Federal Court of Canada
Trial Division

Section de première instance de
la Cour fédérale du Canada

Date: 19990129

Docket: T-2408-96

BETWEEN:

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Applicant

- and -

VLADIMIR KATRIUK

Respondent

REASONS FOR JUDGMENT

NADON J.:

[1] On August 15, 1996, the Minister of Citizenship and Immigration (the "Minister") gave notice to Vladimir Katriuk (the "respondent"), a Canadian Citizen, that it was her intention to request that the Governor in Council revoke his citizenship. The notice reads, in part, as follows:

> TAKE NOTICE that the Minister of Citizenship and Immigration intends to make to the Governor in Council a report within the meaning of sections 10 and 18 of the Citizenship Act, R.S.C. 1985, c. C-29, as amended and section 19 of the Canadian Citizenship Act, R.S.C. 1952, c. 33, as amended, on the grounds that you have been admitted to Canada for permanent residence and have obtained Canadian citizenship by false representations or fraud or by knowingly concealing material circumstances in that you circumstances in that you [*sic*] failed to divulge to Canadian immigration and citizenship officials your collaboration with and service to German authorities in Ukraine and Belorussia, and your participation in the

commission of atrocities against members of the civilian population in Belorussia, while a member of Ukrainian Schutzmannschaft Battalion 118 (after the fall of 1943, known as the Ukrainian Schutzmannschaft Battalion 63) during the period 1942-1944, and your failure to divulge to Canadian immigration authorities your true identity.

AND FURTHER TAKE NOTICE that, if the Governor in Council is satisfied, upon the said report, that you have obtained Canadian citizenship by false representation or fraud or by knowingly concealing material circumstances, you will cease to be a Canadian citizen, as of such date as may be fixed by order of the Governor in Council;

AND FURTHER TAKE NOTICE that you may, within **thirty days** after the day on which this notice is sent to you, request that the Minister refer the case to the Federal Court of Canada - Trial Division;

AND FURTHER TAKE NOTICE that such request may be made by way of registered letter addressed to:

Registrar of Canadian Citizenship
Citizenship Registration
Department of Citizenship and Immigration
Ottawa, Ontario
K1A 1L1

AND FURTHER TAKE NOTICE that if you do so request, the case will be referred to the Court and the said report will not be made to the Governor in Council unless the Court decides that you have obtained Canadian citizenship by false representation or fraud or by knowingly concealing material circumstances;

AND FURTHER TAKE NOTICE that if you do not so request, the said report will be made to the Governor in Council without further notice or delay.

[2] On August 27, 1996, the respondent, pursuant to paragraph 18.1(a) of the *Citizenship Act*, R.S.C. 1985, c. 29, as amended, wrote to the Minister requesting that she refer the matter of the revocation of his citizenship to the Federal Court of Canada. On October 31, 1996, the Attorney General of Canada, on behalf of the Minister, referred the matter to this Court. By his proceedings, the Attorney General seeks a declaration from this Court that the respondent obtained his Canadian citizenship by false representation or fraud or by knowingly concealing material circumstances.

FACTS:

[3] I will begin with a brief outline of the relevant facts. The story which follows is that put forward by the respondent. The respondent is of Ukrainian ancestry. He was born on October 1, 1921 in the Village of Luzhany, near the City of Chernovsty. In 1921, Chernovsty was situated in an area known as Bukovina which was then part of Romania.

[4] After completing Grade 6, the respondent commenced an apprenticeship in the meat packing trade in Chernovsty for a period of three years (1935 to 1938). For the next two and one half years, he worked in a meat factory returning to his village shortly before the arrival of troops from the Soviet Union in 1940. The Soviet troops arrived to occupy Bukovina following the pact entered into between Germany and the Soviet Union in August 1939. The Soviet occupation lasted until Germany invaded the newly created regions of the Soviet Union in June of 1941. Shortly thereafter, German troops arrived in Bukovina with their Hungarian and Romanian allies.

[5] Neither the Soviet nor the German occupation was pleasant for the local Ukranian inhabitants. Professor Orest Subtelny in *Ukraine A History*, 2nd ed. (Toronto: University of Toronto Press, 1994), at 453, offers a vivid description of the plight of the Ukrainians during that period:

> It seemed, as Europe moved toward the Second World War, that Ukrainians had little to lose from the radical changes that it promised to bring. Still traumatized by Stalinist excesses and the increasing Polish, Romanian, and Hungarian repression in the western regions, Ukrainians had reasons to believe that any change - even that brought on by war - would favorably alter the conditions under which they lived. But those who thought so would be sadly mistaken, for although the war radically

> transformed the situation of Ukrainians, their plight changed from bad to worse. The collapse of Poland at the outset of the war led to the imposition in Western Ukraine of the even-more-repressive Soviet regime. But when the German invaders swept away the Soviets, they brought with them a Nazi regime that in Ukraine reached the heights of brutality and inhumanity. Caught between the Nazi and Soviet regimes and lacking, for all practical purposes, a state to protect their interests, Ukrainians were especially vulnerable to the devastation of the war and the ruthless policies of its totalitarian protagonists.
>
> **The War in Ukraine: Phase One**
>
> From the Ukrainian point of view, the Second World War took place in two distinct phases. The initial phase began on 1 September 1938 when the Germans attacked Poland and the Soviets occupied its eastern territories soon after. The main feature of this stage, which involved only the West Ukrainians, was the appearance in their lands of new occupying powers, the foremost of these being the Soviets. The second phase, which will be discussed later, commenced with the German invasion of the USSR on 22 June 1941 and lasted until the Soviet expulsion of German troops from Ukraine in the fall of 1944. This phase encompassed all of Ukraine and exposed its inhabitants to the worst horrors of the war.

[6] In the fall of 1941, the respondent, like many of his Ukrainian compatriots from Bukovina, joined a volunteer force which marched to Kiev to, amongst other things, liberate that city, and hence liberate Ukraine. The march to Kiev took a number of months. The Bukovinians arrived in Kiev in November or December of 1941. In due course, the Germans who were occupying Kiev, after a brief period of coexistence with Ukrainian nationalists, decided that Ukrainian nationalism would not be tolerated in the occupied territories. As a result, many of the leaders of the Ukrainian National Movement were either arrested or executed.

[7] The Germans then proceeded to form battalions in which different nationals, including Ukrainians, would serve Germany. The first battalion to be formed was Battalion 115, of which the respondent became a member. All members of Battalion 115 were Ukrainians. Subsequently, before the end of 1942, the Germans formed

Battalion 118. Approximately 100 men from Battalion 115, including the respondent, were taken to form Battalion 118. The third company of Battalion 115 became the first company of Battalion 118. Prisoners of war captured by the Germans from the retreating Soviet armies were also recruited into this battalion. They became the second and third companies of Battalion 118. The Battalion was formed of about 500 men divided between three companies each of which was divided into three platoons. In turn, each platoon was composed of a number of units of ten to thirteen men. The respondent was a member of the first platoon of the first company of Battalion 118 and was made a sergeant in charge of a unit. Battalion 118 was led by Ukrainian officers under the overall command of German officers.

[8] At the end of 1942, the men of Battalion 118 were taken in trucks to the City of Minsk in Byelorussia. From Minsk, the battalion was sent to Pleshchenitsi. Following its stay in Pleshchenitsi, the battalion went to Evye, a Polish village, where the battalion remained for approximately one year, i.e. from the spring of 1943 to the time of the Russian advance in the spring of 1944.

[9] With respect to the battalion's activities while in Kiev, Minsk, Pleshchenitsi and Evye, the respondent, in his statement filed in response to the Minister's summary of facts and evidence, gave the following explanation:

> 13. The Respondent was placed on guard duties in Kyiv as were his colleagues, with the Respondent recalling his particular responsibility to guard a wheat mill producing flour in Kyiv. At this time there was a great

> deal of sabotage and partisan activity by Soviet forces that had not all of them retreated with the general collapse of the front before the German invasion.
>
> 17. In Belarus, the Respondent's particular company was sent for a period of some months to Pleshcinitsia to maintain law and order and eventually the Respondent's company was sent to the location of Yewa.
>
> 20. The Respondent's responsibilities while posted at Yewa for a period of some one year were to protect villagers and their livestock and their resources from a threatening array of partisan forces, such being right-wing Polish partisans, and left-wing Polish partisans, and Belarussian partisans, and Soviet partisans, all of which partisan groups had one need and activity in common, namely, raiding villages to secure foodstuffs in order for their own survival and continued activity.

[10] In his *viva voce* evidence, the respondent reiterated the above statements. He testified that he had never participated in any major military operation and that he had never fired his gun in Pleshchenitsi and Evye. The respondent's testimony was that his company's involvement was to protect civilians against enemy partisans. The respondent stated that he had heard of German operations which took place in 1943 but that his company had not participated in these operations.

[11] As the Russian army advanced in the Spring of 1944, the German troops, including Battalions 115 and 118, began their retreat towards the West. At some point during the retreat, i.e. somewhere in what was then East Prussia, Battalions 115 and 118 were merged into one battalion. According to the respondent, the newly created battalion would have had approximately 500 to 600 men.

[12] In August of 1944, the men of the new battalion were transported by train to Bésançon, France. From there, they were taken to Valderharn, a small village where German anti-aircraft forces were stationed in large barracks built during Napoleon's rule. The members of the new battalion were informed by their German officers that they would now be part of the Waffen S.S. 30th Grenadier Division.

[13] Following their arrival at Valderharn, some members of the new battalion made contact with the French underground and, in particular, with what was then known as the Forces Françaises de l'Intérieur ("FFI"). One day, the respondent and his companions were informed by German officers that they would be fighting the allies on the following day. According to the respondent, he and his companions were waiting for an opportunity to join the French underground and, consequently, that evening, a majority of the men of the battalion defected to the French partisans.

[14] As part of the FFI, the respondent and his colleagues fought on a number of occasions against German troops. They were, in due course, sent to the front to fight against Germany. While they were fighting at the front, Soviet officers came to visit them with a request that they return to the "motherland". The respondent did not want to return to Russia as he feared he would be sent to Siberia for a long period of time. As a result of Soviet pressure, the respondent and his colleagues were removed from the front and sent

to the village of Dumblair where they remained for a few days. Their weapons were taken from them and the French informed them they would have to return to Russia. After discussing the matter with French officers, they were informed that the only way they could avoid being sent back to Russia was to join the French Foreign Legion ("FFL"). The respondent joined the FFL as did many of his colleagues.

[15] The respondent was taken by train to Marseille in order to enroll in the FFL. According to the respondent, 100 to 120 men of the merged battalions decided to return to the Soviet Union.

[16] The respondent officially joined the FFL in September 1944 as a private. He was one of twenty to twenty-five "volunteers" who were asked by their French commanders to go to the front to fight the German army. At the front, the respondent was placed in charge of a machine gun and, during the course of his participation, was severely injured. He spent two and one half months in an American hospital in France.

[17] In 1945, the respondent again fought with the allies, this time at the Italian front near Monaco. It was during this period of time that the Second World War came to an end. The respondent was taken from Italy to Nice, France where he rested and was then taken to barracks near Paris (at Meaux) where FFL troops were to be reorganized so as to be sent to Indochina.

[18] At Meaux, the respondent fell under the command of a Spanish sergeant. His relationship with his commanding officer was very poor and, as a result, his commanding officer informed him that it was doubtful that he would return alive from Indochina were he would shortly be sent.

[19] This threat occurred about three days before the 15th of July 1945 parade to commemorate the liberation of Paris. The respondent was given a month's leave and he travelled to Paris and, while there, contacted members of the French underground that he had met during the war. He informed them of his problem with his commanding officer in the FFL and asked for new identity papers in the name of Nicolas Schpirka, his brother-in-law. At that time, his sister and brother-in-law were still living in the respondent's home village in Bukovina. The respondent's evidence is that he changed his name because he had deserted the FFL and, if caught, would have been shot. The papers which the respondent obtained showed his birth date to be January 1921 instead of October 1921. He chose January as his birth month because his brother-in-law was born in the month of January. It took several months before the respondent obtained his papers in the name of Schpirka. Needless to say, the respondent did not return to the FFL at the end of his leave.

