

# Canada's Program on Crimes Against Humanity and War Crimes

**Eighth Annual Report  
2004-2005**

Canada Border Services Agency  
Citizenship and Immigration Canada  
Department of Justice  
Royal Canadian Mounted Police

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## Introduction

Canada's War Crimes Program upholds the government's position that Canada is not a safe haven for anyone involved or complicit in crimes against humanity, war crimes or genocide. Canada continues to play a leading international role in taking action against persons responsible for atrocities, and our coordinated program is a successful model of interdepartmental cooperation in the battle against impunity.

The eighth annual report summarizes the activities of the program during the fiscal year 2004–2005, with statistics and examples of cases handled during the year. As a snapshot, it shows the status of the program as of March 31, 2005.

For background information on the program, including the history, partners and legislation, as well as previous annual reports and contact information, please refer to the Web site on Canada's Crimes Against Humanity and War Crimes Program at [www.justice.gc.ca](http://www.justice.gc.ca).

## Program Overview

The no safe haven policy means that persons involved or complicit in crimes against humanity or war crimes are not welcome in Canada. The partners in the coordinated War Crimes Program are the Canada Border Services Agency (CBSA), Citizenship and Immigration Canada (CIC), the Department of Justice (DOJ) and the Royal Canadian Mounted Police (RCMP). Senior officials from each department or agency share responsibility for managing the program through the Interdepartmental Operations Group, which meets regularly to discuss policy, coordinate operations and assess allegations. The CBSA, DOJ and RCMP each have specialized war crimes units.

To combat crimes against humanity and war crimes from World War II and more recent conflicts, the government established the coordinated program in 1998. At that time, the government provided funding of \$15.6 million per year for three years, later extended on a yearly basis until March 2005. This amount was allocated to three partners: CIC, the DOJ and the RCMP. The CBSA is now responsible for the Modern War Crimes Unit formerly with CIC.

The 2005 Budget in February renewed the government's 1998 commitment to combat impunity for war crimes and deny safe haven to those involved. The Budget provides the War Crimes Program with \$15.6 million annually over the next five years. This will be allocated to the four partners who will apply resources to the activities most critical to support Canada's no safe haven policy.

CIC and the CBSA are jointly responsible for measures under the *Immigration and Refugee Protection Act* (IRPA), particularly preventing entry to Canada. CIC is responsible for screening visa applications abroad, with the CBSA's support on war crimes issues. The CBSA handles the enforcement of cases in Canada, seeks exclusion from the definition of Convention refugee and carries out deportation. CIC is responsible for revocation of citizenship under the *Citizenship Act*, while the DOJ handles litigation in court proceedings for judicial reviews, citizenship revocation and extradition. The RCMP and the DOJ cooperate on criminal investigation and prosecution under the *Crimes Against Humanity and War Crimes Act*. The DOJ leads the development of World War II cases with the assistance of the RCMP.

Taking action against war crimes requires a great deal of international cooperation. Program partners take part in international conferences, training and outreach activities, and provide assistance to other countries and the international criminal tribunals.

The successes of the program have contributed to increasing public awareness. Almost 3,000 individuals considered involved or complicit in war crimes or crimes against humanity have been prevented from coming to Canada, while 367 such persons have been removed from Canada, and Canadian citizenship has been revoked in five cases arising from World War II.

# Program Activities in 2004–2005

## Prevention

The most effective tool in denying safe haven to people involved or complicit in war crimes or crimes against humanity is preventing them from entering Canada. This includes denial of visas at Canadian visa offices abroad and computer lookouts to flag potential war criminals who may apply to Canadian visa offices or Canadian ports of entry.

CIC and the CBSA share this key function. CIC's visa officers working at Canadian missions abroad are the first line of defence in preventing war criminals from reaching Canada. CIC visa officers are responsible for screening and making decisions on increasing numbers of applications for permanent and temporary residence visas. They now consider about 1.4 million persons for visas per year, for both temporary and permanent residence. Balanced against the need for timely processing and quality of service to clients, there is also the need for preliminary screening of some 300,000 of these persons for war crimes concerns, based on more than 100 screening aids developed by the CBSA specifically to assist visa officers to identify crimes against humanity and war crimes concerns.

CIC visa officers invest a great deal of time in screening and interviewing persons who may be involved in crimes against humanity or war crimes. They also play an important role in highlighting and documenting atrocities and emerging refugee crises as part of their responsibility for reporting and liaison. For example, recent issues covered included the crisis in Sudan, the International Criminal Tribunal for the former Yugoslavia and situations in Afghanistan, Iraq and Iran.

The CBSA's Modern War Crimes Unit in Ottawa provides training, research, analytical support and guidance to CIC visa officers, who generate most of the unit's caseload. Applications, which raise concerns regarding war crimes, genocide or other atrocities, are referred to analysts in the Modern War Crimes Unit, part of the Intelligence Directorate in the CBSA's Enforcement Branch.

War crimes analysts have expertise in evaluating such cases, with access to the branch's intelligence and research on country situations, regimes and organizations responsible for war crimes to aid in identifying possible inadmissibility. In examining the file, they may ask the visa office to obtain further details or ask in-house researchers for more detailed information.

