

# Rough Justice: The Court Martial of Lieutenant Robert Douglas Legate

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*En octobre 1918, le lieutenant Robert Douglas Legate, de la RNCVR, commandant du NCSM Hochelaga, fut reconnu coupable en cour martiale d'avoir manqué à son devoir de combattre l'ennemi avec son navire. Le navire qu'il avait rencontré, le U-156, était à la fois plus rapide et mieux armé que le Hochelaga, et il aurait été suicidaire pour le lieutenant Legate de le combattre sans soutien. Arrivée juste après l'explosion de Halifax, la condamnation du lieutenant Legate ne résultait pas d'une enquête judiciaire motivée mais plutôt de la recherche d'un bouc émissaire par la RCN. Sacrifier la carrière du lieutenant Legate était aux yeux de la RCN préférable à admettre le fait que ses navires étaient incapables de répondre à la menace des navires U.*

In August 1918 the armed yacht HMCS *Hochelaga* unexpectedly encountered Germany's marauding submarine *U-156* off the coast of Nova Scotia - and refused combat. *Hochelaga* was lightly armed, with a single 12-pounder cannon. The huge U-cruiser packed a powerful punch: two 15-cm (5.9-inch) guns, two 8.8-cm cannon, and torpedoes. Captain of Patrols Walter Hose had long been persuaded that Canada's armed yachts were far outgunned and would be at the mercy of any U-Cruiser that might appear.<sup>1</sup> Yet the decision of *Hochelaga's* captain, Lieutenant Robert Douglas Legate, RNCVR, played into the hands of a navy and government that needed a scapegoat.

On 5 October 1918, a naval court martial found that Lieutenant Robert Douglas Legate, in command of HMCS *Hochelaga* did not, "on sighting a ship of the enemy, use his utmost endeavour to bring his ship into action."<sup>2</sup> As a result of this finding, Lieutenant Legate was dismissed in disgrace from the service of His Majesty, losing his pension rights and all other benefits he had accrued during his service. Was Lieutenant Legate in fact a victim of a flawed system of naval justice? Was he in effect made responsible for the failings of the fledgling Royal Canadian Navy (RCN) as a whole? Did his dismissal allow the naval

<sup>1</sup> Michael L. Hadley and Roger Sarty, *Tin-Pots and Pirate Ships: Canadian Naval Forces and German Sea Raiders 1880-1918*, (Montreal, 1991), 268.

<sup>2</sup> "Officers of the Canadian Naval Service Tried By Court Martial," National Defence Headquarters, Directorate of History and Heritage (DHH), File 82/401, Part 2.

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staff - and the government — to draw attention away from the navy's own woeful inadequacies?

The navy had only been founded in 1910, in the midst of political controversies so intense that they nearly snuffed out the new service shortly after its birth. Britain's Royal Navy (RN) had traditionally guaranteed Canadian maritime security, but the intensity of international competition in naval armaments, and Britain's distraction by a growing antagonism with Germany had compelled the Canada's Liberal government, led by Sir Wilfrid Laurier, to take action. The establishment of a national navy was Laurier's attempt to reconcile severely divided opinion over Canada's relationship to Britain. Pro-empire members of both federal parties believed Canada should directly assist the RN in its hour of need, through cash contributions. Anti-empire nationalists, especially French-Canadian members of both federal parties, believed Canada, with no enemies of her own, should do nothing at all about naval defence. The new navy satisfied neither viewpoint, and contributed to the Liberal defeat by Robert Borden's Conservatives in the election of 1911. Borden stopped development of the service and tried to provide financial aid to Britain, but the measure was defeated in 1913 by the Liberal majority in the Senate.

Borden was still weighing his government's options for a naval policy when the First World War broke out at the beginning of August 1914. That dramatic turn of events seemed to settle the question. Because there was no hope for Canada to undertake significant naval development in wartime, the British government asked that the dominion mainly commit itself to the provision of land forces.<sup>3</sup> Meanwhile, British cruisers rushed to take up station at Halifax to guard the huge British seagoing trade from North America against the fast German cruisers were then the primary threat to allied shipping. The Canadian navy, it seemed, would not develop much beyond the nucleus that the Laurier government had established, and certainly it would not undertake an independent operational role. HMCS *Niobe*, the former British cruiser that the Laurier government had purchased to serve as a training ship on the east coast, put to sea with the help of seconded British seamen, and joined the British squadron that operated from Halifax. The Canadian navy's main role, other than providing additional personnel for the cruiser, was mainly to run supporting services at Halifax and other ports, and maintaining lookout ships at the mouth of the port. This task that was undertaken by ships of the Canadian government's civilian marine fleet, most often the lightly armed patrol vessels of the Fisheries Protection Service.<sup>4</sup>

Naval warfare, however, soon began to undergo a transformation. Germany, with its surface fleet effectively blockaded in the North Sea by Britain's superior surface fleet, began to use submarines - or U-boats - offensively, and with devastating effect. In the spring and summer of 1915, U-boats, operating with near impunity in the Atlantic approaches to the British Isles, inflicted severe losses on the transatlantic merchant shipping upon which Britain's economy and war effort depended. This was particularly disturbing for

<sup>3</sup> Gilbert Norman Tucker, *Naval Service of Canada. Its Official History*, Vol. 1. "Origins and Early Years," (Ottawa, 1952), 128.

<sup>4</sup> Roger Sarty. "Hard Luck Flotilla: The RCN's Atlantic Coast Patrol, 1914-1918" in W.A.B. Douglas, (ed.), *R.C.N. In Transition, 1910-1985*, (Vancouver, 1988), 103-104.

the Canadian naval staff, because troopships, loaded with Canadian soldiers, were regularly sailing from Canadian ports, where there were no anti-submarine forces. The commander of the British cruiser squadron at Halifax confirmed that his ships would be helpless in the face of a submarine attack, and could only run for cover. The British Admiralty warned against over-reaction. The U-boats could carry sufficient fuel only to make a one-way passage to Canadian waters, and would have to refuel there by means of secret fuel caches on the Canadian coast, or by rendezvousing with fuel-carrying German merchant ships. Canada therefore needed only a few lightly armed steamers to keep watch along the coasts and stop and search any suspicious merchant vessels. Even so, there were few suitable vessels available because the British forces had already requisitioned many Canadian ships for transport duties in the European and Mediterranean war theatres. The two most effective of the Fisheries Protection Service patrol vessels had already been commissioned into the navy for full-time patrol service, and there were only a handful of civilian vessels available<sup>5</sup>.