[20] The respondent took his new identity papers to the municipality of Paris and was issued a "carte d'invité" valid for three months. In due course, his "carte d'invité" was renewed for a period of ten years. He then started looking for a job and found one as a butcher for a small company where he worked for approximately ten months. The respondent then found a better paying job, again as a butcher, and remained at this new job for approximately two years following which he and two partners started a business.

[21] One of his partners was a Frenchman that he had met at his second job and together they found a third partner, an Ukrainian from Bukovina, Ivan Serbyn. Their business was a wholesale delicatessen operation, selling headcheese, hams, sausages, etc.. At one point in time, the business had eighteen employees. Because of French laws, neither Mr. Serbyn, nor the respondent, as foreigners, could own the business and therefore their wives were the legal owners.

[22] The respondent met his future wife at the end of 1945 or in the early months of 1946. Maria Stéphanie Kavoom, a French citizen, lived in Paris in the 6e Arrondissement. She was born in Troyes, France on February 3, 1927. Her parents were Ukrainians who had immigrated to France in 1924. The respondent and his wife were married in Paris on February 10, 1948. Maria Stéphanie Kavoom became Maria Stéphanie Schpirka.

[23] Although the Schpirkas had no particular reason to come to Canada, they decided to take steps to come to this country after receiving a letter of invitation from Mr. and Mrs. Rohosky, Ukrainians friends whom they had met in Paris and who had immigrated to Canada. The Rohoskys had come to France from Switzerland. In their letter of invitation, the Rohoskys informed the Schpirkas that there were a large number of Ukrainians living in Canada and that the Province of Quebec was French speaking.

[24] Before the Schpirkas decided to take steps to see whether they could immigrate to Canada, Ivan Serbyn informed his partners that he was immigrating to Canada and, as a result, sold them his interest in the business. Sometime in the spring of 1951, Mr. and Mrs. Schpirka took the Rohosky letter to the Canadian consulate to find out whether they could immigrate to Canada. The respondent does not remember much of the immigration process which led to his obtaining a visa. He does not remember being asked anything specific at the Canadian Consulate. He testified that he never filled out nor signed any form. He remembers seeing a doctor who asked that he have x-rays taken. He also remembers meeting an immigration officer with whom he spoke in French. The respondent stated categorically that he was never interviewed and that he attended the Consulate on two or three occasions. The respondent denies having been asked what he did between 1938 and 1945.

[25] Within a matter of months, the Schpirkas obtained their Canadian visas. The Schpirkas boarded the ship *NELLY* at the port of Le Havre on August 6, 1951 and arrived in Quebec city on August 14, 1951. The following day, the Schpirkas proceeded to Montreal by train where they arrived at Windsor Station. The Schpirkas then took a taxi to the Rohosky residence situated in the Montreal district of Rosemont. According to the respondent, he did not see nor was he interviewed by immigration officers upon arrival in Quebec City.

[26] Within a matter of weeks, Nicolas Schpirka had found a job. Initially, he attempted to find a job with Canada Packers but was refused because he could not speak English. Shortly thereafter he found a job with Frontenac Packing where he was paid $0.90 per hour. He worked 40 hours a week. He then found what he considered a well-paying job at $56.00 a week. He subsequently worked with Drash H. Kosher Meats and with Hygrade where he spent his days inside a freezer. Mr. Schpirka started having problems with his legs and his doctor advised him to leave his job at Hygrade if he "wanted to walk on his feet".

[27] As a result, Mr. Schpirka decided to help his wife, a hairdresser, who had recently opened a beauty salon. Also, Mr. Schpirka began cultivating bees on a farm owned by one of his friends. When his friend sold the farm, Mr. Schpirka bought his own farm.

[28] In Canada, Mr. Schpirka frequented the Church of St Sophie, an Ukrainian Orthodox Church in Montreal. In 1957, Mr. Schpirka confided in a priest that his real name was Katriuk and that he wanted to revert to his true name. The priest advised him to see a lawyer and suggested that he see Me Paul Massé, Q.C.. The priest took Schpirka to see Me Massé. After having related to Me Massé the events which led him to change his name, Mr. Schpirka asked Me Massé what could be done to enable him to change his name back to Katriuk. The respondent did not give Me Massé any information concerning his activities prior to his arrival in France in 1944.

[29] Me Massé, after inquiring with the Department of Citizenship and Immigration (the "Department"), informed Nicolas Schpirka that the easiest way would be for him to apply to the Department for a name change before filing his application for Canadian citizenship.

[30] On May 20, 1958, Vladimir Katriuk and his wife signed applications for citizenship under the name of Katriuk which the Department received on May 26, 1958. In his application, Mr. Katriuk stated that he was born in Luzhany, Romania (Ukraine), that he was a Romanian citizen and that his ethnic origin was Ukrainian. He further indicated that he had entered Canada under a false name, namely Nicolas Schpirka, and had arrived in Canada on August 14, 1951 on the steamship *NELLY*. He further indicated the following:

> Avant la fin de la 2e guerre mondiale, j'ai quitté les rangs de la LÉGION ÉTRANGÈRE de France sous les nom et prénom "Nicolas Schpirka" Ref. le dossier ED-2-37194, Immigration, Montréal. Mes nom et prénom véritables sont "VLADIMIR KATRIUK".

[31] On October 10, 1958, the registrar of Canadian Citizenship, Mr. J.E. Duggan, wrote to the Chief, Admission Division, Immigration Branch, in the following terms:

> Applications for Canadian citizenship have been filed by the above-named under Section 10(1) of the Canadian Citizenship Act with the Clerk of the Citizenship Court, Montreal, Quebec, May 20, 1958.
>
> Mr. and Mrs. Katriuk were lawfully admitted to Canada for permanent residence August 8, 1951, under the names of Maria Stephanie Schpirka and Nicolas Schpirka. They now state that their correct names are Marie [*sic*] Stephanie and Vladimir Katriuk and refer to your file number ED-2-37194.
>
> Would you please advise this office of the details surrounding the correct names of Mr. and Mrs. Katriuk and, if possible, may we have a photo-copy [*sic*] of any documents on your file relating to their correct names.

[32] On October 17, 1958, the following reply was sent to the registrar of Canadian Citizenship:

> 1. This will acknowledge your memorandum dated October 10th, 1958.
>
> 2. These persons entered Canada under the surname "Schpirka" at Quebec, P.Q. on August 14, 1951, and were granted landing under that surname. In 1957 they approached our Montreal office with a view to clarifying their Immigration status before applying for Canadian citizenship. In an affidavit sworn to at Montreal on October 18th, 1957, Vladimir Katriuk attested that he was born on October 10th, 1921 at Lujany, Bukovina, Roumania, took refuge in France in 1944 and a few months later enlisted in the French Foreign Legion under his correct name Vladimir Katriuk. He further attested that he left the Foreign Legion without permission and obtained from the French government a travel document and identity certificate under the name of Nicholas [*sic*] Schpirka.
>
> 3. We also have on file a supporting affidavit sworn to by Maria Katriuk in which she states that she married Vladimir Katriuk, then known by the name of Nicholas [*sic*] Schpirka, on February 10th, 1948. She states further that she and her husband came forward under the surname Schpirka.
>
> 4. We have on file an extract of registry of birth at Troyes, France, on February 3rd, 1927 of Maria Stephanie Kawun, as well as an extract of the records of marriages, showing that Nicolas Schpirka and Marie [*sic*] Stephanie Kawun were married on February 10th, 1948 in Paris, France.

> 5. The application of Vladimir Katriuk and his wife Maria Stephanie for amendment of our records, was favourably considered and due notation has been made to indicate that Vladimir Katriuk and Maria Katriuk were granted landing (admitted for permanent residence) at Quebec, P.Q. on August 14th, 1951.

[33] The Department, by a letter dated May 13, 1958, advised Me Massé that Mr. and Mrs. Katriuk's application to correct their names had been accepted. The letter reads as follows:

> Je désire me référer à nouveau à la requête que vous avez soumise à ce bureau il y a déjà quelque temps de la part de vos clients, monsieur et madame Vladimir Katriuk, qui sont arrivés à Québec sur le vapeur "Nelly" le 14 août 1951 et qui ont été admis au pays sous des noms d'emprunt.
>
> A ce sujet, il me fait plaisir de vous informer que le Ministère, en vue des informations qui ont été soumises, a décidé d'autoriser la rectification désirée et les personnes mentionnées sont maintenant enregistrées dans les dossiers du Ministère sous leurs noms véritables, soit Vladimir et Marie[*sic*] Katriuk.
>
> Veuillez agréer, cher monsieur Massé, l'expression de mes sentiments les plus dévoués.
>
> Le fonctionnaire supérieur à l'immigration
> Port de Montréal

[34] As appears from the above passage, the Department amended its records to indicate that Vladimir Katriuk and Maria Katriuk had been granted landing in Quebec City on August 14, 1951. As a result, Nicolas Schpirka and Maria Schpirka ceased to exist as far as the Department was concerned. This explains why Mr. and Mrs. Katriuk filed their applications for citizenship under their own names. On November 10, 1958, Mr. and Mrs. Katriuk became Canadian citizens.

[35] I should point out here that Mr. Katriuk's affidavit sworn to in Montreal on October 18, 1957, to which the Department's reply of October 17, 1958 refers at paragraph 2, is not part of the evidence. I should also point out that Mr. and Mrs. Katriuk's, or, rather, Mr. and Mrs. Schpirka's, applications for permanent residence in Canada are also not in evidence since the files were destroyed by the Department in the regular course of its business at the end of the 1950s or early 1960s.

THE MINISTER'S POSITION:

[36] In these proceedings, the Attorney General, on behalf of the Minister, seeks a declaration from this Court that the respondent obtained his Canadian citizenship by false representation or fraud or by knowingly concealing material circumstances. Specifically, in his summary of facts and evidence, the Attorney General submits the following:

> 46. The Respondent applied for Canadian citizenship under his correct name, Vladimir Katriuk, and became a Canadian citizen in 1958, receiving Citizenship Certificate number 276208.
>
> 47. At the time the Respondent applied for citizenship, good character and acquisition of Canadian domicile were both conditions precedent to being granted Canadian citizenship.
>
> 48. The Respondent presented himself to Canadian authorities as a person of good character, notwithstanding his activities during the Second World War, in particular his collaboration with the Nazi regime, and his participation in operations carried out by the *Schutzmannschaften* battalions and the Waffen-*SS*.
>
> 49. The Respondent also presented himself as a person who had acquired Canadian domicile. At the time of the Respondent's application for Canadian citizenship, a person could only acquire Canadian domicile if he had been landed in Canada, and a person could only be landed in Canada if he had been lawfully admitted to Canada.

> 50. As a result of his false representations and his intentional concealment of material facts, the Respondent was not lawfully admitted to Canada. Consequently, the Respondent never acquired Canadian domicile and he never met the requirements for obtaining Canadian citizenship.
>
> 51. The Respondent would never had [*sic*] been given Canadian citizenship if he had disclosed his memberships and activities during the war, in particular his collaboration with the Nazi regime, his enrollment in the *Schutzmannschaften* battalions and Waffen-*SS*, or if he admitted having concealed this information to Canadian authorities at the time of his application to immigrate to Canada.
>
> 52. By falsely presenting himself as a person of good character and a person who had acquired Canadian domicile, the Respondent withheld from Canadian citizenship authorities information which would have resulted in the denial of Canadian citizenship.
>
> 53. The Deputy Attorney General of Canada states that the Respondent obtained and retained Canadian citizenship by false representations or fraud or by knowingly concealing material circumstances which gives the Minister of Citizenship and Immigration grounds upon which to make a report to the Governor in Council for the revocations of the Respondent's citizenship.

[37] It is therefore the Minister's position that the respondent was a "collaborator", that he participated in the commission of atrocities against the civilian population in Byelorussia while a member of Battalion 118, that he failed to divulge material circumstances upon applying for permanent residence in Canada in 1951, including his true identity, and finally that he failed to divulge material circumstances in 1958 when he applied for Canadian citizenship. Before considering the Minister's allegations, a few words must be said about the applicable law. These proceedings were commenced on October 31, 1996 and, as a result, the provisions of the *Citizenship Act* in force at that date govern the matter of the revocation of the respondent's citizenship. In *Canada (Minister of Citizenship and Immigration)* v. *Bogutin*, (1998), 144 F.T.R. 1, McKeown J. carefully reviewed the relevant statutory sections and jurisprudence. In *Bogutin*, the respondent obtained a visa on June 27, 1951 and arrived in Canada on August 22, 1951.

