in the ability and good sense of our commanders. Co-ordination in other spheres already exists in full measure in the prosecution of our common war effort and I am sure that our co-operation in the military sphere will be no less cordial in the future than it has been in the past.

Although the control of training had been recognized as a purely Canadian matter by the War Office as early as 21 Mar 40 (Chap II, para 66), Mr. Massey was prepared to assure the British Government that the Canadian authorities would be "entirely agreeable to correlate training with operational plans."

44. The memorandum also dealt with the question of a divided command which had been raised in the British letter of 31 Jul 42. Should a part of the Canadian forces proceed overseas as part of a British Expeditionary Force and the Canadian Senior Combatant Officer remain in the United Kingdom, the direction of operations would be exercised through the Senior Canadian Combatant Officer with the combined force. In conclusion the memorandum stressed the Canadian desire to adhere to the essential principle of unity of command and pointed out that the measure of control which it was proposed to reserve for Canadian authorities was "only such as is considered commensurate with their responsibility to the people of Canada." On 3 Sep Mr. Attlee replied, expressing the concurrence of the British Government in the draft Canadian Order of 8 Jul and welcoming Mr. Massey's assurance that "no practical difficulties will arise in the association of United Kingdom and Canadian troops against the enemy." (Ibid: Attlee to Massey, 3 Sep 42)

45. A delay of several months was to ensue, however, before this draft order was actually passed. Finally, on 29 Apr 43 it received the approval of the Governor-in-Council at Ottawa as P.C. 3464. This order granted the "appropriate Canadian Service Authorities" power to detail "such Forces or any part thereof" of the "Military Forces of Canada, serving outside of Canada" to act "in combination with forces of any other part of the British Commonwealth there serving, and to withdraw such Forces or any part thereof from combination." This order revoked the previous ones dealing with the application of the Visiting Forces Act of Canada and lumped their substance into one order as follows:

> 1. (a) The Military Forces of Canada shall serve together with the Naval, Military and Air Forces of any other part of the British Commonwealth with which the said Military Forces of Canada are at any time serving in the same place.
>
> (b) Such part of the Military Forces of Canada as may be detailed for the purpose by the appropriate Canadian Service Authorities designated by the Minister of National Defence, shall act in combination with the Naval, Military and Air Forces of any part of the British Commonwealth to which the same have been so detailed until such an appropriate Canadian Service Authority otherwise directs.
>
> 2. The aforesaid appropriate Canadian Service Authorities, in respect of the Military Forces of Canada, are hereby authorized to take such action as may be necessary to effect the attachment of members of the Naval, Military and Air Forces of any part of the British Commonwealth other than Canada to the Military Forces of Canada and vica versa.

3. Any officer of the Naval, Military or Air Forces of His Majesty, raised in any part of the British Commonwealth, who is for the time being exercising command of a combined force (being a force in which a Canadian force is serving together and acting in combination with any other force or forces also declared to be so serving and so acting by the appropriate authorities for such other forces) or any part thereof, is hereby declared to be an officer appointed by His Majesty, or in accordance with the regulations made by or by authority of His Majesty, to command the combined force or any part thereof for all purposes, unless otherwise specified by appropriate authority.

(29/Vis Forces/5/4: Copy of PC 3464 on file)

46. This Order was supplemented by the issue on the same day of a new Designation signed by the Minister of National Defence naming as the appropriate Canadian Service Authorities:

(a) The Senior Combatant Officer of the Canadian Military Forces serving the United Kingdom or the Continent of Europe, not below the rank of Brigadier, in respect of those Forces as are under his Command.

(b) The Senior Combatant Officer of Canadian Military Headquarters in Great Britain, not below the rank of Brigadier, in respect of those Military Forces of Canada serving in the United Kingdom and not under the Command of the officer mentioned in paragraph (a).

(c) The Senior Combatant Officer, not below the rank of Brigadier, of the Canadian Forces serving in or based upon or operating from the Continent of Africa, but only in respect of those Forces mentioned in this paragraph which have previously, by Orders of Detail issued by either of the Officers mentioned in paragraphs (a) and (b), been detailed to act in combination with the Naval, Military or Air Forces of other parts of the British Commonwealth serving in or based upon or operating from the said Continent of Africa.*

(29/Vis Forces/5/4: Tel GS 2361, Defensor to Canmilitry, 29 Apr 43. See also copy of Designation on this file)

At the same time a series of instructions with respect to the exercise of his powers as Senior Combatant Officer were sent by N.D.H.Q. to General McNaughton (Ibid).

## "HUSKY" TO "OVERLORD"

47. Once it was decided that Canadian troops would participate in Operation "HUSKY" (invasion of Sicily) General McNaughton's responsibility to the Canadian authorities as to the "soundness and practicability" of the proposed operation necessitated his being kept fully in the picture. This fact was clearly understood

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* Section "(c)" of the Designation was subsequently modified on 20 May 43 when the words "of any Cdn Military Force serving in or based upon or operating from..." were substituted for "of the Canadian Forces serving in or based upon or operating from..."
(29/Vis Forces/5/4: Tel GSO 941. Defensor to Canmilitry, 20 May 43)

and accepted by the British service authorities. (First Cdn Army file PA 1-14-1: Memorandum of discussions held at the War Office and Norfolk House, 25 Apr 43). Having satisfied himself that the operation contemplated was "sound and within the means available". (Ibid: Memorandum of a Discussion Lt-Gen McNaughton - Lt-Gen Ismay, 27 Apr 43), General McNaughton advised the Canadian Government of his approval; and on 19 Jun 43 issued his 7th Order of Detail, placing the 1st Canadian Division, the 1st Canadian Army Tank Brigade and certain specified units which were to participate with British formations as part of the Eighth Army in the assault upon Sicily in combination "with all the Naval, Military and Air Forces of the several parts of the British Commonwealth and serving in or based upon or operating from the Continent of Africa or embarked in the United Kingdom for the purpose of any such service." (Ibid: Order of Detail No. 7, by General McNaughton, 19 Jun 43). He also issued a Directive to Major-General G.G. Simonds, G.O.C. 1st Canadian Division, and to Brigadier R.A. Wyman, commanding the 1st Canadian Army Tank Brigade, explaining the legal position of the troops under their command and pointing out that by virtue of P.C. 3464 they would be permitted to withdraw their forces from combination should "the orders and instructions issued to you by the Comd Combined Forces...not...represent a practicable operation of war or are otherwise at variance with the policy of the Government of Canada on any matter; provided always that by so doing an opportunity is not lost nor any part of the Allied Forces endangered." (Ibid: Directive by the Senior Combatant Officer of the Canadian Military Forces serving in the United Kingdom or the Continent of Europe, 19 Jun 43). The Directive further added that:

> You continue to enjoy the right to refer to the Government of Canada in respect to any matter in which the forces under your command are or are likely to be involved or committed or on any question of their administration which may require correction.
>
> Reference to the Government of Canada will be made by you through me and only when the remedial or other action deemed by you to be necessary has been represented to the Officer Comd the Combined Force and he shall have failed to take appropriate action.

At the same time General McNaughton issued warrants to Generals Alexander and Montgomery empowering them to convene General Courts-Martial for the trial of Canadian officers or soldiers. Neither British Commander, however, had heed to take advantage of this right during the course of the Sicilian and Italian campaigns.

48. On 20 Oct General McNaughton issued Order of Detail No. 8 placing "in combination" with 15th Army Group not only the troops specified in the previous order but also the 5th Canadian Armoured Division, 1 Canadian Corps Troops and elements of Canadian Army Troops, Canadian G.H.Q., L. of C. and Base Troops. Then, on 7 Jan 44, Lieut-General K. Stuart, Chief of Staff at C.M.H.Q. and Acting Commander of First Canadian Army, issued Order of Detail No. 9 stating:

> ...that the Military Forces of Canada now or hereafter serving in the United Kingdom under my command in First Canadian Army do act in combination with His Majesty's Military Forces raised in the United Kingdom and serving

in 21 Army Group, until I, or any other appropriate Canadian Service Authority, shall otherwise direct."

(1/Formations/13: Copy on file)

As was explained by General Montague in a letter to the War Office dated 20 Jan, it would be necessary to issue another Order of Detail when, "in all probability", General Stuart should be succeeded by another commander as the Senior Canadian Combatant Officer overseas. Until such time the Canadian service authorities were willing to interpret this order as meaning that Canadian troops of First Canadian Army would "be in combination outside as well as within the United Kingdom."

