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Canada's Crimes Against Humanity and War Crimes Program

2001-2002



Department of Citizenship and Immigration
Department of Justice
Solicitor General Canada

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**CANADA'S CRIMES AGAINST HUMANITY AND WAR CRIMES PROGRAM
FIFTH ANNUAL REPORT
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INTRODUCTION

The policy of the Canadian Government is unequivocal that Canada is not and will not become a safe haven for persons who have committed war crimes, crimes against humanity or other reprehensible acts regardless of when or where they were committed.

Since the mid-1980's Canada has undertaken significant measures, both within and outside of its borders to break the cycle of impunity enjoyed by persons who have committed atrocities. These measures include a new statute and amendments to three others to support and strengthen enforcement strategies as well as the creation of specialized units in the three departments which, through a coordinated effort, deliver Canada's Crimes Against Humanity and War Crimes Program. Each unit is allocated dedicated resources for program development and delivery on an annual basis.

The issue of apprehending and dealing appropriately with persons who have allegedly committed crimes against humanity or war crimes is an international one requiring international solutions and cooperation. Canada was actively involved in supporting the establishment of the International Criminal Tribunals for the former Yugoslavia (ICTY) and Rwanda (ICTR) and provided a prominent Canadian, Madame Justice Louise Arbour, as a Chief Prosecutor for the ICTY. It was another Canadian, Philippe Kirsch, current ambassador to Sweden, who served as chair of the pivotal Committee of the Whole at the Rome Conference, where the International Criminal Court was created.

Canada has ratified both the International Criminal Court Statute (ICC) and the protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflicts and was the first country to introduce comprehensive legislation incorporating the provisions of the ICC statute into domestic law with the proclamation of the Crimes Against Humanity and War Crimes Act on October 23, 2000. While there have not yet been any prosecutions under this new statute, there are 72 cases under active investigation and an infrastructure has been developed to implement this new component of Canada's Crimes Against Humanity and War Crimes Program. The ICC statute was ratified on April 1, 2002 and entered into force on July 1, 2002.

Canada has also been an active supporter of the Sierra Leone Special Court and has been involved in the development of the Sierra Leone Truth and Reconciliation Commission (SLTRC). On May 27, 2002, Professor William A. Schabas, a prominent Canadian international law expert, was appointed as one of the three international Commissioners of the SLTRC.

With respect to World War II atrocities, all allegations of persons in Canada who may have committed war crimes during World War II (1673 cases) have been or are being investigated and eighteen cases have been identified for enforcement action to date. Of these, eleven have been concluded while seven remain in the litigation process. It must be acknowledged that all World War II cases represent significant challenges due to the age and declining health of suspects and witnesses. Despite this, World War II cases

continue to be actively investigated. In its 2002 Annual Report, the Simon Wiesenthal Centre spoke favourably of Canada's efforts and encouraged other states to follow the example of Canada and the United States which use denaturalization and deportation proceedings rather than prosecution to bring these perpetrators to justice.

With respect to modern cases, a total of 445 persons were refused visas at overseas missions due to war crimes allegations. Of those who were able to enter Canada, 46 were removed, an increase from the previous year. The number of cases in which the Minister intervened for exclusion at refugee determination hearings has increased significantly. It is anticipated that increased security measures authorized by the government in response to the events of September 11, 2001 will ultimately strengthen Canada's capacity to take enforcement action against modern war criminals.

Appendix A provides a comprehensive backgrounder on Canada's Crimes Against Humanity and War Crimes Program.

REMEDIES AND LEGISLATIVE FRAMEWORK

There are several remedies available to deal with alleged war criminals and persons who have committed crimes against humanity. The decision to use one or more of these mechanisms is based on a number of factors. These factors include: the different requirements of the courts in criminal and immigration/refugee cases to substantiate and verify evidence; the resources available to conduct the proceeding; and Canada's obligations under international law. These remedies are:

- prosecution in Canada under the *Crimes Against Humanity and War Crimes Act*;
- extradition to a foreign government;
- surrender to an international tribunal;
- revocation of citizenship and deportation;
- denial of visa to persons outside of Canada;
- denial of access (exclusion) to Canada's refugee determination system and/or
- inquiry and removal from Canada under the *Immigration Act* (*The Immigration Act was in force for the period this report covers. The new Immigration and Refugee Protection Act came into force on June 28, 2002.*)

The decision to utilize a particular remedy is carefully considered and is assessed in accordance with the Government's position that Canada not be a safe haven for war criminals.

Extradition to a foreign government or surrender to an international tribunal occurs upon request and is considered in accordance with Canadian law. The provisions contained in Canada's *Crimes Against Humanity and War Crimes Act* govern criminal prosecutions in Canada. This relatively new statute strengthens the legislative foundation for criminal prosecutions in Canada.

The following Canadian statutes authorize enforcement action against alleged war criminals or persons who have committed crimes against humanity:

The Crimes Against Humanity and War Crimes Act:

- provides for the prosecution of any individual present in Canada for any offence stated in the Act regardless of where the offence occurred;
- creates new offences of genocide, crimes against humanity, war crimes, and breach of responsibility by military commanders and civilian superiors;
- creates new offences to protect the administration of justice at the ICC, including the safety of judges and witnesses; and,
- recognizes the need to provide restitution to victims and provides a mechanism to do so for victims of offences (regulations to implement these provisions have not yet been passed).

The Extradition Act:

- in addition to allowing Canada to extradite to other states, the Act allows for the surrender to International Criminal Tribunals;
- allows for the use of different forms of evidence that will facilitate surrender to the International Criminal Tribunals and States with a different legal tradition;
- permits the use of video and audio link technology to provide testimony from witnesses located in Canada or abroad; and,
- establishes clear procedures for the extradition or surrender process.

The Immigration Act:

- provides for the examination abroad of all persons seeking to enter Canada for permanent residence;
- provides for the examination abroad of persons seeking to visit Canada where a visitor visa requirement is in effect;
- provides two specific grounds of inadmissibility for persons involved in war crimes or crimes against humanity and outlines procedures for their reporting, inquiry and removal;
- provides for the exclusion from the refugee determination process of persons involved in war crimes or crimes against humanity; and,
- limits appeal rights of persons involved in war crimes and crimes against humanity.

The Citizenship Act:

- provides for the revocation of citizenship of persons who have obtained citizenship by fraud or misrepresentation;
- deems that persons who gained admission to Canada by fraud or misrepresentation and subsequently obtained Canadian citizenship are considered to have gained citizenship by fraud or misrepresentation; and,
- provides that citizenship shall not be granted where the person is under investigation by the RCMP, the Minister of Justice, or the Canadian Security Intelligence Service.

For the texts of the relevant provisions of the *Immigration Act* and the *Citizenship Act* refer to Appendix B.

For highlights of Canada's new *Immigration and Refugee Protection Act* refer to Appendix C.

The full text of these statutes can be found on the Department of Justice web site at: <http://www.canada.justice.gc.ca>

OVERVIEW OF OPERATIONS, MANDATES AND STRUCTURE

Interdepartmental Operations Group

The Interdepartmental Operations Group (IOG) is the vehicle through which Citizenship and Immigration Canada, the Department of Justice and the RCMP investigate all allegations of crimes against humanity and war crimes undertaken by the Government of Canada. This coordination takes place on several levels, ranging from discussing and developing policy objectives common to all three departments to ensuring proper cooperation at the day-to-day working level.

The IOG ensures that the Government of Canada has properly addressed all allegations of war crimes and crimes against humanity against Canadian citizens or persons present in Canada. One of its purposes is to ensure that Canada complies with its international obligations. This includes the investigation, prosecution and extradition or surrender of war criminals, as well as cooperation with the international tribunals. In order to meet this objective, the RCMP and the Department of Justice investigate allegations involving reprehensible acts that could lead to a possible criminal prosecution or revocation of citizenship while CIC pursues the application of remedies under the *Immigration Act*, in cooperation with the Department of Justice in all instances when these matters proceed to court.

A major activity of the IOG has been the review of all Crimes Against Humanity and War Crimes files, determining the appropriate course of action, and channelling the files to the appropriate departmental authority for action. During 2001-2002, 272 new modern era files were reviewed to bring to 1216 the total number reviewed since the creation of the IOG. Most of these cases were referred from CIC. It was determined from this review that 72 files required further investigation for possible prosecution or administrative action in Canada. There are regular reviews to examine new files that have been opened by CIC or that have come to the attention of the RCMP or the Department of Justice Crimes Against Humanity and War Crimes Section.

With the proclamation of Canada's *Crimes Against Humanity and War Crimes Act*, the IOG has done much work in developing the infrastructure to develop cases for prosecution under this new legislation. This includes policy development to establish

criteria to ensure that only the most promising cases will become the subject of an investigation and the establishment of criteria to ensure that cases under investigation are appropriately prioritized. Further details on this activity will be found in the section entitled "Developments Under the *Crimes Against Humanity and War Crimes Act*."

The IOG meets on a monthly basis. Decisions are made by consensus and the chair rotates annually. The current chair is the RCMP.

Department of Justice

The Crimes Against Humanity and War Crimes Section of Canada's Department of Justice is located in Ottawa and consists of eleven lawyers, six historians/analysts, two paralegals, a historical support group, legal assistants and support staff. The Section also hires contract analysts and related experts on an *ad hoc* basis as required.

The Section's primary purpose is to participate in the investigation of allegations that individuals, presently in Canada, have engaged in the commission of the crimes enumerated in the *Crimes against Humanity and War Crimes Act*, regardless of where or when those offences were committed. These complex and multi-faceted investigations are conducted in conjunction with officers from the RCMP War Crimes/Immigration and Passport Section. Initial archival checks and basic research activities are carried out by in-house historians and analysts who possess background knowledge of the area where the crimes allegedly occurred. RCMP officers assigned to the file, working with Justice counsel, prepare an initial witness list, and conduct interviews with individuals identified as possible witnesses in the allegation documents or by the complainant. A more extensive witness list is then produced, and interviews are conducted by RCMP officers working in conjunction with Justice counsel. These interviews can take place anywhere in the world. Throughout the investigation process, in-house historians and analysts provide ongoing and *ad hoc* advice as required. As the investigation nears completion, they begin the search for and initiate contacts with outside experts or analysts to provide expert evidence at trial.

Once an investigation is completed, counsel and RCMP officers jointly evaluate the evidence obtained during the investigations. If sufficient evidence is found which substantiates the allegations, counsel prepare reports recommending either that the file should proceed to enforcement action under the *Immigration Act* and/or the *Citizenship Act* or that the Attorney General consider laying an indictment under the *Crimes Against Humanity and War Crimes Act* or the *Criminal Code*. It is anticipated that Justice counsel from the Criminal Law Portfolio will prosecute any indictments laid under the *Crimes Against Humanity and War Crimes Act*.

In addition to participating in the investigation of modern crimes against humanity and war crimes, the Section continues to actively investigate cases pertaining to Second World War atrocities. (An overview of ongoing World War II cases will be found in pp. 11-13 of this report.) Successfully concluding these cases is becoming increasingly

difficult given the age and declining health of suspects and witnesses. As these files are closed more resources within the Section are being transferred to the modern war crime investigation efforts. Details of the Second World War Program can be found in the Backgrounder in Appendix A.

The Department of Justice, through its regional offices, also provides extensive assistance to Citizenship and Immigration Canada by representing the Minister of Citizenship and Immigration in all cases before the Federal Court and CIC Legal Services provides legal advice to the department when interpretations of the Immigration Act and the Citizenship Act are required.