Following his application in 1958, he obtained his Canadian citizenship in 1959. Revocation proceedings were commenced against Mr. Bogutin by the Minister on April 4, 1996. Consequently, McKeown J.'s review, with which I agree entirely, is applicable to the present matter. At pages 30 to 33 McKeown J. states:

> **[116]** The proceedings before me are governed by the provisions of the **Citizenship Act** which was [*sic*] in force at the time of the commencement of the proceedings to revoke the citizenship of the respondent, i.e. April 4, 1996. The relevant sections are reproduced in Schedule "A". In **Canada (Secretary of State) v. Luitjens**, [1989] 2 F.C. 125 (T.D.), Collier, J., held that substantive rights should be governed by the **Act** under which they are accrued and procedure by the **Act** in force when the legal proceedings were commenced. Section 18 of the **Act** sets out the applicable procedural provisions pertaining to revocation of citizenship. Section 18 contemplates that the Minister is required to give notice to the citizen if the citizenship is to be revoked, that she intends to make a report to the Governor-in-council that the person has obtained citizenship under the **Act** by false representations or fraud or by knowingly concealing material circumstances. The person has 30 days to request that the Minister refer the case to the court. If the person does not make such a request, the Minister should make a report to the Governor-in-Council. If the person makes a request or reference to the court the case has to be referred to the court. In such an eventuality it is only if the court decides that the person has obtained citizenship by false representations or fraud or by knowingly concealing material circumstances that the Minister may make a report to the Governor-in-Council.
>
> **[117]** Section 10(1) of the **Citizenship Act** provides that a person ceases to be a Canadian citizen if the Governor-in-Council is satisfied that the person has obtained, retained, renounced or resumed citizenship by false representation or fraud or by knowingly concealing material circumstances. In particular, s. 10(1)(a) of the **Citizenship Act** provides for an automatic statutory cessation of citizenship in circumstances where the Governor-in-Council is satisfied that a person has obtained citizenship by knowingly concealing material circumstances. In the event that statutory cessation of citizenship takes effect under s. 10(1) of the **Citizenship Act**, the person would become a permanent resident of Canada, as that term is defined in s. 2(1) of the **Immigration Act**, R.S.C. 1985, c. I-2, as amended. As a result, the person would be subject to all provisions of the **Immigration Act** including those pertaining to removal from Canada.
>
> **[118]** In **Canada (Secretary of State) v. Luitjens** (1992), 142 N.R. 173 (F.C.A.), Linden, J.A., held that the decision to be made on a s. 18 reference constitutes a factual finding by the court which is not determinative of any legal rights. The decision on the reference provides the Minister with the factual basis for her report and in some point in the future may constitute the foundation of a decision by the Governor-in-Council. Linden, J.A., continued at page 175, stating that the reference decision "is merely one stage of a proceeding which may or may not result in final revocation of citizenship and deportation or extradition". The approach of the Federal Court of Appeal in **Luitjens**, supra, was approved by the Supreme Court of Canada in **Tobiass**, supra.

[119] I must then examine the substantive provisions governing the acquisition of citizenship in s. 10(1) of the **Canadian Citizenship Act**, R.S.C. 1952, c. 33, as amended, which was in force in 1958-59 when Mr. Bogutin applied for and was granted citizenship. The section reads as follows:

> "10(1) The Minister may, in his discretion, grant a certificate of citizenship to any person who is not a Canadian citizen and who makes application for that purpose and satisfies the court that,
>
> (a) either he has filed in the office of the Clerk of the court for the judicial district in which he resides, not less than one nor more than five years prior to the date of this application, a declaration of intention to become a Canadian citizen, the said declaration having been filed by him after he attained the age of eighteen years; or he is the spouse of and resides in Canada with a Canadian citizen; or he is a British subject;
>
> (b) he has been lawfully admitted to Canada for permanent residence therein;
>
> (c) he has resided continuously in Canada for a period of one year immediately preceding the date of the application and, in addition, except where the applicant has served outside of Canada in the armed forces of Canada during time of war or where the applicant is the wife of and resides in Canada with a Canadian citizen, has also resided in Canada for a further period of note less than four years during the six years immediately preceding the date of the application;
>
> (d) he is of good character;
>
> (e) he has an adequate knowledge of either the English or the French language, or, if he has not such an adequate knowledge, he has resided continuously in Canada for more than twenty years;
>
> (f) he has an adequate knowledge of the responsibilities and privileges of Canadian citizenship; and
>
> (g) he intends, if his application is granted, either to reside permanently in Canada or to enter or continue in the public service of Canada or of a province thereof."

[120] The relevant paragraphs in this hearing are 10(1)(c) and (d)[1] which deal with the acquisition of Canadian domicile and the applicant being of good character. I agree with Collier, J., in the **Luitjens** case when he ruled that evidence as to good character and lack of good character could be presented.

[121] The deeming provisions in s. 10(2) of the present **Citizenship Act** bring into play the immigration process and the relevant provisions of the **Immigration Act** in force at the time the respondent had entered Canada in 1951. The lawfulness of the admission to Canada is a condition precedent of the acquisition of Canadian citizenship. A person must be lawfully admitted to Canada as an immigrant before he can acquire citizenship which requires lawful residence or the acquiring of Canadian domicile.

[122] As I found earlier, Mr. Bogutin was sponsored for immigration to Canada by the IRO in 1951 at Villach, Austria as a displaced person. He received an IRO identity card which was equivalent to a passport for displaced persons since most displaced persons, including Mr. Bogutin, had lost all their documents during the war. Mr. Bogutin then applied for resettlement to Canada shortly thereafter and was processed by Canadian immigration officials in Salzburg, Austria and was issued a visa dated June 27, 1951 to go to Canada. He was granted landed immigrant status on August 22, 1951 at Halifax.

[123] I now propose to review the **Immigration Act** and **Regulations** and other administrative provisions in force which govern the admission of immigrants from Europe to Canada in 1951. Section 2(1) read as follows:

> "2(1) 'land', 'landed' or 'landing', as applied to passengers or immigrants, means their lawful admission into Canada by an officer under this Act, otherwise than for inspection or treatment or other temporary purpose provided for by this Act; (emphasis added)
>
> ...
>
> "2A. Canadian domicile is acquired and lost for the purposes of this Act, in accordance with the following rules:
>
> > (a) Canadian domicile is acquired by a person only by having his domicile for at least five years in Canada after having been landed therein; (emphasis added)
>
> ...
>
> "3. No immigrant, passenger, or other person, unless he is a Canadian citizen, or has Canadian domicile, shall be permitted to enter or land in Canada, or in case of having landed in or entered Canada, shall be permitted to remain therein, who belongs to any of the following classes, hereinafter called 'prohibited classes':

---

[1] Paragraph 10(1)(b) is also, in my view, relevant.

> (i) Persons who do not fulfill, meet or comply with the conditions and requirements of any regulations which for the time being are in force and applicable to such persons under this Act;" (emphasis added)

> **[124]** Thus a person who wished to acquire Canadian domicile in 1951 had to be landed within the meaning of the 1927 **Immigration Act** as amended and in order to be "landed" the immigrant had to be lawfully admitted within the meaning of the **Immigration Act**. Section 33(2) of the 1927 **Immigration Act** also provided that every prospective immigrant "shall truly answer all questions put to him by any officer when examined under the authority of this Act" and failure to do so was an offence and was cause for deportation. The Supreme Court of Canada in **Minister of Manpower and Immigration v. Brooks**, [1974] S.C.R. 850, at page 873, had occasion to interpret similar provisions in the 1952 **Immigration Act** which confirmed that an applicant for immigration has a duty to answer truthfully and completely all questions and that material falsity or misleading information is a basis for deportation. The court stated:
>
> > "Lest there be any doubt on the matter as a result of the board's reasons, I would repudiate any contention or conclusion that materiality under s. 19(1)(e)(viii) requires that the untruth or the misleading information in an answer or answers be such as to have concealed an independent ground of deportation. The untruth or misleading information may fall short of this and yet have been an inducing factor in admission. Evidence, as was given in the present case, that certain incorrect answers would have had no influence in the admission of a person is, of course, relevant to materiality. But also relevant is whether the untruths or misleading answers had the effect of foreclosing or averting further inquiries, even if those inquiries might not have turned up any independent group of deportation." (emphasis added)

[38] Before dealing with the Minister's allegations, I would like to say a few words on the standard of proof applicable in these proceedings. Once again, I am in complete agreement with the statement of the law made by Mr. Justice McKeown in *Bogutin* at pages 27 to 29:

> **[108]** Before summing up the material findings, I wish to address the question of the applicable standard of proof to be applied in a s. 18 reference. Collier, J., stated in **Canada (Secretary of State) v. Luitjens** (1991), 46 F.T.R. 267 (T.D.), that a reference proceeding is a civil proceeding. This has been confirmed in many subsequent cases including a recent decision of the Supreme Court of Canada in **Canada (Minister of Citizenship and Immigration) v. Tobiass et al.** (1997), 218 N.R. 81 (S.C.C.).

[109] Notwithstanding that Collier, J., found that the reference proceeding is a civil proceeding, he went on to find that the consequences of the process, once completed, are very serious and a high degree of probability is required. In particular, in **Luitjens**, supra, at page 270 after dealing with the respondent's submission that the onus of proof should be a criminal standard, i.e. beyond a reasonable doubt, he stated:

> "From a review of the authorities cited, I am satisfied the present proceedings is a civil proceeding. I had been tempted, alternatively, to use the phrase, a quasi-criminal proceeding. That, to my mind, would be too imprecise and create confusion.
>
> "The standard of proof required in civil proceedings is a preponderance of evidence, or a balance of probabilities. But in that standard there may be degrees of the quality of the proof required.
>
> "The position I shall adopt here is that as set out by Lord Scarman in **Khawaja v. Secretary of State for the Home Dept.**, [1983] 1 All E.R. 765 (H.L.), at page 780. A high degree of probability is, in my opinion, required in a case of this kind. What is at stake here is very important; the right to keep Canadian citizenship, and the serious consequences which may result in that citizenship ceases."

[110] In my view, in light of the decisions of the Supreme Court of Canada, it is not open to me to use, as a standard of proof, a high degree of probability. In three cases, **Smith v. Smith**, [1952] 2 S.C.R. 312, **Hanes v. Wawanesa Mutual Insurance Co.**, [1963] S.C.R. 154 and **Continental Insurance Co. v. Dalton Cartage Co. et al.**, [1982] 1 S.C.R. 164; 40 N.R. 135 at 169, the Supreme Court of Canada held that the correct standard of proof is the civil standard of proof, i.e., the balance of probability. In **Continental Insurance Co. v. Dalton Cartage Co.**, supra, Laskin, C.J.C., adopted Lord Denning's oft-cited words in **Bater v. Bater**, [1950] 2 All E.R. 458, at 459 where he states:

> "... In criminal cases, the charge must be proved beyond reasonable doubt, but there may be degrees of proof within that standard. Many great judges have said that, in proportion as the crime is enormous, so ought the proof to be clear. So also in civil cases. The case may be proved by a preponderance of probability, but there may be degrees of probability within that standard. The degree depends on the subject matter. A civil court, when considering a charge of fraud, will naturally require a higher degree of probability than that which it would required if considering whether negligence were established. It does not adopt so high a degree as a criminal court, even when it is considering a charge of a criminal nature, but still it does require a degree of probability which is commensurate with the occasion ..."

[111] However, Laskin, C.J.C., in **Continental Insurance**, supra, rejected the proposition that there are various standards of proof stating at page 171 [S.C.R.] that:

> "I do not regard such an approach as a departure from a standard of proof based on a balance of probabilities nor as supporting a shifting standard. The question in all civil cases is what evidence with what weight that is accorded to it will move the court to conclude that proof on a balance of probabilities has been established."