The analysts then provide the visa office with an assessment and recommendation on inadmissibility based on war crimes or crimes against humanity. They also post lookouts in CIC's and the CBSA's computer system, Field Operations Support System (FOSS), to prevent the individual from attempting to enter Canada. Ultimately, visa officers make the final decision on the case.

In fiscal year 2004–2005, visa officials abroad reviewed a total of 2,651 potential war crimes cases. These included applicants for both permanent resident visas (immigrants) and temporary resident visas (visitors, students and temporary workers) and represent a 15% increase over the number reviewed the previous year.

During the year, a total of 385 persons were prevented from coming to Canada because of allegations of war crimes or crimes against humanity. This includes those refused specifically for involvement in war crimes or crimes against humanity, those who withdrew when asked for more information and those who were investigated for allegations of war crimes but were refused for other reasons.

During the period, visa officers concluded the review of 171 applicants for permanent residence for possible involvement or complicity in war crimes or crimes against humanity. As a result, 41 persons deemed involved or complicit in crimes against humanity, war crimes or genocide were refused visas to immigrate to Canada or withdrew their applications. Fewer permanent residence applications were concluded during the year partly because of growing workload pressures in the CBSA's Modern War Crimes Unit, which reviews applicants referred by visa offices and by offices in Canada, as well as complex cases involving litigation. During the year, visa offices abroad referred 431 cases for in-depth review to the CBSA's Modern War Crimes analysts. These cases were mostly from trouble spots in Africa, the Middle East and Asia.

At the same time, the CBSA's Modern War Crimes Unit screened 2,480 temporary resident visa referrals, a 26% increase over the previous year. Of those, 344 were refused or withdrawn.

The increase in both the caseload and the rate of prevention demonstrates the program's success in detecting and assessing individuals with war crimes concerns as a result of screening by visa officers and training, research, guidance and analytical support provided by the CBSA. Thus, potential war criminals who might otherwise have gone undetected have now been prevented from entering Canada.

Not all of the work performed by the Modern War Crimes Unit is reflected in numbers of cases processed. In response to crises in different countries, the unit prepares for the possibility of applications or attempts to enter by persons involved in war crimes and human rights abuses. For example, in 2004, the unit continued the identification and screening of Haitian senior officials, begun earlier in the year when President Aristide's government fell. Also in 2004, in anticipation of threatened United Nations travel sanctions against the Ivory Coast as the civil war escalated in that country, the CBSA sent out an alert to all ports of entry, updated the Ivory Coast screening aid and chronology, and made all the information available to Canadian visa offices abroad through the Modern War Crimes System database.

The CBSA also provides 24-hour telephone support to visa offices and field offices in Canada, which often have questions when dealing with the arrival of persons from countries with war crimes concerns or subjects of lookouts in FOSS.

The CBSA's researchers provide support and intelligence, not only within the branch, but also to national and international partners and the international criminal tribunals. During the year, they produced or updated studies on groups of concern, such as the Islamic Salafi Jihadist Movements, the Eritrean Liberation Front and the apartheid-era medical professionals. They also produced screening aids on countries of concern. Requests for information handled by the researchers increased significantly to a total of 2,417 during the year, up from 1,549 the year before.

## **Enforcement in Canada**

When a potential war criminal does manage to enter Canada or is found already living in Canada, the partners in the War Crimes Program have recourse to a number of enforcement measures, including exclusion from refugee status, admissibility hearings, deportation, extradition, criminal investigation and prosecution, and revocation of citizenship.

## **Exclusion**

When a person makes a refugee claim at a port of entry or a local office within Canada and there is a concern with respect to involvement in war crimes or crimes against

humanity, CBSA officials file for intervention to seek exclusion from the definition of a Convention refugee at the refugee hearing before the Refugee Protection Division (RPD) of the Immigration and Refugee Board (IRB). In investigating such cases, they may seek guidance from the Modern War Crimes Unit.

In 2004–2005, the CBSA filed 155 interventions in cases involving war crimes allegations, fewer than half the number filed the previous fiscal year. During the year, the IRB provided 199 decisions on cases where the CBSA had intervened; 79 individuals were excluded from refugee protection, 75 were not excluded, but were refused as not being credible, and 45 were found to be refugees. These decisions resulted from interventions that were filed in previous years as well as the same year. Refugee hearings, especially in complex cases involving war crimes or crimes against humanity, do not necessarily open and conclude in the same year.

## **Admissibility hearings**

When allegations of war crimes or crimes against humanity are made against persons in Canada who are not refugee claimants, the CBSA refers them to admissibility hearings before the Immigration Division of the IRB. A small number of refugee cases are also referred to admissibility hearings and the refugee claim is suspended pending the decision. During the fiscal year, 27 admissibility hearings were opened for nonrefugees and 11 for refugee claimants. Three refugee claimants were found inadmissible for war crimes and were ordered deported, while one non-refugee and two claimants were found not to be inadmissible. The proceedings continue in the remaining cases.

## **Litigation**

Persons who have been excluded, found inadmissible or ordered deported may apply to the Federal Court Trial Division for leave to pursue judicial review. The DOJ handles litigation such as judicial reviews of decisions under the IRPA and citizenship revocation under the *Citizenship Act*. Some litigation cases are extremely complex and have required considerable time and resources. The DOJ's senior counsel with expertise in immigration and international law continues to give legal advice on war crimes issues to CIC and the CBSA.

