



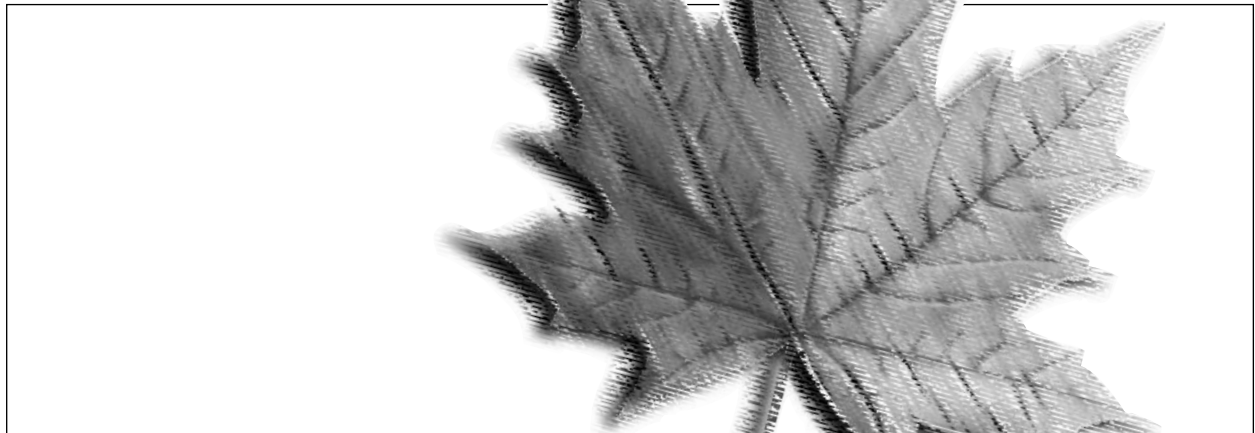
Government  
of Canada

Gouvernement  
du Canada

**Public Report**

# **Canada's War Crimes Program**

**1998–1999**



**Department of Citizenship and Immigration  
Department of Justice  
Solicitor General Canada**

**Canada**

## **CANADA'S WAR CRIMES PROGRAM ANNUAL REPORT 1998-1999**

### **INTRODUCTION**

The Government of Canada made a commitment to all Canadians some years ago. Our country would not become a safe haven for any person who committed a war crime, a crime against humanity or other reprehensible acts during times of conflict regardless of when or where these crimes took place. This commitment applies to acts committed from World War II through to modern-day war crimes.

This commitment can be understood in the context of various measures taken elsewhere in the world in the area of war crimes. Examples include: the prosecution of persons involved in genocide, war crimes and crimes against humanity in countries as diverse as Ethiopia, Rwanda and several European countries; the recent decision by the British House of Lords in the extradition of Augusto Pinochet; the conviction of Anthony Sawoniuk for crimes committed during WWII, by a British court and the Office of Special Investigations of the American Department of Justice; and the recent establishment of the War Crimes and Atrocities Analysis Division within the U.S. Department of State.

The Government of Canada's war crimes program is of the highest importance. It crosses departmental and regional lines and holds significant international implications. We pride ourselves on global leadership in the protection of human rights. Canadian society is governed by the rule of law and is held up as an example to many other countries. We actively support the international tribunals on war crimes in Rwanda and the former Yugoslavia, where in 1996 Madama Justice Louise Arbour, a Canadian judge, was appointed chief prosecutor of the International Tribunal on War Crimes in Rwanda and the former Yugoslavia. Canada has also strongly supported the creation of a permanent International Criminal Court to deal with war crimes. More important, bringing to justice persons involved in some of the worst atrocities known to humankind is a profound moral issue. These efforts could be undermined if Canada were to be viewed as a safe haven for war criminals.

The government has allocated significant resources to ensure that effective enforcement action can be taken against people who have committed war crimes, crimes against humanity or other reprehensible acts during times of conflict. The Department of Justice and the Department of Citizenship and Immigration, with the support and assistance of the RCMP, have the mandate to bring such persons to justice.

The Minister of Justice and the Minister of Citizenship and Immigration have made a commitment to produce an annual public report on Canada's War Crimes Program. The first such report was published in July 1998. This second report provides information to Canadians concerning this program, offers an overview of activities and accomplishments during fiscal year 1998-1999 and outlines the resources set aside to achieve the government's objectives.

## BACKGROUND

### *World War II Cases*

After World War II, large numbers of immigrants applied and were selected for entry into Canada within a short time. This influx of immigrants resulted in the entry of some people subsequently suspected of having committed war crimes, crimes against humanity or other reprehensible acts during times of conflict.

In 1985, the government established the Deschênes Commission of Inquiry on War Criminals. The principal recommendation made by Mr. Justice Deschênes was that the RCMP and the Department of Justice be given a mandate to carry out investigations of suspects living in Canada. The Deschênes Commission established three lists of suspects that contained 883 names.

On March 12, 1987, the government responded to the report of the Deschênes Commission and announced a policy to deal with war criminals in Canada. Criminal prosecutions were to be pursued with revocation of citizenship; and deportation was to be used, as appropriate, for individuals who had entered the country or obtained citizenship by fraud or misrepresentation.

Shortly thereafter, the Crimes against Humanity and War Crimes Section of the Department of Justice was created. Its purpose was to receive allegations, and to investigate, assess and pursue cases against people suspected of involvement in war crimes and crimes against humanity. In October 1987, the *Immigration Act* was amended so that persons believed on reasonable grounds to have committed war crimes or crimes against humanity would be rendered inadmissible to Canada. The War Crimes and Special Investigations Unit of the RCMP, first established in 1985 to assist the Deschênes Commission, would continue to conduct investigations of all suspected perpetrators of the above crimes.