The Crimes Against Humanity and War Crimes Section, with its partners at Citizenship and Immigration and the RCMP, actively promotes the work of addressing the issue of impunity for crimes against humanity and war crimes. In addition to hosting regular international conferences on issues related to the investigation and prosecution of these offences, members of the Section publish papers in law journals and give presentations in law schools and conferences at home and abroad, disseminating information about the Rome Statute, domestic legislation and Canada's efforts at ensuring that our country does not become a safe haven for these criminals.

The International Assistance Group (IAG) has primary responsibility for matters under the *Extradition Act* and the *Mutual Legal Assistance in Criminal Matters Act*. It is through this Group that communications with other countries and International Criminal Tribunals flow; matters which include the extradition or surrender of persons in Canada to foreign countries or to the Tribunals, and Canada's response to requests for assistance from these bodies in the conduct of their investigations. This process ensures the smooth flow of information and assistance between Canada and partner organizations around the world.

Citizenship and Immigration

Citizenship and Immigration Canada (CIC) takes a three-pronged approach in dealing with modern-day war criminals: preventing suspected war criminals from reaching Canada by refusing their immigrant, refugee or visitor visa applications from abroad; excluding them from the refugee determination process in Canada; and removing war criminals who have already entered Canada through the immigration inquiry process. Most applicants overseas are identified through the visitor visa screening process. The majority of modern war criminals in Canada are not permanent residents but have come to Canada as refugee claimants. Many in this group have been able to bypass the overseas screening process by travelling to Canada with fraudulent or improperly obtained travel documents, often posing as persons from countries whose citizens do not require a visa to visit Canada.

Posts abroad have special security vetting procedures to ensure that potential war crimes cases are identified and subjected to checks that are more thorough before a

visa can be issued. These posts have specific profiles, for example, military service, and use questionnaires designed to identify potential war criminals. When concerns are identified that cannot be resolved, the case is referred to the Modern War Crimes Section in Ottawa where an analyst will conduct a complete analysis with input from the Research and Intelligence sections as required.

There are several ways in which the presence of a war criminal in Canada is brought to the attention of immigration officials. Information may come to light when the person is examined at a port of entry to determine admissibility or when providing information in support of a refugee claim. Since September 11, 2001, all Personal Information Forms for Refugee Status (PIFs) are screened by the regional war crimes units for possible war crimes activity. Where there is indication of war crimes activity further investigations are conducted and, where warranted, a Minister's Intention to Intervene in the applicant's refugee determination hearing is filed with the Immigration and Refugee Board (IRB). In instances where information about war crimes activity first comes to light at the refugee hearing, the IRB may continue the hearing and decide to exclude the person from refugee protection or, alternatively, adjourn the hearing and request the intervention of the Minister (CIC Hearings Officer) to argue the case for exclusion. As well, immigrant/refugee communities have identified persons in Canada who have allegedly committed atrocities in their homeland.

Lastly, the Canadian Security Intelligence Service (CSIS), when conducting background checks on applicants for permanent residence or for citizenship, will refer names of individuals who may be implicated in war crimes or crimes against humanity to CIC. CIC then conducts further inquiries using its specialized Resource Centre data bases and specific intelligence information which resides with its Modern War Crimes Intelligence Coordination Unit to establish whether refusal or enforcement action under the war crimes or designated regimes provisions of the *Immigration Act* is warranted.

The Resource Centre, established as part of the CIC Modern War Crimes Section, was designed primarily to provide research support to regional field officers, immigration analysts and other enforcement partners in identifying visa applicants and individuals in Canada who may have been involved in war crimes. Currently, the Resource Centre consists of three Research Officers and one Research Assistant who respond to requests for information, such as obtaining background material on events and organizations as well as verification of information.

The open-source materials, newspapers, journals and historical texts stored in the Centre, concentrate on human rights violations that have occurred in current and recent history including legal, military, refugee, historical, and geographic information. Although the Centre does possess hard copy documentation, the vast majority of the information it has access to is in electronic format via the internet, including gateways to several media monitoring databases. The Resource Centre is continually identifying new sources of information and expanding its databases accordingly.

The Resource Centre also serves as a central repository of current information such as news reports or bulletins gathered from media sources and international human rights organizations. The Resource Centre creates the Modern War Crimes News Update, a document that is compiled, edited and distributed electronically to regional offices, 67 Canadian missions abroad, and several foreign governments twice weekly. The need for current and historical war crimes information is growing exponentially. During the past year, the Resource Centre responded to 1693 inquiries, a significant increase from the 1182 inquiries in the previous year. Distribution of the Modern War Crimes News Update has expanded to over 250 readers.

The Modern War Crimes Intelligence Co-ordination Unit is another result of the government's review of war crimes operations in 1997 and presently consists of a Director, a Senior Intelligence Adviser, and five analysts, with some additional staff hired on contract. As the Modern War Crimes Section was formed, it became apparent that the connection between intelligence information and war crimes investigations needed to be strengthened. Information and intelligence relevant to war crimes, previously held randomly throughout other departments, is now co-ordinated by the Intelligence Unit to assist in examining war crimes allegations.

Functioning as a "central clearing house" for intelligence within the government, the Intelligence Co-ordination Unit is in contact with all other departments that might have intelligence information concerning governments, countries, places or perpetrators of war crimes that would enhance Canada's Crimes Against Humanity and War Crimes Program. Given that most war crimes cases are dealt with under the *Immigration Act*, it was decided to place co-ordination of modern war crimes intelligence within CIC.

The Modern War Crimes Intelligence Unit has established and developed links with intelligence agencies in Canada and abroad and with the International Tribunal for the Former Yugoslavia; in particular, the Unit has benefited considerably from support provided by the Department of National Defence. It has also produced a number of working aids on countries that are of concern to the Canadian government from a war crimes perspective and has produced several screening tools to assist visa officers.

The Intelligence Unit has played a pivotal role in developing Canada's capacity to detect and identify war criminals by equipping immigration officers with better knowledge, tools, and expertise.

The MWCS Data Management Unit is responsible for the development, maintenance, and inputting of the Modern War Crimes System (MWCS). This database contains information on persons, events, and organizations as they pertain to war crimes or crimes against humanity and is available to immigration officers in Canada and abroad. The information in the system is cross-referenced; for example, the name of a particular individual could be associated with a particular atrocity which in turn could be linked to a specific organization. All of the information in this system is based on open-source documentation and can therefore be used as evidence in immigration proceedings in

Canada or to support the refusal of a visa abroad. Open source information could originate from a book, essay, NGO publication, the media, a variety of internet web sites, or any other source that is unclassified.

The MWCS provides the capability to search for information related to persons, events, organizations, or other information relating to war crimes. It also contains a reference feature that contains legal opinions, screening tools prepared by the Intelligence Co-ordination Unit, and other information to assist immigration officers in making informed decisions. There is no other known computer system that is dedicated solely to the detection of war criminals. A gold medal was awarded to CIC in 2001 at the Public Service Distinction Awards for excellence and leadership in information technology for its development of the MWCS.

The MWCS Data Management Unit consists of a project coordinator, two analysts, and an assistant.

RCMP

The RCMP have ten regular member positions assigned to World War II and Modern War Crimes investigations within the RCMP War Crimes / Immigration and Passport Section located in Ottawa. Support for the Section is provided by RCMP personnel working in provincial and territorial jurisdictions, at Canadian missions abroad and at the Headquarters Forensic Laboratory. Other regional and municipal police forces in Canada, the International Criminal Police Organization (INTERPOL) and a variety of non-governmental organizations (NGOs) operating throughout the world also extend assistance when called upon. The RCMP responds to allegations of war crimes and crimes against humanity reported by the general public as well as by Canadian and foreign government agencies and also supports the citizenship revocation and deportation proceedings initiated by the Departments of Justice and Citizenship and Immigration.

Since 1996, the RCMP has concluded 86 files of suspects alleged to have committed war crimes / crimes against humanity during the Second World War. For the most part, files are concluded because the suspects have died, are in poor health or too old (born before 1906) or were too young to have participated in the war. Other files have been concluded because the allegations were found to be unsubstantiated or due to an absence of evidence linking a suspect to a specific crime. The majority of the most recent allegations received fall within the last two categories.

The RCMP's role in relation to WW II allegations is to work with the Department of Justice Crimes Against Humanity and War Crimes Section to investigate allegations and assess the validity of the complaint. This process requires that investigators, relying on information obtained by Department of Justice historians through archival research, confirm the presence of suspects in Canada and develop initial witness lists. Working with counsel, RCMP officers arrange and conduct witness interview trips mainly in

central and eastern European countries, with the assistance of foreign governments and police officials obtained under Memoranda of Understanding between the Department of Justice and parallel Departments and Ministries in these States. The results of these investigations are reviewed by Department of Justice counsel and RCMP investigators to determine whether sufficient evidence exists to bring criminal charges against the subject of the investigation. If not, a further analysis of the evidence is conducted and, if warranted, revocation and deportation proceedings are initiated.

With respect to modern war crimes, a number of investigations have been initiated relating to suspects alleged to have committed crimes against humanity during the conflicts which took place in the Former Yugoslavia and Rwanda. The publicity generated as a result of media coverage which appeared in Canadian newspapers throughout the 1990's, the work being done by both International Criminal Tribunals and the coming into force of the Canada's *Crimes Against Humanity and War Crimes Act* in October 2000 have contributed to crimes against humanity allegations having been made against individuals recently arrived in Canada. Countries that have previously or are currently involved in some type of civilian and/or military conflict are the source of suspects coming to Canada. Consequently, the RCMP War Crimes Section has received crimes against humanity allegations regarding citizens of Afghanistan, Angola, Bosnia, Burundi, Chile, China, Columbia, Croatia, El Salvador, Ethiopia, Guatemala, Honduras, Iraq, Lebanon, Nigeria, Philippines, Rwanda, Senegal, Serbia, South Africa, Sri Lanka and Sudan. In essence, anyone assigned to internal security and/or intelligence work in countries known to violate the most basic of human rights are potential investigative targets if they elect to come to Canada.

War crimes and crimes against humanity allegations come from a variety of sources, most notably from victims, witnesses, foreign governments, ethnic communities, NGOs, open source information such as the Internet and by the suspects themselves through self-identification when seeking refugee status or permanent residence in Canada.

There are evidentiary challenges in pursuing these allegations. While much information can be derived from consulting archival material with respect to WW II investigations, the same cannot be said for war crimes and crimes against humanity more recently committed. Some of the suspects currently under investigation have never been part of a formalized, structured military army as we know it in Canada and may have operated in specific locations for very limited periods of time. In summary, there is often little documentary evidence of these atrocities. In the absence of pertinent documentary records, more emphasis must be placed on finding witnesses capable of identifying the perpetrators and explaining what had transpired. To facilitate this process, the RCMP has entered into special cooperation agreements with police departments and public offices in some of the countries where these witnesses are located. There is an ongoing effort to conclude agreements with all countries where witnesses may be located, either for current or future investigations. At present, there is a project underway among European Union States to create "points of contact" in each participating country for all crimes against humanity or war crimes investigations.

The intent is to permit better cooperation and coordination in these investigations. Steps are being taken to include Canada in this process.

While individuals alleged to have committed a crime against humanity in relation to more recent conflicts may not result in prosecution, the information acquired by the RCMP relative to these individuals has often been used during immigration hearings resulting in exclusion from refugee protection and removal from Canada.