[112] In **Canada (M.C.I.) v. Tobiass**, supra, the Supreme Court of Canada held that the liberty of the subject was not at risk in revocation of citizenship proceedings. The court held as follows:

> "Perhaps the first thing to notice is that what is at stake for the appellants in this case is arguably different from what is at stake for the typical accused in the typical criminal case. The state is trying to deprive the appellants of their citizenship and not of their liberty. Canadian citizenship is undoubtedly a very 'valuable privilege' (See **Benner v. Canada (Secretary of State)**, [1997] 1 S.C.R. 358 at para. 72). For some, such as those who might become stateless if deprived of their citizenship, it may be valued as highly as liberty. Yet for most, liberty is more valuable still. Therefore, the interests on the appellants' side of the balance do not weight quite so heavily as they would if the proceedings were purely criminal in nature."

> **[113]** The Court in these proceedings is making findings of fact and making a report to the Minister. It does not follow that the Governor-in-Council is therefore compelled to revoke the citizenship of the respondent. The Minister has to consider a report and send it to the Governor-in-Council. The Governor-in-Council has to make a decision whether to revoke citizenship or not. **Accordingly, I apply the civil standard of proof on a balance of probabilities but I must scrutinize the evidence with greater care because of the serious allegations to be established by the proof that is offered.** [Emphasis added]

I now turn to the Minister's allegations.

COLLABORATION WITH GERMANY AND PARTICIPATION IN THE COMMISSION OF ATROCITIES:

[39] The respondent admits that he was a member of Battalion 115 and, subsequently, of Battalion 118. However, the respondent takes the position, and he testified to the effect that he did not voluntarily join the battalions. He testified that joining the battalions was the only alternative to deportation to Germany. In that regard, his evidence is corroborated by Ivan Serbyn and George Hiltschuk. Both Mr. Serbyn and Mr. Hiltschuk were Ukrainians from Bukovina who marched to Kiev in the fall of 1941 and both became members of Battalion 118. The respondent's evidence that he did not voluntarily join Battalion 118 was also corroborated by the evidence of Mr. Savaliy Antonovich Khrenov, whose evidence I took in Nizhniy Novgorod, Russia, on March 30, 1998. Mr. Khrenov was a soldier in the Red Army. He had been called for military service in April 1941. He was part of the Soviet troops that were sent to occupy part of Poland. After Germany invaded Poland, Mr. Khrenov's unit retreated to Kiev where, in November 1941, he was taken prisoner by the Germans. He was placed in a prisoners of

war camp from which he escaped two months later. Although Mr. Khrenov was able to hide for a while, the Germans, on three occasions, tried to deport him to Germany. Each time, he managed to escape. This is what led him to join Battalion 118 in 1942. At one point during his cross-examination, when asked what alternative he had to joining Battalion 118, Mr. Khrenov gave the following answer:

> The only faith that awaited me was a rope around the neck. That was the only choice left.[2]

[40] On the issue of collaboration and war crimes, the Minister filed the expert reports of Professors Dr. Frank Golczewski and Dr. Manfred Messerschmidt. I will begin with the report of Dr. Golczewski. He received a Ph.D. from Cologne University in 1973 and subsequently studied extensively in the areas of modern and East-European history. From 1983 to 1994, he taught modern history and, since 1994, he has been a full professor of East-European history at the University of Hamburg.

[41] In his report dated August 3, 1997, Dr. Golczewski discusses the organization of Ukrainian Nationalists, Kiev under German occupation until December 1941, the Bukovina Battalion, the formation of local militias and auxiliary units in Bukovina, Galicia and Ukraine in the summer and fall of 1941 and the conditions for the auxiliary formations in occupied Russia.

---

[2] Page 78 of the transcript of Mr. Khrenov's cross-examination of March 30, 1998.

[42] At pages 29 to 31 of his report, Professor Golczewski writes as follows:

> Schuma[3] service was voluntary. The German military police and Security police personnel screened the militiamen they took over and the newly enlisted ones. Periodic screenings took place, because the Germans were really afraid of communist infiltrators and later of OUN propagandists as well. Especially in sensitive duty - like guarding of important objects and anti-partisan warfare - political correctness was considered to be an important point. The fact alone that „ unreliable " people were dismissed implies that nobody was pressed into Schuma service.
>
> As early as November 1941 an order by the Rear Land Force area Commander South stated that the auxiliaries had to serve German aims only and should not acquire the imprint of a future Ukrainian army. The infiltration of OUN propagandists should be stopped. Dean documents that in the Berdyčiv area Schuma members were arrested for being affiliated with OUN. When desertions to the partisans, especially to the nationalist partisans (UPA) formed in late 1942, occurred more frequently in later years the screening and checking of possible Schuma personnel intensified. The need for more local auxiliaries which was motivated by the „ necessary economic use of German soldiers " led to the recruitment of more and more POWs.
>
> This situation needs some explanation. As stated before, Ukrainian POWs were recruited for auxiliary formations as early as 1941. Their motivations might have differed from those of the formerly non-POW auxiliaries. From summer 1941 until the end of winter 1941/42 Soviet POWs faced almost certain death in the German POW camps. Not only were they denied Geneva Convention POW treatment, but starvation, dying from cold and illnesses and executions of those under suspicion of pro-communist leanings accounted for millions of deaths among them. In such conditions in order to survive one was highly tempted to join a collaborationist formation such as the Schuma. The „ volunteerness " of POWs becomes a farce when viewed form the perspective of highly possible death.
>
> In 1942 the fate of the Soviet POWs improved somewhat. Nevertheless, I consider POW recruitment not to be „ voluntary ". This does not apply to those who joined the Schuma who were not POWs, however. The main source were in the beginning independently formed militias transformed into Schuma. Recruitment thereafter had to concentrate on the local population the male part of which had been reduced by Red Army recruitments and evacuations. The remaining Ukrainian men were from 1942 on under constant danger of being deported to Germany as forced labour. Joining the Schuma was therefore a way to escape these labour service round-ups.
>
> This was, however, still a „ voluntary ". Though life as a labourer in Germany was far from desirable, it did not imply imminent death. Service in the Schuma - especially anti-Partisan warfare - could be highly dangerous on the other hand. An additional incentive to join the Schuma was of a material kind. With hunger a constant feature in the occupied USSR, joining the auxiliaries meant a regular supply of food for the Schuma and his family. The confiscation of Jewish goods and other articles, when „ controlling " markets and travellers offered material supplies to corrupt Schuma. As the expected and promised land privatization did

---

[3] By "Schuma", Professor Golczewski means "militia".

not occur distinction in Schuma service was declared to be a way to gain ground allocations prior to an overall settlement. Power was an additional aspect. The Germans declared that they were never short of willing people to join the Schuma - even later in the war, when a German victory became more and more improbable.

I know of no case where anybody would have been pressed into Schuma service. If the „ volunteerness " of the personnel is put into question it is only possible by taking into account the personal reference frame of the volunteers. Not joining the Schuma meant hunger and material dearth - on one level with the regular population. In contrast, for POWs only Schuma service meant escape from imminent death. This was balanced, however, by the clear understanding that a victorious Soviet Union would consider those who joined enemy para-military or military service to be traitors subject to the death penalty.

In light of the above I come to the conclusion

- that service in the auxiliary units was voluntary. Only former POWs escaped imminent death by joining auxiliary units. For the others different incentives were a reason to make the choice they did,

- that an oath of allegiance was not required for SSPF (Schuma) personnel before later in 1942,

- that the auxiliaries were armed, though different waves of disarming then took place, and that the Bukovina Kureń is said to have started out unarmed.

[43] At page 32 of his report, Professor Golczewski comments on the respondent's statement in answer to the Minister's summary of facts and evidence. Professor Golczewski writes:

As far as the paragraphs 4-8[4] in the Respondent's statement are concerned I state in the light of the above that the statements in paras 4 and 5 are correct. Para 5 is only half-true. Though the OUN set out to bring full independence to Ukraine it did so in cooperation with the Germans who were considered to be „ liberators " and allies. That is why many Ukrainian nationalists endorsed the German atrocities towards the Jewish and Polish populations, seeing in these activities a step towards „ ethnic cleansing " of the desired Ukrainian territory. This was done, because the Germans on purpose tried to foster a „ liberator's " image. So although the sovereignty in the end was planned to be „ independent of both the Soviet Union and Nazi Germany " the OUN groups were allied with the Germans: the OUN-B until July/August 1941, the OUN-M - to which the units, with which the respondent was affiliated, belonged - in Kiev until November/December 1941.

The Bukovinians arrived in Kiev in September or early October 1941. It is not clear if they arrived in Kiev right along with the German troops or some days later. Their later arrival would, however, not have been caused by the planting of mines, but by organizational priorities on the side of the OUN marching groups.

---

[4] 4. The Soviet occupation with its reprisals and executions, lasted until such time as Germany invaded the newly created regions of the Soviet Union in June of 1941 and shortly thereafter arrived in Bukovina together with its allied forces of Hungarians and Romanians.

5. The Respondent, as did many of his contemporaries and compatriots, anticipated the possibility of having Ukraine as an independent state, because of the rapid collapse of Soviet authority in retreat.

6. The Respondent therefore joined a volunteer force which was intended to provide law and order in the territories being fled by the Soviet forces (who exacted fearful repressions and executions as they retreated), and eventually to provide the basis of a Ukrainian force which would allow Ukraine to maintain sovereignty as independent of both the Soviet Union and Nazi Germany.

7. The Respondent, with his colleagues, for this reason set out for the capital of Ukraine, Kyiv, on a three month trek, which was interrupted as to entry in Kyiv because of Kyiv having been mined by the retreating Soviet forces so that the Respondent and his colleagues arrived in Kyiv only as of November of December of 1941.

8. Once arrived in Kyiv and being stationed in some barracks that had previously been occupied by Soviet internal security, the command of his group unfurled a Ukrainian flag with the national symbol of a trident, which had been savagely repressed and prohibited by the Soviet authorities.

> The statement of paras 8 and 9[5] is correct in the light of the available documentation. There is some doubt about the statement in para 10[6], as deportation for forced labour on a non-voluntary basis started only later in 1942. The reason given by Veryha (through only in the English summary) of his account is that the Bukovina men joined the 115th Battalion, „ not having any means by which to return to their native province of Bukovina, occupied by Roumanians ". This was not the only solution - it was a more expedient one.

[44] I now turn to Dr. Messerschmidt's evidence. Dr. Messerschmidt received a Ph.D. from the University of Freiburg in 1954. In 1958, he obtained a law degree from that university and a second degree in law from Stuttgart University in 1962. Since 1962, he has been employed by the Research Institute for military history in Freiburg. In 1970, he became Chief Historian and has been teaching history since then at the University of Freiburg.

[45] In his report, Dr. Messerschmidt discusses the formation of the Auxiliary Police (Schutzmannschaften) by the Germans. The Auxiliary Police, of which Battalions 115 and 118 formed part of, were to be used, according to Dr. Messerschmidt, primarily for security and anti-partisan warfare in the occupied regions.

---

5 8. Once arrived in Kyiv and being stationed in some barracks that had previously been occupied by Soviet internal security, the command of his group unfurled a Ukrainian flag with the national symbol of a trident, which had been savagely repressed and prohibited by the Soviet authorities.

9. The Germans acted in exactly similar fashion as the Soviet by confiscating all such would be national symbols, arresting the command of any such Ukrainian unit, and executing the chief officers in order to make clear that no such national manifestations would be tolerated.

6 10. Instead the Germans proceeded to create a force to assist them in maintaining law and order and to have guard duties, numbering such force the 115th Battalion. Service in such Battalion was indicated to the Respondent and his colleagues as the only alternative to deportation as slave labour to the Nazi Reich.

[46] According to Dr. Messerschmidt, as the Ukrainians were categorized as anti-Polish and pro-German, they were to be provided with more food and given preference in the staffing of subordinate administrative positions. Thus, according to Dr. Messerschmidt, the better treatment accorded to Ukrainians made it possible to establish "voluntary units" of Auxiliary Police.

[47] At page 12 of his report, Dr. Messerschmidt poses the following question:

> The question is whether there was force involved through coercion or the threat of deportation to forced labour in Germany.