From 1987 to 1992, after extensive investigation, charges were laid under the *Criminal Code* in four cases. None resulted in convictions. The Crown appealed the acquittal of Imre Finta to the Supreme Court of Canada. The decision of the Supreme Court in 1994 to uphold the acquittal, and the reasons given by the Court, made it impractical to proceed with further cases under the existing provisions of the *Criminal Code*.

At the same time, in the Jacob Luitjens case, revocation of citizenship and deportation proceedings were also started. The Luitjens case ultimately resulted in the successful deportation of Luitjens to the Netherlands where he was immediately incarcerated for an earlier conviction of collaboration.

In January 1995, the government announced a shift in focus from criminal prosecution to revocation of citizenship and deportation. At the same time, the ministers of Justice and Citizenship and Immigration announced a commitment to initiate 12 cases over the next

three years. The government exceeded its original goal by commencing 14 cases before the three-year period was over.

As of March 31, 1998, two people whose citizenship was revoked had left Canada voluntarily rather than face deportation. The government had won two revocation cases before the federal court and the defendants had been successful in beating the charges against them in two others. Three defendants had died before proceedings had concluded. Three more revocation cases were pending before the federal court and two deportation cases were before the Immigration and Refugee Board.

### *Modern War Crimes*

As a signatory to the United Nations Convention relating to the Status of Refugees, Canada is committed to providing protection to persons found to be Convention refugees. The issue of modern-day war crimes and crimes against humanity became more prominent in the late 1980s. Political turmoil, internal ethnic strife, the settling of historical grievances, and religious or nationalist extremism in areas such as Latin America, Africa, and the Middle East caused considerable flows of refugee claimants. A relatively small proportion of these asylum seekers were alleged to be complicit in war crimes or crimes against humanity.

After changes were made to the *Immigration Act* effective October 30, 1987, Canada was enabled to refuse admission to people believed on reasonable grounds to have committed an act or omission which constituted a war crime or crime against humanity. Further amendments, effective January 1, 1989, provided a specific mechanism whereby Canada would exclude people from its refugee determination process who were believed, on reasonable grounds, to have been complicit in crimes against humanity. This later provision was challenged and subsequently upheld by the federal court in 1991 in the case of Ramirez.

On February 1, 1993, the *Immigration Act* was amended to specifically prohibit the admission of senior members of regimes known for widespread human rights abuses. To date, seven regimes have been designated.

In April of 1996, a small Modern War Crimes Unit was established within the Department of Citizenship and Immigration. This unit was intended to track modern-day perpetrators of war crimes and crimes against humanity who have been identified in Canada or at visa offices abroad. This unit established and handled the inventory of cases, created priorities for field offices, and provided guidance to immigration officers in Canada and abroad.

By the end of March 1998, over 440 cases had been investigated, which resulted in 300 people being excluded from the refugee determination process, 80 people being removed from Canada, and 40 visas being refused overseas. However, concerns were expressed over the increase in the number of persons in Canada whose files were not being processed in a timely manner. It was also acknowledged that modern-day cases require significantly fewer resources to deal with if they are identified early in the immigration

process. Early action by the government, particularly through screening abroad and exclusion proceedings before the Immigration and Refugee Board, have proven to be the most effective means of dealing with these cases.

### *Renewed Approach 1998*

In the fall of 1997, the government conducted a review of its War Crimes Program and several decisions were announced on July 21, 1998, to improve effectiveness:

- Implementation of a government-wide initiative stressing increased coordination between departments; cooperation in such areas as case prioritization, compliance with international obligations, communications and the sharing of information and expertise would be beneficial to both WWII and modern war crimes initiatives;
- Substantial enhancements to the modern war crimes effort in order to strengthen enforcement activities with increased emphasis on prevention;
- An additional 14 WWII cases would be initiated over the next three years and other cases would continue to be developed;
- A total of \$46.8 million would be allocated over the next three years; then the government would review the accomplishments of the program before determining funding requirements for future years. To make this review possible, a program evaluation framework would be established in 1998-1999 and a full program evaluation would be conducted in 2000-2001.

Resources, over three years, were distributed among departments as follows:

- The Department of Justice would receive \$16.5 million to litigate the new 14 WWII cases and to litigate new modern-day cases on behalf of CIC (\$5.038 million in the first year, \$5.739 million in the second year, and \$5.739 million in the third year);
- The Department of Citizenship and Immigration would receive \$28.2 million to expand its capacity for prevention at posts abroad, to improve case processing in Canada, and to provide enhanced support for the War Crimes Program (\$6.813 million in the first year, \$12.245 million in the second year, and \$9.179 million in the third year);
- The RCMP would receive \$2 million for the investigation of “modern-day” criminal prosecution cases (\$682,000 in each of the three years).

## **PROGRAM OVERVIEW**

### *Department of Justice Operations*

The lead department with respect to WWII cases is the Department of Justice. The Department of Justice War Crimes Section includes eight lawyers, five historical staff, two paralegals and a historical support group, all located in Ottawa. Regional counsel are assigned to specific cases for litigation. Outside consultants and contract historians are also hired when needed.

The Section's current workload consists of approximately 91 active files. In addition, initial checks are being undertaken on approximately 114 further files. Depending on those checks, the files will either become active or inactive. Much work goes into investigating and developing each of these files. The work on active files is very complex and involved. Evidence is collected by way of research in archives and witness interviews, both in Canada and abroad.