49. On 23 Feb 44 the Minister of National Defence issued a new Designation, revoking that of 29 Apr 43 and the variation dated 19 May 43 (see para 46), naming as Appropriate Service Authorities the G.O.C.-in-C. First Canadian Army, the Chief of Staff C.M.H.Q. and the Senior Canadian Combatant Officer, not below the rank of Brigadier, of any Canadian Military Force serving in the Mediterranean theatre of operations. Then, on 20 Mar 44, General Crerar (now commanding First Canadian Army) and General Stuart (as Chief of Staff, C.M.H.Q.) issued Order of Detail No. 10 which ordered that:

(a) Components of First Canadian Army, and

(b) Canadian elements of Airborne, GHQ, L of C, Base or any other Troops,

which are now or hereafter serving under command 21 Army Group, do act in combination with the Military Forces of His Majesty raised in the United Kingdom or any other part of the British Commonwealth and also serving under command 21 Army Group.

(Ibid: copy on file)

Canadian units and formations not yet placed under command of 21 Army Group were to be shown as such in C.M.H.Q. Administrative Orders from time to time when so placed. (Ibid: Montague to Under Secretary of State for War, 31 Mar 44). In this connection it should be noted that by the beginning of the year a staff of British legal officers had been added to the Headquarters of First Canadian Army to deal with and advise the Commander with respect to courts-martial involving personnel in British units and formations which should be placed under its command. (Ibid: Montague to Secretary, D.N.D., 10 Jan 44). It was felt, however, that there was no need to give the C.-in-C. 21 Army Group, a General Court-Martial Warrant since such powers had already been granted to the Canadian Army, Corps and Division Commanders. (Ibid: Montague to McLeod, 20 Jan 44)

## RELATIONS WITH UNITED STATES FORCES

50. Following the entry of the Commonwealth and United States into the war on the side of the British Empire on 7 Dec 41 and the subsequent despatch of American troops to the European Theatre of Operations, a new question arose: that of the legal status of Canadian and American officers in the event of Canadian and American troops engaging in operations under a unified Command. No enabling legislation, like the Visiting Forces Acts, existed between the United States and Canada; nor was there any provision

for reciprocal powers of command and punishment.

51. On 6 Aug 42 the Department of External Affairs raised the question of the position of Canadian troops in the event that an American General should be placed in command of a combined force. A telegram to Mr. Massey posed the question:

> Would present probability that Supreme Command of Combined Operations on continent will be entrusted to an American General effect your views on the relationship which should obtain between British and Canadian armies. Do United Kingdom authorities contemplate that relationship of British to American armies in respect of interpretation of operational control, etc. should be similar to the Canadian United Kingdom relationship...
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> (29/Vis Forces/5/3: Tel 1490, External to Dominion, 6 Aug 42)

At the time, the War Office were uncertain as to how this delicate situation could be handled, and Mr. Massey's reply on 13 Aug, pointed out that "no formal agreement has as yet been reached on this subject and I think it likely that the matter will be dealt with only in terms of broad principle." (Ibid: Tel 2071, Massey to External, 13 Aug 42). He suggested, however, that it seemed quite clear that "a British Commander in relation to an American Commander in Chief, if such is appointed, or an American Commander in relation to a British Commander in Chief, would enjoy a measure of autonomy at least as complete as that which is proposed...for the Canadian Army."

52. On 7 Sep 42 a memorandum on the relation of Canadian, United Kingdom and United States Army personnel was drawn up by the J.A.G. Branch at C.M.H.Q. With respect to relations between Canadian and American personnel the memorandum pointed out that:

(a) No right of arrest exists at the present time between Cdn Army personnel and U.S. Army personnel.

(b) In order to confer the right of arrest of Cdn Army personnel upon U.S. Army personnel, it will be necessary to have enabling legislation passed in Canada which would confer such right.

(29/U.S. Forces/1: Carrick to J.A.G. Legal, 7 Sep 42)

With respect to American personnel in Canadian hospitals the United States Army authorities expressed their willingness to send American courts to any Canadian Hospital should it be necessary to try any American who might be a patient therein for a breach of discipline. (Ibid: Carrick to D.J.A.G., C.M.H.Q., 29 Dec 42)

53. The whole question of the legal relationship between Canadian and American troops in a combined force was brought to a head by the incorporation of the 2nd Canadian Parachute Battalion into a combined American-Canadian force, known as the 1st Special Service Force. This force was organized on such a basis as to involve the complete integration of Canadian and American personnel serving therein and it became necessary to clarify the whole question of command and punishment. Accordingly, on 26 Jan 43, the Governor-General-in-Council approved P.C. 629, vesting "each member of the United States

Military Forces, serving with or attached to the 1st Special Service Force, or serving with or attached to any other component of the United States Armed Forces in or under which the said 1st Special Service Force may be comprised" with the powers of operational command. (Ibid: Copy of P.C. 629 issued by the Governor-General-in-Council, 26 Jan 43). The powers of discipline and/or punishment were however not granted, although the Order provided that any Canadian arrested or sentenced under Canadian Military Law might be kept in an American prison.

54. This Privy Council Order was further supplemented on 18 Jun 43 by P.C. 5012, which was designed to cover the situation created by the Canadian Government's decision to participate in combined operations with American forces against the island of Kiska in the Aleutians. This Order closely resembled the previous P.C. 629 in that it placed Canadian troops under American command for operations only. (Ibid: P.C. 5012 by Governor-General-in-Council, 18 Jun 43)

55. In the case of the Canadian Forces in the West Indies and the Caribbean, which had been placed "in combination" with the British garrisons, the only step taken in regard to the United States forces in the areas was the issuance by the C.G.S. at N.D.H.Q. of a general order to the Canadian Commanders, instructing them to obey the "operational orders"* of the local superior U.S. Commander subject to their right of reference to the Canadian Government. (Ibid: Anglin to Senior Officer, 31 Aug 43)

56. In the United Kingdom no action was taken, however, with respect to the relationship of Canadian and United States forces until the possibility of including a Canadian Contingent in a large scale operation against the continent (see para 47) brought the question of legal relationship to the forefront. On 13 Apr 43 Colonel W.A.I. Anglin, D.J.A.G. at C.M.H.Q., conferred with Brigadier-General G.L. Hedrick, J.A.G., ETOUSA** and Colonel E.C. Betts of the Legal Branch United States Army in the E.T.O. Colonel Anglin was informed that "the USA Comd, E.T.O. has full authority to place US troops under a Cdn Comd for operations." It was pointed out by the American officers that in North Africa, the United Kingdom and United States commanders issued complementary orders effecting reciprocal powers of command for operations. Thus:

> Each comd ordered his troops to obey the operational orders of the other comd. Neither side desired to go further and include reciprocal powers of arrest.
>
> (Ibid: Anglin to A.D.A.G.(B), C.M.H.Q., 19 Apr 43)

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* "The term 'operational control' is understood and employed to mean the functions of prescribing initially and continuously the details of tactical missions and operations to be carried out by forces and by any and all elements of those forces, together with modifications thereof, without the responsibility or authority for controlling matters of administration, discipline or statutory authority or responsibility for such matters as promotion, transfer, relief and assignment of personnel." (Handbook of Administrative Instructions for the Co-operation of the British Army and the Ground Forces of the United States Army in the British Isles, War Office 1943, page 11)

** European Theatre of Operations, United States Army.

The American legal officers further pointed out that, under their constitution, their commanders had inherent authority without the need for legislative sanction from Congress to order their troops to submit to "operational control" by an Allied Commander. Such an order from an appropriate United States Officer would be similar to placing his troops "in combination" and would empower all Canadian officers to exercise "operational control" over American personnel in the appropriate circumstances. (Ibid: Anglin to Senior Officer, 31 Aug 43). Colonel Anglin took the view that a "similar inherent power existed in our Cdn Comd-in-Chief in the field" but that such power "should be exercised only in cases of necessity and emergency because such power for a Cdn Comd arises only from his status as a comd and is not reinforced by any legislation or constitutional source as is found with a US comd." (Ibid: Anglin to A.D.A.G.(B), C.M.H.Q., 19 Apr 43)

57. In the absence of such legislation General McNaughton made it clear to the British authorities during the planning stages of Operation "HUSKY" that the Canadian component would be placed under the command of General Alexander rather than under General Eisenhower - "the reason being that the only legal formula we had was the Visiting Forces Act which did not give authority to place Cdn troops under other than a British comd." (First Cdn Army file PA 1-14-1: Memorandum of a discussion Lt-Gen McNaughton - Lt-Gen Ismay, 27 Apr 43)

58. Beyond informing General Eisenhower of the legal position of Canadian troops no further steps appear to have been taken until August, when at the instance of General Montague, a memorandum was prepared on the question of the legal relations of Canadian and American Forces in order that the matter might be discussed with Brigadier Orde who was then in England. This memorandum, dated 31 Aug 43, pointed out that the situation had not undergone any change. Colonel Anglin suggested, however, that the solution to the difficulty, in the absence of specific legislation such as the Visiting Forces Act and the apparent reluctance of the United States service authorities to place the matter before Congress, was to be found in the adoption of reciprocal orders by the respective "Appropriate Service Authorities" of both Countries. Precedents for this course existed in the procedure followed in the case of United Kingdom and U.S. Forces in North Africa and more specifically in the case of Canadian and United States forces in the Caribbean. Colonel Anglin concluded his memorandum with the statement that:

> From developments in this matter to date it now appears obvious that for the establishment of reciprocal power of operational control and arrest as between Cdn and US forces resort will be made to a general order by the appropriate respective service authorities and their Governments concerned as an inherent power in a mil comd to issue such order. Indemnity acts for the protection of such comds may or may not be eventually considered necessary. The forces will remain under their own mil law and trial and punishment will be dealt with be offrs and courts from the accused's own force.
>
> (29/US Forces/1: Anglin to Senior Officer, 31 Aug 43)

59. Such was the course finally adopted by the Allied Commands prior to the assault against North West Europe, and the relevant paragraphs of 21 Army Group Routine Order No. 357 of 23 Jun 44 are quoted to show how this situation was justified:

1. The Allied Forces Acts do not provide for the mutual exercise of command as between British and Allied contingents operating together, as do the Visiting Forces Acts in the case of UK and Dominion troops when these are serving together and acting in combination.