To meet the need for patrol craft, the navy drew on the services of patriotic yachtsmen to evade US neutrality laws and purchase two large pleasure craft. These were the Morgan yacht *Waturus*, which became HMCS *Hochelaga*, and the Yarew yacht *Columbia*, which became HMCS *Stadacona*. Both these vessels had good sea-keeping qualities and became mainstays of the coastal patrols for the remainder of the war.<sup>6</sup> They were two of the seven "auxiliary patrol ships" acquired by the RCN between 1915 and 1917, the remainder being the *Canada*, *Cartier*, *Acadia*, *Lady Evelyn*, and the *Margaret*. These vessels were generally between 170 and 210 feet in length, displaced 700 to 1,050 tons and had maximum speeds of between eleven and sixteen knots.<sup>7</sup> They carried at least two 12-pounder guns; some had the larger four-inch type (although not the most modern version).<sup>8</sup> In spite of the increased armament, however, the ships of the Royal Canadian Navy were comparatively small, slow, and lightly armed, and would remain so throughout the war. They were also performing a function for which they had never been designed.

The new anti-submarine patrol began to operate in August 1915, with all seven vessels on strength. The crews were, for the most part, civilians who had been brought into the Royal Navy Canadian Volunteer Reserve, leavened by a few experienced officers and petty officers, several of them retired British personnel who had come out of retirement for wartime service. The work of the patrol was in fact more civilian than naval. The ships, in effect, took up duties of the government civilian marine service; carrying supplies to isolated lighthouses and life-saving stations, and keeping an eye out for violations of fisheries regulations, while watching for suspicious activities along the vast, and mostly isolated, east

<sup>5</sup> *Ibid.*

<sup>6</sup> *Ibid.*, 119-123.

<sup>7</sup> Maximum speed estimates were based on the ships having "clean bottoms," meaning that they were free of barnacles and other such obstructions. The general inadequacy of the dockyard facilities on the East coast meant that usually the ships did not have 'clean bottoms' and the speeds they were capable of were considerably lower. (*Ibid.*, 293-294.) *Hochelaga* herself was 196 feet long and displaced 682 tons. She had a maximum speed of 13 knots and had originally been built in Scotland for an Austrian Archduke and subsequently bought by Randall Morgan. (See Fraser McKee, *The Armed Yachts of Canada*, (Erin, Ontario, 1983), 32).

<sup>8</sup> Sarty in Douglas, 107.

coast of Canada and west coast of Newfoundland.<sup>9</sup>

Circumstances changed dramatically in October 1916. *U-53*, loaded with extra oil for its diesel engines, did what the Admiralty thought impossible: cruised to the coast of the still neutral US, sank five Allied steamers off Nantucket Island, and made the return passage back to Germany without refuelling. The Admiralty advised Canada to increase its patrol force to thirty-six steamers. In addition to searching out some additional ships in the United States, the Canadian government now ordered construction of twelve 140-foot trawlers, modest vessels that had proved useful for routine patrols in British waters. The Admiralty placed orders in Canada for construction of thirty-six additional trawlers, and one hundred still smaller drifters, but reserved the right to use these vessels in European waters unless there was the direst of emergencies in Canadian waters.<sup>10</sup>

By early 1917 Britain was, in fact, facing the gravest naval crisis of the war. Germany had reduced the intensity of its U-boat offensive in 1915 after strong American protests about the destruction of American vessels. Now, in early 1917, Germany renewed the campaign in British waters, in the hope it could win the war within a few months. The United States responded to new sinking of US ships by joining the allies on 6 April 1917. The Canadian navy's hope of getting assistance from the American fleet quickly came to nought - Britain's need was so desperate that all available US destroyers, the best anti-submarine type of warship, went to operate with the RN in European waters."

During the crisis in the spring and summer of 1917, the British Admiralty finally hit on what proved to be a successful defence against U-boat attack. Merchant ships began to sail together in large convoys of forty or fifty ships from North American ports; as the convoys approached the U-boat operating zone off the British coast, large British and US destroyer forces surrounded the convoys and escorted them through the danger area. For the Canadian navy, the organization of convoys at Halifax and Sydney was a large new commitment, but one the service, with help from the government civilian marine services, successfully undertook.<sup>12</sup>

All the while, the Canadian naval staff pressed the Admiralty about the danger of U-boat attack on the North American coast. Answers came only when a Canadian officer visited London at the end of 1917. The Admiralty had good intelligence that the Germans, using large cargo-carrying submarines converted and armed with guns and torpedoes, and new classes of purpose-built long-range fighting submarines, might attack in Canadian and United States waters as early as the spring of 1918. Only now did the Admiralty allow Canada to take over the trawlers and drifters building on British contract at Canadian shipyards. These little ships - and those of the existing Canadian patrol - would, however, be incapable of undertaking concerted combat with the new large German submarines. The Admiralty promised to assign a dozen British or American destroyers to the Canadian coast as the main striking force, but it quickly became apparent that none were available, given the

<sup>9</sup> *Ibid.*

<sup>10</sup> Hadley and Sarty, Chapter 5.

<sup>11</sup> *Ibid.* 129.

<sup>12</sup> *Ibid.*, *passim*.

heavy needs of convoy escort in European waters.<sup>13</sup> The Canadians would have to go it alone, facing the most difficult circumstances. The new trawlers and drifters from the Canadian and British contracts of 1917 would not, for the most part, be completed until the spring and summer of 1918, at the same time as the U-boats were expected to arrive. Moreover, the Canadian service had to find some 2,300 personnel to crew the vessels at a time when recruiting for the large Canadian army in Europe had swept up most qualified Canadian merchant seamen.<sup>14</sup> Although the British Admiralty ultimately made available some five hundred experienced seamen,<sup>15</sup> including a large number of Canadians who had been recruited for British service earlier in the war, there were very limited training facilities in Canada, and almost no time, to allow these experienced personnel to train the many raw recruits.