In the early years, the Section developed relations with foreign countries in order to gain access to archives for historical research. As a result of this work, agreements have been reached with foreign countries, either informally or through the formal signing of memoranda of understanding. Pursuant to these agreements, historians, RCMP and counsel from the Department of Justice have travelled overseas to search the archives, identify potential witnesses, and conduct interviews in order to investigate suspected individuals. The significant passage of time makes locating documents more difficult, and sometimes impossible.

The documents located in the archives are written in foreign languages. Frequently, they must be examined by the historians through an interpreter. Later, they must be translated and certified if they are to be used in court proceedings. With the break-up of the Soviet Union and the subsequent opening of previously inaccessible archives in former Soviet states, more and more information has become available for examination and analysis by our historians. Over the years, our historical staff have worked hard to develop a keen understanding of the information stored in key archival holdings.

Counsel in the Section consider and legally analyze the information collected by the historians. The archival documents are helping to identify potential witnesses. As with the documents, the passage of time often makes it difficult or impossible to locate the witnesses. In the majority of cases, counsel must travel to a foreign country to interview the witnesses through interpreters. These witness interview trips require a great deal of planning and coordination with foreign countries, as well as a lot of travel within the countries. If a case proceeds to court, the court itself is often required to travel to foreign countries to take Commission evidence as the witnesses are unable to travel to Canada.

A revocation of citizenship begins by notifying a person that the Minister of Citizenship and Immigration intends to recommend that Cabinet revoke that person's citizenship unless that person files a reference to the federal court disputing the facts on which the notice is based - having obtained citizenship by fraud, false representations or knowingly concealing material circumstances. If, after a full trial of the issues in open court, the Federal Court of Canada finds that citizenship was indeed obtained in such a way, the Minister of Citizenship and Immigration recommends that the Governor in Council revoke that person's citizenship. If the Governor in Council agrees, it will issue an Order in Council revoking the citizenship of that person. After citizenship has been revoked, the person is then taken to an inquiry before an adjudicator of the Immigration and Refugee Board who will determine whether there are grounds for deportation. All proceedings are conducted in full accordance with the principles of fundamental justice as prescribed in the *Canadian Charter of Rights and Freedoms*.

## *WWII Cases – Choosing the Mode of Proceeding*

All investigations are conducted in order to determine whether a criminal or civil proceeding is warranted. Since 1995, all 15 cases commenced have involved revocation of citizenship and/or deportation. In these cases, the government is not trying to prove that the defendants are “war criminals” but that they entered Canada and/or obtained citizenship through misrepresentation, fraud, or the concealment of material circumstances. The government pursues only those cases for which there is evidence of complicity in war crimes or crimes against humanity.

It is the position of the federal government that in cases of alleged war crimes and crimes against humanity, the laws governing the revocation of citizenship and deportation provide appropriate procedures and sanctions. The government may either institute criminal law proceedings against an individual or may invoke other available laws, procedures or remedies. The federal court has heard and rejected the argument that citizenship revocation proceedings are a disguised means of mounting a war crimes prosecution. In the case of *Minister of Citizenship and Immigration v. Johann Dueck* (December 23, 1997), Justice Marc Noël held that application of the federal court process “in no way diminishes the respondent’s right to be treated fairly in strict compliance with the principles of natural justice.”

## *Citizenship and Immigration Operations*

Citizenship and Immigration Canada is the lead department with respect to modern-day war crimes, crimes against humanity and other reprehensible acts during times of conflict (where most cases involve non-citizens). The Department takes a three-pronged approach in dealing with such crimes: preventing suspected war criminals from reaching Canada by refusing them overseas; excluding them from the refugee claims process; and removing them from Canada if they have already been able to enter Canada.

After additional funding was allocated in the spring of 1998, CIC’s role was strengthened. In March 1999, an expanded War Crimes Unit, was created at national headquarters (NHQ). The staff was increased from four to ten, with further plans to hire two more analysts. The unit provides analytical and research capacity, as well as legal and intelligence expertise. Regional war crimes units have also been established in Vancouver, Toronto, Montreal, Halifax and Winnipeg, and at the Case Processing Centre in Vegreville.

Resources are also strategically allocated to Canada’s posts abroad. Enhanced training will be provided to officers at key posts to assist in the identification and refusal of visa applicants who pose a risk of involvement in war crimes. Officers will be assigned to liaise more with external contacts on war crimes issues. Additional support to posts includes the development of screening forms and risk profiles specific to the geographic region, the preparation and dissemination of “look-out lists” and research material, the sharing of best practices and the provision of legal advice relevant to case processing or the confirmation of historical facts.

In Canada, the unit provides guidance to staff in managing cases through the more complex and lengthy process of removing modern-day war criminals after they have entered the country. The regular provisions of the *Immigration Act* permit the removal of persons who are inadmissible or who are in contravention of the Act, including those involved in war crimes and similar reprehensible acts. In addition, there are two other provisions designed to strengthen the ability of the government to deal effectively with such individuals by denying them the benefit of the refugee status determination system.

The first provision provides authority to deny access to a refugee hearing to persons described as war criminals or members of repressive regimes if the Minister believes it would be contrary to the public interest to have a refugee claim by such a person heard. This occurs at an immigration inquiry, where a person is brought before an adjudicator to determine his or her admissibility to enter or remain in Canada.

The second provision can be applied after the refugee claim has been referred to a hearing and adverse information comes to light. This occurs at the refugee determination stage before the Immigration and Refugee Board. Here, the Minister's representative is entitled to intervene to ensure that the Board has all the relevant information at its disposal. The Board may then apply the provisions of the Convention which deny refugee status to war criminals and other perpetrators of atrocities.