[48] Dr. Messerschmidt answers his question as follows:

> The forced recruitment for labour service in the Reich began only in 1942. Until then it was a matter of "attracting" people, although this was often done in a very drastic manner. Only in May of 1942, the Army High Command [OKH] demanded conditions for municipalities; through effective publicity measures by the mayors, the people should be made to understand what their duty was. However, residents were also pressed into service in the Army [Heer] Rear Area. Finally, the greatest number of forced labourers were recruited for service in the Reich in the summer of 1942, for the most part women who were employed in German households (about 800,000 Ukrainian women). These methods were continued in 1943. The "Reports from the Occupied Areas" ["Meldungen aus den besetzten Gebieten"], No. 54 of 14 May 1943) characteristically conclude: "In general it is found that no one can be motivated any longer to volunteer. However, since in certain places and areas, contingents for labourers were prescribed, one has no choice but to use force".

[49] Later on, at page 14 of his report, he states:

> The German side was aware that the prospect of a better life with the German troops was a major motive for prisoners of war. But this very circumstance shows that prisoners were not forced into collaborative service. This also would have run counter to the tendency of wanting only "reliable" prisoners.

[50] With respect to the participation of Ukrainians in the Auxiliary Police, Dr. Messerschmidt opines as follows at pages 17 and 18 of his report:

> In Ukraine, the General Commissar ordered a recruitment campaign for the auxiliary forces [Schutzmannschaften] on 24 February 1942. The following conditions were established for membership:
>
> 1. Age: 18-45
> 2. Full physical suitability
> 3. Minimum height: 1.65 m
> 4. Appropriate general education
> 5. Good reputation (to be established by means of official certificates and witnesses).
> 6. Commitment initially only until 31.12.1942.
>
> Special mention should be made of the Ukrainian units from which a large percentage of officers and men transferred into the Ukrainian Schuma battalions. From the German point of view, these legions that had been organized for an independent Ukraine, certainly represented an anti-Bolshevist potential which could be utilized for police purposes, provided that the primary nationalist interests could be repressed. This goal was not realized with all, but with very many it could be subordinated to the struggle against Bolshevism. It would be difficult to find another explanation for the fact that the transfer was generally achieved without many problems.
>
> According to a memorandum by the Commander of the Order Police for Ostland of 13.3.1942, the recruitment of volunteers had the effect that skilled workers were leaving their jobs to join the auxiliaries [Schutzmannschaften]. In Latvia (according to Event Report [Ereignismeldung] USSR No. 187) 8000 volunteers had applied by 30 March 1942. Volunteers were also recruited for the Lithuanian auxiliaries [Schutzmannschaften].
>
> The general rules also provided that members of the Schutzmannschaften could file an application for discharge.

[51] After these comments, Dr. Messerschmidt then turns his attention to Schuma Battalions 115 and 118 and the respondent's participation, on a voluntary basis, in these battalions. At pages 18 and 19, Dr. Messerschmidt writes the following:

> Both battalions belonged to the area of Higher SS and Police Leader Russia South and Ukraine. For battalions in this area, the numbers 101 to 200 had been allocated.) It was thus determined that the bulk of the members were to be Ukrainians. The occupying power proceeded accordingly in Kiev when the battalions were set up.
>
> The question is to what extent the prescribed volunteer principle was indeed maintained.

V. Katriuk (the Respondent will hitherto be referred to as R) has claimed that he was enlisted [eingestellt] after his arrival in Kiev (November or December 1941) and indicated that this was his only alternative, i.e. to deportation for slave labour in the Reich. He claims that soon after, Battalion 118 was formed from prisoners of war who also had the alternative to be brutally treated and to starve in the prisoner of war camp. The respondent says that he had been transferred with his company into Battalion 118. In this manner, he says, the Germans had tried to suppress the nationalist feelings of the Schutzmannschaften and that this was how they had treated the "volunteers". He says that an oath of solidarity had therefore not been requested either.

R. bases his claim that he did not join Battalion 115 voluntarily on two arguments:

1. the threat of forced labour in the Reich,
2. the claim that the prisoners of war who joined Battalion 118 had no choice other than death by starvation in the prisoner of war camp.

He describes the overall situation as if Battalions 115 and 118 had been purely compulsory units [Zwangseinrichtungen].

The above indications concerning the German policy in terms of Ukrainian nationalism speak against R's claim. Neither does the implication hold true that the Bukovina Ukrainians in November/early December 1941 were given the alternative of doing either forced labour in the Reich or police duty. Of the 15,000, only some entered the battalions. It cannot be determined whether the rest were taken to Germany. This is unlikely, because at that time there were no scheduled deportations to forced labour, and also because volunteer recruitment was still carried out in 1942.

This leads to the conclusion that the Higher SS and Police Leader [HSSPF] and the local authorities were supported by Ukrainian helpers in establishing the Schuma battalions in Kiev.

How can the Respondent's comments be reconciled with these circumstances? Prior to the occupation of the Bukovina [Bukowina] by the USSR, R. was a Romanian citizen and a member of the Ukrainian minority. When the Wehrmacht ended the one-year Soviet rule in the summer of 1941, R. was barely 20 years old. As a non-Romanian and as a Ukrainian activist, he joined a volunteer unit whose aim was to act as a Ukrainian force to bring about an independent Ukraine. For that reason, this organization of Southwest Ukrainians marched for 3 months to Kiev, where upon its arrival in November/December 1941 it was housed in former barracks of the USSR security forces. The trident flag was unfurled, which the German side did not allow.

No one mentioned that the leading Ukrainian officers in Kiev were executed by the Germans, although questions about the instructors [Instrukteure] were raised during the interview [Vernehmung]. With this claim, R stands alone. Such action on the German side would be in contrast to the fact that the commander, the company heads [Kompaniechefs] as well as the platoon and group leaders [Zug - und Gruppenführer] in Battalion 118 were Ukrainians. In my opinion, R's statements must be seen in connection with his position and role in the battalion. In contrast to the Ordnungsdienst unit (910 men) made up of Ukrainian prisoners of war released in Minsk, where the question of finding suitable Ukrainian leaders could not be solved, such complaints did not become known about Battalion 118. Obviously the

> German supervisory officers [Aufsichtsoffiziere] appointed by Decree [Erlaß] of Reichsführer SS [RFSS] of 6 November 1941 were fully satisfied with the performance and attitude of their Ukrainian comrades. R. was a Group Leader [Gruppenführer] in Platoon 1 [1.Zug] of Company 1 [1.Kompanie]. The company consisted primarily, or almost completely of Western Ukrainians. It was the best armed and can be described as the elite of the battalion. In his Group [Gruppe], R. was in charge of 10-12 men.
>
> These indications do not fit into the picture of forced service which was painted by R. He does not mention at all that he served in Company 1 and that he was awarded a medal for his activities.

[52] Then Dr. Messerschmidt addresses the field of operation of Battalion 118. He relates, in vivid terms, the participation of Battalion 118 in a number of important military operations, namely "Hornung", "Draufgänger ", "Cottbus", "Hermann" and "Wandsbeck" which took place between March and August 1943. For example, with respect to operation "Cottbus", Dr. Messerschmidt sets out, at page 23 of his report, figures taken from a German Combat Report of June 28, 1943 which highlights the success of that operation:

Enemy losses	
killed in action:	6087
executed:	3709
prisoners:	599
Labourers seized:	
Male:	4997
Female:	1056
Own losses:	
Germans:	
Killed:	5 officers
	83 NCOs + men
Non-Germans:	
Killed:	40
Wounded:	152

[53] Dr. Messerschmidt cites a report written by the General Commissar for White Ruthenia who complained that, during "Operation Cottbus", 13,000 enemies had been killed but only 950 rifles had been captured. The General Commissar would have then said:

> "This ratio between enemy dead and weapons shows that 90% of the enemy dead were unarmed."

[54] The figures which Dr. Messerschmidt gives for "Operation Hermann" are similar to those given for "Operation Cottbus" (4,280 enemies dead and 654 prisoners captured).

[55] With respect to "Operation Wandsbeck", Dr. Messerschmidt pays particular attention to the destruction of the village of Khatyn on March 22, 1943.

Dr. Messerschmidt explains the destruction of the village as follows:

> There was a special reason why the village of Khatyn was destroyed on 22 March 1943. In the correspondence between German agencies, the events were dealt with under the heading "Ambush near Guba" ["Überfall bei Guba"]. First in the documents is a radio message from the SS Special Battalion Dirlewanger, dated 23.3.1943. In this message to the Plenipotentiary of the Reichsführer SS for Anti-Partisan Warfare (von dem Bach-Zelewski) it says that Battalion 118 had urgently requested support to be sent to Guba. Together with Battalion 118, the SS Company requested support to be sent to Guba. Together with Battalion 118, the SS Company [SS-Komp.] had pursued the retreating enemy to Chatyn. The village had been destroyed after fighting, and there had been 30 enemy dead. A completely different report went to the General Commissar in Minsk. According to this - letter of 1.4.43 to District Commissar [Gebietskommissar] Borossow - a security patrol from Battalion 118 had been ambushed near Guba, a captain and three Ukrainians were killed. In the pursuit, the gang [Bande] had been pinned down. 30 enemy dead. The partisan village ["Bandendorf"] of Chatyn with 90 inhabitants had been destroyed. On 10 April, the SS and Police Regional Leader [SS- und Pol.-Gebietsführer] requested a report from Battalion 118. On 12 April, the German commander of Battalion 118, Major Körner, reported to the SS and Police Regional Leader that the telephone line between Pleshchenice and Lahoysk had been

> interrupted on 22 March. To cover the repair team [Bautrupp], two platoons of Company 1, Battalion 118 had been dispatched. Behind Guba some woodcutters had been encountered who did not provide any information about partisans. Shortly after, the troops were ambushed. In the fighting, Captain Woellke and 3 auxiliary policemen [Schutzmänner] were killed. The enemy retreated to Chatyn. The woodcutters were apprehended. During an attempt to flee, 23 were killed, the rest were handed over to the Gendarmerie and finally released. The enemy was pinned down in the village of Chatyn, which was known to be in sympathy with the partisans ["partisanenfreundlich"]. In heavy fighting, 34 "bandits" and numerous villagers were killed: some died in the flames. Some of the inhabitants had probably left the village earlier so they would not be forced to side with the 'bandits".
>
> In addition to these operations, Battalion 118 or parts thereof participated in numerous patrols and security missions because the immediate vicinity of Pleshchenice and the surrounding area was insecure. The available documents mention at least 17 such operations in which Battalion 118 participated with forces of varying strength.

[56] Finally, at page 27, as part of his conclusion, Dr. Messerschmidt writes:

> In evaluating the operations of the Schuma battalions one has to consider that since their command in anti-partisan warfare was transferred to the Reichsführer SS [RFSS] and von dem Bach-Zalewski, the chief of anti-partisan warfare [Chef der Bandenbekämpfung] appointed by him, they were involved in a ruthless scenario of terror. This included the compulsory use of specific language. They had to speak of "gangs" ["Banden"]. Annihilation operations were called "pacification" or "re-establishment of security and order". Although the Foreign Armies Section (East) of the Army General Staff [Generalstab des Heeres] had made it clear that the enemy's partisan operations were to be regarded as a tightly commanded means of warfare by the Red Army, and that since Marshall Voroshilov had taken command, partisans were seen as "soldiers of the Red Army in the rear of the enemy", the SS and police units in this particular Reich Commissariat, often supported by Wehrmacht security troops, continued their ruthless methods against the population. Members of the Schuma could avoid this only by deserting, which did happen and has been documented. R distanced himself only in France. In White Russia, he was described as an active Schuma man.

[57] The picture painted by Dr. Messerschmidt is quite different from the story related by the respondent. It will be recalled that the respondent testified that his company had never participated in any major military operation. The respondent also testified that, in Pleshchenitsi and Evye, he had not fired his gun. Further, the respondent reiterated in his testimony what he stated in paragraphs 13, 17 and 18 of his statement in response to the

Minister's summary of facts and evidence. He added that, while in Minsk for three to four weeks, Battalion 118 underwent training exercises every day. The respondent related the same story in regard to Battalion 118's presence in Pleshchenitsi, that the battalion underwent training exercises every day and that it guarded its barracks and a bridge on the main road. The battalion would have remained in Pleshchenitsi for two to three months and would never have left town.