2. Authority for the exercise of command is derived from the respective Government in alliance, under whose directions their Commanders assume command over Allied Formations, or place themselves and their troops under the orders of an Allied superior commander.

3. The officers and men of any Formation which is thus placed under the Command of an A llied officer may lawfully be directed to accept and obey his orders, and disobenience of them will be a military offence punishable under the code of discipline of the National Forces to which the offender belongs.

Accordingly, when Canadian troops were placed under the command of an allied formation or commander they were to "carry out all lawful orders of such Allied commander as they would the orders of their own superiors" (see para 83). As far as possible in such cases, orders would be issued through the normal chain of command, i.e. to Canadian troops through the senior Canadian Commander. (Ibid: Copy of 21 Army Group RO 357 of 23 Jun 44)

60. The constitutional position of Canadian troops in Italy, under the direction of the G.O.C.-in-C., 15 Army Group, continued satisfactorily until late 1944, when General Sir Harold Alexander was replaced by General Mark Clark, United States Army. Although 1st Canadian Corps was shortly moving to North West Europe on Operation "GOLDFLAKE", it would be some time before the Canadian G.H.Q., L. of C. and base troops would be leaving the theatre; therefore it was considered by the Canadian Government that action should be taken to place such troops under A.F.H.Q., since the Supreme Allied Commander, Mediterranean Theatre was now a British officer - Field Marshal Sir Harold Alexander. (1/COS/9: Montague to A.C.I.G.S(O), War Office, 14 Feb 45). Satisfactory arrangements were made with the War Office, A.F.H.Q., and Headquarters 15 Army Group to permit this constitutional change to take effect from 13 Mar 45. (Ibid: Montague to Supreme Allied Commander, Mediterranean Theatre, 20 Mar 45). It was further specified that Canadian troops in the Mediterranean theatre of operations could not be employed for any task outside of Italy without the prior concurrence of N.D.H.Q.

## ATTACHMENT

61. In addition to the familiar conditions governed by the Visiting Forces Acts of "serving together" and acting "in combination" a third condition - "attachment" - normally existed among the forces of the British Commonwealth. For example, throughout the course of the war Canadians attended British Army schools of instruction, were patients in British hospitals and convalescent depots, took part in special research activities, accompanied British expeditionary forces as observers and performed medical and dental duties with the R.A.F.

62. As set forth in the involved language of the Canadian Visiting Forces Act, Section 6:

(1) The Governor in Council,
(i) may attach temporarily to a home force any member of another force to which this section applies who is placed at his disposal for the purpose by the service authorities of that part of the Commonwealth to which the other force belongs;
(ii) subject to anything to the contrary in the conditions applicable to his service, may place any member of a home force at the disposal of the service authorities of another part of the Commonwealth for the purpose of being attached temporarily by those authorities to a force to which this section applies belonging to that part of the Commonwealth.

(2) Whilst a member of another force is by virtue of this section attached temporarily to a home force, he shall be subject to the law relating to the Naval Service, the Militia, or the Air Force, as the case may be, in like manner as if he were a member of the home force, and shall be treated and have the like powers of command and punishment over members of the home force to which he is attached as if he were a member of that force of relative rank:
Provided that the Governor in Council may direct that in relation to members of a force of any part of the Commonwealth specified the statutes relating to the home force shall apply with such exceptions and subject to such adaptations as may be so specified.

(29/Vis Forces/1: copy of 23-24 Geo.V., Chap. 21, on this file)

Canadian Privy Council Order No. 1066 of 3 Apr 40 gave effect to the above section by authorizing "the appropriate Canadian Service Authorities" to take "such action as may be necessary to effect the attachment of members of the Military and Air Forces of any part of the Commonwealth to Canadian Forces and vice versa." (Copy on 29 Vis Forces/5/4)

63. Thus the necessary complementary orders were made and Canadian military personnel attended British schools and courses on the orders of unit or formation commanding officers. According to the Canadian Visiting Forces Act such attachment had to take place under the authority of the "Governor in Council" or by a competent military authority designated for the purpose within the meaning of P.C. 1066. On 24 Jul 41 a War Office letter enquired as to the steps which had been taken to effect the temporary attachment of Canadian personnel to such British training schools and establishments. (29/Vis Forces/5: McLeod to Senior Officer, C.M.H.Q., 24 Jul 41). It was felt that some such order was necessary in order that disciplinary action could be administered by British officers; otherwise a Canadian soldier might have to be returned to his unit in the middle of a course. A search of the files at C.M.H.Q. revealed that no such orders had been issued; and not until 24 Nov 41 was a draft order of disposal sent to the War Office for its approval. (29/Vis Forces/5: Anglin to McLeod. 24 Nov 41). Further discussions were then held with representatives of the Judge Advocate General of the Forces. As a result the British authorities finally settled on the regulations which would be laid before His Majesty, and C.M.H.Q. These drafted

a similarly worded Order of Disposal.

64. Thus, on 20 Dec 41, General Montague was able to send a detailed memorandum to General McNaughton on powers of discipline. He noted that troops from the Canadian Corps which was "in combination" would normally be under Canadian law and, since this would make discipline complicated for the British officer commanding a school, General Montague suggested that all individuals, even those from Canadian units already acting "in combination", should come under the attachment rule and therefore under British military law, which was so akin to Canadian law that neither party would suffer. (29/Vis Forces/5/2: Montague to McNaughton, 20 Dec 41). In the event of a Field General Court Martial proving necessary the offending N.C.O. or private would be returned to his unit. The final draft order of disposal, as approved, was signed on 29 Dec 41 by Generals McNaughton and Montague and applied to:

> ...all members of His Majesty's military forces raised in the Dominion of Canada who are serving under our respective commands and who may at any time under appropriate arrangements attend any school or training establishment, or be a patient in or serve on the staff of any hospital or convalescent establishment, or be specially detailed to be attached under this order to any formation, unit, detachment or establishment which is part of His Majesty's military forces raised in the United Kingdom and not under command of any Canadian Service Authorities.
>
> (Ibid: Order of Disposal by Generals Montague and McNaughton, 29 Dec 41)

It should be noted that this Order of Disposal was not confined to troops in the United Kingdom.

65. On 13 Jan 42 General Montague sent to the War Office a suggested set of instructions for the officers commanding such attached Canadian personnel. The chief points set forth were as follows:

(a) In the case of a soldier, it is left to the discretion of the C.O. whether under the circumstances in each instance he exercises his summary powers or returns the accused to his Canadian unit for disciplinary action. Whenever practicable it is preferred by the Canadian authorities that he be returned to his unit.

(b) If the soldier is attached to a school, it will be in the discretion of the C.O. whether the accused is there dealt with summarily, returned to his unit forthwith, or, permitted to complete the course of instruction before being returned to his unit for disciplinary action.

(c) If it is necessary to apply for Field General Court-Martial, arrangements should be made for at least one Canadian officer to be placed at the disposal of the convening Authority to be detailed as a member of the Court.

(d) If a sentence of death or penal servitude is passed by Field General Court-Martial the proceedings should not be confirmed by the G.O.C.-in-C. of the command or the authority, whoever he may be under Rule of

Procedure 120 (D) without first obtaining the suggestions of the Canadian service authority who would have been the confirming authority if the accused had been tried at his unit.

(e) In the case of an officer or a warrant officer he will be returned to his unit forthwith or when the C.O. sees fit in the circumstances of each case, and the complaint will be forwarded for disciplinary action, to be taken at his unit.

(Ibid: Montague to Under-Secretary of State for War, A.G. 3B., War Office, 13 Jan 42)

General Montague suggested further that these instructions should be issued as any Army Council Instruction; he also suggested that a reciprocal order of disposal be made for British personnel attached to Canadian units, chiefly patients in Canadian hospitals.