In addition to the investigations it conducts, the RCMP War Crimes Section provides assistance to foreign police authorities as well as to the International Criminal Tribunals for the Former Yugoslavia and Rwanda. It does this by locating witnesses in Canada, conducting interviews on their behalf and making arrangements to have RCMP members attend when their investigators come to Canada to interview witnesses.

ACTIVITIES IN FISCAL YEAR 2001-2002

Response to September 11

On October 12, 2001 the Minister of Citizenship and Immigration announced a five part security strategy as part of the Government's Anti-Terrorism Plan. These initiatives are:

- fast-tracking the permanent resident card for new immigrants;
- front-end security screening of refugee claimants;
- increased detention capacity;
- increased deportation activity;
- hiring up to one hundred new staff to enforce upgraded security at ports of entry.

It is anticipated that the last four initiatives will assist in providing additional support to Canada's Crimes Against Humanity and War Crimes Program. As part of this initiative all Personal Information Forms (PIFs) completed by refugee claimants are referred to the War Crimes Units for screening and further investigation if required. This initiative has resulted in an increase in the numbers of persons detected in Canada who may have been involved in atrocities which is reflected in the higher number of Minister's interventions at refugee hearings.

World War II Cases Overview

The following provides an update of the status of the ongoing World War II cases and actions undertaken on these cases during the fiscal year:

Helmut Oberlander: In an Order dated February 28, 2000, the Federal Court - Trial Division, per Mackay J., found that Mr. Oberlander obtained his Canadian citizenship by false representation or by knowingly concealing material circumstances within the meaning of paragraph 18(1)(b) of the *Citizenship Act*. Though the Court did not find

that it had been established that Mr. Oberlander had personally committed any war crimes, it did hold that Mr. Oberlander had been untruthful with Canadian immigration and citizenship officials by concealing his membership in a Third Reich mass killing squad the Einsatzgruppen "D". On July 12, 2001 the Governor in Council revoked Mr. Oberlander's Canadian citizenship. Mr. Oberlander's counsel filed an application for judicial review of the Governor in Council decision on August 21, 2001. The Judicial Review is ongoing. In addition, Mr. Oberlander has been summoned to appear before an Immigration Adjudicator and this inquiry is underway.

Wasył Odynsky: In an order dated March 2, 2001, Justice W. Andrew Mackay of the Federal Court - Trial Division found that Mr. Odynsky "obtained citizenship by false representation or by knowingly concealing material circumstances within the meaning of paragraph 18(1)(b) of the *Citizenship Act*." Mr. Odynsky was found to have concealed his service as a guard at the SS forced labour camps of Trawniki and Poniatowa.

Vladimir Katriuk: In the Vladimir Katriuk case, Justice Marc Nadon of the Federal Court released his decision on January 29, 1999. The Court found that Mr. Katriuk was a member of Ukrainian Schutzmannschaft Battalion 118, took part in the operations in which his company was involved and, as a result, was certainly engaged in fighting enemy partisans. The Federal Court of Appeal dismissed Mr. Katriuk's appeal with costs thereby affirming that there is no right of appeal from a Federal Court ruling under section 18 of the *Citizenship Act*. On May 11, 2000, the Supreme Court of Canada dismissed Mr. Katriuk's Application for Leave to Appeal.

Jacob Fast: Mr. Jacob Fast was served with a Notice of Intent to Revoke Citizenship on September 30, 1999. The matter proceeded to trial before the Federal Court, Trial Division. It is alleged that Mr. Fast was the head, or a member, of the Political Department of the Nazi sponsored Auxiliary Police in Zaporozhye, Ukraine, during the Second World War. It is alleged that he obtained entry into Canada by misrepresentation in 1947 without revealing his activities on behalf of the Germans or that he had become a German citizen. The trial has been concluded and the matter is under reserve.

Walter Obodzinsky: Mr. Walter Obodzinsky was served with a Notice of Intent to Revoke Citizenship in August 1999. He requested that the matter be referred to the Federal Court - Trial Division for adjudication pursuant to the *Citizenship Act*. A Statement of Claim was issued against and served on the defendant on February 1, 2000, alleging that he obtained his status in Canada by "false representation or by knowingly concealing material circumstances" concerning his membership in a Schuma police battalion in the towns of Turets and Mir in what is now Belarus, and, following that, his membership in an attack unit (Jadzug) under Nazi command in the town of Baranovich, in Belarus. The Federal Court - Trial Division and the Federal Court of Appeal have both dismissed Mr. Obodzinsky's request to stay the case on medical grounds. He requested leave to appeal this issue to the Supreme Court of Canada, which was dismissed. The trial is ongoing.

Michael Baumgartner: On August 31, 2001, Justice William P. McKeown found that Mr. Baumgartner had obtained his citizenship by false representation, fraud or by knowingly concealing material circumstances. The Court found that Mr. Baumgartner was a voluntary member of the Waffen S.S. and served as a concentration camp guard at the Stutthof and Sachsenhausen Concentration Camps.

Michael Seifert: Michael Seifert was found guilty by an Italian Military Tribunal of war crimes, including murder and torture, committed while he was a guard at a German police transit camp in Northern Italy in November, 2000. His appeal of the conviction was dismissed by the Italian court on October 18, 2001. The Minister of Citizenship and Immigration served a Notice of Intent to Revoke Citizenship. Mr. Seifert has requested that the matter be referred to the Federal Court for a hearing. A statement of claim was issued in Vancouver on November 13, 2001. On May 1, 2002, Mr. Seifert was arrested in Vancouver pursuant to an arrest warrant which had been issued following an extradition request from the Italian authorities. (Extradition Act, R.S.C. 1999, c.18). He was detained and released. The citizenship revocation proceeding and the extradition matter are currently before the courts.

For case summaries of the eleven WW II cases concluded refer to Appendix H.

Modern Cases Overview

With respect to prevention abroad, a total of 445 persons were refused admission to Canada due to war crimes allegations. This includes persons whose applications were refused directly on war crimes allegations, persons who were investigated for war crimes activities but refused on other grounds, and persons who withdrew their applications in the face of questions concerning their background. The total number of cases investigated in Canadian missions abroad was 1797. In the previous fiscal year the number of persons refused abroad was 644 and the total number of cases investigated was 2374. Ironically, the events of September 11, 2001 are a contributing factor in these decreasing numbers as overall travel to Canada diminished considerably in the last three months of 2001. The rate of refusal was 24% in this fiscal year and 26% in the previous one.

As a result of increased front-end security screening of all refugee claimants implemented shortly after September 11, 2001, a larger number of refugee claimants were investigated for war crimes activity, 1969 this fiscal year compared to 1585 in the previous year. This resulted in a much larger number of interventions before the CRDD, 350 this year compared to 227 the previous year. As this increase in interventions took place in the latter part of the fiscal year the majority of these hearings have not been concluded.

In this fiscal year, 46 persons were removed from Canada the majority of which were excluded from refugee determination as a result of Ministerial interventions at their refugee hearings. This represents an increase of 10% over the number of persons removed last year for war crimes violations.

Subsequent to last year's annual report there was much interest in the numbers of persons removed from Canada with a suggestion that the number of removals was not keeping pace with the number of removal orders issued. Consequently, it was decided to report annually on the numbers of removal orders issued, the numbers effected and the numbers of uneffected removal orders. The breakdown is as follows:

Removal Orders Issued.....	59
Removal Orders Effected.....	46
Removal Orders Uneffected (cumulative)	157

This is not inconsistent with the regular immigration program as there are several reasons, some of them legislative, why persons cannot be expeditiously removed from Canada. In most cases these impediments to removal are beyond the control of the Department. The breakdown of the 157 outstanding removal orders is as follows:

Did not report for removal, warrant issued.....	91
Awaiting travel document from foreign government.....	22
Under judicial review by Federal Court.....	6
Under appeal to the Appeal Division of the IRB.....	28
Stayed because the person's presence is required in judicial proceedings	10

Appendix I provides enforcement results on modern war criminals cases. It is worth noting that over the past five years of the program's operation, a total of 2011 persons complicit in war crimes or crimes against humanity have been refused visas to come to Canada. Over the same period a total of 233 such persons have been removed from Canada.

Developments Under the Crimes Against Humanity and War Crimes Act

Investigations which will lead to criminal prosecutions for crimes against humanity or war crimes are extremely difficult, complex, and lengthy. Bringing cases to the point of laying a charge in a crime against humanity which occurred outside of Canada cannot be compared to the process of conducting criminal investigations in Canada under the *Criminal Code*. Other jurisdictions which are attempting to bring war criminals to justice have confirmed similar experiences. At the Third International War Crimes Conference, held in Ottawa in April 2002, the following comments were made by the Dutch delegate concerning the prosecution of modern war criminals:

"The investigation and prosecution of war crimes has proved to be a highly complicated and tough task. There are various reasons for this: As a rule, these crimes were committed several years ago on foreign territory. Local investigation is often not feasible. The options for gathering evidence by requests for mutual assistance are limited. Sitting regimes are not always willing to give full co-operation. Moreover, governments may have an interest in providing biased information on members of their own party and members of the opposition. Atrocities are rarely

recorded and if so, such documents are not open for inspection. Up to now, evidence of war crimes strongly relies on witness statements. These witnesses must be found and be willing to make incriminating statements. In several cases, such statements cannot be made freely. Witnesses may be intimidated or be threatened with reprisal. In many cases, witnesses will be more prepared to give anonymous evidence, for instance for use in reports prepared by non-governmental organizations such as Amnesty. However, Dutch criminal law puts strict rules on the use of anonymous witness evidence. In addition, European Court of Human Rights case law provides that a person's conviction may not be solely or substantially based on anonymous statements.

Furthermore, witnesses willing to make a statement may have an interest in incriminating rival groups. And even witnesses who act in good faith may be unable to give accurate statements. Having been a witness to, or a victim of atrocities deeply affects a person. This, together with the lapse of time, may have a severely disturbing impact on a person's recollection. It is also a well-known fact that contacts with fellow-victims during the course of time can make it more difficult to sharply distinguish between personal and communal experiences. Finally, language and culture may give rise to misunderstandings when communicating with suspects and witnesses. Investigating officers will have to tune in to local situations in order to understand the historical and cultural context of the committed war crimes.

All in all, these obstacles have caused that - with the exception of War Crimes Tribunals, which can operate under special conditions - few individual states have been successful in bringing war criminals to justice. Convictions of war criminals by foreign courts seem to have depended mainly on the chance factor that a large number of witnesses happened to be available in the country conducting the prosecution."

While the Department of Justice is the lead Department in bringing perpetrators to justice under this relatively new authority, all three departments are involved both in program development and in decision-making on individual cases through the IOG. These activities progress concurrently with cases being investigated while required infrastructure is being developed. A number of significant program development activities have now been completed. These include the development and implementation of law and policy, the allocation of resources (done on an annual basis), the establishment of a mechanism to identify potential cases, and the establishment of criteria to determine which cases should be pursued and how they should be prioritized.

In order to evaluate cases for possible prosecution and to prioritize the investigations, the IOG has developed criteria under three categories. There are now 72 cases which have been identified for possible prosecution with investigations underway and prioritized under the following criteria:

A. Nature of allegation

- credibility of allegation
- seriousness of allegation
- seriousness of crime (genocide – war crimes – crimes against humanity)
- military or civilian position
- strength of evidence.