Difficulties in the development of the RCN as an effective fighting force paralleled the development of the system of naval discipline both prior to and throughout the war. Historically, the primary purpose of military law has been to maintain and enforce discipline. Through the passage of time, the means by which this has been achieved have increased in sophistication, but the purpose has remained unchanged since the first codification of naval discipline in 1645 and the creation of the first courts martial in 1661.<sup>16</sup> Given the nature of naval service and the relative isolation of units at sea, discipline has, if anything, been viewed as more important for naval services than for armies in the field. Thus, the creation of a new naval service would not only require ships, it would also require a system of discipline if it were to function smoothly. As was the case in the development of the fleet, the development of naval discipline in the RCN also proceeded on an ad hoc basis and was related to the lack of any clear offensive mission for the new service.

The RCN itself was created by the passage of the *Naval Service Act* in May of 1910,<sup>17</sup> with Admiral Kingsmill as its first director. Although an independent service, the RCN was intended to be closely integrated with the Royal Navy in all matters. This was a similar situation to that pertaining in most of Britain's other self-governing colonies and was part of an imperial conception of naval service.<sup>18</sup> The reliance on the RN both for operational and administrative assistance were still believed to be sufficient for Canadian purposes when the first of the long-range U-boats arrived in US waters, as British intelligence predicted, in May 1918.

The vessel was a converted merchant submarine of the type that would carry out the bulk of transatlantic operations in the summer and fall of that year. Nevertheless, the submarines carried a formidable armament of torpedoes and mines, and, for surface action, one or two fifteen-centimetre guns that could fire a 100-pound round to an effective range

<sup>13</sup> *Ibid.* 111 ff.

<sup>14</sup> Sarty in Douglas, 110.

<sup>15</sup> *Ibid.*

<sup>16</sup> R. Arthur McDonald, *Canada's Military Lawyers*, (Ottawa, 2002), 1-3.

<sup>17</sup> *Naval Service Act*, S.C. 1910, c. 43.

<sup>18</sup> Chris Madsen, *Another Kind of Justice: Canadian Military Law from Confederation to Somalia*, (Vancouver, 1999), 49.

of 10,000 yards. In comparison, the standard gun in the Canadian fleet was the twelve-pounder, whose twelve-pound shell ranged to no more than about 7,000 yards.<sup>19</sup> The general tactics that they employed remained reasonably constant. Submerged attack was usually reserved for large steamers that were likely to be armed. For other vessels the preferred method of attack was with surface fire or, optimally, to board and scuttle the vessels with timed charges. Escorted ships were never attacked.<sup>20</sup> Although a U-boat commander may have enjoyed reasonable confidence in attacking a single coastal patrol vessel or trawler, attacking large groups of them was a foolhardy endeavour.

While the convoy system, combined with the reluctance of U-boat commanders to attack escorted vessels, meant that the prioritisation of naval tasks had been a success, it did expose a significant element of Canadian coastal shipping to harm. This element was the fishing fleet operating off of the Canadian Atlantic seaboard. The focus on convoy escort, while strategically sound, left them basically unprotected; and as attacks on fishing vessels increased in frequency and severity, Canadian fishing captains began to view themselves as having been sacrificed to the U-boats.<sup>21</sup> The fledgling RCN did its best to protect the fishing fleet but the area to be covered was so large that it afforded no possibility of comprehensive coverage. Although the apparent sacrifice of the fishing fleet in favour of convoy protection made strategic sense, politically it was very dangerous. The fishing fleet had the ear of the government which began increasingly to demand that fishing vessels be protected. While members of parliament from the maritime provinces stopped short of actual intervention, A. K. Maclean, a minister without portfolio in Prime Minister Borden's government, had travelled to Halifax in response to concerns raised by the fishing fleet.<sup>22</sup>

The media was also showing increasing concern over the activities of the U-boats and the apparent inability of the RCN to stop their depredations. The sensational approach taken in the media towards the "Hun Pirates" was fuelling rising paranoia and concern among the civilian population. Reported sightings of German U-boats, and of spies landed from them, became increasingly common as did calls for something concrete to be done about the perceived menace. Even worse for the RCN, it was becoming increasingly obvious that the Navy was incapable of coping with the genuine threat posed by the U-boats. The public was not in the mood to listen to explanations of the difficulties in hunting and destroying a submarine in the open ocean, nor were they prepared to listen to debates about the allocation of funding. What was important was that the naval operations were perceived as a complete failure,<sup>23</sup> and it was this perception that the RCN would have to address if it was to retain any credibility among the general population.

It was into this situation that the *U-156* and the HMCS *Hochelaga* sailed in the summer of 1918. *U-156* was not one of the purpose-built U-cruisers that the Admiralty expected to arrive off the coast of North America in 1918. She did, however, arrive in close

<sup>19</sup> Hadley and Sarty, 151-172.

<sup>20</sup> Sarty in Douglas, 114.

<sup>21</sup> Hadley and Sarty, 261-262.

<sup>22</sup> *Ibid.*, 265.

<sup>23</sup> *Ibid.*, 253-261.

enough proximity to them to give rise to the possibility that she was much more heavily armed and armoured than she really was.<sup>24</sup> In her arrival and subsequent operations, *U-156* brought all of the failings of the R C N into the starkest possible focus in terms of its tactical abilities, and indirectly exposed the weakness of its disciplinary system. *U-156* began her operations in American waters in early July of 1918. On 7 and 8 July, she sank two "large sailing vessels" and subsequently proceeded to lay mines near the Fire Island light vessel in the Gulf of Maine. One of these mines sank the 13,000-ton American cruiser USS *San Diego* on July 19. On 21 July, *U-156* appeared off the beaches of the southeastern part of Cape Cod and attacked a tug that was towing four barges.<sup>25</sup> From the beginning of her operational tour, *U-156* made her presence well known.