66. As an interim measure these suggestions were made the basis of a War Office letter to the C.-in-C., Home Forces. A draft of the proposed A.C.I. was found acceptable by C.M.H.Q. and eventually published on 18 Apr 42 as A.C.I. 810,* while the British Order of attachment for Canadian personnel had been signed on 9 Feb. (Ibid: Order made by the Army Council under Section 4(2) (i) of the Visiting Forces (British Commonwealth) Act, 1933, 9 Feb 42). This latter order applied only to attachments to British Forces serving in the United Kingdom. (Ibid: Draft A.C.I., 9 Feb 42)

67. In order to make provision for Canadians who might be patients in R.A.F. hospitals and others, who were largely medical and dental personnel attached to the R.A.F. for duty, Generals McNaughton and Montague issued an Order of Disposal on 31 Mar 42. (Ibid: Order of Disposal by Generals Montague and McNaughton, 31 Mar 42). A corresponding British Order of Attachment was published as Air Ministry Order 814 of 6 Aug 42 (29/Vis Forces/5/3: Copy of A.814 - Disciplinary Position of members of the Canadian Military Forces attached to the Royal Air Force, 6 Aug 42) and was subsequently promulgated by C.M.H.Q. as Overseas Routine Orders 3070 (27 Jan 43) and 4438 and 4439 (1 Apr 44).

Attachment from United Kingdom Forces

68. On 16 Feb 42 the War Office presented an Order of Detail placing at the disposal of the Canadian Service authorities for attachment all United Kingdom personnel who were:

(a) attending any school or Training Establishment, or,

(b) patients in or on the staff of any Hospital or Convalescent Establishment, or,

(c) pursuant to being posted for duty serving with any formation, unit, department, or establishment which

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* Publication of the A.C.I. was delayed because the War Office hoped to make the subject part of a larger instruction regulating the discipline of troops "in combination". This was dependent on the Canadian acceptance of the British view as to appointment of a Commanding Officer and subordinate commanders in a combined force but, in the absence or even expectation of such action, General Montague recommended the immediate publication of a section concerning attachments. (Ibid: A.G.3B, War Office to Anglin, 15 Mar 42)

is part of such military forces of His Majesty raised in the Dominion of Canada.

(29/Vis Forces/5/2: Copy of Order made by the Army Council under Section 4(2) (ii) of the Visiting Forces (British Commonwealth) Act 1933, 16 Feb 42)

In this connection, a Canadian Order of Attachment signed on 28 Feb 42 completed the necessary arrangements for the two forces in the United Kingdom. (Ibid: Anglin to Senior Officer C.M.H.Q., 28 Feb 42)

Attachment outside the United Kingdom

69. During 1942 a number of Canadian officers and N.C.O's. were attached to British units serving outside the United Kingdom. The first group came from R.C.A.M.C. In December, a second group was sent to North Africa to study tactics and the use of new weapons. In this instance a slightly different method of attachment was adopted. Following the advice of the J.A.G. Branch at C.M.H.Q., an Order of Disposal was signed on 10 Dec 42, by which Generals McNaughton and Montague placed at the disposal of the Army Council:

> ...every member of the military forces of His Majesty raised in Canada and serving under our respective commands who may at any time be detailed by or under the direction of either one of us...for the purpose of being attached temporarily by the Army Council... to a military force of His Majesty raised in and serving outside the United Kingdom.
>
> (29/Vis Forces/5/3: Order of Disposal by Generals Montague and McNaughton, 10 Dec 42)

Various Orders of Detail for such personnel were issued from time to time.

70. On 6 Jan 43 the War Office issued a complementary order of attachment. (29/Vis Forces/5/4: Order of Attachment made by the Army Council, 6 Jan 43). Furthermore, the instructions contained in Overseas Routine Orders 4438 and 4439 (see para 67) were extended to all Canadians attached to British military and air forces "within or without" the United Kingdom by Overseas Routine Orders 4602 and 4603 of 12 May 44.

71. Although there were no Canadian units in Europe or Africa to which British Army personnel could be attached until the middle of 1943, there were British officers and other ranks stationed with the British Army Staff in Washington and Ottawa and a number of instructors on loan to the Canadian Army in Canada. In order to legalize future provision and the existing attachments, a draft disposal order was prepared by the War Office and transmitted to C.M.H.Q. with a covering letter dated 4 Jan 43:

> In pursuance of their powers...the Army Council hereby place at the disposal of the Service Authorities of the Dominion of Canada for the purpose of being attached temporarily...every member of the Military forces of His Majesty raised in the U.K. and present in the said Dominion during such period as:

(a) he is under the command of the Inspector General of the Inspection Board of the United Kingdom and Canada, or

(b) he is (i) on the staff of or attending any school or training establishment, or, (ii) on the staff of or a patient in any hospital or convalescent establishment, or, (iii) pursuant to being posted for duty (whether on loan, interchange or otherwise) serving with any formation, unit, detachment or establishment, which (in each case) is part of such Military forces of His Majesty raised and serving the Dominion of Canada.

(Ibid: McLeod to Anglin, 4 Jan 43)

This Order was signed on 19 May 43 but no copy of the complementary Canadian Order of Attachment, issued at Ottawa, is available on file at C.M.H.Q. (Ibid: McLeod to Norris, 22 May 43)

## POWERS OF MUTUAL ARREST

72. The power of arrest between military forces of the Commonwealth was dealt with under the Visiting Forces Acts of 1933, which differentiated between the arrest of offenders generally and that of deserters or absentees.

73. Dealing with the case of offenders generally, the British Visiting Forces Act, Section 1(5) stated that:

> For the purpose of enabling such service courts and service authorities as aforesaid to exercise more effectively the powers conferred upon them by this section, the Admiralty, Army Council, or Air Council, as the case may be, if so requested by the officer commanding a visiting force, or by the Government of that part of the Commonwealth to which the force belongs, may from time to time by general or special orders to any home force direct the members thereof to arrest members of the visiting force alleged to have been guilty of offences against the law of that part of the Commonwealth, and to hand over any person so arrested to the appropriate authorities of the visiting force.
>
> (29/Vis Forces/1: A copy of Visiting Forces (British Commonwealth) Act, 1933: 23 Geo.V, Chap. 6 is on this file)

74. On 16 Jan 40 Mr. Massey sent such a request to Mr. Eden, and the required Order from the War Office was despatched on 11 Mar 40. (Ibid: Massey to Eden. 16 Jan 40 and 29/Vis Forces/5: Copy of Order made by Army Council. 11 Mar 40). This Order was published by C.M.H.Q. as Overseas Routine Order 111 on 28 May 40 and remained unamended. In this respect it should be noted that originally neither the Canadian nor British service authorities wanted to place their troops under the Military law of the other and as far as possible avoided utilizing mutual powers of arrest. As time went on, however, it proved more practicable to work in close co-operation (see para 79) and the arrival of American troops upon the scene made necessary the adoption of certain measures which are discussed

in subsequent paragraphs.

75. Section 3(3) of the British Visiting Forces Act also dealing with powers of arrest stated:

> No person who is alleged to be a deserter from any such force as aforesaid shall be apprehended or dealt with under this section except in compliance with a specific request from the Government of that part of the Commonwealth to which the force belongs, and a person as dealt with shall be handed over to the authorities of that part of the Commonwealth at such place on the coast or frontier of the United Kingdom as may be agreed.
>
> Provided that a person who is alleged to be a deserter or absentee without leave from a visiting force may also be apprehended and dealt with under this section in compliance with a request, whether specific or general, from the officer commanding that force, and shall, if that force is still present in the United Kingdom, be handed over to the officer commanding that force at the place where the force is stationed.

Here again a request was needed. In his letter dated 16 Jan 40 (see para above) Mr. Massey also included this request. A British Privy Council Order of 4 Jun 40 (Visiting Forces Order (No. 3) 1940) set up the required authority and was approved by Brigadier Montague in his letter of 3 Jul 40. (29/Vis Forces/5: Statute Rules and Orders 1940 No. 1012, Visiting Forces (British Commonwealth), The Visiting Forces Order (No. 3) 1940, 4 Jun 40 and Montague to McNaughton, 3 Jul 40). Since the British Visiting Forces Act called for a request from the Officer commanding the Visiting Force, such a document, bearing the signatures of General McNaughton and Brigadier Montague, was presented to the War Office on 9 Jul 40. (Ibid: Montague to Under-Secretary of State, War Office, 9 Jul 40) Although Canadian Army Overseas Routine Order No. 390 of 29 Oct 40, giving effect to the British Order, was subsequently amended as far as procedure was concerned, the policy remained as first laid down by the British Order in Council.