[58] In Evye, Battalion 118, according to the respondent, was housed in a school where the men were packed as "herrings in bunk-beds". Battalion 118 patrolled the town to show the population that it was there to protect them from the enemy.

[59] I will now contrast the respondent's testimony with that of Mr. Khrenov. Mr. Khrenov joined Battalion 118 in 1942. He was in the third platoon of the first company of Battalion 118. He remembers the respondent was a member of the first company. He also remembers that the respondent was from Western Ukraine. Mr. Khrenov confirmed the respondent's testimony that, while in Kiev, Battalion 118 underwent training. He also remembered that the battalion had participated in an operation against partisans outside Chernigov. He added, however, that as things turned out, the first company had not been involved in the fighting.

[60] Mr. Khrenov then testified that the battalion had been transferred to Minsk, either at the end of 1942 or the beginning of 1943. He testified that in Minsk, the battalion underwent training. He could not remember how long the battalion had remained in Minsk. He remembered that the battalion was transferred from Minsk to Pleshchenitsi some time in 1943. He remembered celebrating Christmas of 1942 in Pleshchenitsi. When asked in cross-examination whether his company had been involved in military action while in Pleshchenitsi, Mr. Khrenov answered "of course".

[61] Mr. Khrenov explained that the first company "wasn't always involved in things in its entirety. Sometimes, it would be involved as a platoon or as a unit". He then added that it was difficult to remember "all these things".

[62] He testified that he had participated in the burning of the village of Chmelevisci. When asked whether the respondent had participated in this operation, he answered that he could not say but that he could say that the company "was there".

[63] Mr. Khrenov also testified with respect to an incident which occurred on the road between Pleshchenitsi and Logoisk. A member of the battalion had been killed while repairing telephone lines. The first company was sent to the site of the incident.

Mr. Khrenov stated that he saw dead bodies lying on the ground. Mr. Khrenov also saw woodcutters being escorted by the third platoon.

[64] Mr. Khrenov remembers leaving the Pleshchenitsi region in the summer of 1943 "for some big operation". The battalion then went to Novogrudok. In the fall of 1943, the company went to Evye, where a number of operations were carried out. He remembers fighting partisans near the village of Morino. Mr. Khrenov remembers the respondent as being the Commander of the first unit of the first platoon of the first company. When asked how he would describe the way the respondent behaved during operations, Mr. Khrenov answered the following[7]:

> Q. And meaning he [Katriuk] was at what, the vanguard of the advancement?
>
> A. Well, for instance, there was an incident when he brought a partisan to the battalion where - to the place where the battalion was deployed. Then, they formed up the company in one line. And this partisan, walked along the line to recognize faces of certain people. And he recognized two (2) people, who had wanted to make contact with the partisans. And the man that Katriuk brought recognized two (2) individuals. And then, those two (2) individuals were taken away.
>
> Q. So, it was Mr. Katriuk who brought this person in to identify the others?
>
> A. Yes.
>
> Q. How was Mr. Katriuk viewed by his men?
>
> A. Well, there were always good relations. They were all fellow countrymen, and they were all friends.
>
> Q. Okay, in respect of the manner in which he proceeded during the operations, how was his attitude towards fighting?
>
> A. I didn't go with him at all, never, but, in general, I can say he was an active participant, but, personally, I had no contact with him.

---

[7] Pages 69 and 70 of the transcript of Mr. Khrenov's cross-examination of March 30, 1998

Q. During the fighting.

A. Well, as I said, I was always with the cannon. So we didn't participate.

Q. Finally, did anybody in the first company ever get medals or awards?

A. About seventy percent (70%), not less than seventy percent (70%) of the people in the first company got awards sometime in the spring of 1944, and he also got an award.

Q. He being?

A. Katriuk.

Q. Mr. Katriuk.

A. He was also given an award.

[65] To complete Mr. Khrenov's testimony, I should state that he was also part of the battalion created from the remains of Battalions 115 and 118 which was sent to France and from which a number of men defected to the FFL in 1944. In contrast to the respondent, Mr. Khrenov did not join the FFL and, as a result, returned to Russia. After being tried, he was found guilty of being a traitor to his country and was sentenced to be executed. After two months on "death row", Mr. Khrenov's sentence was converted to twenty years of forced labour. After having served thirteen years in prison, Mr. Khrenov was released. He explained that Ukrainians from Eastern Ukraine were the ones that returned to Russia. The Western Ukrainians did not return. They remained in France.

[66] In view of the evidence of Dr. Messerschmidt and Mr. Khrenov, I find it difficult, if not impossible, to accept the respondent's evidence that he did not participate in any important military operation while his battalion was in Byelorussia. That is simply not plausible. I find that the respondent must have participated in at least some of the

operations in which his battalion was involved between 1942 and 1944. The respondent was an active member of the battalion and was in charge of one unit of platoon number 1 of company 1. Mr. Khrenov remembers him as an "active participant". I can only conclude that the respondent, as a member of Battalion 118, took part in the operations in which his company was involved and, as a result, was certainly engaged in fighting enemy partisans.

[67] Although I have no difficulty concluding that the respondent participated in the operations in which his company was involved, I am not prepared, on the evidence before me, to conclude that he participated in the commission of atrocities against the civilian population of Byelorussia. Not enough is known to reach any conclusion. The Minister did not call any witnesses, save Mr. Khrenov, with respect to the events on which Dr. Messerschmidt relies in coming to his conclusions. The Minister called Mr. Khrenov but his evidence does not support the Minister's contention that the respondent committed atrocities or participated in the commission of atrocities against the civilian population of Byelorussia. Consequently, I am of the view that Dr. Messerschmidt's expert evidence is not sufficient to support the conclusion which the Minister seeks. Dr. Messerschmidt is an expert historian. He relies, like Dr. Golczewski, on a number of documents in order to reach his conclusions. However, Dr. Messerschmidt, it goes without saying, has no personal knowledge of the events which he relates in his report. It would be unthinkable, in my view, to conclude, on the basis of Dr. Messerschmidt's

evidence only, that the respondent committed war crimes. I therefore find that the Minister has not proved, on a balance of probabilities, that the respondent participated in the commission of war crimes or that he committed such crimes. The Minister did not call any witnesses who could link the respondent to the atrocities committed against the civilian population.

[68] I now turn to the issue of whether the respondent "voluntarily" joined Battalion 118. Both Drs. Golczewski and Messerschmidt are of the view that the respondent must have voluntarily joined Battalion 118. At page 31 of his report, Dr. Golczewski recognizes that refusal to join the Schuma could lead to "hunger and material dearth". He dismisses the respondent's evidence that the only alternative to joining a battalion was deportation to Germany because "deportation or forced labour on a non-voluntary basis started only later in 1942". According to Dr. Golczewski, joining a battalion "was not the only solution. It was a more expedient one". Dr. Messerschmidt is, for slightly different reasons, also of the view that the respondent voluntarily joined Battalion 118.

[69] As I indicated earlier, the respondent testified that joining a battalion was the only alternative to being deported to Germany. In that respect, I have already referred to the evidence of Messrs. Serbyn, Hilschuck and Khrenov.

[70] This issue is not easy to decide. For those of us who did not participate in the Second World War, or for that matter in any war, it is almost impossible to imagine the difficult choices men and women had to make during the course of that war. In the circumstances which prevailed at that time, "voluntary service" may well have been a relative term. As Professor Golczewski himself recognizes, there were many reasons why a man could have decided to join a battalion. To name a few, deportation, hunger, possible death, etc.. It must be remembered that Professor Golczewski's opinion is all encompassing. All those who joined the battalions, save for prisoners of war like Mr. Khrenov, did so voluntarily. That cannot, in my view, possibly be true. No doubt many men did join the battalions of their own free will. It cannot also be doubted that many did not join of their own free will but did so either to avoid deportation, hunger or perhaps death. When asked by counsel for the Attorney General why he did not leave Battalion 118, the respondent answered by saying "where could we go? To the Red Partisans, or maybe to the Polish Partisans?".

[71] It is interesting to compare the statements made by Drs. Golczewski and Messerschmidt with those that are made by Professor Subtelny in his book *Ukraine A History*. At pages 471 to 473, under the heading *Collaboration*, Professor Subtelny writes:

> *Collaboration* In dealing with the Nazis, the Ukrainians had two alternatives: to obey or to resist. As throughout all of German-occupied Europe, the vast majority chose obedience. And when obedience went beyond the limits of the passive

fulfillment of German commands, it usually became collaboration. In Western Europe, where loyalty to one's state was taken for granted and the Nazis were the one and only enemy, collaboration with the Germans was generally viewed as a form of treason. But in Ukraine, collaboration was a much more complicated issue. It was, first of all, unclear as to how much loyalty Ukrainians owed to Stalin's regime or to the Polish state that had mistreated them. Who was the primary enemy? Was it the Stalinist system, which inflicted such great suffering in the 1930s, or the Nazi regime, which was currently (but perhaps only temporarily) in power? Finally, given the extreme ruthlessness of both regimes in Ukraine, collaboration was often the price of survival for many Ukrainians.

For Ukrainians the was posed the problem of how to make the best of what was essentially a no-win situation. From an average individual's point of view, success generally meant the preservation of one's life. For Ukrainian leaders and their organizations in German-occupied territories the goal - or rather, the puzzle - was how to preserve Ukrainian interests from both the Nazis and the increasingly stronger Soviets. Distasteful as it was, some Ukrainian leaders decided to side with one totalitarian system in order to withstand the other. Because the Soviets appeared to be the greater long-term threat, almost all Ukrainian organizations in the Third Reich collaborated with the Germans at one time or another, but always to a limited degree and for strictly tactical reasons. As a people without a state of their own, Ukrainians operated from a position of weakness. They were unable to formulate policy or influence events. Consequently, Ukrainian collaboration with the Nazis was insignificant compared to that of Germany's allies. Finally, although there were opportunists, anti-Semites, and ideological fanatics among the Ukrainians, there is no evidence indicating that their number was proportionally greater than among other nationalities.

On the individual level, collaboration with the Germans usually took the form of participation in the local administration of the German-supervised auxiliary police. Motives for taking such positions varied. In Western Ukraine, where, before the war, Poles had excluded Ukrainians from even the lowest administrative positions, the desire to have at least a minimum of authority in Ukrainian hands and to turn the tables on hated rivals was often a major motive. The need to find employment or to satisfy personal ambitions was, as always, an important consideration. The most notorious form of collaboration was to act as a concentration camp guard. Invariably, guard positions were held by Soviet prisoners of war, who had the difficult choice of accepting the task or perishing in the camps.

Given the lowly position of Ukrainian collaborators in the Nazi apparatus and the *ss* monopoly on the actual extermination of Jews, Ukrainian participation in the massacres was neither extensive nor decisive. When it did occur, it usually took the form of auxiliary policemen herding Jews into ghettos. However, there were also many Ukrainians who risked the death penalty by aiding Jews. Metropolitan Sheptytsky was an outstanding example: not only did he shelter hundreds of Jews in monasteries but he also used his sermons to decry the Nazi slaughter of Jews. In 1943 an *ss* report to Himmler stated that the metropolitan was adamantly opposed to the Nazi anti-Semitic outrages and that he had come to consider nazism to be an even greater evil than communism.

Aside from the abortive interlude between the OUN and the Germans in the early days of the war, the most important case of Ukrainian cooperation with Hitler's regime on the organizational level was the formation of the *ss* volunteer

> Galicia Division. In spring 1943, after the stunning German defeat at Stalingrad, Nazi authorities belatedly decided to recruit non-German "easterners" into their forces. Consequently, Otto Wächter, the governor of Galicia, approached the Ukrainian General Committee (UCC) with a proposal to form a Ukrainian division in the German army. After much debate and despite opposition from the OUN-B, Kubijovyč and his associates agreed. Their immediate reason for the creation of such a division was the hope that it might help to improve German treatment of the Ukrainians. The specter of 1917-20 was also extremely influential in persuading the UCC leadership, for Kubijovyč and his associates (as well as Metropolitan Sheptytsky himself) were convinced that it was the lack of a well-trained army that had prevented Ukrainians from establishing their own state after the First World War. Realizing that the defeat of Germany was probable, they were determined that this time Ukrainians would not be caught in the ensuing chaos without a regular military force. It should be emphasized that both the Ukrainian organizers of the division and its members were motivated primarily by patriotic and anti-Soviet motives, not by pro-Nazi sympathies.
>
> In the negotiations leading up to the formation of the division, the UCC insisted that the unit fight only against the Soviets. Wächter, on Himmler's instructions, demanded that the entire higher divisional command be German and, in order not to irritate Hitler, that the division be called Galician rather than Ukrainian. When the UCC called for volunteers in June 1943, over 83,000 men responded. Of these, 13,000 eventually became members of the *ss* Volunteer Galicia Division.
>
> The men of the Galician Division were not the only Ukrainians in Hitler's armies. Scattered among the approximately 1 million former Soviet citizens who wore German uniforms in 1944 were about 220,000 Ukrainians (most of the others were Russians). To put these numbers into perspective, it should be remembered that about 2 million Ukrainians fought on the Soviet side and that large numbers also fought in Polish, Romanian, Hungarian, Czech, American, and Canadian forces. Such was the fate of a stateless people.