Following her operations in American waters, *U-156* proceeded rapidly to begin operations in Canadian waters. On 2 August, she attacked and sank the schooner *Dornfontein* whose crew landed on August 3 at Gannet Rock<sup>26</sup>. Three days later *U-156* attacked and sank the schooners *Agnes B. Holland* and *Gladys M. Hollett*. None of the vessels attacked to this point had been equipped with wireless communication equipment, and so news of their sinking was not received until the crews rowed ashore some time afterwards. By the time news of the sinkings reached the naval command, it was too late to catch up with *U-156*.<sup>27</sup> A two-day head start with no indication as to the direction of travel was simply too much for the R C N to overcome.

Later in the day of 5 August, 1918, the R C N's luck appeared to have changed. Shortly before noon, *U-156* attacked the tanker *Luz Blanca*, which had left port early that morning in spite of recommendations against leaving. The initial attack, which occurred just before noon, was followed by a gun battle that lasted until nearly 1500 hours. His Majesty's Dockyard (at Halifax) received word of the attack at approximately 1345 hours. In spite of being aware of the attack while it was in progress, both Captain Hose and Commander Newcombe (the commander of the patrols based in Halifax) were unable to dispatch sufficient ships to the area in time to allow the capture or destruction of *U-156*. This inability was partly due to the challenge of finding a submarine in the open sea, a difficult task even if one knows its approximate location. It was also partly due to a failure in wireless discipline which resulted in the ship closest to the attack area, USS *Tingey*, not receiving the wireless broadcast from Halifax until 1630 hours, by which time *U-156* had left the area. The failure of the fleet to catch *U-156* triggered a sense of powerlessness in the civilian population.<sup>28</sup> The confidence of the public in the fleet, and the confidence of the R C N itself, was being repeatedly shaken by the fleet's apparent inability to meet the U-boat threat.

Almost unbelievably, things got even worse for the R C N at the hands of *U-156*. On

<sup>24</sup> Sarty in Douglas, 114.

<sup>25</sup> *Ibid.*

<sup>26</sup> A subsequent board of inquiry into the conduct of the captain of the *Dornfontein* concluded that he had been "guilty of neglect" in allowing his vessel to be sunk and suspended his master's certificate of competency for the duration of the war. (Hadley and Sarty, 252).

<sup>27</sup> *Ibid.*

<sup>28</sup> *Ibid.*, 256-258. A one of the trawler and drifter divisions did arrive on scene while *U-156* was in the area but were unable to locate her due to the poor weather prevalent at the time.

20 August, *U-156* attacked the steam trawler *Triumph* near the fishing banks off of Canso, Nova Scotia.<sup>29</sup> Rather than sink her, however, the captain of *U-156* captured *Triumph* and put two light guns and wireless equipment aboard her. It appeared from the reports of *Triumph's* crew that the German commander intended to use her as a raider.<sup>30</sup> As incredible as these initial reports seemed, they soon proved all too accurate. Over the next three days, *Triumph* in her new role as commerce raider began savaging the fishing fleet. She was remarkably successful, sinking the American schooners *A. Piatt Andrew*, *Francis J. O'Hara Jr.* and *Sylvania*, the Canadian vessels *Lucille M. Schnare* and *Pasadena* and the French vessel *Notre Dame De La Garde*. None of the schooners was equipped with wireless, and so there was no way for them to communicate the identity, intent or even the presence of *Triumph* to other vessels, and in the meantime *U-156* had sunk *Uda A. Saunders?*<sup>31</sup>

The activities of *U-156*, especially the taking of *Triumph* and using her as a commerce raider must have been galling to the RCN, and particularly to Captain Hose. The patrols assembled to hunt down *U-156* and *Triumph* were larger than any that had been previously mounted. However, as the sinking of the five trawlers demonstrated the increased patrol activity appeared to have little impact on the operations of the enemy. After three days, when she ran out of coal, *Triumph's* German crew scuttled her and re-boarded *U-156*.<sup>32</sup> In spite of the number of ships dispatched, the task of finding and sinking the enemy again seemed to be one that was beyond the capacity of the RCN.

One of the patrols dispatched to find *U-156* and *Triumph* included two auxiliary patrol ships, *Hochelaga* and *Cartier* and two armed trawlers, *Trawler 22* and *Trawler 32*.<sup>33</sup> This patrol was destined to be the only group of Canadian naval vessels to engage an enemy U-boat directly during the war, and the result of the engagement would prove anything but satisfactory. On 25 August, *U-156* began her day by attacking and sinking the SS *Eric*, a small British steamer of approximately 583 gross tons, which was proceeding from St. John's Newfoundland to Sydney Nova Scotia. She was attacked with guns at 0130 hours and sunk approximately seventy miles off of the island of St. Pierre. Due to damaged wireless equipment, *Eric* was unable to issue any warning as to the presence of *U-156*. The survivors of the *Eric* were transferred aboard the schooner *Willie G* at approximately 0600 hours. Since the *Willie G* was not wireless equipped there was still no way for her crew to alert anyone as to the presence of *U-156*.<sup>34</sup>

Approximately three hours later, *U-156* came upon yet another group of fishing schooners. She was first sighted by the *E.B. Walters* who apparently mistook her for a Canadian patrol boat. The *E.B. Walters* was a schooner of about 110 gross tons and was

<sup>29</sup> Between 5 August and 20 August *U-156* returned to American waters off Cape Cod sinking three more steamers including the Swedish *Sydland*. (Sarty in Douglas, 118.)

<sup>30</sup> Hadley and Sarty, 263.

<sup>31</sup> *Ibid.*, 266-267.

<sup>32</sup> *Ibid.*, 266.

<sup>33</sup> Initially it appears that HMCS *Stadacona* was part of this patrol, but she appears to have left company prior to the encounter with *U-156*. (Hadley and Sarty, 264).