76. In neither of these instances, however, was any reciprocal power granted by the British Government or the Army Council under which Canadian soldiers were to have the power to arrest British soldiers who were alleged to have committed offences against the laws of the United Kingdom or who were suspected of being either deserters or men absent without leave. (29/Vis Forces/5/3: Memorandum by Capt D.D. Carrick, 26 Aug 42)

77. The above arrangements settled the question of arrest of personnel who had been officially notified as military offenders, but there was also the question of the right to arrest a soldier of the other force in order to prevent a crime or while a crime was being committed. The ordinary criminal law of the United Kingdom confers such a right on all persons within its jurisdiction, although wherever possible actual arrest should be carried out by a policeman or, in any case, the person arrested should be handed over without delay to the police. (29/Vis Forces/5: Anglin to A.A.G.(Pers), C.M.H.Q., 15 Nov 41) Thus:

> Under Defence Regulations of the United Kingdom, 88c, any member of His Majesty's Forces (which includes U.K. and Canadian forces) has the right to arrest any person whom he has reasonable grounds for suspecting to have committed any of the offences specified in the second schedule covers such matters as treason, an

offence against the Treachery Act, 1940, murder, manslaughter, arson, etc.

Under Defence Regulations of the United Kingdom, 88d, any member of His Majesty's Forces if he has reasonable grounds to suspect that a person is about to act in a manner prejudicial to the public safety, or the defence of the realm, may arrest him...

(29/Vis Forces/5/3: Memorandum by Capt Carrick on "Mutual Powers of Arrest or British and Canadian Troops," 26 Aug 42)

In such instances, therefore, Canadian soldiers had the right to arrest any British soldier and British soldiers had the similar right to arrest any Canadian soldier.

78. The powers of arrest under Defence Regulations were republished as Overseas Routine Order No. 3185 of 4 Mar 43, which quoted the relevant provisions of the British A.C.I. 109 of 1943.

79. The question of mutual powers of arrest between Canadian and British troops serving outside the United Kingdom was, however, still left unsettled. During the course of an "operational planning" meeting at the War Office on 26 Aug 42, attended by Lt-Col A.D. Cameron, Deputy Provost Marshal, C.M.H.Q., it was suggested that "the necessary arrangements should be made for mutual powers of arrest of British and Canadian Troops Overseas." (Ibid: Cameron to A.D.A.G.(B), C.M.H.Q., 28 Aug 42). Meanwhile, the need for adding to the Visiting Forces Acts became increasingly apparent as a result of the association of British, Canadian and New Zealand troops "in public places" in the Tunbridge Wells area. None of the service authorities concerned saw any objection to recognizing such mutual powers of command and the consequent authority to make arrests, if they existed in law as a result of "serving together". Consequently, General Turner suggested to C.M.H.Q. that a routine order be promulgated, informing Canadian troops that "they must conform to the directions of the British military police and New Zealand picquets (they have no provost or police) as if they were members of our own Provost Corps." (Ibid: Anglin to Senior Officer, 20 Nov 42). It was understood that upon all three authorities issuing such information to their respective troops it would be possible to make arrangements to avoid the over-lapping of patrols in Tunbridge Wells. According to Lt-Col Anglin:

> U.K. and Cdn military forces have been declared to be serving together in the U.K. and on the continent of Europe. The same has also been done for Cdn and New Zealand military forces in those places. The Visiting Forces of each country contains the following as being the effect of serving together:
>
> > "Any member of the other force shall be treated and shall have over members of the home force the like powers of command as if he were a member of the home force of relative rank." (Ibid)

He thought that this position was sound and advanced the further argument that:

> As between New Zealand and ourselves the further point arises as to whether there is the necessary authority under U.K. law for a Cdn to arrest and confine a New Zealander in the U.K. and vice versa. I submit that the U.K. by Sec 1(1) of its Visiting Forces Act has

conferred such authority. That sub-sec gives to a Cdn service authority the right to exercise for the purposes of discipline all such powers as are conferred on him by the law of Canada. The law of Canada provides that a New Zealander shall be treated and have the like powers of command as if he were a member of the Canadian force. Accordingly, in the result under U.K. law a New Zealander can give orders to and arrest a Cdn as if he himself were a Cdn. The sanction in U.K. law for a Cdn to arrest a fellow Cdn in the U.K. is only to be found in the same Sec 1(1) of the U.K. Visiting Forces Act.

What was sought and obtained in this instance was mutual powers under the respective Visiting Forces Acts whereby "like powers of command" were granted to troops "serving together".

80. The approval of the service authorities of the three forces concerned having been obtained the position was legalized by Army Council Instruction No. 2591 of 1942, Canadian Army 20 Jan 43. The Canadian Order stated that:

1. All ranks are advised that members of the military police, provost corps or picquets of the military forces of the United Kingdom, Canada and New Zealand have reciprocal powers of command, including the power of arrest, over personnel in all three forces.

2. Canadian personnel will, therefore, comply with the lawful orders of such members of the United Kingdom and New Zealand military forces given in the course of their duty as if they had been given by members of the Canadian Provost Corps. Failure to do so is an offence upon which disciplinary action may be taken by an appropriate Canadian Service authority.

This was superseded and cancelled by Overseas Routine Order No. 4438 of 1 Apr 44 (see para 67 ), which had the following to say about the powers of arrest when troops were "serving together":

> ...although each force remains independent in respect of ops and adm, a member of one force will be treated and will have over <u>individual</u> members of the other force the like powers of comd as if he were a member of the other force of relative rank.
>
> Accordingly, an offr, WO or NCO of one force is the superior offr of, and has power of comd over, which includes the power to order into mil custody, an <u>individual</u> member of the other force who is inferior in rank to him.

81. These orders settled the question as far as it concerned Canadian and New Zealand Forces serving in the United Kingdom or later on the Continent of Europe in the Mediterranean area and also the question insofar as it concerned Canadian and British forces serving in a theatre of operations outside the United Kingdom. (29/Vis Forces/1: Anglin to A.D.A.G.(B), C.M.H.Q., 19 Apr 43).

<u>Powers of Mutual Arrest - U.S. and Canadian Forces</u>

82. With preparations being put underway for the assault on Europe the question naturally rose in April 1943 as to whether there should be reciprocal powers of arrest between Canadian and United States forces. The United States Army legal officers in the

E.T.O.* had already informed Colonel Anglin that, in addition to having authority to place American troops under Canadian command for operations (see para 56), the American Commander in this theatre also had inherent power under the United States Constitution to order his troops to submit to arrest by the police or provost of an allied force. (Ibid: Anglin to A.D.A.G.(B), C.M.H.Q., 19 Apr 43). Colonel Anglin had been given to understand, however, that the American service authorities "would prefer not to issue such an order until the time for the respective forces to act as a combined force was imminent, and then only after the respective force comds had conferred or exchanged official requests and agreements on this particular subject." (Ibid). Colonel Anglin thought that the same legal powers should obtain for Canadian senior combatant officers, but he did not think that any action should be taken in this matter "without the sanction of special legislation or P.C. Order from Ottawa," since in his view it would be "usurping the function of the legislature." (Ibid)

83. The need for such action was not apparent during the Sicilian and early stages of the Italian campaign and so the question did not come to the forefront until the time came for the assult on North West Europe. On 23 Jun 44 21 Army Group issued a routine order (No. 357) on "Discipline - Commander Allied Detachments" pointing out that:

> 2. Authority for the exercise of command is derived from the respective Governments in alliance, under whose directions their Commanders assume command over Allied Formations, or place themselves and their troops under the orders of an Allied superior commander.
>
> 3. The officers and men of any Formation which is thus placed under the Command of an Allied Officer may lawfully be directed to accept and obey his orders, and disobedience of them will be a military offence punishable under the code of discipline of the National Forces to which the offender belongs.
>
> (Ibid: Copy of 21 Army Group RO 357 of 23 Jun 44)

Furthermore, Section V, para 2 of the Standing Orders for 21 Army Group, dealing with reciprocal powers of arrest, had already stated:

> (a) Military, Naval, Marine and RAF Police of all forces of the Supreme Allied Commander are authorised and empowered to maintain order, enforce authority, and make arrests among the forces and in the area of this command without regard to the nationality or service to which such personnel may belong. The provisions of this order will be published to all personnel of this command.
>
> (b) Where practicable, arrests will be effected by police of the same nationality as the offender. Any offender arrested will be delivered promptly to the proper authorities (Army, Navy, Marine or RAF) of the Allied Force to which he belongs, for trial or other appropriate action.
>
> (Ibid: Quoted in Anglin to AJAG, Cdn Sec GHQ 1 Ech, AAI, 8 Sep 44)

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* European Theatre of Operations.

According to Colonel Anglin the theory on which 21 Army Group acted was based on the "military exigencies" of the situation. (Ibid)

84. On the other hand, the War Office view was that the application of the theory of "military exigencies" had to be backed up by an Order; otherwise the arrest and custody of personnel of another force would be unlawful. (29/Vis Forces/1: Anglin to A.J.A.G., Cdn Sec G.H.Q. 1 Ech, A.A.I., 8 Sep 44)

85. Such an Order had been published in the Mediterranean Theatre on 24 Mar 44 by the Commander-in-Chief, A.A.I., but the term "British" was intended to cover only troops of the United Kingdom and Canadians were excluded. (Ibid). The question of the need for mutual powers of arrest between members of the Canadian and United States forces was considered at the Canadian Section, G.H.Q. 1st Echelon, A.A.I. but it was decided by the early autumn of 1944 that it was "unnecessary and undesirable to raise the question," since no difficulty had been caused by the absence of any such arrangements. (Ibid: Officer i/c Cdn Sec G.H.Q. 1 Ech, A.A.I. to C.M.H.Q., 2 Oct 44). This condition still held until 1st Canadian Corps moved to North West Europe to rejoin the First Canadian Army. From this time forward all Canadian troops on the Continent of Europe conformed to the situation which had been created by the 21 Army Group Orders.