B. Nature of investigation

- progress of investigation
- ability to secure cooperation with other country or international tribunal
- likelihood of effective cooperation with other countries
- presence of victims or witnesses in Canada
- presence of victims or witnesses in other countries with easy access
- likelihood of being part of group investigation in Canada
- likelihood of parallel investigation in other country or by international tribunal
- ability to conduct documentary research to test credibility of allegation
- likelihood of continuing offence/danger to the public related to crimes against humanity and war crimes allegations.

C. Other considerations

- no likelihood of removal (credible allegation of risk of torture upon return)
- no likelihood of removal (Canadian Citizen)
- no reasonable prospect of fair and real prosecution in other country
- high profile case (publicity, representations, or interest from other countries)
- no indictment by international tribunal or no extradition request likely
- likelihood of continuing offence/danger to the public not related to crimes against humanity and war crimes allegations
- national interest considerations.

While these investigations are underway further infrastructure is under development. This includes refinement of specialized investigative techniques and a process model specifically adapted to developing these cases for prosecution as recommended in the Program Evaluation (see pp. 18-21). Mechanisms are also under development that will facilitate the exchange of information with other jurisdictions, in particular the need to work cooperatively during concurrent investigations (see following section).

Additional challenges include bringing witnesses before the court. Occasionally a court may travel on commission to take evidence and at other times witnesses may have to travel to Canada. Experience in other jurisdictions point to the complexities related to bringing witnesses from other countries before a local court. These include the expense related to travel and lodging as well as legal issues relating to their temporary stay in Canada.

International Cooperation and Outreach Activities

Part of the strategy involved in implementing Canada's "no safe haven policy" is to communicate with a broad spectrum of interested parties both domestically and internationally. The objective is to foster a broad understanding of Canada's policies regarding war crimes and crimes against humanity and the initiatives that have been taken under Canada's Crimes Against Humanity and War Crimes Program. Target audiences include a wide variety of partners and other stakeholders such as like-minded states, international organizations, NGOs, academics and educational institutions. During the year representatives of the Crimes Against Humanity and War Crimes Program participated in the following:

- Lecture on history of Canadian War Crimes Prosecutions at St. Francis Xavier University, April 2001
- Participation at the UNHCR Global Consultations Expert Roundtable on "Refugees, cessation, and exclusion, May 3-4, 2001
- Presentation on Command Responsibility at the Pearson Peacekeeping Centre, Nova Scotia, August 22, 2001
- Presentation entitled "Modern War Crimes Intelligence: A Canadian Immigration Perspective to the Annual Canadian Association for Security and Intelligence Studies (CASIS) Conference in Halifax, Sept. 30, 2001
- Lecture on war crimes at Carleton University, Oct. 15, 2001
- Presentation and participation in a NATO sponsored Workshop on Prosecuting War Crimes held in Interlaken, Switzerland, Oct. 17-19, 2001
- Lecture on history of war crimes trials (graduate course) at Carleton University, Oct. 24, 2001
- Paper entitled "Overview of Application of Humanitarian Law in Canada in 2000" published in the Yearbook of International Humanitarian Law, Volume 3
- Three articles contributed to a book entitled Canada and International Humanitarian Law: Peacekeeping and War Crimes In the Modern Era, edited by Richard D. Wiggers and Ann L. Griffiths, and published by the Centre for Foreign Policy Studies, Dalhousie University
- Participated in the Wilton Park Conference held in Sussex England in February 2002; the title of the conference was "Towards Global Justice: Accountability and the International Criminal Court"
- Paper entitled "Prosecuting Crimes Against Humanity in Canada: What Must be Proved" published in Edition 46 of the Criminal Law Quarterly, 2002
- Paper entitled "The Cooperation of States with the International Criminal Court" published in Edition 25 of the Fordham International Law Journal No.3, March 2002.

In October 2001, Canada hosted a meeting of 55 representatives of the Australian, British, American and Canadian governments in Ottawa to discuss means of enhancing modern war crimes intelligence cooperation between the immigration services of the partner nations. The meeting brought together intelligence, operational, and legal experts to identify and address the modern war crimes intelligence challenges that the

immigration services face and intelligence sharing issues specific to the immigration services of the four countries. Several senior visitors, including the U.S. Ambassador for War Crimes Issues also attended. The meeting was the first of its kind between the four countries, and resulted in both short and long term approaches to enhance cooperation.

In April of this year, Canada hosted the Third International War Crimes Conference which included participants from Belgium, Germany, The Netherlands, Sweden, Switzerland, the United Kingdom and the United States. The theme of the conference was *Combatting International Crimes Domestically* and participants were asked to provide presentations on their domestic legislation and investigation activities regarding crimes against humanity and war crimes and to present a particular problem with the development or enforcement of their war crimes legislation and how that problem was overcome. One significant development of this conference was the discussion on cluster investigations. This involves the situation where two states are investigating separate individuals linked to the same atrocity. The sharing of information in such instances would increase the effectiveness of these investigations and it was agreed that agreements to facilitate the sharing of such information would be developed.

During the year a senior official from the Australian Department of Immigration and Multicultural Affairs spent three months with the Modern War Crimes Section of CIC. This provided an opportunity for both agencies to exchange practical information on best practices related to the identification and removal of modern war criminals.

In addition to participating in the International Conferences, members of the RCMP promoted the government's mandate through visits and presentations to high schools, universities and a variety of interest groups. The unit is also identified on the RCMP web site, thereby providing worldwide access to anyone wishing to contact them.

FORMAL EVALUATION OF CANADA'S WAR CRIMES PROGRAM

On September 28, 2001, the final report on the formal evaluation of Canada's War Crimes Program was submitted. The purpose of the evaluation was to assess the effectiveness of Canada's Crimes Against Humanity and War Crimes Program and to review its internal and external outcomes by answering specific evaluation questions relating to its relevance, design, delivery, and program success levels. The conclusions of the evaluation, broken down into four categories, are as follows:

Relevance of Canada's War Crimes Program

- Sustained and increasing levels of activity regarding modern war crimes combined with a high level of interest in Canada as a destination for immigrants, visitors, and refugee claimants confirm the basic rationale for the program and ensure its continued relevance for the future.

- Despite the increasing difficulty in pursuing WW II cases there is no strong rationale at this point in time for either eliminating or formally reducing the priority of the WW II component of the program. As activity levels decrease, resources can be transferred to the ongoing modern investigations.
- The passage of the *Crimes Against Humanity and War Crimes Act* combined with Canada's support of international efforts to bring war criminals to justice has raised public expectations that Canada will be proceeding with domestic prosecution in the near future. This represents an important challenge for the program.

Program Design and Delivery

- The design of Canada's War Crimes Program as a coordinated, interdepartmental program with a central operational coordination group has been confirmed as an appropriate structure. Program effectiveness could be increased if the role of the Interdepartmental Operations Group was strengthened to include policy coordination.
(*Comment – Each department has its own mandate and process for policy development. While each department is open to new ideas which will make the IOG more effective, each is of the view that the IOG's current mandate to coordinate operations and decide/prioritize cases should remain its primary focus.*)
- In order to effectively investigate and prepare modern cases for prosecution, there is an urgent need for the development of a process model between the RCMP and the Department of Justice. International practice suggests a more integrated system with researchers, counsel, and police investigators working in small teams on priority cases.
(*Comment – Both the RCMP and the Department of Justice have endorsed this recommendation. A three day workshop was held to discuss major investigative techniques and a commitment was made to co-locate the two groups. A new integrated approach has been developed and is now being implemented by the RCMP and the Department of Justice. This new strategy is based on the RCMP Major Case Management Approach to complex investigations.*)

Program Results and Success

- The Canadian Crimes Against Humanity and War Crimes Program over four years of operation has improved the use of training, guidelines, tools, and information and intelligence used by CIC staff to achieve a higher level of success in refusing entry to Canada or denying refugee status to persons who are complicit in crimes against humanity. The program has also removed significant numbers of persons from Canada but at a much slower pace.
(*Comment – There are impediments to removal, some of which have a legislative basis. Beginning with this Annual Report there will be reporting on the status of unremoved cases.*)
- The timeliness and quality of interventions before the CRDD has improved although IRB representatives indicate that there is still room for improvement.

(Comment – Officials of CIC and the IRB have agreed to meet periodically to identify and address areas where improvements can be made. It should be noted that the number of interventions has again increased significantly, from 227 to 350 in the last fiscal year.)

- The World War II component of the program has proceeded with a total of 17 revocation and deportation cases and has commenced only three new cases rather than the target of 14 new cases set for this period. Of these, 8 had positive outcomes for the program in terms of either a successful decision at the Federal Court of Canada or a decision by the defendants not to contest the proceedings. Six defendants died during the proceedings and three cases are at various stages of the revocation process following positive outcomes in Federal Court. The decision to proceed through revocation of citizenship and deportation rather than criminal prosecution has produced a much higher rate of success in contrast to the situation prior to 1995 when criminal prosecutions were unsuccessful.

(Comment - Since the Program Evaluation was finalized, a further case was commenced bringing the total to 18. Refer to the chart in Appendix G for a breakdown of the status of litigation. Fewer World War II cases were developed than originally estimated as a result of increased litigation arising from developments in Supreme Court proceedings and changes to Federal Court procedure. It is becoming increasingly more difficult to investigate and litigate World War II cases due to the passage of time and its effects on both suspects and witnesses.)

- The program has received considerable success in the development of partnerships and successful cooperation with the international community. The three departments have cooperated with international tribunals, national police forces, immigration agencies, prosecution services, and a range of other international partners. This cooperation has had the effect of improving program effectiveness and establishing an international view that the Canadian program represents a serious effort to respond to the problem of war crimes and crimes against humanity and that Canada retains a position of leadership in this area.
- Without a direct assessment of changes in public opinion it is difficult to reach a conclusion regarding the effect of the program on the perception of Canadians that Canada is not a safe haven. However the outreach activities and public information efforts of the program represent a reasonable effort at public education in this area. The commencement of a prosecution in Canada under the *Crimes Against Humanity and War Crimes Act* has the potential to greatly increase the level of public understanding of Canada's War Crimes Program and its impact.

Program Resources

- It is critically important that the program continues to be resourced at an appropriate level given the high levels of activity and the importance of program goals both in Canada and internationally. There are opportunities to strengthen resource allocations in the areas of intelligence coordination and dissemination and in the investigation and preparation for prosecution of modern war crimes.

(Comment – In response to the events of September 11, 2001, CIC has restructured its intelligence activities and created a new Intelligence Branch. The design of the new branch takes into account the experience of the Modern War Crimes Intelligence Unit which was able to make a significant contribution to the development of best practices for intelligence gathering in the department. This new branch now includes the tactical intelligence activities performed in the Organized Crime, Security Review (terrorism and espionage), and Modern War Crimes Sections, the Intelligence and Interdiction Directorate (formerly with the Enforcement Branch) and the Strategic Intelligence Unit (formerly with the Strategic Policy, Planning and Research Branch). This restructuring is intended to focus and strengthen the effectiveness of CIC's intelligence activities.)

CONCLUSION

The formal evaluation of Canada's War Crimes Program has confirmed that since the government allocated significant resources in 1998 to the development of an integrated war crimes program, the three departments through the IOG have taken and continue to take effective measures to ensure that Canada does not become a safe haven for persons who have committed war crimes or other atrocities.

It must be acknowledged that notwithstanding the best efforts of Department of Justice officials to bring more WW II cases to justice, the age and declining health of suspects and witnesses represent significant challenges. Despite this, investigations into these allegations will continue as long as viable routes of investigation remain open. As these cases are finalized, resources currently used in these investigations will be redirected to modern cases.