<sup>34</sup> United States Navy Department, *German Submarine Activities on the Atlantic Coast of the United States and Canada*, (Washington D. C., 1920), 68-69.

based out of La Have, Lunenburg County, Nova Scotia. She was boarded by the crew of *U-156* who removed items of value and sank her with explosives.<sup>35</sup> A similar process was repeated with the other three vessels present at that time, *CM. Walters* and *Verna D. Adams* out of La Have, and *J.J. Flaherty* out of Port Gloucester Massachusetts. All were also boarded by the crew of *U-156*, and were sunk using explosives after all items of value had been removed. There were no casualties among the crews of the target vessels; everything seems to have proceeded in a calm and orderly fashion.<sup>36</sup> As *U-156* was completing the destruction of the *J.J. Flaherty*, the last of the schooners to be sunk, *Hochelaga*, through what can only be described as a remarkable stroke of luck, arrived on the scene. At approximately 1345 hours, the lookout on *Hochelaga* sighted two of the schooners that *U-156* was in the process of sinking. At the time of the sighting *Hochelaga* was approximately twelve miles from them, a considerable distance away. The four-ship patrol was travelling in line abreast at four-mile intervals and *Hochelaga* was at the time closest to the schooners.<sup>37</sup>

Upon sighting the schooners, *Hochelaga* altered course to intercept them. It is unclear as to what the actual purpose of the course of action was, although since neither *Hochelaga* nor the schooners were equipped with wireless, presumably it was to warn the schooners of the possible presence of *U-156*. As *Hochelaga* drew closer to the schooners, an object that was believed to be a dory was sighted in the water. As she drew even closer, to a distance of about four miles, one of the schooners mysteriously "blew up" and overturned. At that time Signalman Harold Gates, signalman of the watch, reported sighting a submarine near the overturned and sinking schooner.<sup>38</sup>

At this point, Lieutenant Legate made a decision that was to prove lethal to his career in the RCN. Rather than advance to engage the submarine, he turned *Hochelaga* back towards HMCS *Cartier*, commanded by Lieutenant McGuirk, who was the senior officer on patrol.<sup>39</sup> *Cartier*, upon seeing *Hochelaga* alter course, turned to intercept and read the signals that *Hochelaga* was making. The signal read by *Cartier* was "submarine bearing east". Lieutenant McGuirk immediately ordered all four ships on patrol to alter course towards the last bearing of the submarine and proceed at full speed to engage it.<sup>40</sup> Upon receiving this signal *Hochelaga* again held back from the attack signalling that she thought it best to await reinforcements.<sup>41</sup> This was possibly a reference to *Trawler 22* which had fallen astern, but the actual reason for the hesitation has remained unclear. By the time the patrol had altered course and arrived in the area of the last sighting, *U-156* had disappeared and could not be located. She sank one more vessel, the schooner *Gloaming* on 26 August before heading to

<sup>35</sup> *U-boat Operations in the Western Atlantic During W. W. I.* (U.S. Naval Center Operational Archives, Box 6, Microfilm "(7-756 Cruise)", 18-19.

<sup>36</sup> *Ibid.*

<sup>37</sup> *Findings and Proceedings: Court Martial of Lieutenant Robert D. Legate*, (National Archives of Canada, First World War Personnel Records. File N.S. 47-23-L64), 12-18.

<sup>38</sup> *Ibid.*, 20-37.

<sup>39</sup> Hadley and Sarty, 268.

<sup>40</sup> *Findings and Proceedings*, 50-57.

<sup>41</sup> *Ibid.*, 54-56.

home waters. On or about 25 September, 1918, she sank in the Anglo-American minefields between Scotland and Norway thereby becoming the only U-boat raider not to return from North American waters during the war.<sup>42</sup>

Lieutenant Legate's court martial began on 5 October, 1918. Sitting in judgement on Lieutenant Legate were Captain Fred C. C. Pasco, RN,<sup>43</sup> Commander J. T. Shenton, RCN, Commander D. Tatton Brown, RN, Commander H. E. Holme, RCN, and acting-Captain B. Eldridge, RN, (sitting as lieutenant-commander).<sup>44</sup> At the time of the incident, Lieutenant Legate was one of the more experienced officers serving in the RCN. He had been on active service since 1914, received his commission in June 1915, and had held seagoing commands since January of 1917.<sup>45</sup> Given the dearth of adequately trained officers, particularly commanders, the decision to proceed against Lieutenant Legate is of great significance and indicative of the importance that the RCN command placed on the incident.

At the time these charges were brought against Lieutenant Legate, no clear process existed to deal with disciplinary issues. Due to the paucity of officers in the RCN qualified to convene and conduct courts martial, the *Naval Discipline (Dominion Naval Forces) Act* was not brought into effect by the Canadian government until May of 1918.<sup>46</sup> Thus, until that time discipline in the RCN was in a state of flux. The *Naval Service Act*, which incorporated the provisions of the *Naval Discipline Act (1866)*, applied to Canadian vessels as long as they remained in Canadian territorial waters. In international waters, however, the *Naval Service Act* did not apply. There was considerable question as to whether the Royal Navy and British officers had the right to discipline Canadian sailors for infractions which occurred outside of Canadian territorial waters, and there were arguments made that, since the jurisdiction of the Canadian government did not extend beyond territorial waters, and the RN had no jurisdiction over Canadian nationals, no one, in fact, had such jurisdiction.<sup>47</sup> The uncertainty in jurisdictional matters was in many ways the result of the lack of any clearly enunciated offensive mission for the RCN. Legal jurisdictional questions were either not raised or were deferred simply because it was not envisioned that they would become relevant.<sup>48</sup> This situation is illustrative of the ad hoc, and generally confused, state of naval discipline throughout most of the First World War.

No procedural guidelines existed. The *Naval Discipline Act* was very particular as to the composition of courts martial, and provided detailed guidance as to how they were to be constituted, who was entitled to sit on them, and even the oaths to be administered prior to the commencement of proceedings.<sup>49</sup> No provisions of the Act required that the accused be represented by trained legal counsel; nor did it allow for such counsel even if the accused

<sup>42</sup> Sarty in Douglas, 120.

<sup>43</sup> Captain Pasco was a predecessor of Captain Hose as Commander of Patrols, and was in a unique position to understand both the weaknesses of his flotilla and the challenges that they faced. (Hadley and Sarty, 122-123).

<sup>44</sup> *Findings and Proceedings*, "Findings".

<sup>45</sup> Hadley and Sarty, 269; Sarty in Douglas, 120.

<sup>46</sup> *Naval Discipline (Dominion Naval Forces) Act*, S.C. 1919, c. 34.

<sup>47</sup> Madsen, 50.

