

MEMORANDUM

To - D. of ADMIN.

Department of National Defence

H.Q.C. 55-M-1380 (JAG/E)

OTTAWA, November 8th, 1944.

K.573605 Pte. McLean, C.H.

1. Reference the marginally noted and your request made personally through Capt. Gordon for my comments on this matter.

2. It would appear that the marginally noted was never a member of the Canadian Army and that, therefore, no authority exists or ever existed for issuance of pay to him. It is not seen, therefore, why it is necessary to go through the form of forfeiting pay and allowances from the period 5th August, 1944, to 3rd October, 1944, nor why it was necessary to forfeit pay from 16th September, 1941, to 4th August, 1944. On the other hand it would not appear proper to now issue pay to him from 5th August, 1944, to 3rd October, 1944.

3. However, the practice has been, and it would seem convenient and to do no harm to continue it, to go through the form of a discharge under R.O. 1029 either (1) or (12) whichever is preferred. It is realized that this man has been "irregularly enrolled" not "irregularly enlisted" but the latter category is at least analagous to the real facts.

4. It is suggested, however, that some serious consideration should be given under the circumstances to the fact that he had apparently unlawfully been held by the military authorities in detention and, therefore, has a right of action against all concerned for false imprisonment. It might be well to consider whether it would not be wise to make him some form of ex gratia payment and at the same time obtain a release to all concerned from any liability.

R. J. Orde
R. J. Orde

(R. J. Orde) Brigadier,
Judge Advocate-General.