[72] There is no evidence that the respondent, prior to August of 1944, made any attempt to leave Battalion 118. This, in any event, would be most surprising since leaving the battalion might have been considered to be desertion and would perhaps have resulted in the firing squad. On the other hand, a man could leave to join the partisans and fight against Germany which, in the end, is what the respondent did in August of 1944 when he and others joined the FFI.

[73] On the evidence before me, I cannot accept the respondent's evidence that refusal to join Battalions 115 and 118 necessarily meant deportation or forced labour. Rather, I am of the view that the respondent joined the battalions for a number of reasons, possibly including better living conditions and avoiding hunger. Another possible reason for joining a battalion was that Ukrainians, at least for a short period of time, preferred the Germans to the Russians and were prepared to fight against their former oppressors. In the end, I must agree with Dr. Golczewski that the respondent decided that joining a battalion was the lesser evil of the choices that life was offering him at that time. In reaching this conclusion, I wish to make it clear that I do not believe that the respondent was entirely candid in relating his participation in Battalion 118. He clearly was not prepared to answer fully the questions put to him regarding his participation in Battalion 118 and, more particularly, in company number 1 of that battalion. In my view, he was only prepared to testify with respect to generalities and not to specifics. This does not, however, lead me to infer that the respondent was trying to conceal that he had committed or participated in the Commission of war crimes. As I indicated earlier, the Minister did not adduce any evidence, other than that of the expert historians, to prove its allegation that the respondent had committed war crimes. In reaching that conclusion, I am perfectly conscious of the fact that the victorious powers, which include Canada, are the ones that decided what collaboration meant and who collaborators were. For reasons which will appear later on, this finding is not, in any event, determinative of the questions which I must answer.

FAILURE TO DIVULGE MATERIAL CIRCUMSTANCES UPON APPLYING FOR PERMANENT RESIDENCE IN CANADA IN 1951.

[74] It is not disputed that the respondent misrepresented his identity when he applied for a visa in Paris in 1951. Consequently, the respondent concealed material circumstances when applying for permanent residence in Canada. However, by reason of his application in 1957 to have his name changed from Schpirka to Katriuk, it does not necessarily follow that the respondent obtained his Canadian citizenship by false representation or fraud or by knowingly concealing material circumstances.

[75] On this issue, the Minister's position is that there was in existence in 1951 a system which provided for screening of immigrants based on the information which they provided in their application forms and, in particular, information regarding their residences and employments from 1938 until the date of their applications. The Minister submits that this system could only be effective if applicants provided accurate and truthful information regarding their identity and their history, as requested in the application form and reviewed during a visa-vetting interview.

[76] The Minister submits that, when the applicant applied to come to Canada in 1951, persons found to be collaborators were not admissible. According to the Minister, there was a blanket exclusion in regard to "collaborators".

[77] I will now briefly review Canada's immigration policy[8] concerning the entry into Canada of "undesirable" persons and the manner in which the government chose to implement its policy.

[78] By the end of the Second World War, Canada's immigration policy was still subject to an order in council[9] adopted in 1931 pursuant to the *Immigration Act,*

---

[8] For a complete and detailed review of Canada's immigration policy, see the judgment of Noël J. in *Canada (Minister of Citizenship and Immigration)* v. *Dueck*, (21 December 1998), Ottawa: F.C.T.D., T-938-95 [unreported], at pages 67 to 73. At pages 73 to 87, Noël J. reviews in detail Canada's policy regarding the security screening of immigrants. See also pages 17 to 21 (paragraphs 61 to 77) of McKeown J.'s decision in *Canada (Minister of Citizenship and Immigration)* v. *Bogutin*, (1998), 144 F.T.R. 1.

[9] See P.C. 695, 21 March 1931. The relevant portion of the Order in Council reads as follows:

> The Immigration Officer-in-Charge may permit to land in Canada any immigrant who otherwise complies with the provisions of the Immigration Act, if it shown to his satisfaction that such immigrant is: -
>
> A British subject entering Canada directly or indirectly from Great Britain or Northern Ireland, the Irish Free Sate, Newfoundland, the United States of America, New Zealand, Australia, or the Union of South Africa, who has sufficient means to maintain himself until employment is secured: Provided that the only persons admissible under the authority of this clause are British subjects by reason of birth or naturalization in Canada, Great Britain or Northern Ireland, the Irish Free Sate, Newfoundland, New Zealand, Australia, or the Union of South Africa.
>
> A United States citizen entering Canada from the United States who has sufficient means to maintain himself until employment is secured.
>
> The wife or unmarried child under 18 years of age of any person legally admitted to and resident in Canada who is in a position to receive and care for his dependents.
>
> The father or mother, the unmarried son or daughter eighteen years of age for [*sic*] over, the unmarried brother of sister, the orphan nephew or niece under sixteen years of age, of any person legally admitted to and resident in Canada, who is in a position to receive and care for such relatives. The term "orphan" used in this clause means a child bereaved of both parents.
>
> An agriculturist having sufficient means to farm in Canada.
>
> The fiancee of any adult male legally admitted to and resident in Canada who is in a position

R.S. 1927, c. 93 (the "*Immigration Act, 1927*"). As a result, it was quite difficult, if not impossible, for immigrants from countries other than the United Kingdom, the United States, Ireland and the Dominions to come to Canada as permanent residents. There were up to six hundred thousand displaced persons at the end of the war. Thus, Canada was not in a position to accept the large-scale immigration which resulted from the war.

[79] From 1945 to 1947, Cabinet held many discussions with a view to "relaxing" the provisions of the 1931 order in council. In October 1945, an order in council[10] was passed so as to allow refugees who had entered Canada during the war to obtain landed status. In January 1947, Cabinet decided that a number of statutes would either be repealed or amended to end racial discrimination, particularly as concerned persons of Asian origin.

[80] On May 1, 1947, the Prime Minister of Canada, the Right Honourable Mackenzie King, made the following statement in the House of Commons:

> The policy of the government is to foster the growth of the population of Canada by the encouragement of immigration. The government will seek by legislation, by regulation, and vigorous administration, to ensure the careful selection and permanent settlement of such numbers of immigrants as can advantageously be absorbed in our national economy.
>
> ...

---

to receive, marry and care for his intended wife.

A person who, having entered Canada as a non-immigrant, enlisted in the Canadian Armed Forces and, having served in such Forces, has been honourably discharged therefrom.

[10] P.C. 6687, October 26, 1945

> Because of the limitation of transport, the government decided that, as respects immigration from Europe, the emphasis for the present should be on the admission of the relatives of persons who are already in Canada, and on assisting in the resettlement of displaced persons and refugees.
>
> ...
>
> The government is sending immigration officers to examine the situation among the refugee groups, and to take steps looking towards the early admission of some thousands of their number. In developing this group movement, the immigration branch and the Department of Labour will determine jointly the approximate number of persons who can be readily placed in employment and absorbed into various industries and occupations. Selection officers will then consider applicants for entry into Canada, examine them on a basis for suitability and physical fitness, and make arrangements for their orderly movement and placement. Persons so admitted will, of course, be included in whatever quota Canada finally accepts as its share in meeting the general problem. In taking these steps the government is seeking to ensure that the displaced persons admitted to Canada are of a type likely to make good citizens.
>
> ...
>
> Let me now speak of the government's long term programme. It is based on the conviction that Canada needs population. The government is strongly of the view that our immigration policy should be devised in a positive sense, with the definite objective, as I have already stated, of enlarging the population of the country. This it will seeks [*sic*] to attain through the development and energetic application of productive immigration measures.
>
> ...
>
> The population of Canada at present is about 12,000,000. By 1951, in the absence of immigration, it is estimated that our population would be less than 13,000,000 and that by 1971, without immigration, the population would be approximately 14,600,000. Apart from all else, in a world of shrinking distances and international insecurity, we cannot ignore the danger that lies in a small population attempting to hold so great a heritage as ours.

[81] Between June 1947 and the fall of 1948, Cabinet, by way of orders in council, agreed to accept up to 40,000 displaced persons destined for the bulk labour category, i.e. woods and garment workers, construction workers, utilities labourers, domestics and special workers.

[82] In deciding to broaden the categories of immigrants admissible to Canada, security remained a major concern of Cabinet. The Gouzenko spy scandal,[11] in the fall of 1945, did nothing to alleviate Cabinet's concern in that regard. In the spring of 1946, a decision was taken to establish a Security Panel for the purpose of coordinating the planning, organization and execution of security measures throughout the Government of Canada. The first meeting of the Security Panel took place on June 24, 1946. Its members were the Secretary to the Cabinet, senior security officials of the Armed Services, External Affairs, and the Royal Canadian Mounted Police ("R.C.M.P."). The Chairman of the Panel was Arnold Heeney, the Secretary to the Cabinet and the senior Deputy Minister.

---

[11] At page 915 of volume II (2nd ed.) of the Canadian Encyclopedia, the following entry appears under the name of **Gouzeko, Igor Sergeievich**:

> **Gouzenko, Igor Sergeievich**, intelligence officer, author (b at Rogachov, USSR 13 Jan 1919; d near Toronto late June 1982). At the beginning of WWII Gouzenko took intelligence training and in 1943 was appointed cipher clerk at the Soviet legation in Ottawa, where he learned that Soviet intelligence operated several spy networks in Canada. Disenchanted with Soviet life and politics, he decided to defect when he learned in 1945 that he and his family were to be sent home. On Sept 5 Gouzenko left the embassy with documents illustrating Soviet espionage activities. Initially, no one in Ottawa took him seriously; only on Sept 7, following an abortive Soviet attempt to recapture him, were he and his family given protective custody. When it became evident that a widespread espionage network was operating, Mackenzie King's government authorized the arrest of 12 suspects. After interrogation, they were brought before a royal commission. Gouzenko's testimony and documents impressed the commissioners, who confirmed in July 1946 that a spy ring had been operating in Canada, aimed at, among other things, the secrets of the atomic bomb. A number of suspects were subsequently convicted and imprisoned.
>
> Gouzenko was given a new identity, and for the rest of his life he and his family had police protection. He produced a memoir, *This Was My Choice* (1948), and a novel, *The Fall of a Titan*, which received the Gov Gen's Award (1954). From time to time he emerged from the shadows, always wearing a protective mask, which for most Canadians became his trademark. Even his death apparently from natural causes, was surrounded in secrecy.

[83] At its second meeting on July 8, 1946, the Security Panel discussed the issue of "undesirable aliens" entering Canada and it was noted that there did not exist any Canadian organization responsible for the screening of prospective immigrants abroad on grounds of security. A committee was formed to examine the feasibility of enacting new regulations with respect to the refusal of immigrants for reasons of security.

[84] At its meeting of August 5, 1946, the Panel decided that screening should be dealt with by way of administrative action rather than by legislation. The rationale for this decision appears to have been Cabinet's desire for its concerns regarding security screening of prospective immigrants to remain "secret".

[85] In August 1946, the Security Panel recommended that the R.C.M.P. should be sent to Europe to assist immigration officers. Specifically, R.C.M.P. officers would have the responsibility of screening prospective immigrants on grounds of security. The Commissioner of the R.C.M.P. agreed with this proposal and a team of officers was sent to London at the end of October 1946. In a letter dated October 23, 1946, the Commissioner, S.T. Wood, indicated to Sergeant W.W. Hinton that his duties in London would be the following:

> 5. Your duties will be to check the names of any potential Canadian immigrants passed to you by the Immigration Branch, Ottawa, through External Affairs. These names will be checked against records available at the British Passport Control Department of the Foreign Office, the Special Branch of the Metropolitan Police, and against any other records which may from time to time be opened to you, such as, the Security Control Section, A.N.G.

