COMMISSION OF INQUIRY ON WAR CRIMINALS

FINDINGS AND RECOMMENDATIONS

30 December 1986

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Definition

For purposes of this report, the Commission defines "war criminals" as follows:

All persons, whatever their past and present nationality, currently resident in Canada and allegedly responsible for crimes against peace, war crimes or crimes against humanity related to the activities of Nazi Germany and committed between 1 September 1939 and 9 May 1945, both dates inclusive.

Findings and Recommendations

The Commission's **FINDINGS and RECOMMENDATIONS** are so closely intertwined that the Commission has not felt it desirable to separate them into two categories. **Recommendations bearing on amendments to the law are however stated in bold characters.** Each number in brackets at the end of a paragraph shows the corresponding page in the body of the report.

1- Shortly after World War II, trials were held in Europe for crimes committed against members of the Canadian Armed Forces: four trials involving seven accused were held by the Canadian Forces; at least six other trials involving 28 accused were held by the British Forces on behalf of Canada. (p. 33)

2- In 1948 a stop was put to war crimes trials as a result of a secret suggestion made by the United Kingdom to seven "Dominions", to which Canada responded that it had "no comment to make". (p. 33)

3- The matter of war crimes officially lay dormant in Canada for a third of a century when it was reactivated mainly at the initiative of then Solicitor General, Honourable Robert P. Kaplan, P.C. (p. 33)

4- Canadian policy on war crimes during that long period was not worse than that of several Western countries which displayed an equal lack of interest. (p. 33)

5- **In order not to thwart lawful investigations by commissions of inquiry or the RCMP or investigative bodies specified in the regulations pursuant to ss. 8(2)(e) of the *Privacy Act* (1980-81-82-83, S.C. c. 111, Schedule II):**

a) **the mention of s. 19 of the *Old Age Security Act* (1970 R.S.C., c. 0-6) should be deleted from Schedule II to the *Access to Information Act* (1980-81-82-83 S.C. c. 111, Schedule I);**

b) **s. 19 of the *Old Age Security Act* should be amended by adding to the exceptions listed in ss. 19(2)(a): commissions of inquiry, the RCMP and the above-mentioned investigative bodies;**

c) **ss. 19(2) of the *Old Age Security Act* should be further amended in order to make compulsory, rather than discretionary, the disclosure of information requested in the discharge of their duties by the bodies enumerated in this recommendation.** (p. 55)

6- On the basis of the weight of the available evidence, it is established beyond a reasonable doubt that Dr. Joseph (Josef) Mengele has never entered Canada. (p. 76)

7- Apart from being an alias for Dr. Joseph (Josef) Mengele, the name of Josef Menke was also that of an actual SS Major, who, however, never came to Canada. (p. 77)

8- Dr. Joseph (Josef) Mengele did not apply in Buenos Aires in 1962 for a visa to enter Canada, either under his own name or under any of his several known aliases. (p. 82)

***Caveat*: recommendations 9 through 16, dealing with extradition, must be read against the backdrop of the statutory discretion of the Minister of Justice, which the Commission shall not discuss.**

9- Extradition of a war criminal to the Federal Republic of Germany should, if requested, be favourably considered, once prima facie evidence has been brought of the suspect's commission of the alleged crime. (p. 91)

10- Under the 1967 *Extradition Agreement* between Canada and Israel as it now stands, no request for extradition based on Nazi war crimes can be entertained. (p. 92)

11- **The 1967 extradition agreement between Canada and Israel should however be amended:**

a) **To abrogate the restriction, introduced into art. 21 in 1969, as to the date of the offence or the conviction for which extradition is sought; and**

b) **To allow for executive discretion by the requested state, following the model in art. III of the 1962 U.S.A.—Israel**

Extradition treaty, when extraterritorial jurisdiction is asserted by the requesting state. (p. 96)

12- Requests for extradition of war criminals by other countries having a treaty with Canada should be favourably considered, when the usual conditions provided by law are met. (p. 97)

13- Requests for extradition of war criminals by countries having no treaty with Canada cannot be entertained either under the 1942 *St. James's Declaration*, the 1943 *Moscow Declaration*, the 1945 *London Agreement*, the 1946 and 1947 relevant *Resolutions* of the United Nations General Assembly or the 1948 *Convention on the Prevention and Punishment of the Crime of Genocide*. (p. 102)