Much work has been done in developing the infrastructure and identifying the operational requirements and challenges to conduct investigations and develop evidence that will result in successful prosecutions under Canada's *Crimes Against Humanity and War Crimes Act*. There are many cases that have been prioritized and are under active investigation. It is anticipated that the required elements to bring forward a successful prosecution will soon materialize.

In conclusion, Canada has the mechanisms in place to deal effectively with war criminals and persons who have committed crimes against humanity and will continue to apply these mechanisms in a vigilant manner. In concert with the international community, Canada will continue to play a significant role in breaking the cycle of impunity enjoyed by those who have committed crimes against humanity.

BACKGROUND

World War II Cases

Following World War II, large immigration movements resulted in the admission to Canada of persons subsequently suspected of having committed war crimes or crimes against humanity. In 1985, the government established the Deschênes Commission of Inquiry on War Criminals which produced three lists of suspects containing 883 names. The principal recommendation of Mr. Justice Deschênes was that the RCMP and the Department of Justice be mandated to carry out investigations of these suspects.

In March of 1987, the government responded to the Deschênes Commission Report by announcing that those alleged to have committed war crimes or crimes against humanity would be subject to criminal prosecution or revocation of citizenship and deportation. Recognizing that the research required to investigate and prepare such cases for prosecution is highly specialized and intensive, the Department of Justice created a Crimes Against Humanity and War Crimes Section (Department of Justice War Crimes Section). The War Crimes and Special Investigations Unit of the RCMP, first established in 1985 to assist the Deschênes Commission, and now called the War Crimes / Immigration and Passport Section, has continued to conduct investigations of all suspected perpetrators.

At the initial stages of the program, it was necessary to negotiate agreements with several countries in order to gain access to their archives and to obtain permission to contact and interview potential witnesses, either informally or through formal memoranda of understanding. Historians, RCMP investigators and counsel from the Department of Justice travelled overseas to search archives, identify potential witnesses and conduct interviews to further their investigations.

From 1987 to 1992, after extensive investigation, charges were laid under the *Criminal Code* in four cases. None resulted in convictions. The case of *Imre Finta* was appealed and argued before the Supreme Court of Canada. In 1994, the Supreme Court upheld the acquittal, and, as a result, it became clear that it would be impractical to prosecute further cases under the (then) existing provisions of the *Criminal Code*.

During this period, revocation of citizenship and deportation proceedings under the *Immigration Act* were also initiated in the case of *Jacob Luitjens*. These proceedings resulted in the deportation of Luitjens to the Netherlands where he was immediately incarcerated for an earlier conviction of collaboration.

In January of 1995, the government announced a change in its approach to dealing with war criminals, shifting from the criminal prosecution of these individuals to revocation of citizenship. This effectively meant that it was no longer incumbent on the government

to prove that individuals were "war criminals" but instead had to prove that they entered Canada and/or obtained citizenship through misrepresentation, fraud, or the concealment of material facts. As part of this process, 1664 cases were examined by the Department of Justice's War Crimes Section in order to identify those cases which possess sufficient grounds to warrant the initiation of proceedings.

All cases are evaluated for both criminal prosecution as well as revocation proceedings. It is the position of the government that in some cases where there are allegations of war crimes and crimes against humanity, revocation of citizenship and deportation is the appropriate remedy. The Federal Court of Canada has indicated that this process "in no way diminishes the respondent's right to be treated fairly in strict compliance with the principles of natural justice."

The government pursues only those cases for which there is evidence of direct involvement or complicity in crimes against humanity. A person is considered complicit if, while aware of the commission of war crimes or crimes against humanity, the person contributes directly or indirectly to their occurrence. Membership in an organization responsible for committing the atrocities can be sufficient to establish complicity if the organization in question is one with a single brutal purpose, e.g. a death squad.

Modern War Crimes Cases

In the late 1980's, the issue of modern-day war crimes and crimes against humanity became more prominent. Political turmoil, internal ethnic strife, the settling of historical grievances, and religious extremism in Latin America, Africa, and the Middle East caused considerable flows of refugee claimants. Within these movements were small numbers of individuals alleged to be involved in war crimes or crimes against humanity.

As a signatory to the 1951 United Nations Convention relating to the Status of Refugees, Canada is committed to providing protection to persons who fear persecution as described in the Convention. This protection prevents refugees from being returned to the country where they have been persecuted. In turn, the Convention maintains that those who have committed crimes against peace, war crimes or crimes against humanity, are not entitled to this protection. In January 1989, the *Immigration Act* was amended to allow for the exclusion from the refugee determination process of individuals who were believed, on reasonable grounds, to have been complicit in crimes against humanity. In addition to denying such individuals protection under the Convention, this exclusion has the effect of reducing the time required to effect their removal from Canada.

In February of 1993, a number of changes were made to the *Immigration Act* intended to bring the classes of criminal inadmissibility up to date with both Canadian and international developments that had occurred in the area. Among these amendments was a provision rendering inadmissible to Canada, senior officials of regimes who have been designated by the Minister of Citizenship and Immigration as being involved in

terrorism, systematic or gross human rights violations or crimes against humanity. This provision was a response to a successful immigration application by the Iraqi ambassador to the United States. At that time, the existing grounds of inadmissibility could be used to refuse admission to persons who had been directly involved in crimes against humanity. However, persons in government who were physically removed from these human rights violations but who took part in decisions which led to the commission of these atrocities, were not inadmissible under the *Immigration Act*.

The Act was further amended to provide authority to deny access to a refugee hearing for persons described as war criminals or members of designated regimes if the Minister believes it would be contrary to the public interest to have a refugee claim by such a person heard. This situation occurs at an immigration inquiry where the person is brought before an adjudicator to determine his admissibility to enter or remain in Canada.

In May of 1997, amendments were made to the Post Determination Refugee Claimants in Canada Class regulations and the Deferred Removal Order Class regulations. These amendments prohibited persons who have been excluded under article 1F(a) of the Convention from accessing these additional humanitarian reviews prior to their removal.

As the issues pertaining to the entry of modern-day war criminals grew more numerous and complex, it was apparent that an improved system was required for identifying and screening these individuals. In April of 1996, three employees were assigned to a new Modern War Crimes Section within Citizenship and Immigration Canada. Due to the escalating number of cases and the need for supporting infrastructure, it was evident that this section required increased resources. At the same time, concerns were expressed over the increase in the numbers of persons in Canada whose files were not being processed in a timely manner. It was acknowledged that the initial identification of modern war criminal cases early in the immigration process would be the best strategy. Early detection, particularly through visa screening abroad, had proven to be considerably more effective and efficient than attempting to remove the person after arrival in Canada.

Renewed Approach 1998

In the fall of 1997, the government conducted a review of its War Crimes Program. In a press release dated July 21, 1998, the following decisions were announced to improve effectiveness:

- Implementation of a government-wide initiative to increase coordination between departments; enhanced cooperation in such areas as case prioritization, compliance with international obligations, communications, and the sharing of information and expertise in order to benefit both World War II 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 fourteen World War II cases would be initiated over the next three years and additional cases would continue to be developed; and
- \$46.8 million would be allocated over the next three years; the government would then review the accomplishments of the program before determining funding requirements for future years. To make this review comprehensive, a program evaluation framework would be established in 1998-1999 and a full program evaluation would be conducted in 2000-2001.

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

- The Department of Justice received \$16.5 million to litigate fourteen new World War II cases and to litigate 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);
- Citizenship and Immigration Canada received \$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 received \$2 million for the investigation of modern-day criminal prosecution cases (\$682,000 in each of the three years).

Subsequent to the government's announcement, a number of initiatives were implemented in the remainder of fiscal year 1998-1999.

A substantial amount of the resources allocated to CIC (\$7-8 million) was committed to developing a large Information Technology (IT) infrastructure that would support the information and research material for the entire program, as well as the compilation of statistics for management reporting, on performance and results. Management reporting is critical in delivering program measurement and management information to Treasury Board, CIC senior management as well as departmental War Crimes Units worldwide.

The purpose of the infrastructure is to enable CIC to manage and retrieve information pertaining to modern war crimes and crimes against humanity cases, as well as store specific material pertaining to modern war crimes and crimes against humanity in a reference facility. These systems will be accessible to all immigration officers in Canada and abroad and will assist with the prevention of such people from entering Canada, the identification and research of cases and the development of tracking systems and search systems to assist with investigations. They will provide the capacity to track cases through the immigration adjudication and judicial systems and to ensure removal occurs as promptly as allowed by law.

The staff of the Modern War Crimes Section within Citizenship and Immigration Canada was increased to sixteen employees. This permitted the expansion of the mandate to include: strategic management of their modern-day war crimes caseload, encompassing the development of a research function, the ability to provide better analysis and

support to field offices, an in-house legal advice capability, the development of a computerized operational support and case-tracking system, and the creation of an intelligence unit mandated to develop specific subject expertise in modern-day war crimes. Comprehensive Operations Memoranda were prepared to guide immigration officers in the proper application of the relevant provisions of the Act and a training program specific to war crimes cases was prepared.

Resources were deployed to Citizenship and Immigration field offices in Canada permitting the creation of regional war crimes units in Vancouver, Toronto, Montreal, Halifax, Winnipeg, and at the Case Processing Centre (CPC) in Vegreville. Resources were also strategically deployed to key posts abroad to strengthen the ability to identify and refuse visa applicants who pose a risk of involvement in war crimes and also to increase liaison with foreign governments and other contacts on war crimes issues.

The Department of Justice and the RCMP have used the funds allocated to them to continue to investigate allegations that people now in Canada participated in the commission of crimes against humanity or war crimes during the Second World War or in the modern era. Counsel, police investigators and analysts also traveled overseas on a number of occasions in connection with these investigations.

The Department of Justice and the RCMP have worked to develop and implement an integrated system to facilitate the conduct of modern war crimes investigations in Canada and throughout the world. Additional counsel, police investigators and analysts with extensive experience working with the international criminal tribunals for the former Yugoslavia and Rwanda were engaged. Personnel travelled to more than eight countries in the past two years to enter into formal arrangements with foreign governments and establish the necessary contacts which permit Canadian investigators to conduct investigations into crimes against humanity and war crimes in these countries. These arrangements have enabled investigators to interview potential witnesses, search archives and foreign government documents to advance the investigations.

The Department of Justice continues its efforts to build a modern war crimes database to manage information obtained in support of the investigations conducted under the integrated system discussed above. The database will facilitate the management of the data obtained by our analysts from foreign archives and open sources, as well as the material gathered from police investigations on individual suspects, such as witness statements, individual identity documents and other forensic evidence. The database will also allow for easy cross-referencing of material and information within the Section, and permit a more effective exchange of information with investigators and analysts within Citizenship and Immigration Canada.

SELECTED LEGAL PROVISIONS

Immigration Act (*these provisions were in effect during the period of this report; the new Immigration and Refugee Protection Act came into force on June 28, 2002*)

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:

(before October 23, 2000) (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.

(after October 23, 2000) (j) persons who there are reasonable grounds to believe have committed an offence referred to in any of sections 4 to 7 of the *Crimes Against Humanity and War Crimes Act*;

(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 any act or omission that would be an offence under any of sections 4 to 7 of the *Crimes Against Humanity and War Crimes Act*, 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
- (b) 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 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 (before October 23, 2000) (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*.