## **Removal**

Persons excluded from refugee status or found inadmissible for war crimes or crimes against humanity can be deported after they have exhausted all legal avenues and CIC officials have conducted a pre-removal risk assessment (PRRA). Persons whose citizenship has been revoked can also be subject to deportation. During the fiscal year, the CBSA removed 42 persons found involved in war crimes or crimes against humanity. At the end of March 2005, the CBSA had an inventory of 72 enforceable removal orders, as well as 125 removal orders which could not actually be carried out because of impediments such as a stay issued by a court, lack of travel documents or a moratorium on removals to that country. Another 23 were awaiting PRRA.

## **Warrants**

A warrant for arrest is issued when a person does not report for removal or other immigration proceedings, such as admissibility hearings. The warrant is considered executed when the person is arrested or departure from Canada is confirmed. In 2004–2005, 19 new warrants were issued. During the same period, 10 warrants were executed. Of the warrants executed during the year, three were new warrants issued during the same year, while the others were issued in previous years. Six of the 10 warrants were executed or cancelled after the CBSA had confirmation of the person's departure and/or received official notification that the person was in another country.

Three warrants were executed and in those cases the immigration proceedings were able to continue. Another was cancelled for administrative reasons. The remaining 16 newly issued warrants now account for 12% of the outstanding warrants inventory.

The fiscal year ended with an inventory of 134 outstanding warrants, 7% higher than last year's inventory of 125. Of these cases, 68% of the individuals were excluded from refugee protection by the RPD or found inadmissible because of their involvement in war crimes or crimes against humanity. The remaining 32% were alleged to have been involved in war crimes or crimes against humanity, but this has not yet been proven because they did not complete immigration proceedings. However, the concern regarding war crimes or crimes against humanity still exists. CBSA investigators are continuing to make every effort to find these persons and conclude the processing of their cases.

It is important to note that a warrant is not the same as a removal order. A warrant may be issued if someone has not appeared for an immigration proceeding, such as an admissibility hearing. When the person is found, this means that the warrant is executed and the proceeding may continue. Even when a warrant for removal is executed, the removal may be delayed pending a PRRA decision or procuring of travel documents.

## **Criminal investigation and prosecution**

The RCMP War Crimes Section and the DOJ Crimes Against Humanity and War Crimes Section work together to assess allegations referred for criminal investigation under the *Crimes Against Humanity and War Crimes Act*. In November 2004, the RCMP and the DOJ signed a Guiding Principles agreement in order to enhance the ability to conduct criminal investigations.

## **Modern war crimes**

The RCMP is responsible for criminal investigations, with legal support from the DOJ. These investigations target individuals in Canada who are alleged to have participated in crimes against humanity or war crimes anywhere in the world. The RCMP receives allegations of war crimes and crimes against humanity from a variety of sources including victims, witnesses, foreign governments, local ethnic communities, non-government organizations, open source information and media releases as well as allegations resulting from refugee, immigration and citizenship applications.

As of March 31, 2005, more than 100 files were being examined involving allegations from Afghanistan, Angola, Bosnia, Burundi, Chile, China, Colombia, Croatia, El Salvador, Ethiopia, Guatemala, Honduras, Iraq, Lebanon, Nigeria, Peru, Philippines, Rwanda, Senegal, Serbia and Montenegro, Sierra Leone, South Africa, Sri Lanka and Sudan. RCMP investigators face challenges, which include distant travel, negotiations with foreign governments, lapse of time and linguistic barriers. They must rely on witness testimonies from victims who are often difficult to locate and insecure about speaking to investigators.

During this reporting period, RCMP teams conducted a total of 31 investigative trips, both within Canada and abroad. Teams traveled to Europe, South America, Africa and Australia, as well as to several Canadian and American cities. As a result, they were able to amass further evidence in support of 20 separate cases.

This year, the RCMP submitted the results of one new completed investigation to the DOJ, recommending that it be considered for presentation to the Attorney General of Canada to seek his consent for criminal prosecution. This brings the total number to four completed criminal investigations submitted for consideration for prosecution.

The DOJ examines such reports to determine whether further investigation is needed or whether to recommend legal action. Under the *Crimes Against Humanity and War Crimes Act*, the Attorney General of Canada must consent to charges before they are laid. The DOJ is responsible for leading the prosecutions under the act.

If there is not enough evidence to proceed with a criminal prosecution, the RCMP provides investigative results to the CBSA to use in their enforcement activities or to CIC to use in citizenship revocation proceedings.

## **World War II cases**

The DOJ, with the assistance of the RCMP, addresses allegations of crimes against humanity, war crimes or genocide related to WWII. These investigations are complicated and often take several years to complete. They require the expertise of experienced lawyers, analysts, historians and RCMP officers. Historical research is used to build each case and to compile potential witness lists. Most witnesses live overseas, mainly in central and eastern Europe. The DOJ must therefore request permission from foreign countries to allow lawyers and RCMP officers to conduct interviews. The passage of time makes this work more and more difficult.

Counsel, historians and RCMP investigators thoroughly review the final results of every investigation in order to determine whether any criminal or civil remedies should be applied. In cases with sufficient evidence of a crime, proceedings may be commenced under the *Crimes against Humanity and War Crimes Act*. In cases where there is enough evidence of deceit related to involvement in crimes against humanity, war crimes or genocide upon entry into Canada or upon acquisition of citizenship, proceedings may be commenced under the *Immigration and Refugee Protection Act* or the *Citizenship Act*.