*Ibid.*

<sup>49</sup> *Naval Discipline Act, 1866 (U.K.)*, 29 & 30 Vict., c. 109, Part IV.

should request it. Furthermore, there was no requirement that the naval authorities put the case to be met to the accused in advance or allow time for the preparation of a defence. All of these things were apparently left to the discretion of the tribunal. While this was the case with field general courts martial in the army and was explained away as a matter of expediency,<sup>50</sup> such considerations did not apply to naval courts martial which were not generally conducted in the face of the enemy, but rather occurred in comparative safety.

Any shortcomings in provisions for discipline were the least of the worries that the Canadian navy's senior officers faced in early 1918. Admiral C E. Kingsmill director of the naval service in Ottawa, and Captain Walter Hose, commander of the east-coast anti-submarine forces, were desperately concerned about the potential for disaster on the east coast. Both struggled to find the means to station even a few ships with sufficient armament to stand up to the U-boats in combat, and Kingsmill and the government pressed the question with such vigour in London and Washington that the Admiralty sharply asked the Canadians to stop interfering in overall Allied strategy. The Admiralty took the position that the critical theatre, where the war might be won or lost, was in European, not North American, waters.

In addition to the challenges created by the lack of process and the paucity of resources, the trial also raised a number of issues on both a procedural and legal basis. The first of these was the specific charge being brought against Lieutenant Legate. Unlike the process in the civilian criminal courts<sup>51</sup> there appears to have been no requirement in the case of courts martial that the specific charges be made apparent during the course of the trial, although the specific accusation would have appeared on the charge sheet given to him at the time of his arrest. As a result it remained unclear throughout the proceeding against Lieutenant Legate exactly what he had done wrong. It is reasonably clear that the problem was his failure to engage the enemy actively, but the source of his obligation to do so was not made plain in the testimony given by the witnesses for the prosecution. Given the contradictory orders that, as will be seen, were operative at the time, this was a major failing in the process.

Closer investigation suggests that Lieutenant Legate was charged with violating the provisions of the *Naval Discipline Act*. Section 2 of the Act listed it as an offence for a captain "on Sight of a Ship of the Enemy which it may be his Duty to engage [sic]" to fail to "Use his utmost Exertion to bring his Ship into Action [sic]". A conviction under this section, if the captain had acted traitorously or through cowardice, carried the death penalty. If the failure to engage the enemy was the result of "negligence, or...other Default" the penalty was dismissal from the service.<sup>52</sup>

The question then becomes whether Lieutenant Legate had a duty to engage *U-156*. As mentioned previously the record of the proceedings against Lieutenant Legate are unclear on the source of the duty. Certainly, there seems to be an assumption that a commander has a duty to engage a ship of the enemy in wartime. There also seems to be a reliance on a memorandum, issued by Admiral Kingsmill on 7 August, 1918, regarding engaging the

<sup>50</sup> See for example Anthony Babington, *For the Sake of Example*, (New York, 1983).

<sup>51</sup> The comparison to the criminal system is appropriate due the punitive nature of the courts martial.

<sup>52</sup> *Naval Discipline Act*, S.C. 1910, c. 109, s. 2.

enemy. These orders were predicated on the assumption that enemy submarines would attempt to avoid direct confrontation with armed surface vessels and would seek to escape if attacked. Based on this assumption, patrol commanders were advised to attack any enemy submarines vigorously, closing at full speed and adopting a zig-zag course. The memorandum also however points out that the enemy submarines in question were armed with "either 5.9" or 4.1" guns, [which were] usually of high velocity and long range" and that the surface speed of the enemy was in all probability twice that of the patrol craft.<sup>53</sup> In emphasizing the dangers Admiral Kingsmill was sending what was at best a mixed message to his patrol vessel commanders. Given the ambiguity of the Kingsmill memorandum, the charges against Lieutenant Legate must have been based on the obligations created by the Naval Discipline Act and the general duty to engage ships of the enemy in wartime. However, in the absence of a formal training and education in military law, there was no way of ascertaining whether the Lieutenant knew that. Obviously, in these circumstances, he would have a great deal of difficulty in knowing the charge to meet from a legal perspective.

The second thing that becomes evident on even a cursory reading of the trial proceedings is that Lieutenant Legate conducted his own defence and did not have the benefit of counsel. The reasons for the absence of counsel are unclear. While the *Naval Discipline Act* is very detailed on the constitution and conduct of courts martial it fails to mention representation of the accused at all. In the army during this time, the accused was allowed the assistance of a "prisoner's friend" who may or may not have had legal training.<sup>54</sup> There is no indication that such a provision applied in the navy. Regardless of the reason, what is clear from the record of proceedings is that Lieutenant Legate represented himself. As a consequence, he suffered both in terms of knowing the charges he had to meet and in dealing with the evidence.

From an overall procedural perspective, the issue of the burden of proof required of the prosecution is also in question. Given the relative newness of the naval service, naval authorities had apparently not considered precisely what level of proof they required in court martial proceedings to support a conviction. From a defence point of view, this is critical as it is impossible to construct a meaningful defence unless one knows how far the prosecution must go in proving its case. Lieutenant Legate does not appear to have had the benefit of this knowledge, and perhaps more importantly, there is nothing in the proceedings of the tribunal which would indicate that the burden of proof was given any consideration.<sup>55</sup> On 11 October, 1918, the naval secretary in a memorandum to the chief of staff requested an examination of the proceeding be conducted "in order that a decision may be come to as to whether the evidence is quite clear and the finding in accordance with the evidence." The comments which accompanied the review indicated that the findings of the court were "technically correct" and a belief that the sentence was, if anything, light.<sup>56</sup> The finding of technical

<sup>53</sup> "Memorandum: Admiral Kingsmill to Captain of Patrols," 7 August, 1918 (Ottawa: Directorate of History and Heritage, File 81/520/1000-973 part 1).

<sup>54</sup> See Babington, *supra*, chapter 2.

<sup>55</sup> "Finding" October 5, 1918, *Findings and Proceedings*.

<sup>56</sup> "Memorandum to Chief of Staff" 11 October, 1918, *Findings and Proceedings*.

correctness is hardly surprising given that there were very few technical guidelines provided that governed anything other than the selection of officers for the court martial panel.