The text of selected provisions of the legislation relating to the War Crimes Program can be found in Appendix A.

### *RCMP Operations*

The RCMP responds to allegations of war crimes or crimes against humanity reported by the general public as well as by Canadian and foreign government agencies. They are called upon to review cases and conduct additional investigations at the request of the Department of Justice or CIC. As the custodian of evidence for WWII cases, the RCMP supports civil or criminal proceedings litigated by the Department of Justice or CIC. The RCMP War Crimes Section also provides assistance to the United Nations international criminal tribunals for the former Yugoslavia and Rwanda, most particularly with the location and interviews of potential witnesses as per the Memorandum of Understanding (MOU) between Canada and the U.N. tribunals.

The section has the responsibility of coordinating the assistance to the U.N. tribunals in Canada through the location and interviews of potential witnesses under the same MOU. The RCMP investigates allegations of torture as a crime against humanity and/or as the specific offence of torture under the *Criminal Code* in compliance with Canada's obligations as a signatory to the U.N. Convention against Torture. Additional money recently allocated will permit the hiring of five additional investigators, for a total of 13, to be assigned to modern-day war crimes cases. It will also provide the means to travel in Canada and abroad, hire interpreters for interviews, obtain translations of documents and cover other operating expenses.



## **ACTIVITIES IN FISCAL YEAR 1998-1999**

### *Increased Coordination Among Departments*

In its news release of July 21, 1998, the government announced that steps would be taken to ensure that the three departments involved in the War Crimes Program worked more closely than had been possible in the past. To meet this requirement, an Operations Committee was established to ensure the effective communication and coordination of activities among the three departments. The mandate of the Committee is to review and discuss operational issues such as case strategies, program development, the nature of cooperation with international tribunals, litigation strategy and other areas of mutual concern, where the sharing of information and expertise would enhance program effectiveness. Another aspect of its mandate relates to the method of proceeding with modern-day war crimes cases; this includes an analysis of these cases to ensure that Canada's international obligations regarding prosecution or extradition are met before deportation action is initiated. The Committee meets approximately every four weeks.

Cooperation among the three departments is also taking place on an operational level as representatives of the local and regional offices meet more often to help ensure a coordinated approach to these cases. In addition, regional offices have met and will continue to meet with members of ethnic communities to explain the War Crimes Program and to elicit support for its objectives.

### *Enhanced Structure for Modern-Day War Crimes*

CIC's War Crimes Unit has grown from four to ten people at NHQ. This has permitted the expansion of the mandate to include strategic management of the modern-day war crimes component of the program, which encompasses the development of a research function, the ability to provide better analysis, an in-house legal advice capability, and the development of a computerized operational support and case-tracking system.

An integral component of the strategy is intelligence coordination and support specific to modern-day war crimes. A newly established intelligence unit will assist in identifying modern-day war criminals through the collection and analysis of intelligence, the provision of subject expertise and the exchange of information with Canadian intelligence agencies. The unit will contribute to CIC training and briefing programs, and country profiling and screening and will offer support to CIC's field offices in Canada and abroad.

### *Operational Guidance for Field Officers*

Comprehensive Operations Memoranda (OMs) have been prepared to assist field officers in the correct application of the provisions of the *Immigration Act*. These OMs provide detailed and thorough overviews of the war crimes policy and procedures to field officers and will be posted on CIC Explore. A training program specifically designed for field officers involved in handling war crimes cases has been prepared. This training plan will be delivered to hearing officers, officers at ports of entry and visa officers. Training will be offered to staff during the 1999-2000 fiscal year.

### *Ongoing WWII Initiatives*

During 1998, the 15<sup>th</sup> WWII case was initiated against Ludwig Nebel, a landed immigrant. Case development work is continuing. It is expected that the pace established since 1995 will be maintained over the next three years.

### **SUMMARY OF CASES PROCESSED AS OF MARCH 31, 1999**

#### *World War II Cases in Process since 1995*

##### Revocation

References before federal court .....	2	(Odynsky, Baumgartner)
Awaiting decision from federal court...	3	(Kisluk, Oberlander, Podins)
Decision rendered by federal court in favour of the government, next step revocation.....	1	(Katriuk)

##### Deportation

Landed immigrant - at immigration inquiry.	1	(Nebel)
Citizenship revoked - at inquiry.....	1	(Bogutin)

#### *World War II Cases Concluded*

Removed or left Canada voluntarily.....	2	(Csatory, Maciukas)
Proceedings stayed due to successful litigation by subject.....	2	(Vitols, Dueck)
Deceased during proceedings.....	3	(Tobiass, Kenstavicius, Nemsila)

Appendix C to this report shows the complete inventory of WWII cases as of March 1999.