## USE OF BRITISH PRISONS

86. The use of British Army detention barracks to handle the overflow of Canadian personnel prior to the establishment of a Canadian Corps Field Punishment Camp and a Canadian Detention Barracks at Witley have been mentioned in Chapter VIII of the Narrative. In addition, there was the question as to whether Canadian Military personnel should be committed to civil prisons in the United Kingdom as provided for in the British Visiting Forces (British Commonwealth) Act of 1933. Section 2(2) of this Act stated that:

> If His Majesty by Order in Council so provides, members of a visiting force if sentenced by a service court of that part of the Commonwealth to which the force belongs to penal servitude, imprisonment or detention may, under the authority of a Secretary of State or the Admiralty, given at the request of the officer commanding the visiting force, be temporarily detained in custody in prisons or detention barracks in the United Kingdom, and if so sentenced to imprisonment may, under the like authority, be imprisoned during the whole or any part of the term of their sentences in prisons in the United Kingdom, and His Majesty may by the same or a subsequent Order make provision with respect to any of the following matters, that is to say, the reception of such persons from, and their return to, the service authorities concerned, their treatment while in such custody, or while so imprisoned, the circumstances under which they are to be released, and the manner in which they are to be dealt with in the event of their unsoundness of mind while in such custody, or while so imprisoned.
>
> Any costs incurred in the maintenance and return of, or otherwise in connection with, any person dealt with in accordance with the provisions of this sub-section shall be defrayed in such manner

as may, with the consent of the Treasury, be agreed between the Secretary of State or the Admiralty and the Government of that part of the Commonwealth which is concerned.

(Ibid: a copy of the Visiting Forces (British Commonwealth) Act, 1933, 23 Geo.V, Chap. 6, is on this file)

87. This matter came up for discussion following the first arrival of Canadian troops in England and on 29 Dec 39 the official secretary of Canada House sought advice from the Dominion's Office as to "whether action has been taken or is contemplated under Section 2, sub-Section 1 or sub-Section 2, of the Act." (Ibid: Pearson to Under-Secretary of State for Dominion Affairs, 29 Dec 39). It was not until 4 Jun 40, however, that this matter was dealt with by Visiting Forces Order (No. 2) 1940: in accordance with the Visiting Forces Act prisoners were to be treated according to the provisions of the Army Act and the King's Regulations for the Army "subject to any necessary modifications." Brigadier Montague considered that a satisfactory course had been taken. (29/Vis Forces/5: Montague to High Commissioner, 3 Jul 40)

88. On 5 Jul the Dominions Office sent a draft order to C.M.H.Q. which suggested two amendments to the existing Visiting Forces Order (No. 2) 1940. The second of these changes substituted the words "any enactment" for those of Army Act and King's Regulations, while the first change was the addition of a new paragraph which would make "provision for the reception of persons from the Canadian Service authorities and their subsequent return to those authorities." (Ibid: Archer to Secretary, High Commissioner for Canada, 1 Aug 40). The necessity for such changes was not perceived at C.M.H.Q. and it was not until October, following some considerable correspondence on this matter, that agreement was reached. A new Visiting Forces Order (No. 6) 1940 was issued on 24 Oct 40 and contained an amended second paragraph, part of which was as follows:

> The provisions of any enactment, so far as they relate or are applied in relation to the reception of prisoners from and their return to the service authorities of the home forces, their treatment while in such custody or while so imprisoned, the circumstances under which they are to be released and the manner in which they are to be dealt with in the event of their unsoundness of mind while in such custody or while so imprisoned, shall apply in relation to members of any Canadian visiting force sentenced as aforesaid in like manner as they apply in relation to members of a home force sentenced by a service court, subject to the modification that for any reference in any such enactment to any service authority there shall be substituted a reference to the corresponding Canadian service authority, and subject to such other modifications as may be necessary.

(Ibid: a copy of The Visiting Forces Order (No. 6) 1940 is on this file)

89. Consequent to the issuance of this Order, General Montague submitted a general request to the War Office on 14 Dec that the Secretary of State for War authorize the temporary detention of members of a Canadian military force sentenced by a service court of Canada to penal servitude, imprisonment or detention. (Ibid: Montague to Under-Secretary of State, War Office, 14 Dec 40). After considerable delay, on 15 Apr 41,

Mr. Lambert wrote to General Montague that the Secretary of State had given his authority for "the detention and imprisonment in the United Kingdom of members of the Canadian Visiting Military Forces sentenced by a Service court of Canada." (Ibid: Lambert to Senior Officer, 15 Apr 41). A set of administrative instructions for guidance as to the arrangements for detention or imprisonment in the United Kingdom was enclosed. Due to a misunderstanding, however, a list of the Canadian "competent military authorities" was not forwarded to Lt-Col McLeod at the War Office until 6 Nov 41: at which time Lt-Col Anglin declared that:

> The Canadian service authorities in question will be identical in the matter of appointment with the corresponding British service authorities in the administration of the instructions under reference.
>
> (Ibid: Anglin to McLeod, 6 Nov 41)

The letter further stated that Generals McNaughton and Montague were the present "superior military authorities" for the purpose of Section 57A(9) of the Army Act.*

90. After an even longer lapse of time Lt-Col McLeod replied on 4 Jul 42 to the effect that "No practical difficulty has, so far as I know, arisen under our Administrative Instructions." (29/Vis Forces/5/3: McLeod to Anglin, 4 Jul 42). He enclosed a schedule showing the various competent authorities under the Army Act for British troops in the United Kingdom and asked whether United Kingdom officers would be recognized under the Canadian Army Act as competent authorities. In reply Lt-Col Anglin stated that, in his own view, the United Kingdom military authorities were not empowered to act as "competent authorities" and he thought that "for the present at least, it would be desirable to have Canadian Army authorities only act as 'competent authorities' insofar as Canadian soldiers are concerned." (Ibid: Anglin to McLeod, 15 Jul 42). The War Office was subsequently informed (11 Sep) that in addition to the two Canadian Senior Combatant Officers, the following were also "superior military authorities":

> Corps Commanders, Commanders of Divisions and Canadian Base Units not below the rank of Major-General and the Deputy Adjutant-General, Canadian Military Headquarters, not below the rank of Brigadier.
>
> (Ibid: Booth to Under-Secretary of State, War Office, A.G.3.B. 28 Sep 42)

91. There still remained the question of paying for the use of British prisons. On 5 Mar 42 a letter was received at Canada House from the Dominions Office suggesting a flat rate of six shillings a day for each man maintained in a civil prison; accounts would be presented at regular intervals by the Prison Commissioners. (29/Vis Forces/1: Dixon to Secretary, Office of High Commissioner for Canada, 5 Mar 42). From a breakdown of figures it appeared that the estimated cost per day was 8/3, but since it was considered unfair to charge a Dominion Government with overhead expenses, two shillings, three pence had been deducted. (29/Vis Forces/1: Dixon to Johnson, 3 Jul 42). Meanwhile, however, discussions had

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* "A superior military authority under this section shall be an authority having power to mitigate, remit or commute sentences of penal servitude, imprisonment or detention..."

been going on with the British Government with the object of establishing a general capitation rate for all services provided from British sources (Chap XIII paras 72-103).

## CREATION OF THE OFFICE OF THE JUDGE-ADVOCATE-GENERAL CANADIAN ARMY OVERSEAS

92. At the beginning of the war the Canadian Army Overseas had followed the then British practice of having legal officers shown as miscellaneous appointments at the headquarters of formations.* It was found, however, that certain British commanders tended to regard the legal officer as their own special adviser and refused to allow him to be moved away when desired by the Judge-Advocate-General or the senior legal representative in a theatre of operations. (10/ANGLIN, W.A.I./1: Montague to Orde, 20 Oct 44). Accordingly, when it came time to organize a legal staff for 21 Army Group in March 1944, a separate war establishment was authorized as "J.A.G. Staff Pool, 21 Army Group." (See Appendix "A"). Brigadier H. Scott Barrett, C.B.E., T.D., was appointed DJAG and his officers were made responsible, for legal duties, to him only, although they might be attached elsewhere for rations, quarters and discipline. (Ibid). Similar instructions issued in the United Kingdom had laid it down that legal officers for Commands and Districts were to be carried on the establishment of the Office of the Judge-Advocate-General of the Forces. When some difficulty in control arose the Army Council issued a circular letter on 16 Mar 44, setting forth the status of legal officers.