The government only pursues legal remedies in cases where there is evidence of direct involvement or complicity in war crimes, crimes against humanity or genocide. A person may be considered complicit if the person is aware of the commission of war crimes or crimes against humanity and 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 limited brutal purpose, such as a death squad.

Since beginning this work, the DOJ has opened and examined over 1,800 files. As of March 2005, 47 WWII files were under active investigation and 246 initial WWII-related allegations were being examined. A completed study of the German pension list with over 1,000 names provided to the DOJ several years ago resulted in the addition of over 100 new allegations in 2004–2005. During 2004–2005, the DOJ completed investigations and closed more than 80 files.

Some files have been concluded because the individuals never entered Canada, left Canada or died. Many others have been concluded because the investigations did not result in sufficient evidence to justify any legal action.

Since 1995, the government has initiated 21 revocation and deportation cases, resulting in eight findings of citizenship fraud before the Federal Court of Canada. Each finding can potentially lead to revocation of citizenship and subsequent deportation. Defendants have been successful in three cases before the Federal Court. Several have died at different stages in the proceedings. Five individuals have had their citizenship revoked (Bogutin, Kisluk, Csatory, Maciukas and Luitjens). Three of those have been deported or left Canada voluntarily.

Federal Court proceedings continue in the cases of three suspects, one of whom is also the object of an extradition proceeding. See Appendices 1 and 2 for details.

## **Extradition and surrender to international criminal tribunals**

In 1999, the *Extradition Act* was amended to allow Canada to enter into agreements for extradition on a case-by-case basis. The amendments also allow for surrender to international tribunals. Requests for extradition or surrender are not made public unless and until the Attorney General of Canada gives the authority to proceed.

There is currently one extradition action before the court in the war crimes context. This matter was initiated at Italy's request in the case of Michael Seifert, who was convicted by an Italian military tribunal for WWII-related war crimes in November 2000. On August 27, 2003, the British Columbia Supreme Court ruled that Mr. Seifert could be committed for extradition to Italy. Mr. Seifert's appeal of the committal decision is before the courts.

## **International cooperation and outreach**

### **Relations with the international criminal tribunals**

Canada's War Crimes Program partners provide assistance and information to the International Criminal Tribunal for Rwanda (ICTR) and the International Criminal Tribunal for the former Yugoslavia (ICTY). All the partners are represented at the Interdepartmental Working Group for the ICTY and ICTR, which examines the tribunals' requests for assistance from Canada.

They work with the International Assistance Group (IAG) of the Department of Justice Federal Prosecution Service and the Department of National Defence to support the international tribunals. The IAG also reviews war crimes-related requests for mutual legal assistance from foreign governments, the international tribunals and the International Criminal Court (ICC).

The partners have established long-standing reciprocal relationships with the international tribunals, which provide logistical support and enable the sharing of resources and information. During the past year, the ICTY provided much needed assistance to RCMP investigative teams who travelled to the former Yugoslavia and other locations to conduct their work. An RCMP team visited Rwanda to provide training on forensic interviewing to members of the ICTR investigative staff and prosecutors from the Rwandan government. In addition, an RCMP war crimes investigator met with representatives of the ICC in The Hague for an exchange of information on investigations in Africa.

In 2004–2005, DOJ officials visited the ICTY, the ICTR, and the ICC to conduct research and to discuss information sharing, access to witnesses and general cooperation. The DOJ also received members of the ICTR, the ICC and the Sierra Leone Special Court to further these discussions.

As well, Canada's War Crimes Program was represented by the RCMP and the DOJ at the 10th anniversary celebrations in commemoration of the Rwandan genocide held in Kigali, Rwanda in April 2004.

Within the limits of the law, the CBSA shares intelligence and research material with the international criminal tribunals and like-minded countries, particularly the United States, Australia, New Zealand, the United Kingdom and other European countries.



## **Relations with foreign governments**

The partners in the War Crimes Program have been internationally recognized for their cooperation, assistance and sharing of expertise in the development of other nations' war crimes programs.

The RCMP provides assistance to foreign investigative agencies, which are not permitted to conduct criminal investigations in Canada, with regard to the rights of witnesses in Canada. In the past year, the RCMP War Crimes Section was responsible for the Canadian portion of a number of foreign investigations from countries such as Germany, Italy, the Netherlands, Chile and Denmark.

CIC's visa officers abroad are responsible for reporting and liaison on global migration, country situations and emerging trends and have developed ongoing relationships with host countries, other diplomatic missions, international organizations and the international criminal tribunals.

DOJ officials visited several foreign countries to discuss access for investigative purposes. The DOJ also hosted officials and responded to requests for cooperation from several countries including the United States, Denmark, Norway and Chile.

In June 2004, officials from Australia, the United States and the United Kingdom visited Canada for a joint working level meeting with Canada's War Crimes Program partners to discuss issues of mutual concern, including screening methods, data exchange, caseloads, research, statistics and relations with international criminal tribunals.