(after October 23, 2000) (c) while the person is under investigation by the Minister of Justice, the Royal Canadian Mounted Police or the Canadian Security Intelligence Service for, or is charged with, on trial for, subject to or a party to an appeal relating to, an offence under any of sections 4 to 7 of the Crimes Against Humanity and War Crimes Act;

(d) if the person has been convicted of an offence under any of sections 4 to 7 of the Crimes Against Humanity and War Crimes Act.

NEW IMMIGRATION LEGISLATION

On November 1, 2001, the new *Immigration and Refugee Protection Act* received Royal Assent. The previous *Immigration Act*, which had been in force for 24 years, underwent two major re-writes and was amended more than thirty times. Final regulations were published in the Canada Gazette on June 11, 2002. The new statute came into force on June 28, 2002.

The new Act does not contain any additional provisions that specifically deal with war criminals. The current provisions, which have proven to be effective, have been transferred to the new statute. There are a number of amendments throughout the new Act, however, that will strengthen and streamline the enforcement processes that apply to suspected war criminals as well as to other categories of persons involved in serious criminality such as organized crime and terrorism.

These provisions are as follows:

- access to the Immigration Appeal Division (IAD) of the Immigration and Refugee Board is now prohibited entirely to all serious criminals. Under the previous Act, permanent residents and refugees, even if they were serious criminals, had access to the IAD on questions of fact and law but not on humanitarian and compassionate grounds;
- persons whose refugee claims are refused by the Refugee Division of the IRB cannot make a second claim. This includes persons who have been excluded for the commission of war crimes and crimes against humanity. Under the previous Act, it was possible for persons who were rejected to make subsequent claims;
- it is no longer necessary to have the Minister of Citizenship and Immigration declare that it is contrary to the national interest to deny access to the Refugee Division to people involved in very serious criminality; a finding by the Immigration Division of the IRB that a person belongs to such a category is sufficient for this purpose;
- the threshold for removing persons to their country of origin who have been found to be refugees but also have committed very serious criminal activities has been changed from "danger to the security of Canada" to "danger to the security of Canada or because of the nature and severity of the acts committed";
- for the Pre-Removal Risk Assessment (PRRA), persons inadmissible on grounds of serious criminality cannot obtain refugee protection by making a PRRA application: they can only obtain a stay of a removal order to the country for which protection is claimed and only if the PRRA application is successful;
- the protection of confidential information, which is presently possible before IAD and Federal Court hearings, is extended to hearings of the new Immigration Division of the IRB.

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.

REGIMES DESIGNATED PURSUANT TO PARAGRAPH 19(1)(I) OF THE IMMIGRATION ACT (now paragraph 35(1)(b) of the *Immigration and Refugee Protection Act*)

- 1) **designated June 16, 1993, extended on August 15, 1997:** the Bosnian Serb regime between 27 March 1992 until 10 October 1996;
- 2) **designated October 12, 1993:** the Siad Barre regime in Somalia between 1969 and 1991;
- 3) **designated April 8, 1994:** the former military governments in Haiti between 1971 and 1986, and between 1991 and 1994, except the period August -December 1993;
- 4) **designated October 21, 1994:** the former Marxist regimes of Afghanistan between 1978 and 1992;
- 5) **designated September 3, 1996:** the governments of Iraq under Ahmed Hassan Al-Bakr and Saddam Hussein in power since 1968;
- 6) **designated April 27, 1998:** the Government of Rwanda under President Habyarimana between October 1990 and April 1994, as well as the interim government in power between April 1994 and July 1994;
- 7) **designated June 30, 1999, amended March 14, 2001:** the Governments of Federal Republic of Yugoslavia and the Republic of Serbia (Milosevic) between February 28, 1998, and October 7, 2000;
- 8) **designated March 14, 2001:** the Taliban regime in Afghanistan from September 27, 1996.

WORLD WAR II CASES – STATUS OVERVIEW

Category	As of March 2002
Allegation Files (initial checks being undertaken)	140
Active Files – development stage (these include files at the research, witness interview and recommendation stage)	72
Active Revocation/Deportation Files	7
Inactive Files	490
Closed files	964
Total	1,673

WW II CASES - LITIGATION OVERVIEW

Since 1995, 18 revocation and deportation cases have been initiated.
One new case was commenced in fiscal year 2001-2002 (Seifert).

Revocation:	Number	Cases
References now before the Federal Court	3	Fast; Obodzinsky; Seifert
Decisions rendered by Federal Court in favour of the Minister of Citizenship and immigration since 1995	6	Bogutin*; Katriuk; Kisluk*; Oberlander; Odynsky; Baumgartner *deceased
Deportation:		
Hearing before IRB	1	Oberlander
WWII Cases Concluded:		
Removed or left Canada voluntarily	2	Csatary; Maciukas
Proceedings concluded due to successful defence by respondent/defendant	3	Dueck; Podins; Vitols
Deceased during proceedings	6	Kenstavicius; Tobiass; Nemsila; Bogutin; Nebel; Kisluk

Names may appear under more than one category, depending on where the file is in the litigation process. However, for the purpose of calculating the total number of litigation files, each file is only counted once.

WORLD WAR II – CONCLUDED CASES

Johann Dueck (case dismissed): In the Johann Dueck case, on December 21, 1998, Justice Marc Noël of the Federal Court dismissed the Crown's case, finding that Mr. Dueck "did not obtain his Canadian citizenship by false representation or fraud or by knowingly concealing material circumstances, within the meaning of paragraph 18(1)(b) of the Citizenship Act".

Serge Kisluk (citizenship revoked, individual deceased): Justice Allan Lutfy of the Federal Court released his decision on June 7, 1999 and found that Mr. Kisluk "was admitted to Canada for permanent residence and obtained Canadian citizenship by false representations or fraud or by knowingly concealing material circumstances." Those circumstances, as found by the Federal Court, included Mr. Kisluk's voluntary collaboration with the Nazi occupation forces in Cholm, Poland in 1940 and 1941 and his membership in the Schutzmannschaften or auxiliary police unit under Nazi command in Makovichi, Ukraine from late 1941 until February 1943. The Court also found that Mr. Kisluk participated in the beating of an elderly Jewish victim and the killing of a young Jewish woman in March of 1943. The Governor in Council revoked his citizenship on 2 March 2000 and a deportation inquiry began on October 6, 2000. Mr. Kisluk died on May 21, 2001.

Ludwig Nebel (deceased): The defendant was served with two reports under the Immigration Act on June 30, 1998, alleging that he obtained his status in Canada through false representation and knowingly concealing material circumstances. The allegations against Mr. Nebel included that, while living as a citizen in Austria prior to the war, he was a member of the SA, the SS and the Nazi Party. Following the Nazi occupation of Austria, it was alleged that Mr. Nebel held various positions in both the SS and the Gendarmerie unit, reaching the level of Hauptmannschaftsführer in the Stanislau region of Galicia. The matter was referred to the Adjudication Division of the Immigration and Refugee Board on July 6, 1998. Mr. Nebel died in July of 2000.

Wasly Bogutin (citizenship revoked, individual deceased): The Federal Court released its decision in Bogutin on February 20, 1998. Mr. Justice William McKeown determined that Mr. Bogutin had collaborated with the Nazi occupation forces in the town of Selidovo, Ukraine and, as an auxiliary police officer, was personally and directly involved in effecting the roundup of young persons for forced labour in Germany. When applying to immigrate to Canada following the war, Mr. Bogutin fraudulently claimed to be a Romanian national, and did not reveal his collaboration with the Nazis. As a result of these findings, the Governor in Council revoked his citizenship on July 15, 1998 and on September 16, 1998, an Adjudicator of the Immigration and Refugee Board issued a conditional deportation order. On the same date, Mr. Bogutin's lawyers told the Immigration and Refugee Board that he was claiming Convention refugee status. Mr. Bogutin died on January 31, 2000.

Eduards Podins (case dismissed): In the Eduards Podins case, Justice William P. McKeown of the Federal Court released his decision on July 9, 1999. In dismissing the Crown's case, Justice McKeown found that Mr. Podins "did not obtain his Canadian citizenship by false representation or fraud or by knowingly concealing material circumstances, within the meaning of paragraph 18(1)(b) of the *Citizenship Act*."

Peteris Vitols (case dismissed): In the Peteris Vitols case, Justice William McKeown of the Federal Court released his decision on September 23, 1998. In dismissing the Applicant's case, Justice McKeown found that Mr. Vitols "did not obtain his Canadian citizenship by false representation or fraud or by knowingly concealing material circumstances, within the meaning of paragraph 18(1)(b) of the *Citizenship Act*."

Ladislaus Csatory (citizenship revoked, individual left Canada voluntarily): A Notice of Intent to Revoke Citizenship was served on Ladislaus Csatory, wherein it was alleged that he had obtained his status in Canada through fraud and misrepresentation. It was alleged that when applying to immigrate to Canada, Mr. Csatory had provided false information about his nationality, and had failed to provide information concerning his collaboration with Nazi occupation forces while serving with the Royal Hungarian Police and, while in this service, his participation in the internment and deportation to concentration camps of thousands of Hungarian Jews. Mr. Csatory voluntarily left the country to avoid deportation. The Governor in Council revoked his citizenship on August 28, 1997.

Conrad Kalejs (visitor deported): The Conrad Kalejs case involved allegations against a visitor to Canada that in June 1941, he joined the Arajs Kommando, a Nazi collaborationist auxiliary security police force, in his homeland in Latvia. He allegedly served with that force until at least May 1943, and perhaps until June 1944, attaining the rank of First Lieutenant and company commander. In preparing the case for immigration inquiry, the Crimes Against Humanity and War Crimes Section provided extensive historical and litigation support to establish the grounds for removal. Mr. Kalejs was deported to Australia in August 1997 and died there last year. (As this individual was a visitor to Canada he is not counted as part of the WW II caseload in Canada.)

Mamertas Maciukas (citizenship revoked after individual left Canada): In this case, the Minister alleged that Mr. Maciukas had been a member of the notorious Schuma 2/12 Lithuanian Battalion, which, among other things, was directly involved in the murder of tens of thousands of Jews and Soviet POWs in the Minsk area from October to December 1941. The Notice of Revocation to the Federal Court was withdrawn as a result of Mr. Maciukas leaving the country voluntarily. His citizenship was revoked on April 30, 1998.

Erichs Tobliss (individual deceased): The Minister of Citizenship and Immigration alleged that Mr. Tobliss obtained his status in Canada by knowingly concealing

material circumstances in that he failed to divulge to Canadian immigration and citizenship officials his membership in the *lettische Sicherheitshilfspolizei* (commonly known as the *Arajs Kommando*) subordinate to the German *Sicherheitspolizei und SD* during the period 1941 to 1943 in German occupied Latvia and his participation in the execution of civilians during that time and his membership in the *Waffen SS* during the period 1943 to 1945. Mr. Tobiass died in December 1997 during the court proceedings.

Josef Nemsila (Individual deceased): It was alleged by the Minister that Mr. Josef Nemsila had been a member of the Hlinka Guard during the war, and had participated in the arrest, detention, interrogation and execution of civilians during the fall and winter of 1944-45 in the Banska Bystrica region of Slovakia. In 1947, he was convicted of offences flowing from this conduct. He subsequently escaped custody and was able to obtain permission to immigrate to Canada through fraud and misrepresentation, by hiding his war-time activities and his post-war conviction. Following the death of the defendant in April of 1997, the Federal Court of Appeal ruled that his appeal of an order of Justice Jerome on an initial procedure issue had become moot.