14- Even in the absence of a bilateral treaty, requests for extradition of war criminals from Canada may be entertained under the 1949 *Geneva Conventions* relative to the treatment of prisoners of war and relative to the protection of civilian persons in time of war, provided the requesting state be a party to the relevant convention (as are Poland and the USSR) and the charge constitute both one of the "grave breaches" described in such convention and a war crime. (p. 105)

15- Section 36 of the *Extradition Act* (1970 R.S.C. c. E-21) should be amended in order to apply to crimes — limited to war crimes — committed before the Proclamation of Part II of the Act (this principle is already enshrined in s. 12 of Part I of the Act). (p. 108)

16- War crimes do not partake of the nature of "offences of a political character" and are not, as such, placed out of the reach of the extradition process. (p. 111)

17-, 18- and 19-

No prosecution for Nazi war crimes can be successfully launched under the *Criminal Code* or under the *War Crimes Act* (1946, 10 George VI, c. 73) or under the *Geneva Conventions Act* (1970 R.S.C., c. C-3) as the Code and each Act now stand. (pp. 116, 123 and 126)

20- Neither conventional international law nor customary international law *stricto sensu* can support the prosecution of war criminals in Canada. (p. 132)

21- Prosecution of war criminals can however be launched on the basis of customary international law *lato sensu* inasmuch as war crimes are violations of the general principles of law recognized by the community of nations, which art. 11 (g) of the *Canadian Charter of Rights and Freedoms* has enshrined in the Constitution of Canada. (p. 132)

22- By virtue of art. 11 (g) of the *Canadian Charter of Rights and Freedoms*, Parliament can pass enabling legislation, even of a retroactive character, to permit the prosecution and punishment of war criminals. (p. 148)

23- Should prosecutions be launched against war criminals, a delay of some 45 years will have elapsed between the alleged crimes and the laying of the charges. It shall belong to the executive and, eventually, to the judiciary to examine the effect, if any, of this delay on the prosecutions. (p. 150)

24- Bill C-215: *an Act respecting war criminals in Canada*, introduced in 1978 by the Honourable Robert P. Kaplan, would not have achieved the result desired by its mover, especially because of the lack of retroactivity of the *Geneva Conventions*. (p. 156)

25- In view of its essential features, the *War Crimes Act* cannot be conveniently amended in order to deal with war criminals in Canada. (p. 157)

26- The contention that the *Geneva Conventions Act* could be amended in order to deal with war criminals in Canada is not tenable. (p. 157)

27- The *Criminal Code* should be used as the vehicle for the prosecution of war criminals in Canada. (p. 163).

28- Section 6 of the *Criminal Code* should be amended by adding thereto the following subsections:

"(1.9) For the purposes of this section, 'war crime' and 'crime against humanity' mean respectively:

a) War crime: a violation, committed during any past or future war, of the laws or customs of war as illustrated in paragraph 6 (b) of the *Charter* of the International Military Tribunal which sat in Nürnberg, and irrespective of the participation or not of Canada in that war;

b) Crime against humanity: an offence committed in time either of peace or of a past or future war, namely murder, extermination, enslavement, deportation or other inhumane act committed against any civilian population or persecution on political, racial or religious grounds whether or not in violation of the domestic law of the country where perpetrated, as illustrated, but without limitation in time or space, in paragraph 6 (c) of the *Charter* of the International Military Tribunal which sat in Nürnberg.

(1.10) Notwithstanding anything in this Act or any other Act,

a) where a person has committed outside Canada, at any time before or after the coming into force of this subsection, an act or

omission constituting a war crime or a crime against humanity, and

b) where the act or omission if committed in Canada would have constituted an offence under Canadian law,

that person shall be deemed to have committed that act or omission in Canada if

c) the person who has committed the act or omission or a victim of the act or omission was, at the time of the act or omission,

(i) a Canadian citizen, or

(ii) a person employed by Canada in a military or civilian capacity; or

later became a Canadian citizen; or

d) the person who has committed the act or omission is, after the act or omission has been committed, present in Canada.