93. Subsequently during May 1944, General Montague, in his capacity as Judge-Advocate-General of the Canadian Army Overseas (P.C.9701 of 20 Dec 43), arranged for Headquarters, First Canadian Army to include in its Standing Orders a Part XV - "The Functions of the Deputy Judge-Advocate-General and his Staff". (See Appendix "B"). This instruction, however, was not fully appreciated and acted upon by all commanders and during the autumn there was an incident, where a D.A.& Q.M.G. would not agree to a D.J.A. on his staff acting as Judge-Advocate, in an emergency, at some courts-martial held at 2nd Echelon. Although this matter was settled satisfactorily, General Montague considered that the time had come to re-organize the entire legal staff of the Canadian Army Overseas.

94. Therefore, on 20 Oct 44, he sent a personal letter to Brigadier R.J. Orde, Judge-Advocate-General, Department of National Defence, suggesting that the J.A.G. Section should be removed from under the D.A.G. and from C.M.H.Q. altogether, and set up as a separate Office of the Judge-Advocate-General Canadian Army Overseas. (Ibid). Apparently, Brigadier Orde had advanced such a suggestion to General Montague nearly a year before, and it was also in line with the positions of the Offices of the Judge-Advocate-General at the War Office and also in Ottawa. Such an establishment would consolidate all existing legal appointments at C.M.H.Q. and at the headquarters of field formations and could be headed by Colonel W.A.I. Anglin (DJAG, C.M.H.Q.) as

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* The legal relationships respecting command and discipline between Canadian Army Overseas and Associated Armed Forces (Canadian, Commonwealth and Allied) is set forth in the Appendix to Overseas R.O. No. 6330.

V.J.A.G: Colonel T.G. Norris, M.C., would still serve as DJAG for all Canadian troops serving within 21 Army Group.

95. In his reply, date 2 Nov 44, Brigadier Orde stated that he agreed "entirely with the whole proposal and will be prepared to back it to the hilt if the same should be submitted to N.D.H.Q. and my views are sought". (Ibid: Orde to Montague, 2 Nov 44). General Montague then took the matter up with Headquarters, First Canadian Army. Brigadier J.F.A. Lister, D.A. & Q.M.G., who replied, stated: "I would strongly recommend that we adopt this system right away". (Ibid: Montague to C.G.S., 19 Apr 45). Steps were therefore taken at C.M.H.Q. to have an appropriate establishment drawn up. There were several unavoidable delays, however, chief of which was the revision required by the amalgamation of the legal staff of 1 Canadian Corps with that in North West Europe. Finally, however, an establishment of 45 Officers and 70 other ranks was agreed to by all concerned and authorized by C.M.H.Q. Administrative Order No. 49 of 23 Apr 45. Colonel Anglin's appointment as V.J.A.G. and promotion to Brigadier was subsequently made effective from this date. (Ibid: Tel AG 3521, Defensor to Canmilitry, Montague from Walford, 26 Jun 45)

96. An appendix to Overseas Routine Order No. 5740, dated 28 Apr 45, detailed the Organization and Duties of the J.A.G. Staff. The establishment, which was made effective from 1 Mar 45, provided for a detachment at C.M.H.Q. and two field detachments for employment with Canadian troops under the command of 21 Army Group and Headquarters C.R.U. An essential feature of the new organization was that personnel in each detachment were to constitute a pool, and individual members could be moved and employed, on attachment to a formation headquarters, as and where required from time to time at the discretion of the J.A.G. or his senior representative in the detachment. Members of the J.A.G. staff would have direct access, where necessary, to commanders, principal staff officers and heads of services in respect of legal advice or assistance being rendered. As recommended the Office of the Judge-Advocate-General was made entirely separate from the D.A.G. Branch and reported direct to General Montague in his other capacity as Chief of Staff, C.M.H.Q.

97. Since General Montague was himself covering off the appointment of Chief of Staff, that of a J.A.G. Canadian Army Overseas was left vacant although he intended to continue in that appointment. General McNaughton, as Minister of National Defence, had concurred in such a step when General Montague succeeded General Stuart as Chief of Staff but had suggested "would it not be best to hand over this detail to someone else under your supervision so that your mind can be freed for the larger matters." (Ibid: Tel GS 3093. Defensor to Canmilitry, McNaughton to Montague, 19 Apr 45). In fact General Montague had already delegated all the routine and administrative work in legal matters to Colonel Anglin and directed the new M.G.A. to take over the function of confirming all but the most serious courts-martial. Colonel Anglin had considered, however, that General Montague should continue to act as Judge-Advocate-General because, in his view:

> ...the large body of Cdn troops overseas warrants no less than a Judge of the Bench of Canada as the guardian of its legal interests and as the one responsible for seeing that justice prevails in the administration of military law.
>
> With yourself as our J.A.G. we have someone of the rank and standing more than comparable to the principal legal advisers in the British and American forces. I think it most significant that in five years there has been no case

that I recall where a commander, a court or an accused did not accept your decision as final. This attitude, now so well established, must be of the greatest benefit to commanders in the maintenance of discipline and morale.

In this connection, I venture to add that our senior commanders would probably not be prepared to accept as conclusive an opinion on the law from anyone other than yourself.

(Ibid: Anglin to J.A.G., 30 Nov 44)

98. No. 1 Det (A) Cdn J.A.G. Overseas functioned at C.M.H.Q. under the direct control of Brigadier Anglin, with Lt-Col D.D. Carrick as his A.D.J.A.G. No. 2 Det (B) functioned in North-West Europe while No. 3 Det (C) served within C.R.U. During August an Increment was added to No. 2 Det (B) to serve with C.A.O.F. until its withdrawal from Germany. On 12 Dec 45 Brigadier Anglin vacated the appointment of V.J.A.G. to return to Canada where he had been made a District Judge in Admiralty of the Exchequer Court of Canada in and for the Admiralty District of New Brunswick. His duties were taken over by Colonel G.E. Tritschler who had been commanding the detachment in North West Europe.

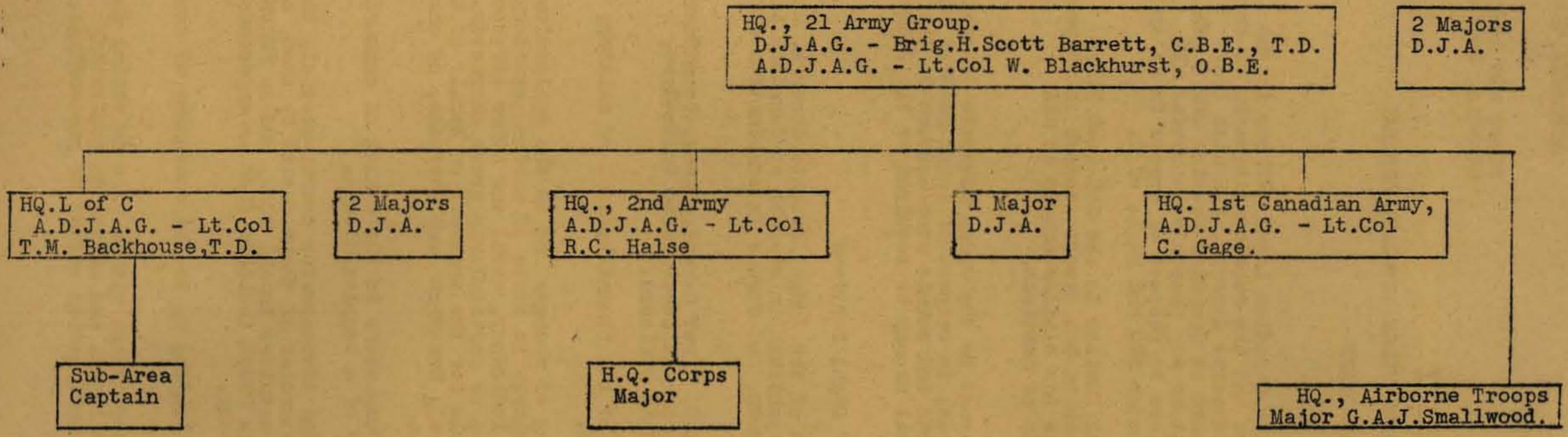
99. This Report was prepared by Capt J.M. Hitsman and was based on work begun by Lt-Col G.F.G. Stanley and Major L.A. Wrinch during 1944. Brigadier W.A.I. Anglin read paras 1-91 in draft and the substance of his comments has been incorporated into the present text.

J.M. Hitsman, Capt

(C.P. Stacey) Colonel
Director, Historical Section

APPENDIX 'A'

CHART SHOWING INITIAL DISTRIBUTION OF JAGs STAFF, 21 ARMY GROUP




Key:- = Legal Staff

= D.J.A. Staff

D.J.A.G. = Deputy Judge Advocate General.
A.D.J.A.G. = Assistant Deputy Judge Advocate General.
D.J.A. = Deputy Judge Advocate.