In January 2005, officials of the United States Office of Special Investigations (OSI) visited Ottawa to meet with the partners in Canada's War Crimes Program. The OSI has recently been granted legislative authority to investigate modern war crimes and crimes against humanity cases. The partners shared information on the coordinated war crimes program, legislation, investigative practices and prevention and enforcement activities.

## **Conferences**

The program partners took part in several domestic and international conferences to share and gain knowledge on the struggle to combat impunity for crimes against humanity and war crimes. For example, the DOJ attended meetings of the International Criminal Law Network, the International Society for the Reform of Criminal Law, the American Society for International Law, and Jessup International Law Moot Court and took part in the International Criminal Court course at Galway University. DOJ lawyers gave presentations as part of discussions of Canada's War Crimes Program and international law at the University of Ottawa, the Jessup Moot in Victoria and several other academic institutions.

CIC's visa officers, particularly those in Geneva and Brussels, attend and report on international conferences and meetings of international organizations on demographic movements and refugee situations where war crimes concerns are central issues.

In March 2004, the partners took part in a one-day interdepartmental conference, hosted by the DOJ, to exchange ideas and share knowledge with representatives from several interested federal departments.

RCMP war crimes investigators participated in both the July 2004 and February 2005 instalments of the INTERPOL annual meeting of the War Crimes International Investigators Working Group in Lyon, France. DOJ officials also attended in July 2004. Delegates presented an overview of their war crimes and crimes against humanity investigations and shared best practices.

## Conclusion

Canada's coordinated War Crimes Program continues to build on its international reputation for results in combating impunity for war crimes and crimes against humanity. As new conflicts develop and new atrocities shock the world, we have made every effort to handle the pressure of growing workloads. Our priority remains to identify those responsible for, or complicit in, war crimes and crimes against humanity and deny them safe haven. At the same time, our success depends on international cooperation. By sharing information and expertise, we can contribute to the success of other nations' war crimes programs and the international struggle against impunity.

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## Appendix 1 – Case samples 2004–2005

### Modern cases

A citizen of the Democratic Republic of Congo applied for a temporary resident visa at a Canadian visa office abroad. He had occupied high-profile positions in the Mobutu regime from 1987 to 2003. Such positions were granted only to individuals whom the president considered loyal to his authority. The Modern War Crimes Program issued a negative recommendation, noting that, given his influential position, the subject would have had knowledge of, and may have assisted in, the crimes against humanity committed by Mobutu's regime. The application was refused in October 2004.

A citizen of Haiti applied for a temporary resident visa at a Canadian visa office abroad. The application was referred to the CBSA's War Crimes Unit for investigation for possible crimes against humanity or war crimes. The applicant was an officer in the Haitian national police force and was promoted to the rank of Chief of Brigade for his dedicated service. The client reported for duty at the Artibonite police station, where atrocities such as torture, beatings and killing were common. Given the duration of his service with the Haitian police, there were reasonable grounds to believe that he was complicit in crimes against humanity. The application was refused in October 2004.

A citizen of Haiti applied for a temporary resident visa at a Canadian visa office abroad. The application was referred to the CBSA's War Crimes Unit for investigation of possible crimes against humanity. As a career officer in the Haitian Armed Forces (FADH), the applicant served with several units known for gross human rights abuses, including torture, arbitrary killings and arbitrary detentions. Involved with the *Service des recherches criminelles/Anti-Gang Unit*, the *Caserne/Dessalines Battalion* and the *Leopards Corps*, he was directly implicated in police investigations. As a senior FADH officer, he assumed command of the national penitentiary during a period when the government was identified by the Minister as a designated regime under section 35(1)(b) of the *Immigration and Refugee Protection Act*. The Modern War Crimes Unit recommended a finding of inadmissibility based on the applicant's involvement and complicity in crimes against humanity and his senior position in an organization involved in atrocities. The application was refused in August 2004.

A citizen of Rwanda applied for a temporary resident visa at a Canadian visa office abroad. The application was referred to the CBSA's Modern War Crimes Unit for investigation for possible crimes against humanity or war crimes. Although the applicant never admitted to membership in any military group, the War Crimes Unit was able to show that he had been an active combatant in the Rwandan Patriotic Army (RPA) since 1990 and was demobilized after being wounded in combat. Although the RPA managed to stop the genocide in July 1994 and took control of the country, it was responsible for numerous massacres of Hutus. As an officer in the RPA from July 1994 to 1995, the applicant was in a position to have been involved in the atrocities committed by RPA

soldiers, or at least he would have had knowledge of these atrocities, which he did nothing to prevent. The Modern War Crimes Unit recommended refusal for inadmissibility under paragraph 35(1)(a) of the *Immigration and Refugee Protection Act*. The application was refused in October 2004.

A citizen of Bosnia–Herzegovina applied for a temporary resident visa at a Canadian visa office abroad in March 2004. The case was referred to the CBSA's Modern War Crimes Unit because he was mobilized during the war from May 1992 to March 1996. After requesting further details of his military service, the Modern War Crimes Unit found that there were reasonable grounds to believe that he was inadmissible to Canada under paragraph 35(1)(a) of the *Immigration and Refugee Protection Act* because he had served in a territorial defence unit, which was complicit in ethnic cleansing in Rudo in 1992. The application was refused in April 2004.