(1.11) No proceedings shall be instituted under s.s. 1.9 or 1.10 except by the Attorney General of Canada or counsel instructed by him for the purpose. (p. 167)

29- **Without eliminating the final role of the Governor-in-Council, the procedures leading to revocation of citizenship (denaturalization) and to deportation—at least in cases of suspected Nazi war criminals—should be streamlined and consolidated;** (p. 173)

30- **The deportation hearing should be elevated to the level of the judicial process, as in denaturalization; the two hearings should then be joined before the same authority, with two provisoes:**

a) that the denaturalization phase should proceed first and be decided before the deportation phase is dealt with;

b) that the findings of facts in the first phase should be held as conclusive with respect to the second phase. (p. 173)

31- **Judicial appeals should be denied or, at most, a single appeal should be provided for against denaturalization and deportation orders together.** (p. 174)

32- In the matter of denaturalization, the substance of the rights of the Crown and the rights and liabilities of the citizen should be governed by the Act under which they accrued, even if the Act was repealed in the meantime; the procedure should be governed by the Act in force when the legal proceedings are commenced. (p. 177)

33- The grounds for revocation of citizenship are, in most cases, those enumerated in the 1946 *Canadian Citizenship Act*: false representations, fraud or concealment of material circumstances. (p. 184)

34- Those grounds should be applied both to the citizenship process and to the earlier immigration process. (p. 184)

35- Those grounds should be tested against the relevant statutes, Orders-in-Council, Cabinet Directives, Immigration, Security and Police regulations. (p. 185)

36- Proceedings in denaturalization are civil in nature; the burden of proof lies on the government. (p. 188)

37- In their assessment of the evidence, the courts should not be satisfied with less, but should not look for more than a probability of a high degree. (p. 188)

38- With respect to both immigration and citizenship, the applicant is under no other duty than to answer truthfully the questions put to him by the statutory authority; in so doing, however, the applicant ought to acknowledge a duty of candour implied in his obligation not to conceal circumstances material to his application, even absent any relevant questions. (p. 196)

39- Applications for citizenship are available from the earliest times; they are not likely, however, to yield useful results for the purpose of unveiling war criminals and leading to the revocation of their citizenship. (p. 199)

40- Applications for immigration and connected documents have been destroyed in large numbers over the years, consistently with retention and removal policies in force within Canadian government departments and agencies, more particularly Immigration, External Affairs, RCMP and CSIS, so that evidence for possible revocation of citizenship or deportation has become largely unavailable. (p. 207)

41- Recourse to ships' manifests, which have been microfilmed up to 1953, would be of little use, if any, in view of the absence thereon of questions relevant to the issue. (p. 208)

42- The destruction of a substantial number of immigration files in 1982-1983 should not be considered as a culpable act or as a blunder, but has occurred in the normal course of the application of a routine policy duly authorized within the federal administration. In any event, if a blunder there was, it arose out of the failure of the higher authorities properly to instruct of an appropriate exception the employees entrusted with the duty of carrying out the retention and disposal policy in their department. (p. 214)

43- The existence of a presumption of fact that a former immigrant, if a war criminal, must have lied for purposes either of immigration or of citizenship, cannot be taken generally for granted, in light of the

conflicting evidence before the Commission. It must be left to the courts to decide whether, in any given case, such a presumption has been established with a probability of a high degree. (p. 224)

44- In order to prevent the granting of citizenship to war criminals or, as the case may be, to ease the revocation of citizenship of war criminals, the *Citizenship Act* (23-24-25 El. II, c. 108) should be amended

a) by adding to ss. 5.(1) the following paragraph (f):

"(f) has not committed or been involved in or associated with a war crime or a crime against humanity, as those crimes are defined in ss. 6.(1.9) of the *Criminal Code.*";

b) by adding after the word "person", in the 7th line of ss. 5.(4) the following:

"except a person barred under paragraph 5.(1)(f)";

c) by adding after the word "circumstances", in the 8th line of ss. 9.(1), the following:

"or in spite of having committed or been involved in or associated with a war crime or a crime against humanity, as those crimes are defined in ss. 6(1.9) of the *Criminal Code,*";

d) by striking, at the end of paragraph 10.(1)(b),the word "and";

e) by adding, in ss. 10.(1), the following paragraph (c):

"(c) has not committed or been involved in or associated with a war crime or a crime against humanity, as those crimes are defined in ss. 6(1.9) of the *Criminal Code*; and";

f) by renumbering "(d)" paragraph 10.(1)(c);

g) by adding, at the end of paragraph 17.(1)(b), the following:

"or in spite of having committed or been involved in or associated with a war crime or a crime against humanity, as those crimes are defined in ss. 6(1.9) of the *Criminal Code.*" (p. 226)

45- The immigration screening process and interview procedure should be tightened, so that:

a) a minimum and standard set of questions to be put to the applicant be established by regulation;

b) such questions bear explicitly on the applicant's past military, para-military, political and civilian activities;

c) all further questions to the applicant and all answers by the applicant be reduced to writing and signed by the applicant;

d) the applicant be required to sign a statement providing, in substance, that he has supplied all information which is material to his application for admission to Canada and that an eventual decision to admit him will be predicated upon the truth and completeness of his statements in his application. (p. 227)