#### *Modern-Day War Criminals Cases*

The following results were achieved in the prosecution of modern-day war crimes and crimes against humanity in 1998-1999:

##### *Immigration cases (overseas)*

Cases under investigation .....	45
Immigrant cases refused (19(1)(j) or (l)).....	14
Visitor cases refused (19(1)(j) or (l)).....	7
Cases refused on other grounds .....	286
<u>Total cases overseas</u> .....	352

## Refugee claimant cases (in Canada)

Cases under investigation by CIC.....	9
Cases with insufficient evidence to go to the CRDD .....	1,045
Cases in which Minister intervened/pending before CRDD .....	58
Cases excluded by CRDD .....	25
Cases found not to be refugees for other reasons.....	18
Cases not excluded and found to be refugees .....	13
Cases withdrawn from CRDD or abandoned .....	8
<u>Total refugee claimant cases in Canada.....</u>	<u>1,176</u>

## *Immigration cases (in Canada)*

Cases under investigation by CIC .....	71
Cases with insufficient evidence to warrant further action ....	5
Cases pending before an adjudicator (19(1)(j) or (l)).....	12
Cases described by an adjudicator (19)(1)(j) or (l)).....	3
Cases not described by an adjudicator (19(1)(j) or (l)).....	1
<u>Total immigrant cases in Canada.....</u>	<u>92</u>

TOTAL CASES PROCESSED (Canada and overseas).... 1,620

*Persons removed from Canada (refugees and immigrants)...* .....23

Appendix D to this report sets out the same categories of modern-day war crimes activities and the cumulative results achieved since CIC started tracking this type of information.

Appendix E to this report provides examples of modern-day war criminals who were removed from Canada during 1998-1999.

## **LITIGATION AND JURISPRUDENCE**

### *Developing Law*

The policy of focusing on revocation and the deportation of persons involved in WWII atrocities has been in effect since 1995. The specific grounds of inadmissibility pertaining to modern-day war criminals were added to the *Immigration Act* in 1987, 1993 and 1997.

The federal government has resolved to apply the full extent of the law to persons involved in war crimes; all cases, both WWII and modern-day cases, have been vigorously pursued by the Crown in either the first instance, when initiating action, or during subsequent administrative or judicial proceedings wherever possible. The result of

this litigation is significant for the War Crimes Program because it provides judicial interpretation of the applicable legal provisions. Three World War II-related judgments were released in

1998-1999 (*Katriuk, Dueck and Vitols*). In addition, during that period, 12 modern-day war crimes decisions by the federal court examined various aspects of war crimes and crimes against humanity law and were favourable to the government. Of these, one deserves special attention since it further develops the parameters of the notion of complicity of persons involved in atrocities.

### *Modern-Day War Crimes Jurisprudence*

The case law has made a distinction between two types of involvement or complicity of persons who did not personally commit war crimes or crimes against humanity. The first type concerns members of organizations with a limited brutal purpose, in that the group commits atrocities in a widespread manner; these are groups such as death squads or secret or security agencies. The second type involves persons who belong to organizations that are not by their nature brutal, but that do commit war crimes or crimes against humanity in a more incidental fashion; these are organizations such as the military or police. In the latter case, there is a higher threshold for deciding that a person can be considered complicit.

The *Minister of Citizenship and Immigration v. Gholam Hassan Hajjalikhani* case sets down more detailed rules for situations where a person belongs to the first type of organization. The matter involved an application by the Minister to have a decision of the Immigration and Refugee Board set aside. The Board found the claimant to be a Convention refugee and did not find he was excluded from protection because of his involvement with the Mujahideen in Iran. The Minister's representative had argued before the Board that the claimant should be excluded from protection pursuant to article 1F(a) of the Refugee Convention.

In interpreting the law, the Court indicated that when membership in an organization is alleged to constitute a presumption of complicity in crimes against humanity, there are two requirements:

- (a) an assessment of the nature of the organization and whether it can be said that it is "directed to a limited brutal purpose"; and
- (b) an assessment of the individual's involvement with the organization and whether he or she was a member or had the kind of involvement with it from which it can be inferred that he or she shared the group's common purpose.

The Court found that the Board did not analyze the evidence respecting the nature of the Mujahideen organization, an issue on which the Board should have made a clear finding. Second, the Court agreed with the Minister's argument that the Board had applied an incorrect test by asking whether the claimant was personally involved in the alleged crimes in the sense of being physically present, rather than whether his involvement encouraged and enabled the commission of alleged crimes by others. There is no doubt

that financing crimes makes one complicit therein. The decision was quashed and referred back to the Board for re-hearing.

## *World War II decisions*

In *The Minister of Citizenship and Immigration v. Katriuk*, the Court concluded that Katriuk had been untruthful about his name when applying for landing in Canada and that he was not candid about his wartime activities. Mr. Justice Nadon consequently found that the respondent did conceal material circumstances and therefore obtained his citizenship by false representation or fraud or by knowingly concealing material circumstances, within the meaning of paragraph 18(1)(b) of the *Citizenship Act*.

In *The Minister of Citizenship and Immigration v. Johann Dueck* and *The Minister of Citizenship and Immigration v. Peteris Vitols*, the Court found that the Minister did not prove that either individual obtained citizenship by false representation or fraud or by knowingly concealing material circumstances, within the meaning of paragraph 18(1)(b) of the *Citizenship Act*.

## **LEGISLATIVE INITIATIVES**

### *Immigration Act*

On January 6, 1999, the Minister tabled a document entitled *Building on a Strong Foundation for the 21<sup>st</sup> Century: New Directions for Immigration and Refugee Policy and Legislation* following a review conducted by an independent advisory group. This review and the subsequent public consultations will form the basis of comprehensive amendments to the *Immigration Act*. While the current legal provisions pertaining to modern-day war criminals have been effective, some of the proposals in this document, such as the elimination of an appeal to the IRB for persons involved in war crimes or crimes against humanity, would facilitate the more timely removal of war criminals from Canada.

### *Citizenship Act*

Amendments to the *Citizenship Act* are now before the House of Commons. While there is no specific new provision dealing with war crimes or crimes against humanity, the proposal to deny citizenship for reasons of public interest could apply in such cases.