A citizen of Rwanda submitted an application for refugee protection at a Canadian visa office abroad, which referred the case to the CBSA's Modern War Crimes Unit. He had been a senior official with the Rwandan government for many years, both within Rwanda working for the Ministry of Foreign Affairs, and as a diplomat, serving in several diplomatic postings. The Modern War Crimes Unit advised that he was inadmissible under paragraph 35(1)(b) of the *Immigration and Refugee Protection Act* because he had been a senior public servant and a diplomat in a designated regime, that is, the government of Rwanda between 1990 and 1994. The application was refused in April 2004.

A citizen of El Salvador submitted a sponsored application for permanent residence, sponsored by his wife, in June 2002. Because the applicant stated he was in the El Salvador army from 1982 to 2002, the visa office asked for details of his military career and referred the case to the CBSA's Modern War Crimes Unit. The Modern War Crimes Unit noted that the applicant was a member of the El Salvador National Guard, a paramilitary group connected to death squads, during a period when the organization systematically committed crimes against humanity. The applicant's commanding officer was found guilty of torture. Thus there were reasonable grounds to believe the applicant was complicit in human rights abuses. In September 2004, the application was refused for inadmissibility under paragraph 35(1)(a) of the *Immigration and Refugee Protection Act*.

A citizen of Iran submitted a sponsored application for permanent residence at a Canadian visa office abroad. The applicant was a retired Supreme Court judge in Iran. The visa office consulted the CBSA's Modern War Crimes Unit, which noted that the Supreme Court in Iran had been involved in crimes against humanity. The applicant was asked to provide details of his activities and decisions, but failed to provide evidence that he had not been involved in crimes against humanity. He was found inadmissible under paragraph 35(1)(a) of the *Immigration and Refugee Protection Act* and the application was refused in March 2005.

A citizen of Cameroon made a refugee claim in Canada in March 2004. He stated that he was a member of the presidential guard of Cameroon from 1979 to 2000 and had had several promotions during his military career. He said that his request to leave the presidential guard in 1997 was refused, but he wished to remain in the military in order to receive a pension at the end of his career. He said that he was aware of acts committed by the armed forces, the police and the presidential guard, including extrajudicial assassination, kidnapping and torture. The RPD concluded that he had established indisputable personal knowledge of acts committed by the security forces while he was a member. The panel found that there were serious reasons to believe that he was complicit by association in crimes against humanity. In October 2004, he was excluded from the definition of Convention refugee pursuant to articles 1(F)(a) and 1(F)(c) of the *United Nations Convention relating to the Status of Refugees*.

A citizen of Pakistan claimed refugee status in Canada, alleging that he was arrested and tortured because of his refusal to join the Hizb–UI–Mujahideen (HUM). In March 2005, the RPD found that the claimant was excluded from the definition of Convention refugee under articles 1(F) (a) and 1(F) (c) of the *United Nations Convention relating to the Status of Refugees*. There were serious reasons for considering that the claimant was an accomplice to the activities of HUM because he knowingly had contributed to their activities by driving and giving money. The Board found that the HUM is a militant extremist organization with a limited and brutal purpose and is involved in crimes against humanity, including execution–style killings of civil servants, attacks on civilians as well as military targets, rape, suicide attacks and summary punishment of individuals believed to be government operatives and informers. The Board also found that the HUM is a terrorist organization that uses terrorist methods and is guilty of actions contrary to the purposes and principles of the United Nations.

A citizen of Sri Lanka arrived in Canada on December 31, 1988, and made a refugee claim. According to his claim, he joined the Sri Lankan air force in 1969 and was trained as an aircraft gunner. He was denied promotion because he was Tamil. After he left the air force in 1985, he was approached by the Liberation Tigers of Tamil Eelam (LTTE) to provide weapons training. When he refused, he was forcibly taken to an LTTE training camp and eventually agreed to provide only fitness and exercise training to new recruits. The Sri Lankan Security Forces were searching for him because of his involvement with the LTTE. The RPD found the claimant's story implausible and found it likely that he supported the LTTE, provided weapons training to recruits until 1988 and must have been aware of the LTTE's terrorist activities and human rights violations. In 1995, the panel excluded the claimant under Article 1(F) (a) of the *United Nations Convention relating to the Status of Refugees* as he was complicit in crimes against humanity. After he had exhausted all legal avenues, he confirmed his departure to Sri Lanka in September 2004.

A citizen of Pakistan and his family made a refugee claim after arrival from the United States in February 2003. As a former prison official in Pakistan, he supervised executions and had knowledge of torture and other human rights abuses committed against prisoners. In April 2004, he was excluded by the RPD pursuant to Article 1(F) (a) of the *United Nations Convention relating to the Status of Refugees* for complicity in crimes against humanity. He was removed to the United States in February 2005.

## World War II–related cases

### Citizenship revocation cases currently in Federal Court

**Seifert, Michael:** Mr. Seifert's citizenship revocation trial at the Federal Court is ongoing. He is alleged to have obtained his Canadian citizenship through deceit by failing to reveal to the Canadian immigration authorities his service as a guard at a German police transit camp in northern Italy in 1944–1945. In November 2000, an Italian military tribunal found Mr. Seifert guilty as an accessory to acts of violence with murder against civilian enemies and aggravated and continuing violence while he was a guard at the Bolzano camp in Italy. He was sentenced *in absentia* to life imprisonment. The Italian government requested his extradition from Canada to Italy. The extradition matter is taking place in parallel to the revocation proceedings.