Turning to a consideration of the evidence itself, a number of things present themselves as significant. The evidentiary weaknesses, combined with the lack of any clear guidance as to the level of proof required to secure a conviction, serve to call the entire proceeding into question. The most obvious evidentiary difficulty with the proceedings surrounds the actual sighting of the submarine. There is no conclusive evidence that Lieutenant Legate himself ever actually saw *U-156*. In fact, his testimony specifically indicates that he at no time actually saw the submarine,<sup>57</sup> and its presence was reported to him by the officer-of-the-watch Mr. Ross and by the signalman-of-the-watch, Signalman Harold Gates. Both of these individuals testified to sighting a submarine near the capsized schooner at a distance of approximately four miles, although Signalman Gates' testimony demonstrates a remarkable inability on his part to estimate distances.<sup>58</sup> On the other hand, Lieutenant Cyril McLean Fry, navigating officer of *Hochelaga* during the events in question, testified that at the material time he was actually standing next to Mr. Ross when the sighting of the submarine was reported. In spite of using both his binoculars and the "long glass," he could not identify the object indicated by Mr. Ross to be a submarine, stating that he was "practically sure that it [the object indicated] was not a submarine" and that the object was in fact a schooner on her side.<sup>59</sup> The evidence of a submarine sighting was therefore hardly unequivocal; with two members of the crew reporting having seen one, but others including the captain and navigating officer reporting no such thing.

It appears from the evidence that Lieutenant Legate may have been a victim of both his own signals and the absence of wireless communication equipment on the ship. It is clear that the signal sent to *Cartier* was "submarine bearing east."<sup>60</sup> According to Lieutenant Legate, this signal was sent on the assumption that since the aftermath of an action was readily apparent it was likely that there was a submarine in the area.<sup>61</sup> The simple fact seems to be that the communication technology in operation at the time, which consisted of flags and semaphore signals, was not sophisticated enough to convey a message of this complexity. As a result, the message that was actually sent indicated a greater certainty as to the presence of an enemy submarine than was actually felt by Lieutenant Legate.

The final major evidentiary difficulty concerns the orders actually in place regarding the approach to be taken to enemy submarines. Captain Hose indicated that there were general standing orders that enemy submarines were to be attacked but conceded that the method of attack was, with the caveat that the attack itself should be pursued vigorously, up to the individual commanders. The court, however, seems to have proceeded on the basis that there was no order preventing the captain of a vessel from immediately engaging the

<sup>57</sup> *Findings and Proceedings*, 72.

<sup>58</sup> *Ibid.*, 32-33 and 48-50.

<sup>59</sup> *Ibid.*, 17.

<sup>60</sup> *Ibid.*, 57.

<sup>61</sup> *Ibid.*, 72.

enemy.<sup>62</sup> The reversal of the onus in this manner would have made it virtually impossible for Lieutenant Legate or any other commander to launch a successful defence to these particular charges and ran contrary to a number of long standing legal assumptions about the burden of proof.

The orders, as set out by Captain Hose, are also at variance with both the memorandum sent by Admiral Kingsmill regarding engaging enemy submarines and with the overall tactical situation. In his memorandum, Admiral Kingsmill had indicated that, as the enemy submarines were more powerfully armed and faster than the patrol craft, "ships should never be out of supporting distance from each other."<sup>63</sup> This memorandum reflected the fact that in most cases the patrol craft were facing an enemy with larger and longer range guns. To attack them singly would have been all but suicide for the attacking commander, who could have had his ship destroyed before getting into range of the U-boat, which in turn would have been able to outrun any supporting craft arriving subsequently.

This must be considered in relation to the state of communication between vessels. Signals sent by flags and semaphore could be easily missed in the event that one of the vessels raced to the attack, meaning that the remaining vessels in the patrol would be considerably late in moving to support. In fact, there is some evidence that this is exactly what occurred, and that *Cartier* had not actually received the initial signals.<sup>64</sup> In these circumstances, it would have made perfect military sense for a captain, on sighting an enemy submarine, to secure as much support for his attack as possible and to ensure that his signals had been received by his supporting vessels.

In light of the foregoing Lieutenant Legate's statement in his own defence is perfectly sensible. He indicated to the court that since he had not personally sighted a submarine he considered it prudent to search the area using the greatest number of vessels. Having made this decision, he turned back towards *Carder* in order to coordinate with her and to ensure that his signals had been received.<sup>65</sup>

What is remarkable about Lieutenant Legate's defence is just how close he came, to acquittal (He lacked the assistance of legal counsel and had only one month to prepare). In his final statement, he raised an argument that went to the very heart of the problem. In indicating that he was reluctant to rush to attack a submarine that he had not seen without ensuring that the remainder of the patrol was aware of the situation, he had made a sound military decision. He had also pointed out the problems with the prosecution in terms of the contradictory orders and the overall tactical situation. With appropriate assistance these issues could have been raised in a coherent and forceful fashion and the result may have been very different. Regrettably for Lieutenant Legate, and fortunately for the RCN, this did not happen. The charges against Lieutenant Legate were found to have been proven and he was dismissed from the service. This was a severe sentence. In the words of Mr. Ballantyne, then

<sup>62</sup> *Ibid.*, 67.

<sup>63</sup> "Memorandum: Admiral Kingsmill to Captain of Patrols," 7 August, 1918 (Ottawa: Directorate of History and Heritage, File 81/520/1000-973 part 1).

<sup>64</sup> *Findings and Proceedings*, 73.

<sup>65</sup> *Ibid.*, 72-74.

minister of the Naval Service, "there can be scarcely any greater disgrace than such a sentence in time of war, which carries with it not only the forfeiture of his commission as an officer, but also of all claim to pension, war service gratuity, medals, or other benefits."<sup>66</sup> While this decision may not have served the interests of justice particularly well, it did serve the political ends of the RCN in a way that an acquittal of Lieutenant Legate would not have done.

Any analysis of the utility of the decision to the RCN must proceed from the assumption that it would not have been in the best interests of the Naval Service to admit that their patrol ships were actually incapable of engaging U-boats at all. This would have undoubtedly led to questions about the purpose of having a navy that could not even protect the Canadian coast from enemy attack, let alone engage in offensive operations. These were questions that the RCN, and Admiral Kingsmill in particular, did not want asked.