PART XV

THE FUNCTIONS OF THE DEPUTY JUDGE ADVOCATE GENERAL

AND HIS STAFF

General

1. (a) The DJAG is the senior Canadian Legal Officer in the Theatre of Operations and the representative in 21 Army Group of the Judge Advocate General, Canadian Army Overseas. He is placed at Canadian Section GHQ 1 Ech 21 A Gp in order that he may properly supervise all Canadian Legal services in respect of troops in 21 Army Gp including those under GHQ and HQ L. of C.

(b) He is the chief Legal Advisor to the GOC-in-C First Canadian Army, to whom he has direct access in respect of legal matters. He has similar access to all other Comds and Heads of Services.

(c) He is responsible direct to the Judge Advocate General, Canadian Army Overseas, in respect of legal matters and will make such reports and submit such matters to the Judge Advocate General as may be required by the Judge Advocate General.

Responsibilities in Respect of Legal Services

2. Subject to the direction of the Judge Advocate General, Canadian Army Overseas, the DJAG is responsible in respect of Canadian Legal services throughout 21 Army Group, and Forces in combination and under command for:

(a) Advice to the GOC-in-C, First Canadian Army, Commanders GHQ and L. of C. troops and subordinate Commanders, Staff Officers and Unit Officers.

(b) The superintendence of the administration of military law and of legal aid.

(c) Advice on the framing of charges and on the collection of evidence, particularly in cases of murder, manslaughter, rape, fraud, theft, indecency, civil and other offences of an unfamiliar kind or particularly grave character. He will be responsible for the approval on behalf of the Judge Advocate General, Canadian Army Overseas, of charge sheets in such cases.

(d) Assistance to Unit Commanders in the taking of summaries of evidence in cases of a complex nature.

(e) The supplying of Judge Advocates for courts-martial, the supervision of the exercise of their duties by them, and the supplying of Prosecutors in all GCsM, and in FGCsM where charges in such FGCsM indicate that an experienced prosecutor is necessary.

(f) Advising on matters leading up to the convening of courts-martial

(g) The review of all proceedings with a view to seeing whether they are regular and legal, and advice to confirming authorities on pre-confirmation review of proceedings.

(h) Liaison on legal matters with Officers and other branches.

(i) In the event of it being necessary to quash proceedings, the making of appropriate recommendations to the proper military authority, and advice on petitions.

(j) Observations on courts-martial proceedings and reports to the appropriate convening and confirming authorities, Commanders, presidents and members of courts-martial on irregularities which appear in the conduct of proceedings. He will make all directions to legal staff necessary so that the attention of the proper authorities will be drawn to any matters arising in connection with such proceedings as affect military discipline or the maintenance of morale.

(k) The recording and safe custody of proceedings of courts-martial and their transmission to C.M.H.Q.

(l) Advising on and performing duties in relation to matters of legal or disciplinary nature when and as required so to do.

(m) Advice and assistance to Commanders, Staff and Unit Officers in connection with important courts of inquiry, particularly those involving the investigation of accounts and fatal accidents.

(n) Instruction in Military Law.

(o) Liaison on legal matters with legal officers of forces in combination or serving with 21 Army Group.

(p) The general allotment of duties in respect of legal matters to Canadian legal staff under 21 Army Group.

Legal Staff at Formation Headquarters

3. The representative at HQ First Canadian Army of the DJAG is the AJAG. He also has the right of direct access to the Army Comd in respect of legal matters. He is responsible direct to the DJAG and makes such reports to, and submits such matters to, the DJAG as may be required by the DJAG.

In addition to the AJAG there is on the legal staff at HQ First Canadian Army a British legal staff as follows:

ADJAG (Lt-Col) - (Brit) - 1
Capt (Legal Staff)(Brit) - 1

The DJAG is represented at Corps by a DJA and an ADJA and at each Div by an ADJA.

At Canadian Section GHQ 2 Ech 21 Army Gp the legal staff consists of two DJAs attached from Canadian Sec GHQ 1 Ech 21 A Gp. These officers review all courts-martial after confirmation and to them proceedings are forwarded direct from formation Legal Officers. At both Canadian Sec GHQ 1 Ech 21 A Gp and at 2 CBRG there are ADJAs. The senior Legal Officer at each HQ has direct access to the Comd of that HQ on legal matters. A Major, (legal staff), and additional Legal Officers as required may be provided from 21 Army Gp. pool (Brit), for any British Corps under command.

The DJAs at Corps are available to act as Judge Advocates in the Field on courts-martial cases on which Judge Advocates are required, and to assist where assistance is required because of any extraordinary burden of work or in the absence of formation Legal Officers. They are carried on Corps strength so that they may be readily available for duty as directed by the DJAG.

Status and Responsibilities of Formation Legal Officers

4. Within their respective formations, formation Legal Officers will have status similar to that of the DJAG. Subject to the direction of the DJAG they will have responsibilities similar, within their own spheres, to the responsibilities of the DJAG save in respect of the Review of proceedings, recommendations as to quashing, advice on petitions and the allotment of duties of other Legal Officers. They will be bound by the directions and rulings of the Judge Advocate General, Canadian Army Overseas, and the DJAG.

Legal Advice

5. The legal advice of the legal staff in the field will be followed subject to appeal from such advice to the DJAG. If a Commander questions any ruling of the DJAG and desires the same to be submitted to the Judge Advocate General, Canadian Army Overseas, the DJAG will make a submission accordingly, forwarding copies of all relevant correspondence. Where such questioned ruling involves the non-confirmation of a finding or sentence--in whole or in part-confirmation should be withheld pending the decision of the Judge Advocate General, Canadian Army Overseas. Similarly, where such ruling involves--in whole or in part-a quashing of findings or sentence or a remission of the sentence a "superior military authority" under AA 57A should place the sentence in suspension pending such decision of the Judge Advocate General. The submission made by the DJAG in such cases will be made by the quickest possible means consistent with getting all the facts before the Judge Advocate General.

Judge Advocates

6. The responsibility for the supervision of courts-martial lies with the Judge Advocate General, Canadian Army Overseas, and with the DJAG as his representative. Such responsibility connotes control of the appointment of Judge Advocates.

Judge Advocate will not be appointed to sit on Courts save such as may be deputed or nominated by the Judge Advocate General, Canadian Army Overseas, or his representative in the theatre.

Integration of British and Canadian Legal Staffs

7. Because of the fact that the differences between British and Canadian Military Law are slight, and in general involve only certain matters of detail it has been possible to establish a complete and practical working integration of British and Canadian legal staffs at HQ First Canadian Army, but without formal sanction. The ADJAG (Brit), reports direct in respect of legal matters, to the DJAG (Brit), 21 Army Group, where the ADJAG (Cdn) reports to the DJAG Canadian Sec GHQ 1 Ech 21 A Gp.

Where formal action on behalf of the Judge Advocate General (Brit), is required, e.g. the approval of charge sheets involving British personnel, such action is taken by the ADJAG (Brit). Save in respect of such matters and in respect of matters of detail wherein action by British legal officers is restricted by the DJAG (Brit), officers of either service carry out their duties in respect of all troops

under command HQ First Canadian Army, whether such troops be British or Canadian.

Responsibilities in respect of Administrative Matters

8. (a) Legal Officers will not normally be required to perform duties other than those falling within the scope of the legal service. Where possible, however, they will give all reasonable assistance to the "A" staff, provided that the efficient performance of their legal duties is not thereby interfered with.

(b) Inasmuch as Legal Staff personnel perform duties which are technical, and as the supply of such personnel in the field is strictly limited, Commanders should before initiating any action which is likely to result in a change in personnel, refer the matter through normal channels to the Officer i/c Canadian Sec GHQ 1 Ech 21 A Gp in order that the matter may be referred to the Judge Advocate General or the DJAG (as the JAG may direct) for his remarks.

(c) The number of Legal Staff personnel available is limited, and it is necessary that they be maintained in a pool for duty where they will best serve the interests of the Service. It should be recognized, therefore, that it may be necessary to interchange Legal personnel from time to time as may best serve the Canadian Military Forces in the field as a whole. Commanders should be prepared to co-operate with the responsible Legal Officers in this respect in an effort to ensure the maximum efficiency in the service. In particular it is desirable that appointments and promotions affecting other rank Legal Staff personnel be not made without reference through normal channels to the DJAG.

(d) As in the interests of the administration of military justice it is necessary that disciplinary matters be attended to and courts-martial be completed and forwarded without delay, it is of the utmost importance that Commanders ensure that formation Legal Officers be given adequate equipment and transport for the efficient performance of their duties.

Channels of Communication

9. Channels of communication will, in respect of legal matters be through legal channels, otherwise they will be through command channels.

10. The Directive - Legal Staff - CM Drill - of 15 Dec 1943 (106/Army HQ/1/3) is cancelled.