**Skomatzuk, Jura:** Mr. Skomatzuk's citizenship revocation trial at the Federal Court is ongoing. It is alleged that he obtained his citizenship through deceit by hiding his wartime activities when he was landed in Canada in 1952. It is alleged that, in 1943, he served as a guard in the German concentration camp guard system.

**Furman, Josef:** Mr. Furman's citizenship revocation trial at the Federal Court is ongoing. It is alleged that he obtained his citizenship through deceit by hiding his wartime activities when he was landed in Canada in July 1949. During WWII, he allegedly served in the German concentration camp system after training at the SS Trawniki training camp in 1943.

## **Cases where Federal Court found fraud-awating possible recommendation for revocation**

**Katriuk, Vladimir:** In January 1999, the Federal Court found that Mr. Katriuk obtained Canadian citizenship by deception in that he concealed his active membership in the *Schutzmannschaft* Battalion 118 and his participation in its activities in Belarus, including anti-partisan operations. The Federal Court of Appeal and the Supreme Court of Canada dismissed Mr. Katriuk's attempts to appeal the Federal Court's findings. Based on the Federal Court decision, the Minister of Citizenship and Immigration may consider whether to recommend revocation of Mr. Katriuk's citizenship to the Governor-in-Council. If citizenship is revoked, deportation proceedings may be considered.

**Oberlander, Helmut:** In February 2000, the Federal Court found that Mr. Oberlander had obtained Canadian citizenship by deception in that he concealed his membership in *Einsatzkommando 10a*, a unit that systematically carried out mass executions of civilians, particularly Jews, in the occupied Soviet Union. The Governor-in-Council revoked Mr. Oberlander's Canadian citizenship in July 2001. In May 2004, the Federal Court of Appeal quashed the revocation of Mr. Oberlander's citizenship because the report of the Minister of Citizenship and Immigration, on which the Governor-in-Council had based its decision, had failed to address the issue of whether Mr. Oberlander's case fell within the government's revocation policy for WWII cases and had not balanced his personal interests against the public interest. The Court stated that the Minister could prepare a new report complying with its ruling. If citizenship is revoked, deportation proceedings may be considered.

**Odynsky, Wasyl:** In March 2001, the Federal Court found that Mr. Odynsky obtained Canadian citizenship by deception in that he concealed his service as a guard at the SS forced labour camps of Trawniki and Poniatowa. Based on the decision, the Minister of Citizenship and Immigration may consider whether to recommend that the Governor-in-Council revoke Mr. Odynsky's Canadian citizenship. If his citizenship is revoked, deportation proceedings may be considered.

**Baumgartner, Michael:** On August 31, 2001, Mr. Baumgartner's revocation trial at the Federal Court resulted in a ruling that he had obtained his Canadian citizenship by false representation or fraud or by knowingly concealing material circumstances. Namely, he failed to reveal his service as a guard at the Stutthof and Sachsenhausen concentration camps during World War II. Based on the Federal Court decision, the Minister of Citizenship and Immigration may consider recommending that the Governor-in-Council revoke Mr. Baumgartner's citizenship. If his citizenship is revoked, deportation proceedings may be considered. (Mr. Baumgartner died in July 2005.)

**Obodzinsky, Walter:** In September 2003, the Federal Court ruled that Mr. Obodzinsky obtained Canadian citizenship by misleading Canadian officials about his World War II activities. The Court ruled that while the evidence did not establish that Mr. Obodzinsky personally killed Jews, partisans or other civilians, it did establish that he was an accomplice in the perpetration of atrocities committed during the German occupation of Belarus. Mr. Obodzinsky died in March 2004.

**Fast, Jacob:** On October 3, 2003, Mr. Fast's citizenship revocation trial at the Federal Court resulted in a ruling that he had obtained his Canadian citizenship by false representation or fraud or by knowingly concealing material circumstances. Namely, he failed to reveal his German citizenship when applying to come to Canada in 1947. The

Court also found that Mr. Fast had collaborated with the German security police responsible for enforcing the racial policies of the German Reich. The Federal Court decision means that the Minister of Citizenship and Immigration may consider recommending to the Governor-in-Council that Mr. Fast's citizenship be revoked. If his citizenship is revoked, deportation proceedings may be considered.

## Appendix 2 – Summary of World War II–Related Cases

### Litigation overview – Case results (\* indicates deceased)

Ongoing WWII revocation cases		
Revocation references ongoing in Federal Court	3	Furman, Skomatzuk, Seifert
Decisions rendered by Federal Court in favour of the Minister of Citizenship and Immigration and revocation being considered	5	Oberlander, Odynsky, Baumgartner,* Katriuk, Fast
WWII cases concluded		
Citizenship revoked	2	Bogutin*, Kisluk*
Citizenship revoked and individual removed or left Canada voluntarily	2	Csatary, Maciukas
Court found citizenship obtained by fraud, individual deceased before revocation	1	Obodzinsky*
Successful defence by respondent/defendant	3	Dueck, Podins, Vitols
Deceased during proceedings before decision rendered	4	Kenstavicius, Tobiass, Nemsila, Nebel
<b>Total cases since 1995</b>	20	
<b>Pre-1995 – citizenship revoked, person deported</b>	1	Luitjens
<b>Total cases</b>	21	