46- Where the application is granted, immigration application forms should be kept until either it is established or it can be safely assumed that the applicant is no longer alive. (p. 227)

47- There exist no legal or contractual obstacles, either domestically or internationally, for Canada to strip a war criminal of his acquired Canadian citizenship, even at the risk of rendering him stateless. (p. 230)

48- In order to reflect in Canadian legislation the exclusion of war criminals contained in the *Convention relating to the Status of Refugees*, the *Immigration Act, 1976* (25-26 El. II, c. 52) should be amended

a) by adding, in s. 2.(1), after the word "person" at the end of the first line of the definition of the words "Convention Refugee", the following:

"(except a person who has committed or been involved in or associated with a war crime or a crime against humanity, as those crimes are defined in ss. 6(1.9) of the *Criminal Code*)";

b) by adding, at the end of s. 4.(2)(b), the following:

"or a person coming within the exception to the definition of 'Convention Refugee' in s. 2.(1)";

c) by adding, at the end of s. 19.(1), the following paragraph (j):

"(j) persons who have committed or been involved in or associated with a war crime or a crime against humanity, as those crimes are defined in ss. 6(1.9) of the *Criminal Code*";

d) by replacing, in the fourth line of paragraph 27.(1)(a), "or (g)" by ",(g) or (j)";

e) by replacing, in the second and third lines of paragraph 55.(a), "or (g)" by ",(g) or (j)." (p. 232)

49- The notion of the valid acquisition of a Canadian domicile is dissolved, once fraud on entry is established against a suspect. (p. 234)

50- Even assuming that fraud on entry did not preclude the acquisition thereafter of a "fraudulently valid" Canadian domicile, such a

domicile cannot constitute an obstacle to deportation of a war criminal. (p. 237)

51- **To dispel doubts surrounding the construction of certain statutory provisions:**

a) **s. 9 of the *Citizenship Act*, 23-24-25 El. II, c. 108, should be amended by adding a provision making it declaratory, so as to render it explicitly applicable to situations arising under former laws on citizenship and immigration.**

b) **s. 127 of the *Immigration Act, 1976*, 25-26 El. II, c. 52 should be amended by adding a second paragraph, as follows:**

> **"This section does not apply to a person who has committed or been involved in or associated with a war crime or a crime against humanity, as those crimes are defined in ss. 6(1.9) of the *Criminal Code*".** (p. 237)

52- **In order to assure the effectiveness of the deportation process in the case of war criminals, s. 54 of the *Immigration Act, 1976* should be amended by adding a paragraph (4), as follows:**

> **"(4) Notwithstanding s.s.(1), (2) and (3), when a removal order has been made against a person who has committed or been involved in or associated with a war crime or a crime against humanity, as those crimes are defined in ss. 6(1.9) of the *Criminal Code*, the Minister shall have full and sole discretion to select the country to which that person shall be removed."** (p. 238)

53- Should Parliament decide that an amendment to the *Criminal Code*, as proposed in recommendation 28 or otherwise, should encompass crimes against peace, recommendations 44, 48, 51 and 52 should then be understood also to cover crimes against peace. (p. 239)

54- Between 1971 and 1986, public statements by outside interveners concerning alleged war criminals residing in Canada have spread increasingly large and grossly exaggerated figures as to their estimated number. (p. 249)

55- Even leaving aside the figure of 6,000 ventured in 1986 by Mr. Simon Wiesenthal, and before a detailed examination of each of the cases appearing on the Commission's Master List, this List already shows no less than a 400 per cent over-estimate by the proponents of those figures. (p. 249)

56- The Galicia Division (14. Waffengrenadierdivision der SS [gal. Nr. 1]) should not be indicted as a group. (p. 261)

57- The members of the Galicia Division were individually screened for security purposes before admission to Canada. (p. 261)

58- Charges of war crimes against members of the Galicia Division have never been substantiated, neither in 1950 when they were first preferred, nor in 1984 when they were renewed, nor before this Commission. (p. 261)

59- Further, in the absence of evidence of participation in or knowledge of specific war crimes, mere membership in the Galicia Division is insufficient to justify prosecution. (p. 261)

60- No case can be made against members of the Galicia Division for revocation of citizenship or deportation since the Canadian authorities were fully aware of the relevant facts in 1950 and admission to Canada was not granted them because of any false representation, or fraud, or concealment of material circumstances. (p. 261)