Antanas Kenstavicius (Individual deceased): In the Antanas Kenstavicius deportation case, the defendant died during the first day of his immigration hearing in January of 1997. The Crown was however able to file its full documentary case, which remains a part of the public record. The Crown had alleged that when applying to immigrate to Canada, Mr. Kenstavicius had failed to inform immigration officials that he had held the position of Deputy Chief, and later Chief of the District Police in Svencionys, Lithuania from 1941-43, during which time he was involved in atrocities against the local Jewish population; that he commanded an operation in October 1941 during which thousands of Jewish citizens were incarcerated in a concentration camp and later executed; that he had led reprisal actions against Polish citizens following the assassination of two German officials, and that he had played a leading role in the liquidation of the Svencioneliai ghetto.

APPENDIX I

RESULTS - MODERN WAR CRIMES CASES

Result	Definition	*1997/98	1998/99	1999/00	2000/01	2001/02
Entries Prevented	Immigrant cases refused 19(1)(j) or (l) or visitor cases refused 19(1)(j) or (l) or cases refused on other grounds	34	307	581	644	445
Refusals and Exclusions	As above plus exclusions by the CRDD	199	332	596	697	496
Removals	Persons removed from Canada, refugee and immigrant	80	27	38	42	46
Cases Reviewed Abroad	Cases reviewed/investigated in visa offices	85	352	1008	2374	1797
CIC Involvement in RD Hearings	Cases in which the CIC Minister intervened	24	58	127	227	350
Total MWC Cases	Number of alleged cases in Canada and abroad	477	1620	3039	4246	3983
Cases Under Investigation at end of Fiscal Year	Cases under investigation abroad	51	45	125	300	170
	Refugee cases under CIC investigation	3	9	363	311	292
	Immigration cases under CIC investigation	82	71	135	208	205

* Data includes all activities up to and including fiscal year 1997/98.

MODERN CASES – SELECTED CASE SUMMARIES

The following sample case summaries have been selected to provide the reader with specifics concerning the types of modern war criminals dealt with in Canada and abroad as well as the legal processes that must be followed to remove such individuals from Canada.

Citizen of Somalia

This individual applied for permanent residence at the Canadian Embassy in Nairobi on November 14, 2000. He was sponsored as a refugee by a church in the Toronto area and has a son and three daughters living in Canada. Information provided by the applicant at interview indicated that he held senior positions within Somalia society during the regime of Said Barre. These included the position of Vice Rector of the Somalia National University and the position of general director of a factory. While managing the factory he stated that he met with President Barre once a week. The case was referred to NHQ for further investigation and analysis.

Documentary information from The United Nations Educational, Scientific, and Cultural Organization (UNESCO) confirmed that the National University of Somalia is a university administered by the Ministry of Higher Education and Culture. The Chancellor of the University is also the head of state. The Rector is the chief executive officer assisted by two vice rectors. This placed the applicant third in the chain of command in a government institution.

Most factories in Somalia during Barre's regime were state run. It should be noted that President Barre did not have time to meet with his own members of government on such a regular basis. The applicant and the work done by the factory were of significance to the government.

As the government of Said Barre from 1969 to 1991 is designated as a regime that engaged in systematic human rights abuses, the applicant was refused under paragraph 19(1)(l) of the Immigration Act.

Citizen of Rwanda

In 2001 the subject was invited by the Rwandan Congress of Canada to give an address on the issue of the aftermath of the genocide. He subsequently applied for a visitor visa through the Canadian Embassy in Paris. The applicant was a former political leader in Rwanda from July 1994 to August 1995.

A 1994 United Nations Report lists the Rwandan government as one of the perpetrators of human rights violations in Rwanda and the interim (MDR) government responsible for

having refused to take effective steps to prevent the violations of human rights and international humanitarian law including genocide.

The applicant was determined to be inadmissible to Canada under paragraphs 19(1)(j) and (l) of the Immigration Act and his application for a visitor visa was refused.

Citizen of Afghanistan

This individual was one of five deputy Prime Ministers from 1990-1992 of the communist government of President Najabullah of Afghanistan. On October 21, 1994 this government was designated by the Minister as one that had engaged in gross human rights violations.

This individual sought entry into Canada as a visitor on Dec 22, 2001 at Niagara Falls. He was reported under 19((1)(l) of the Act and directed back to the United States pending inquiry.

On March 11, 2002, his inquiry opened and he was found described by the adjudicator. A deportation order was issued and he was returned to the USA.

Citizen of Chad

This 29 year old citizen of Chad entered Canada from the USA at Philipsburg on November 15, 2000 claiming refugee status on arrival. He was a member of the Chad Air Force and had reached the rank of Chief of Operations. He indicated that he had left Chad because of disagreements with the air force regarding its human rights violations against the civilian population.

On December 28, 2000 the Minister filed an intervention with the CRDD notifying her intention to seek a 1F(a) exclusion order. In the face of these allegations, the subject subsequently withdrew his claim to refugee status. As the subject had entered Canada from the USA, he was returned to the USA in accordance with the reciprocal agreement on the return of deportees between the USA and Canada.

Mohamed Abdalla YASSER Citizen of Egypt

On January 13, 1997 Mr. Yasser arrived at the port of Montreal as a stowaway and claimed refugee status. In outlining his claim he explained that he had been a member of Gamaa Islamaya, a principal terrorist organization in Egypt.

On July 10, 1998 the Minister filed an intervention with the CRDD signifying her intention to argue that Mr. Yasser should be excluded from refugee determination. Evidence was introduced at the hearing that Mr. Yasser had an excellent understanding of the activities of Gamaa Islamaya. The goal of this organization was to attack the

government at all levels and the methods used were assassinations, bomb attacks, and summary executions. On February 10, 1999 the CRDD ordered that Mr. Yasser was excluded from refugee protection under article 1F(a). Mr. Yasser then applied to the Federal Court for judicial review of the CRDD decision.

On March 2, 1999 following their marriage, Mr. Yasser's spouse submitted a sponsorship application. On July 22, 1999 the Federal Court rejected the application for judicial review. On December 15, 2000 his sponsored application for permanent residence was refused. Mr. Yasser was detained and on April 11, 2001 he was removed from Canada.

Citizen of Argentina

This individual arrived in Canada at Fort Erie in September 2000 and made a claim to refugee status. A Notice of Intent to intervene was filed February 2001 based on his career in the Argentine Navy from 1963 to 1995, where he obtained the rank of Frigate Captain.

The Minister's position was that the subject was an integral part of the Argentine Navy. The torture and disappearance of thousands of people during what is known as the "dirty war" took place largely in secret detention centres. One of these was the Navy Mechanics School (ESMA) where he served in 1976 and 1983-84. The ESMA was not just a secret detention centre where torture was used but also the operations hub of a complex organization where a wide range of secret criminal operations were planned and organized. He claimed to be totally unaware of any human rights abuses committed by the Argentine security forces. It was noted that more than 5000 prisoners were held at ESMA and that officers slept on the first two floors sandwiched between the basement where torture was carried out and the third floor and attic where prisoners awaited their fate. The Minister submitted that it was not credible that a senior navy commander throughout the "dirty war" years, would have been totally unaware of the existence of human rights violations by the armed forces. The CRDD concluded there were reasonable grounds to believe he was a knowing participant at ESMA, that he knew about the torture and extermination of prisoners, and that he failed to disassociate himself from these atrocities. He was excluded under article 1F(a) on November 5, 2001.

He failed to appear for his removal from Canada and a warrant for his arrest was issued on January 15, 2002.

Citizen of Republic of the Congo ..

This individual arrived at Lacolle, Quebec on June 28, 1997 and claimed refugee status. His claim was based on his advocacy for student rights in his country.

At his refugee hearing he admitted that he was an intelligence officer (informant) for Bernard Kolelas, mayor of Brazzaville and main opposition leader to President Lissouba. The information he obtained could result in the disappearances of individuals and violence between the agents of Mr. Kolelas and Mr. Lissouba. Extensive evidence was introduced over four sittings from March 17, 1998 to November 1, 1999.

In rendering its decision on August 9, 2000, the CRDD excluded the subject from refugee determination under articles 1F(a), (b), and (c) of the Convention. On the basis of evidence presented by the Minister, the tribunal had concluded that he was a voluntary member of a brutal organization known as the Ninjas. He was complicit in war crimes, crimes against humanity, and of serious crimes committed by a paramilitary corps.

Following some difficulties in locating the individual he was removed to the USA on June 14, 2001.

Mohamad Abbas EL SIBLANI
Citizen of Lebanon

Mr. El Siblani arrived in Canada from the USA on July 26, 2000 and claimed refugee status on arrival at Vancouver International Airport. On February 22, 2001 a Minister's intervention was filed with the CRDD and evidence brought forth that Mr. El Siblani was involved in crimes against humanity.

Mr. El Siblani joined the Amal movement in Lebanon in 1986. Although generally more moderate than their Hezbollah rivals, Amal members participated in crimes against humanity, including the torture and murder of hostages during the civil war in Lebanon. It is reported that in a siege of a Palestinian refugee camp during the winter months of 1987, the Amal refused to allow food or medical aid into the camps. A number of women and children were shot in the legs when they attempted to leave the camps to escape or bring in food.

As a member of an eight man unit he received a year of military training in 1988. From 1990 until 1994 he supervised security guards at the Amal headquarters in Beirut.

On September 6, 2001 the CRDD held that his involvement in the Amal movement made him complicit in crimes against humanity and he was excluded pursuant to article 1 F(a). Mr. El Siblani applied to the Federal Court but was denied leave.

He was removed under escort to Lebanon on February 6, 2002.

Citizen of Colombia

In 1996 this person was admitted to Canada as a visitor at Lacolle. He overstayed his visitor status and was reported under the Act on January 20, 1997. He subsequently claimed refugee status and three sittings of his refugee hearing were held from July 19, 1999 to March 1, 2000.

The CRDD reached the conclusion that his claim must be excluded under article 1F(a) of the Convention because of his career as a fighter jet pilot in the Colombian army and admission of acts against civilian populations carried out by him and his comrades. He joined the armed forces voluntarily and did not leave when he had the opportunity to do so. When questioned about the length of time (seven years) he served in the armed forces he stated "I'd rather kill people from planes" and "I feel safe in plane with bombs if I have a plane with 500 bombs".

On August 16, 2000 the subject was removed to the USA. On March 3, 2001, immigration officials were advised by the Montreal Police that he was in Montreal apparently having entered the country surreptitiously. He was arrested under the Immigration Act and reported as a previous deport who did not have the consent of the Minister to return to Canada. He did not make another refugee claim and was removed to Colombia on October 18, 2001.

Zoran Vujovic Citizen of Yugoslavia

Mr. Vujovic was admitted as a visitor with a fraudulent British passport at Vancouver International Airport in March 1997. The following month he made a claim to refugee status stating that he was a trained employee of the Yugoslav State Security administration and a member of the secret police. On June 28, 1998, a Minister's Intervention was filed and evidence introduced that he was complicit in crimes against humanity for his delivery of weapons to Serbian combatants in Croatia, Bosnia-Herzegovina and Albania. These actions assisted the Serbian military and paramilitary groups in the commission of crimes against humanity including the execution of Croatian prisoners. The CRDD noted that prior to making arms deliveries to Bosnia and Albania the subject knew of the atrocities committed against Croatian civilians in Vukovar. Mr. Vujovic left Yugoslavia immediately prior to an inquiry into alleged war crimes committed by his associates.

On April 4, 2000, the CRDD excluded him from refugee determination. He applied to the Federal Court for judicial review and was refused leave.