### *Criminal Code*

Amendments to the *Criminal Code* to enhance its war crimes and crimes against humanity aspects are under consideration. It is anticipated that proposals will be introduced during the forthcoming review period.

### *Extradition Act*

Amendments to the *Extradition Act* have proceeded through the House of Commons and the Senate and have received royal assent. These provisions will facilitate extradition to another country or to an international tribunal.

## *Ratification of Rome Statute*

Canadian legislation is being reviewed to support Canada's ratification of the Rome Statute of the International Criminal Court.

## **CONCLUSION**

Notwithstanding the significant challenges that arise in developing World War II cases, the government remains committed to sustaining the pace established over the last several years in bringing these cases forward. The government recognizes that these matters must be brought forward as quickly as possible given the advanced age and declining health of both available witnesses and the suspects themselves. However, cases are and will continue to be selected in a careful and reasoned manner to guarantee that the process remains fair and transparent to everyone.

The situation for the modern-day portion of the program looks promising. The legislation in place has been for the most part effective in dealing with persons involved in war crimes or crimes against humanity. The increase in funding has been and will continue to be used to improve the three-pronged approach of the government, namely: (1) preventing persons involved in the commission of atrocities from entering Canada; (2) ensuring that those who are detected in Canada will not benefit from the protection accorded to genuine refugees; and (3) effecting their timely removal from Canada.

## SELECTED LEGAL PROVISIONS

### *Immigration Act*

3. (**objectives**) – It is hereby declared that Canadian immigration policy and the rules and regulations made under this Act shall be designed and administered in such a manner as to promote the domestic and international interests of Canada, recognizing the need

(i) to maintain and protect the health, safety, and good order of Canadian society;

19. (1) (**inadmissible persons**) – No person shall be granted admission who is a member of any of the following classes:

(j) persons who there are reasonable grounds to believe have committed an act or omission outside Canada that constituted a war crime or a crime against humanity within the meaning of subsection 7(3.76) of the *Criminal Code* and that, if it had been committed in Canada, would have constituted an offence against the laws of Canada in force at the time of the act or omission;

(l) persons who are or were senior members of or senior officials in the service of a government that is or was, in the opinion of the Minister, engaged in terrorism, systematic or gross human rights violations or war crimes or crimes against humanity within the meaning of subsection 7(3.76) of the *Criminal Code*, except persons who have satisfied the Minister that their admission would not be detrimental to the national interest.

1.1 (**Meaning of “Senior Members of or Senior Officials in the Service of a Government”**) – For the purposes of paragraph (1)(l) “senior members of or senior officials in the service of a government” means persons who, by virtue of the position they hold or have held, are or were able to exert a significant influence on the exercise of government power and, without limiting its generality, includes

(a) heads of state or government;

(b) members of the cabinet or governing council;

(c) senior advisors to persons described in paragraph (a) or (b);

(d) senior members of the public service;

(e) senior members of the military and of the intelligence and internal security apparatus;

(f) ambassadors and senior diplomatic officials; and

(g) members of the judiciary.



27(2) (**Reports on Visitors and Other Persons**) – An immigration officer or a peace officer shall, unless the person has been arrested pursuant to subsection 103(2), forward a written report to the Deputy Minister setting out the details of any information in the possession of the immigration officer or peace officer indicating that a person in Canada, other than a Canadian citizen or permanent resident, is a person who

- (g) came into Canada or remains in Canada with a false or improperly obtained passport, visa or other document pertaining to that person’s admission or by reason of any fraudulent or improper means or misrepresentation of any material fact, whether exercised or made by himself or by any other person;
- (i) ceased to be a Canadian citizen pursuant to subsection 10(1) of the *Citizenship Act* in the circumstances described in subsection 10(2) of that Act;

46.01(1) (**Access Criteria**) – A person who claims to be a Convention Refugee is not eligible to have the claim determined by the Refugee Division if the person

- (e) has been determined by an adjudicator to be
  - (ii) a person described in paragraph 19(1)(e), (f), (g), (j), (k), or (l) and the Minister is of the opinion that it would be contrary to the public interest to have the claim determined under this Act.

Schedule – Sections E and F of Article 1 of the United Nations Convention relating to the Status of Refugees

F. The provisions of this Convention shall not apply to any person with respect to whom there are serious grounds for considering that:

- (a) he has committed a crime against peace, a war crime, or a crime against humanity as defined in the international instruments drawn up to make provision in respect of such crimes;

#### *Citizenship Act*

10.(1)(**Order in Cases of Fraud**) – Subject to section 18 but notwithstanding any other section of this Act, where the Governor in Council, on a report from the Minister, is satisfied that any person has obtained, retained, renounced or resumed citizenship under this Act by false representation or fraud or by knowingly concealing material circumstances,

- (a) the person ceases to be a citizen, or
  - (c) the renunciation of citizenship by the person shall be deemed to have had no effect, as of such date as may be fixed by order of the Governor in Council with respect thereto.

(2) (**Presumption**) – A person shall be deemed to have obtained citizenship by false representation or fraud or by knowingly concealing material circumstances if the person was lawfully admitted to Canada for permanent residence by false representation or fraud or by knowingly concealing material circumstances and, because of that admission, the person subsequently obtained citizenship.

18.(1) (**Notice to person in respect of revocation**) – The Minister shall not make a report under section 10 unless the Minister has given notice of his intention to do so to the person in respect of whom the report is to be made and

(a) that person does not, within thirty days after the day on which the notice is sent, request that the Minister refer the case to the Court (Federal Court, Trial Division);

or

(b) that person does so request and the Court decides that the person has obtained, retained, renounced or resumed citizenship by false representation or fraud or by knowingly concealing material circumstances.