61- In any event, of the 217 officers of the Galicia Division denounced by Mr. Simon Wiesenthal to the Canadian government, 187 (i.e., 86 per cent of the list) never set foot in Canada, 11 have died in Canada, 2 have left for another country, no *prima facie* case has been established against 16 and the last one could not be located. (p. 261)

62- The Commission has drawn up three lists of suspects: a Master List of 774 names (Appendix II-E); an Addendum of 38 names (Appendix II-F)) and a list of 71 German scientists and technicians (Appendix II-G). (p. 262)

63- Where the evidence at hand raises a serious suspicion of war crimes against an individual residing in Canada, the Government of Canada should obtain, where available, the evidence of witnesses living in a foreign country provided such country agrees, as the U.S.S.R. has done, to all the conditions stipulated by the Commission in its decision "On Foreign Evidence" of 14 November 1985 (Appendix I-M). (p. 268)

64- The files of the 341 suspects who never landed and are not residing in Canada should be closed. (p. 269)

65- The files of the 21 suspects who have landed in Canada, but left for another country (at least five of whom are deceased) should be closed. (p. 269)

66- The files of the 86 suspects who have died in Canada since landing in this country should be closed. (p. 270)

67- The files of the 154 suspects against whom the Commission could find no *prima facie* evidence of war crimes should be closed. (p. 270)

68- The files of the 4 suspects whom the Commission has been unable to find in Canada should be closed. (p. 270)

69- The last five figures form a total of 606 files which should therefore be closed immediately. (p. 270)

70- The Canadian Government should decide, as a matter of policy, whether to request the cooperation of those foreign governments which have not already denounced, on their own initiative, the 97 suspects, residing in Canada, against whom there may exist incriminating evidence abroad, namely: France, Czechoslovakia, Hungary, Israel, Poland, Romania, U.S.A., U.S.S.R., West Germany, Yugoslavia. (p. 272)

71- The appropriate Canadian authorities should interrogate 13 of those suspects, as well as 5 others in whose connection no further investigation abroad is indicated. (p. 272)

72- The 3 miscellaneous cases should be pursued according to the Commission's recommendations. (p. 272)

73- In 34 cases which remain outstanding, a decision should be taken as soon as answers from foreign agencies or other missing information are received. (p. 272)

74- Work should be pursued by the appropriate authorities concerning the 38 suspects appearing on the late *Addendum* list, in agreement with the relevant recommendations of the Commission. (p. 273)

75- Among the 71 files on German scientists and technicians (Appendix II-G) the following cases should be closed: (p. 274)

9 who entered Canada and have died in this country;
4 who entered Canada and left for another country;
2 who never entered Canada;
1 where there is no *prima facie* case.

76- In the 55 remaining files of this particular group, the Government of Canada should carry out the additional inquiries indicated in each individual opinion (see section f) of Chapter I-8) and then make a decision accordingly. (p. 274)

77- In the 9 cases where the Commission recommends, in Part II of its Report, that no prosecution be initiated and the file be closed, the Government of Canada, where it agrees with the recommendation, should so advise the individual suspect and his or her counsel. (p. 827)

78- In the 20 other cases where the Commission recommends, in Part II of its Report, that steps be taken toward either revocation of citizenship and deportation or criminal prosecution, urgent attention should be given to implementing those recommendations and, if necessary for that purpose, to bringing the necessary amendments to the law as well as actively seeking the co-operation of the interested foreign governments. (p. 827)

79- In all cases which still appear as outstanding in both Parts of the Commission's Report, the Government of Canada should take the necessary steps in order to pursue the interrogatories and inquiries, in Canada and abroad, which the Commission has indicated, and to bring each case to a close. (p. 830)

80- It should not be necessary nor indeed commendable to create for that purpose an organization similar to the Office of Special Investigations in Washington, D.C. (p. 830)

81- The Government of Canada might consider one or the other of the following options:

i) to give to the Department of Justice and to the RCMP a specific mandate bolstered by the following commitments:
   a) one official of the department to be given full authority;
   b) a full-time team of several lawyers, historians and police officers to be set up;
   c) ample financial resources to be supplied, in view of the considerable tasks to be performed across Canada and abroad;
   d) the responsible official to advise the Attorney General of Canada, through his Deputy, in matters of war crimes; or

ii) to renew the mandate of this Commission which possesses the power, among others, to summon the suspects and other witnesses for interrogation. (p. 830)

82- Should none of those options be retained, there would appear to be no other alternative but to close the whole matter of war criminals altogether. (p. 830)