Tactically, Lieutenant Legate proceeded in a correct and proper manner. Rushing to attack a submarine which he had not actually seen himself and which defied location by at least one other officer would have been a "nobly suicidal gesture that would have lent tragic flair to Canadian naval lore"<sup>67</sup> and would have been an utter waste in all other respects. He was clearly outgunned and this fact was known to naval command authorities and ship captains alike. The prudent course of action was to turn back to secure the support of the rest of the patrol before proceeding to the area where the submarine had last been sighted.

Legally, Lieutenant Legate was also proceeding correctly. The Court's finding that the charge of failing to engage the enemy was proven was flawed. It ignores the military situation at the time, and the contradictory orders with which Lieutenant Legate had to deal. It was also based on a trial in which the evidence of guilt was far from clear and certainly did not prove Legate's culpability beyond a reasonable doubt. The legal difficulties were compounded by the newness of the RCN and the absence of any guidance, either procedurally or in interpreting the provisions of the Naval Discipline Act. This absence of guidance allowed naval authorities to conduct the trial on an ad hoc basis, while cloaking the entire process in an aura of legality which simply is not borne out upon close examination of the details of the proceeding.

Politically, a conviction of Lieutenant Legate was absolutely necessary. The crews of the destroyed schooners would be in a position to report both the attack by *U-156* and the presence of Canadian patrol vessels at the same time or shortly thereafter. As *U-156* was not destroyed on the spot, some explanation had to be offered as to why this was the case. The most obvious explanation was that the commander of the nearest patrol vessel, *Hochelaga*, had somehow failed in his duties. In order to support this position, a conviction was a matter of necessity.

Nor is it a coincidence that the incident in which the *Hochelaga* was involved

<sup>66</sup> Canada, Parliament, *Official Report of the Debates of the House of Commons of the Dominion of Canada*, Second Session - Thirteenth Parliament (1919), 2919.

<sup>67</sup> Hadley and Sarty, 269.

occurred close on the heels of the Halifax explosion.<sup>68</sup> The inquiry which followed the explosion took place over nineteen days, involving the testimony of sixty-one witnesses and resulted in 1,770 pages of testimony. The result of the initial inquiry, conducted by Justice Arthur Drysdale, found that, among others, the chief examining officer for the Port of Halifax, Commander Frederick Wyatt, had been negligent in the performance of his duties and that this negligence had contributed to the explosion.<sup>69</sup> This finding played very well into public sentiment, which had turned sharply against the RCN following the explosion and sought to find a culprit to blame for the loss of life and property. The RCN was the most visible player in the drama and was therefore singled out as a convenient target.<sup>70</sup>

Immediately following the publication of the Drysdale Commission report, Commander Frederick Wyatt, the officer responsible for the movement of ships in the port, was arrested and charged with numerous counts of manslaughter by the civilian authorities. The RCN took no steps to assist Commander Wyatt other than making some vague protestations concerning the jurisdiction of the civilian authorities, which were not strongly pursued. For the RCN, Commander Wyatt "served as a useful foil to prevent other information from becoming public."<sup>71</sup> Although he was subsequently acquitted of the charges, Wyatt's reputation was ruined. Other members of the RCN who had been involved in the incident were shielded from censure. Commander Wyatt, therefore, became the symbolic scapegoat that the RCN needed.

The Halifax explosion occurred, then, at a time when the fledgling RCN was engaged in a search for its own identity and role in the defence of Canada. As a result of the explosion and subsequent enquiry, the RCN was engaged not only in this search for identity, but also in a fight for its very survival in the face of heavy criticism and loss of public confidence.<sup>72</sup> Commander Wyatt's career was initially sacrificed in the aftermath of the explosion. However, the general mood created by the explosion would persist beyond the immediate aftermath and the last thing the RCN needed in the late summer of 1918 was another reminder to the public of the failings of the service. In these circumstances it was highly unlikely that the RCN would engage in a great deal of soul-searching in an effort to protect one of its own. What was necessary was someone to blame, and Lieutenant Legate filled this role admirably.

Whether the political decision to sacrifice Lieutenant Legate was deliberate or not is a matter of speculation. What is clear, however, is the subsequent use of the conviction in the House of Commons. When questioned about the capability of the RCN to engage and destroy enemy submarines, the members of the Government were invariably honest. They almost immediately, however, raised the spectre of Lieutenant Legate, as the man who had

<sup>68</sup> On 6 December, 1917 the *Imo* and *Mont Blanc* collided in Halifax harbour triggering "an eruption of almost 3,000 tons of picric acid, TNT, and gun cotton." More than 1,600 people were killed in the explosion and a further 9,000 wounded, and the property damage was immense. (John Griffith Armstrong, *The Halifax Explosion and The Royal Canadian Navy. Inquiry and Intrigue*. (Vancouver, 2002), 3.

<sup>69</sup> *Ibid.*, 185.

<sup>70</sup> *Ibid.*, 4 and 7.

<sup>71</sup> *Ibid.*

<sup>72</sup> *Ibid.*, chapter 8.

been responsible for the RCN's failure to strike back at the enemy, in order to re-direct the proceeding away from the overall systemic failings of the navy.<sup>73</sup> In this role, Lieutenant Legate continued to be of use to the navy even after his dismissal.

Given the state of the evidence presented at the court martial, it is reasonably clear that Lieutenant Legate, by any reasonable standard of justice, should have been acquitted. The failures in connection with the attack on *U-156* were those of the RCN and its political and military masters - not of the individual patrol vessel commanders. These were not failings, however, that the RCN was prepared to accept at the time, particularly in light of the Halifax explosion and its aftermath. Lieutenant Legate's career was sacrificed to draw attention away from the overall failure of a service that was engaged in a struggle for both survival and identity while essentially under siege. The new and uncertain state of naval discipline made this sacrifice rather an easy matter as there was unlikely to be any scrutiny of the process or interference with its findings. In the case of Robert D. Legate, then, justice never really entered the picture.

<sup>73</sup> Canada, Parliament, *Official Report of the Debates of the House of Commons of the Dominion of Canada*, Second Session - Thirteenth Parliament (1919), 2926-2930.