He was removed to the Former Yugoslavia under escort on February 20, 2002.

Samuel Ramirez-Perez
Citizen of Guatemala

Samuel Ramirez-Perez arrived in Canada in November 1989 at Fort Erie, Ontario and claimed refugee status.

According to Mr. Ramirez-Perez's own testimony at the CRDD he attended the police school in Guatemala City and graduated in December 1978. He received the following training: military, criminal investigation, use of arms and shooting, taking fingerprints, everything that would have referred to police matters. The national police school was part of army intelligence. Mr. Ramirez-Perez was later transferred to a unit known as Commando Six (Comando Seis or 6th Commando).

Information was provided from Amnesty International's February 1981 document on Guatemala concerning Commando Six. A diagram of the Structure of Government Killings in Guatemala clearly shows Commando Six as part of the National Police structure. The diagram shows the National Police were responsible for the killings of prisoners and criminals and Commando Six involved in the disappearance of demonstrators. It states "Two special units of the National Police, the Comando Seis (6th Commando) and the Peloton Modelo (Model Platoon), have been particularly active during political demonstrations and were identified as having detained demonstrators who subsequently disappeared."

Mr. Ramirez-Perez was ordered excluded from refugee determination on November 10, 1992. His application to the Federal Court for judicial review was subsequently refused. An application for permanent residence sponsored by his Canadian spouse was submitted and refused on three separate occasions. The subject then thwarted attempts to effect his removal from Canada by refusing to cooperate in obtaining a travel document from the Embassy of Guatemala, by submitting another application for permanent residence, appealing the refusal of that decision, and then failing to appear for his scheduled removal from Canada.

Mr. Ramirez-Perez was removed from Canada, under escort, on June 17, 2000. He returned to Canada on an unknown date and came to CIC's attention through a police traffic stop. He was arrested and detained on January 20, 2002 after attempting to assault the officers and uttering a death threat to one of them. He remained in detention until his removal, again under escort, on February 21, 2002.

Citizen of Guatemala

This 39 year old citizen of Guatemala arrived at Lacolle with his spouse on December 24, 1999 and claimed refugee status. On the basis of information contained in his claim, on March 4, 2000 the Minister filed an application to intervene in his refugee determination hearing.

At the refugee hearing, evidence was presented that the subject had worked as a political analyst for the Presidential General Staff from 1988 to 1998. The Presidential General Staff obtained information about all kinds of individuals and civic organizations, evaluated their behaviour in their respective fields of activity, prepared lists of those actions that were to be repressed for their supposedly subversive character, and proceeded accordingly to capture, interrogate, torture, forcibly disappear or execute these individuals. It was noted that the subject had the opportunity to leave his position in 1995 but declined to do so. On January 10, 2001 the CRDD concluded that the subject had directly participated in activities that resulted in war crimes or crimes against humanity and ordered his exclusion under article 1F(a).

On May 8, 2001 the subject was returned to the USA.

**Qasem Ibrahim Qasem HUSSEIN
(Palestinian)**

Qasem Hussein arrived in Canada from Jordan on 28 June 1998 and was admitted as a visitor. He claimed refugee status on May 23, 2000 based on his fear of HAMAS, of which he was a member from 1994 to May 1998. Notice of Intent to intervene in his refugee hearing was filed on February 20, 2001.

Mr. Hussein testified that he was resolute in his belief that Palestine must be liberated and returned to the Palestinians. Due to Mr. Hussein's dedication to the cause, he was promoted within HAMAS at the end of 1995 or early 1996. He attended lectures, recruited younger Palestinians to join the group, and attended demonstrations. He was taught how to maintain a weapon and assemble bombs. Mr. Hussein worked with individuals who are named in documents as leaders of HAMAS living in Jordan. In September 1997 he advanced to his fourth group, the HAMAS military wing Izzedin al-Qassam led by Sheikh Izzedine. In 1998 when it became apparent that he was expected to become directly involved in perpetrating suicide bombings or assassinations he ceased his association with HAMAS. The CRDD determined that Mr. Hussein was complicit in crimes against humanity based on the widespread and systematic murder of Israeli citizens and Palestinian collaborators by HAMAS between 1994 and 1998.

On August 13, 2001 he was excluded from consideration as a Convention Refugee under article 1F(a). He applied for judicial review, which was denied on January 7, 2002.

He was removed to Jordan on March 4, 2002.

Citizen of Haiti

This individual first entered Canada at Lacolle on May 16, 1989 and made a claim to refugee status five days later. In January 1991, he was excluded from refugee determination due to his 18 year military service in Haiti. He had served in the Leopards which was the army's anti-guerilla unit. The Leopards were created in 1971 to ensure the transition to the Jean Claude Duvalier regime and were charged with, among other duties, the personal safety of Mr. Duvalier. He headed several military operations involving gross human rights violations including the disembarkment on l'Île à la Torture in 1982 and abuses of Haitian voters in 1987. He was subsequently appointed as Chief of Police in Cap-Haitien, the second largest city in Haiti. He became relatively wealthy and owned several businesses and properties in Haiti. At his hearing he denied ever executing anyone or participating in an execution but admitted to receiving orders to do so on several occasions. This lacked credibility given his senior rank and the fact that he obviously had the confidence of his military superiors.

He was ordered removed from Canada but failed to appear for interview to make removal arrangements. A warrant was issued for his removal.

Based on information he subsequently provided to officials, he then entered the United States and remained there illegally for a period of time. In October 1996 he returned to Haiti and obtained the birth certificate of his deceased nephew enabling him to obtain a valid passport in the name of his nephew. He returned to the USA and then re-entered Canada at an unknown port of entry with the assistance of a smuggler and a false US passport. (As citizens of Haiti require a visa to enter Canada, the valid Haitian passport would not have secured his entry.) He made a claim to refugee status under his new identity, which was accepted by the CRDD on January 14, 1998. On May 19, 1999 he became a permanent resident of Canada. (It should be noted that in 1993 CIC implemented a policy of fingerprinting all refugee claimants).

In February 2002 immigration officials received a tip concerning the whereabouts of this individual. He was located in Ottawa and the outstanding warrant for removal was executed.

He was fingerprinted and removed to Haiti under escort on March 9, 2002.

Marco Antonio RIOS MORALES **Citizen of Guatemala**

Mr. Rios Morales arrived in Canada in November 1998, at Niagara Falls and claimed refugee status.

Given Mr. Rios Morales' extensive military experience with the Guatemalan armed forces, the Minister filed a notice to intervene in the refugee hearing on February 15, 1999. Mr. Rios Morales was a career military officer from 1984 to 1997 reaching the

rank of Captain. He was stationed in highly contested areas of Guatemala such as El Quiche, Quetzaltenango, and Peten. Mr. Rios Morales' duties as 2nd Lieutenant of the Civil Affairs Platoon in Peten was to maintain control of the civilian population and carry out a census of the population.

During the period of Mr. Rios Morales' military service some of the most serious human rights violations on record occurred. Evidence was introduced establishing that all branches of the Guatemalan armed forces committed gross human rights violations in a systematic and widespread fashion against the civilian population. The documentary evidence showed that widespread and systematic human rights abuses were committed by the Guatemala military in the places and times Mr. Rio Morales served and that at some level in the Guatemalan military and police, the use of torture was official policy.

The CRDD determined that Mr. Rios Morales had personally and knowingly participated in the Guatemalan Army's campaign of widespread crimes against humanity. He was excluded under article 1F(a) on June 29, 2001. Mr. Rio Morales was very vocal in his disagreement with the Department's actions in his case. He sent numerous letters, which had a threatening tone, to the Immigration and Refugee Board and to immigration officials.

His application to the Federal Court for judicial review was denied on November 22, 2001 and he was removed to Guatemala on January 31, 2002.

Gerardo Florent Sifuentes Salazar
Citizen of Peru

On October 25, 1992 Mr. Salazar arrived at Gander and claimed refugee status. In his application he stated that he worked for the Peruvian police for 20 years and in this capacity passed information to his superiors concerning members of subversive groups operating in Peru. The Minister intervened in the refugee determination hearing but was unable to persuade the tribunal that Mr. Salazar should be excluded from refugee determination. On May 18, 1994 the CRDD granted Mr. Salazar Convention Refugee status and the Minister subsequently applied to the Federal Court for judicial review. This application was allowed and on March 21, 1995 the Federal Court ordered a new hearing.

On February 26, 1996 the CRDD excluded Mr. Salazar under article 1F(a) of the Convention. Mr. Salazar subsequently applied to the Federal Court for judicial review and was successful.

On October, 28, 2000 following the third hearing in this case the CRDD again ordered Mr. Salazar excluded from refugee determination.

On July 4, 2001 Mr. Salazar was removed to Peru.

Osama Ahmed Afifi
Citizen of Egypt

Mr. Afifi was admitted to Canada as a visitor for three weeks at Mirabel International Airport on August 17, 1993. He was subsequently reported for overstaying his visitor status and was taken to inquiry where he claimed refugee status.

The Minister filed an intervention on January 13, 1995 seeking to have Mr. Salazar excluded from refugee determination. Mr. Afifi had joined an Islamic organization in Egypt in 1991 which was associated with Jamar Islamaya and acted as a courier transporting sums of money between Egypt and the organization's contacts in Syria. The organization was responsible for acts of violence in Egypt. Following confirmation that his friends in the group were responsible for the summary execution of a prominent civilian he continued his work with the organization and participated in the brutal activities of this organization. On December 13, 1996 the CRDD ordered him excluded under article 1F(a).

Mr. Afifi's application for judicial review was rejected by the Federal Court on June 13, 1997. Mr. Afifi subsequently failed to appear for the scheduled interview to make arrangements for his removal from Canada and a warrant was issued on April 16, 1998.

On August 25, 2001 confirmation was received that Mr. Afifi was in the USA having been apprehended by authorities there.

Albelkader TOUITA
Citizen of Algeria

Albelkader Touita arrived at Mirabel International Airport in January 1994 with a fraudulent French passport and was admitted as a visitor. A few days later he reported to the Montreal CIC and claimed refugee status.

Evidence was introduced at the hearing that Mr. Touita was an active member of the "Front Islamic du Salut" (FIS) which is known for its human rights abuses against Algerian citizens. As a secret courier he delivered packages and correspondence and facilitated the transport and accommodation of FIS members throughout Algeria. On December 11, 1995 the CRDD found that Mr. Touita had committed or been complicit in committing crimes against humanity and ordered him excluded from refugee determination under article 1F(a). In May of 1996 the Federal Court rejected his application for judicial review.

In May of 1997 Mr. Touita entered into his second marriage with a Canadian Citizen and his spouse submitted a sponsorship application requesting that he be permitted to apply for permanent residence from within Canada. This application was refused on July 3, 1998. Mr. Tiuita's spouse appealed this refusal to the Appeal Division of the Immigration and Refugee Board and this appeal was rejected on October 23, 1998.

On March 11, 1999 a second application for permanent residence was submitted to CPC Vegreville which was referred to the Quebec City CIC for interview and decision.

In July 1999 the case was reviewed by the Minister in view of the temporary suspension of removals to Algeria in effect at that time. The Minister concurred with the removal, and authorized officials to approach the Algerian Embassy to obtain a travel document. On September 14, 2000 his second application within Canada for permanent residence was refused. Mr. Touita never worked in Canada and had remained on social assistance since his arrival in 1994.

On November 28, 2001 Mr. Touita was removed to Algeria.