### Inventory of World War II cases

Allegations	
Allegation received, initial checks and surveys being undertaken	<b>246</b>
Active files	
Development stage	47
Proceedings ongoing (Federal Court)	3 (Seifert, Furman, Skomatzuk)
Federal Court decisions in favour of the Minister at various stages of revocation proces	5 (Odynsky, Katriuk, Baumgartner*, Oberlander, Fast)
<b>Total active files</b>	<b>55</b>
Inactive files	
Membership only	148
Insufficient evidence to support commencement of proceedings	59
Suspect not in Canada	44
Investigative checks and surveys negative	100

Total inactive files	350
Closed files	
Total closed files	1,184
Total inventory	1,835

## Appendix 3 – Summary of Modern War Crimes Program

Results	Entries prevented	Exclusions	Removals	Intervention in RPD hearings	MWC cases concluded
1997/1998	34	165	80	24	477
1998/1999	307	25	27	58	1620
1999/2000	581	15	38	127	3039
2000/2001	644	53	42	227	4246
2001/2002	445	51	46	350	3983
2002/2003	355	73	48	242	2406
2003/2004	242	63	44	387	5040
2004/2005	385	79	42	155	4728
Total	2,993	524	367	1,570	25,539

Inventory	Cases under investigation abroad	Refugee cases under investigation in Canada	Non-refugee cases under investigation in Canada
1997/1998	51	3	82
1998/1999	45	9	71
1999/2000	125	363	135
2000/2001	300	311	208
2001/2002	170	292	205
2002/2003	357	150	125
2003/2004	597	883	115
2004/2005	733	663	65

## Definitions

### Entries prevented:

Applications refused abroad under 35(1)(a) or (b) of the *Immigration and Refugee Protection Act* (or before June 28, 2002, under 19(1)(j) or (l) of the *Immigration Act*), cases investigated for war crimes, but refused on other grounds, or withdrawals.

### Exclusions:

Exclusion by the IRB from refugee protection in Canada under Article 1(F)(a) of the *United Nations Convention relating to the Status of Refugees*.

### Removals:

Persons removed from Canada.

### Interventions in RPD hearings:

Cases in which the Minister intervened at hearings of the Refugee Protection Division of the Immigration Refugee Board.

### MWC (Modern War Crimes) cases concluded:

Number of alleged war crimes cases reviewed and concluded in Canada and abroad during the fiscal year.

**Inventory:**

Cases remaining under investigation at the end of the fiscal year.

**Cases under investigation abroad:**

Overseas cases being reviewed for war crimes allegations.

**Refugee cases under investigation in Canada:**

Cases referred for second-level *Personal Information Form* review.

**Non-refugee cases under investigation in Canada:**

Includes foreign nationals in Canada who have not made refugee claims, permanent or temporary residents, applicants for permanent residence or Canadian citizenship.

## **Appendix 4 – Designated regimes pursuant to paragraph 35(1)(b) of the *Immigration and Refugee Protection Act***

Designated June 16, 1993, extended on August 15, 1997: the Bosnian Serb regime between March 27, 1992 and October 10, 1996.

Designated October 12, 1993: the Siad Barré regime in Somalia between 1969 and 1991.

Designated April 8, 1994: the former military governments in Haiti between 1971 and 1986, and between 1991 and 1994, except the period August to December 1993.

Designated October 21, 1994: the former Marxist regimes of Afghanistan between 1978 and 1992.

Designated September 3, 1996, amended September 9, 2004: the governments of Ahmed Hassan Al-Bakr and Saddam Hussein in power in Iraq between 1968 and May 22, 2003.

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.

Designated June 30, 1999, amended March 14, 2001: the governments of the Federal Republic of Yugoslavia and the Republic of Serbia (Milosevic) between February 28, 1998, and October 7, 2000.

Designated March 14, 2001, amended September 9, 2004: the Taliban regime in Afghanistan between September 27, 1996 and December 22, 2001.

Designated November 21, 2003: the Government of Ethiopia under Mengistu Haile Mariam between September 12, 1974 and May 21, 1991.

## **Appendix 5 – List of acronyms**

CBSA – Canada Border Services Agency (*ASFC*)

CIC – Citizenship and Immigration Canada (*CIC*)

DOJ – Department of Justice (*MJ*)

FADH – Haitian Armed Forces (*FADH*)



FOSS – Field Operations Support System (*SSOBL*)

HUM – Hizb–Ul–Mujahideen (*HUM*)

IAG – International Assistance Group of the Department of Justice Federal Prosecution Service

ICC – International Criminal Court

ICTR – International Criminal Tribunal for Rwanda

ICTY – International Criminal Tribunal for the former Yugoslavia

IRB – Immigration and Refugee Board (*CISR*)

IRPA – *Immigration and Refugee Protection Act (LIPR)*

LTTE – Liberation Tigers of Tamil Eelam (*TLET*)

OSI – United States Office of Special Investigations

PRRA – Pre–removal risk assessment (*ERAR*)

RCMP – Royal Canadian Mounted Police (*GRC*)

RPA – Rwandan Patriotic Army (*APR*)

RPD – Refugee Protection Division of the Immigration and Refugee Board (*SPR*)