(2) (**Nature of Notice**) – The notice referred to in subsection (1) shall state that the person in respect of whom the report is to be made may, within thirty days after the day on which the notice is sent to him, request that the Minister refer the case to the Court, and such notice is sufficient if it is sent by registered mail to the person at his latest known address.

(3) (**Decision Final**) – A decision of the Court made under subsection (1) is final and, notwithstanding any other Act of Parliament, no appeal lies therefrom.

22. (1) (**Prohibition**) Notwithstanding anything in this Act, a person shall not be granted citizenship under section 5 or subsection 11(1) or administered the oath of citizenship

(c) while the person is under investigation by the Minister of Justice, the Royal Canadian Mounted Police or the Canadian Security Intelligence Service, or is charged with, on trial for, subject to or a party to an appeal relating to, an act or omission referred to in subsection 7(3.71) of the *Criminal Code*;

(d) if the person has been convicted of an offence in respect of an act or omission referred to in subsection 7(3.71) of the *Criminal Code*.

## GLOSSARY OF TERMS

### *Crimes Against Humanity*

Includes crimes such as murder, extermination, enslavement, torture and any other inhumane act committed against civilians, in a widespread or systematic manner, whether or not the country is in a state of war, and regardless if the act is in violation of the territorial law in force at the time. The acts may have been committed by state officials or private individuals, and against their own nationals or nationals of other states.

### *Genocide*

The deliberate and systematic destruction, in whole or in part, of a national, ethnic, racial or religious group, whether committed in times of peace or in times of war, by state officials or private individuals.

### *War Crimes*

Criminal acts committed during international armed conflicts (war between states) and civil wars, which violate the rules of war as defined by international law. These acts include the ill-treatment of civilian populations within occupied territories, the violation and exploitation of individuals and private property, and the torture and execution of prisoners.

### *Complicity*

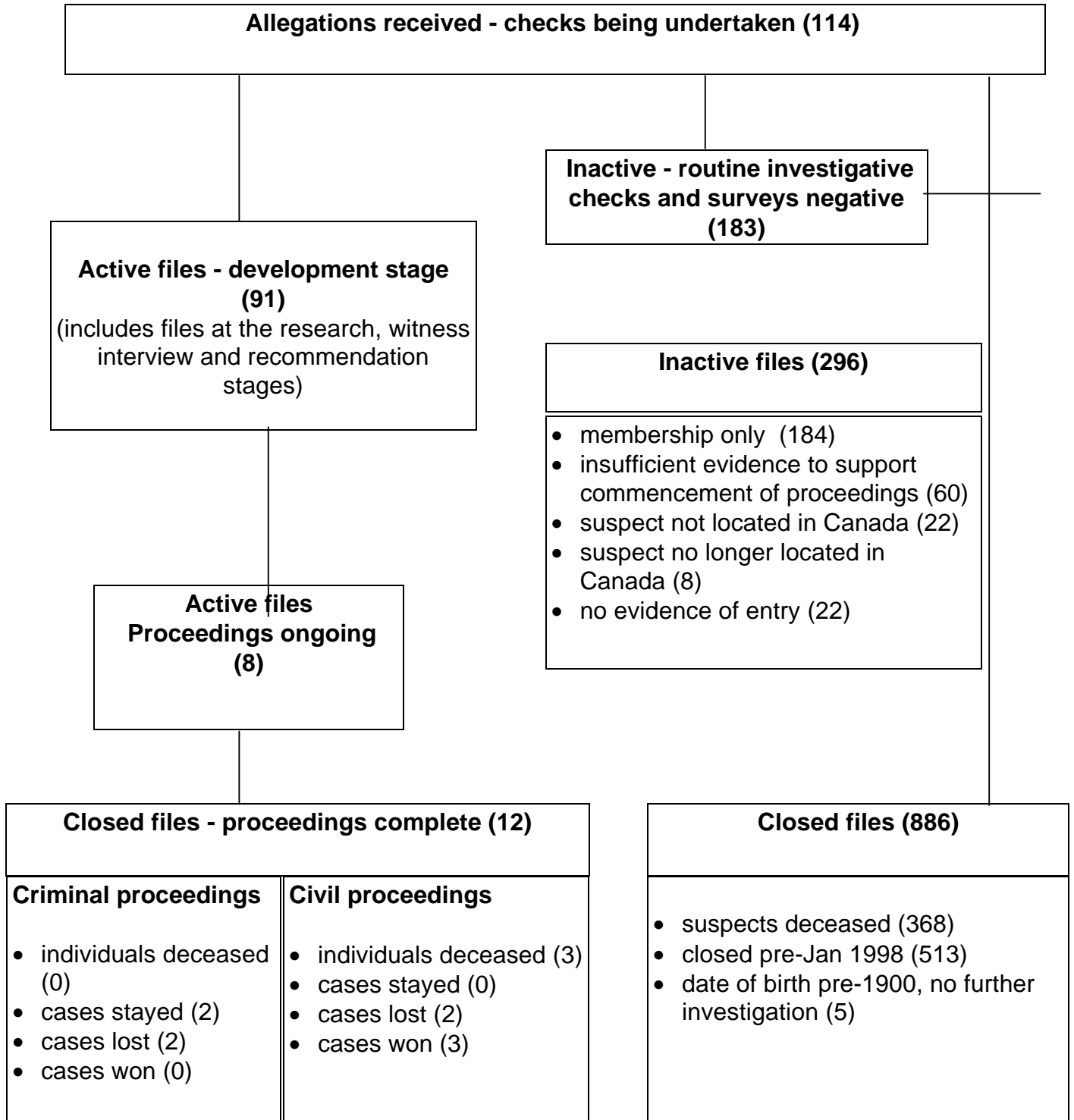
Active membership in the organization responsible for committing proscribed atrocities is not required. A person is considered “complicit” if, while aware of the acts committed, the person contributes, directly or indirectly, to their occurrence.

## APPENDIX C

### Inventory of WWII Suspects - Status

	<b>Sub-total</b>	<b>Total</b>
• Allegation received, initial checks and surveys being undertaken		114
• Active files – development stage		91
• Active files – proceedings ongoing		8
• Inactive files		
a) membership only	184	
b) not enough evidence to support commencement of proceedings	60	
c) suspect not located in Canada	22	
d) suspect no longer located in Canada	8	
e) no evidence of entry	22	296
• Inactive files - routine investigative checks and surveys negative		183
• Closed files:		
a) suspects deceased	368	
b) date of birth pre-1900, no further investigation	5	
c) closed prior to 1998	513	886
• Closed files – Proceedings complete		
a) Criminal proceedings (pre-1995):		
a.a) individuals deceased	0	
a.b) cases stayed	2	
a.c) cases lost	2	
a.d) cases won	0	
b) Civil proceedings		
b.a) individuals deceased	3	
b.b) cases stayed	0	
b.c) cases lost	2	
b.d) cases won	3	
		12
<b><u>Total number of individuals listed in inventory to date</u></b>		<b><u>1,590</u></b>

**FLOW CHART - WORLD WAR II INVENTORY (total 1,590)**



**MODERN-DAY WAR CRIMES CASES***Immigration cases (overseas)*

Cases under investigation	96
Immigrant cases refused (19(1)(j) or (l))	23
Visitor cases refused (19(1)(j) or (l))	16
Cases refused on other grounds	302
<b>Total cases overseas</b>	<b>437</b>

*Refugee claimant cases (in Canada)*

Cases under investigation by CIC	12
Cases with insufficient evidence to go to the CRDD	1,048
Cases in which Minister intervened/pending before CRDD	82
Cases excluded by CRDD	190
Cases found not to be refugees for other reasons	63
Cases not excluded and found to be refugees	25
Cases withdrawn from CRDD or abandoned	29
<b>Total refugee claimant cases in Canada</b>	<b>1,449</b>

*Immigration cases (in Canada)*

Cases under investigation by CIC	153
Cases with insufficient evidence to warrant further action	17
Cases described by an adjudicator (19)(1)(j) or (l))	16
Cases not described by an adjudicator (19(1)(j) or (l))	7
Cases pending before an adjudicator (19(1)(j) or (l))	18
<b>Total immigrant cases in Canada</b>	<b>211</b>

**TOTAL CASES PROCESSED (Canada and overseas)\*** 2,097

***Persons removed from Canada (refugees and immigrants)*** 107

\*The numbers in this Appendix indicate the number of case files, not the number of persons; for example, there is some overlap in that one person can be in different stages of the process at the same time or has been involved in the same process more than once.

**MODERN-DAY WAR CRIMINALS – SELECTED CASE SUMMARIES**

**REYES CABALLERO, Fausto Ramone** – member of the Honduran 316 Battalion, also known as the Death Squad. He was directly involved in the kidnapping of several people who were later tortured and murdered. He was excluded from the refugee determination process in January 1991 and the Federal Court of Appeal dismissed his appeal in May 1993. Removed to Honduras on July 21, 1998.

**Person 2** – member of 316 Battalion involved in torture and killings. Arrived in Canada as refugee claimant in 1987 and was refused under the Refugee Backlog Clearance Program. Reported as 19(1)(j) in May 1995 but found not to be described by adjudicator. Minister appealed decision. Removed under escort to Honduras on August 6, 1998.

**Person 3** – soldier who interrogated suspected guerilla sympathizers in El Salvador and referred them to security police while aware that such people were often tortured and murdered. Excluded from refugee determination process in June 1992 and removed to El Salvador on September 14, 1998.

**Person 4** – enlisted voluntarily in the Guyana Defence Force and admitted to personally torturing 12 people. Excluded from refugee determination process under 1F(a) in April 1994. Arrested for removal on September 11, 1998, and removed to Guyana under escort on October 1, 1998.

**Person 5** – participant in the Lebanese Christian Forces under Samir Geaga and involved in human rights violations. Excluded from refugee determination in August 1996. Convicted of theft on March 18, 1998. Removed under escort to Lebanon on October 14, 1998.

**HOLYFIELD, Abdul Lulago** – employed by the Ugandan military and was complicit in the arrest, beatings and torture of numerous individuals from 1991 to 1993. Excluded from refugee determination in February 1995. Federal court denied leave to challenge exclusion in May 1995. Convicted in Canada for several credit card and fraud offences and served sentence in Guelph. Subject given parole for deportation and was removed under escort to Uganda on November 17, 1998.

**CORTEZ-CORDON, José Anibal** – member of police force in Guatemala since 1980 and admitted to having fired at homes and destroyed villages. Found to be a Convention refugee but Minister's appeal to federal court resulted in re-hearing and exclusion from refugee determination in April 1997. Removed to Guatemala on December 13, 1998.

**Person 8** – a paid informer for the Romanian Securitate from 1982 to 1989 who denounced various people who were eventually tortured. Excluded from the refugee determination process in July 1998 and removed to Romania under escort on February 23, 1999.