> 6. Names of potential immigrants will be supplied to you on individual application forms which have first been subject to a check at this headquarters. The result of this check will be noted on the form itself. Such forms will be dispatched by the Immigration Branch, Ottawa, to External Affairs, and will then be transmitted by diplomatic bag to London.
>
> 7. When you find that an applicant has a record which indicates it would be undesirable to admit him to Canada, you will mark the form "not clear for security" and return it to the Immigration Branch, Ottawa, through the same channel, i.e., the High Commissioner's Office for transmission by diplomatic bag.
>
> 8. Forms on applicants having no unfavourable record will be marked "clear for security" and dispatched to the Immigration Branch, Ottawa, in the same manner.
>
> 9. In each case where an applicant is rejected by you on security grounds, you will compile a report to this headquarters stating the source of your information and the grounds for rejection. These reports will also be forwarded by diplomatic bag.
>
> 10. All reports both to Immigration Department and this headquarters will be classified as "secret."
>
> 11. **In deciding what factors render a potential immigrant undesirable you will be guided by the verbal instructions given at this headquarters.** You will also pay attention to any additional information you may be able to secure from your U.K. contacts as to the background and status of any organizations which have not been specifically dealt with or with which you may not be acquainted.
>
> 12. The objective is to deny admission to any persons who, from their known history and background, would be unlikely to adapt themselves to the Canadian way of life and to our system of Democratic government. [Emphasis added]

[86] In a secret memorandum for the Security Panel dated March 30, 1948, the Secretary of the Panel pointed out that, as of that date, the R.C.M.P. security staff at the London office was comprised of one officer, one sergeant, one civilian clerk and two stenographers.

[87] On May 10, 1948, the Commissioner of the R.C.M.P. wrote to L.L. Keenleyside, the Deputy Minister of the Immigration Branch. In his letter, the Commissioner indicated the following:

> I am inclined to think that Mr. Fortier[12] is of the opinion that our personnel stationed Overseas have responsibilities and a scope far beyond their actual duties. This Force is not conducting an intelligence organization Overseas in the accepted sense of the term nor, for that matter, a counter-intelligence organization. **These men are appointed for the sole purpose of checking, insofar as is possible, the backgrounds of persons who have made application for admission to Canada. These included Displaced Persons in Germany and applicants from other countries on Continental Europe particularly those within the Soviet zone of influence.**
>
> We are interested mainly in obtaining a satisfactory answer to two questions: first, what were the applicant's sympathies and activities during the late war, and second, is he sympathetic to Communism or any other form of subversive influence opposed to our democratic way of life.
>
> ...
>
> There is one difficulty which we encounter in dealing with persons coming from countries in Western Europe, etc., within the Soviet zone of influence. In such cases a period of approximately 15 days is allowed to this Force to make a security check. If no report is forthcoming from this Force at that time it is quite customary to allow the person to proceed. With conditions in Europe today it is often very difficult to get a report in such a short time as we are dependent on the good offices of the security forces belonging to such countries. As a result, we have had several instances of persons being admitted to Canada who, had they been checked prior to their arrival, would certainly not have been cleared for security. A number of these people are still in this country and must be kept under some form of observation for a considerable time to come.
>
> **We have been endeavouring to arrange to place security officers at various Canadian Legations in Western Europe. Due to lack of space this has not been possible heretofore but we are, with the assistance of the Department of External Affairs, endeavouring to overcome this obstacle.** [Emphasis added]

[88] In a letter dated July 26, 1948, George B. McClelland, Superintendent, and the officer in charge of Special Branch of the R.C.M.P., wrote to Major J.A. Wright, posted to Canada House in London. In his letter, Superintendent McClelland, in discussing the rejection of applicants for immigration to Canada on the basis of enemy nationality, makes the following points:

> 4. It is felt here, therefore, that the following policy should be adopted. We will clear the individual for security provided there are no other grounds for rejection such as known Communist, criminal, **collaborator**, etc. The matter of

---

[12] At that time, Colonel L. Fortier was the associate Commissioner, Overseas Service, Immigration Branch.

> whether or not he or she should be accepted on a straight nationality basis should then be left to the Visa Officer.
>
> 5. This point was discussed with Mr. Congdon and Colonel Fortier here in some detail and they agreed.
>
> 6. Would you, therefore, have these instructions conveyed to our men in Germany and Austria and also to our personnel situated at Rome, The Hague, Brussels, Paris, etc. [Emphasis added]

[89] In a R.C.M.P. memorandum dated November 20, 1948, entitled "Screening of applicants for admission to Canada", the following categories of immigrants are stated to be non-admissible to Canada:

> (a) Communist, known or strongly suspected.
> Communist agitator or suspected Communist Agent.
>
> (b) Member of SS or German Wehrmacht.
> Found to bear mark of SS Blood Group (NON Germans).
>
> (c) Member of Nazi Party.
>
> (d) Criminal (known or suspected).
>
> (e) Professional gambler.
>
> (f) Prostitute.
>
> (g) Black Market Racketeer.
>
> (h) Evasive and untruthful under interrogation.
>
> (i) Failure to produce recognizable and acceptable documents as to time of entry and residence in Germany.
>
> **(j) False presentation; use of false or fictitious name.**
>
> **(k) Collaborators presently residing in previously occupied territory.**
>
> (l) Member of the Italian Fascist Party or of the Mafia.
>
> (m) Trotskyite or member of other revolutionary organization. [Emphasis added]

[90] On February 7, 1949, the Associate Commissioner of Immigration, Overseas Service, advised the Commissioner as follows:

> In the past applications have been rejected by the R.C.M.P. without giving reasons for rejection. In several cases this procedure caused this Department to communicate with the R.C.M.P. in order to learn the grounds of rejection. This was necessary because in certain cases we suspected that the reason for rejection was that the proposed immigrant might have served with the enemy forces. **According to instructions, if the proposed immigrant has been forced to serve the enemy forces and could obtain evidence to that effect he was then admissible.** To obviate this situation and in order that the senior officers of this Branch (the Minister, the Deputy Minister, the Director, Commissioner, Assistant Commissioner, Commissioner of Overseas Service, Asst. Commissioner of Overseas Service, the Superintendent of European Emigration and the Asst. Superintendent of European Emigration) would know the grounds of rejection, the R.C.M.P. have agreed to include after the words "Not Clear for Security" the grounds for rejection by indicating the grounds by a letter (a), (b), (c), (d), etc., whichever grounds are applicable. These grounds are listed as follows: - [Emphasis added]
>
> > [The grounds which follow are those which appear in the R.C.M.P. memorandum dated November 20, 1948.]

[91] In a memorandum dated September 16, 1949, the Privy Council's office informed the Prime Minister of Canada on the rejection criteria for prospective immigrants. The memorandum reads as follows:

> **Rejection of prospective immigrants on security grounds**
>
> 1. At a recent meeting of the Cabinet you inquired as to the authority for rejecting prospective immigrants on security grounds.
>
> 2. The security screening of prospective immigrants has been approved by Cabinet and the general arrangements for conducting the inquiries have been worked out by the Immigration Branch and the R.C.M. Police in consultation, when necessary, with the Security Panel. The Panel have on occasions sought direction from the Cabinet on particular problems that have arisen from time to time.
>
> 3. The objective of the security screening has been interpreted in the following manner:
>
> > "To deny admission to any persons who, from their known history and background, would be unlikely to adapt themselves to the Canadian way of life and to our democratic form of government".

4. Under these general principles, the following categories of persons have been regarded as inadmissible on security grounds:

(a) Communist, know or strongly suspected.
Communist agitator or suspected Communist Agent.

(b) Member of SS or German Wehrmacht.
Found to bear mark of SS Blood Group (Non Germans).

(c) Member of Nazi Party.

(d) Evasive and untruthful under interrogation.

(e) Failure to produce recognizable and acceptable documents as to time of entry and residence in Germany.

(f) False presentation; use of false or fictitious name.

(g) Collaborators presently residing in previously occupied territory.

(h) Member of the Italian Fascist Party or of the Mafia.

(i) Trotskyite or member of other revolutionary organization.

5. The only class covered by a precise Cabinet direction is that of Communist. On March 5, 1947, it was agreed that where, as a result of a security investigation, it was demonstrated that a prospective immigrant was a Communist, admission should be refused by the Immigration Branch without reason assigned for such action. From time to time the security problems attendant upon increased immigration have been considered by the Cabinet Committee on Immigration or the Cabinet. From the records it is apparent that a good deal of discussion took place on the question of whether the Immigration Act should be amended to exclude certain undesirable classes such as Nazis, Fascists and war criminals, or whether the problem should be dealt with by administrative means. The decisions taken were in favour of the latter course.

6. As I think your interest in this subject stems from present practices in regard to prospective immigrants from France, I should add that such persons are subjected to security inquiries as a matter of course, whereas those from the United Kingdom are not. [Emphasis added]

[92] The categories of persons inadmissible on security grounds which appear in the above memorandum at paragraph 4 thereof, also appear in a top secret memorandum dated June 9, 1950, from the Deputy Minister to the Minister of Immigration.

[93] On October 28, 1949, Cabinet issued Directive No. 14[13] which dealt with the rejection of immigrants on security grounds. The directive provided as follows:

> The purpose of this directive is to bring to the attention of all government departments and agencies concerned the necessity for withholding information with regard to the rejection of immigrants on security grounds.
>
> Displaced persons and certain classes of prospective immigrants desiring to enter Canada are investigated under established procedures by the R.C.M. Police. Persons in specified categories (i.e., Communists, members of the Nazi or Fascist Parties or of any revolutionary organization, **"collaborators", and users of false or fictitious names or documents)** are regarded as inadmissible under the Immigration Act and are refused a visa. As some of the persons so rejected are not aware that their subversive records are known to security and intelligence agencies, disclosure of the reasons for their rejection as immigrants tends to excite suspicion and compromise valuable sources of information.
>
> For these reasons, it is important that, in such cases, no intimation to [*sic*] given to the applicant, the relatives or the sponsor that entry had been refused on security grounds. In some instances, this information has been passed on to the applicant or the sponsor by persons who, because of their position, have had access to the facts. This has resulted in serious embarrassment to the immigration authorities and to the Police.
>
> In view of the above, the Cabinet decided on September 29th, that under no circumstances should the reason for withholding permission to enter Canada, in the case of displaced persons and prospective immigrants, be attributed to security grounds. The only information to be given out in these cases should be a simple statement, without explanation, that a visa has been refused. [Emphasis added]

---

[13] Expert witness Nicholas D'Ombrain, called by the Minister, explained in his affidavit dated July 31, 1997, *Cabinet Directives* as follows:

> 22. As has been seen, Cabinet documents were treated with very great secrecy, as is still largely the case today. As has also been noted, the role of the Cabinet, although vital to the smooth functioning of government, is essentially informal. The early years of the Cabinet Secretariat were necessarily experimental. One such experiment was the creation of a new class of documents, known as "Cabinet Directives". These were administrative instructions of general application, whose utility lay in their widespread distribution throughout the Public Service. They dealt with subjects such as instructions on the drafting of legislation, security clearance standards and procedures for government employees, the granting of special holiday leaves for occasions such as royal visits, and rules for flying the Canadian flag.
>
> 23. Cabinet Directives are not to be confused with Records of Cabinet Decision, Cabinet Conclusions or Decision Letters. They are essentially public documents, widely available and not, for example, covered by the exceptions set out in Section 69 of the *Access to Information Act* dealing with Cabinet confidences. In the 57 years since the creation of the Cabinet Secretariat, there have been fewer than 50 Cabinet Directives. This contrasts with the production of approximately 300 memoranda to Cabinet in a typical year.
>
> 24. It should be noted that the term Cabinet Directive is frequently used in a rather loose and imprecise way to refer to Cabinet Decisions. I have noted this in some of the documents that I have reviewed for this affidavit.

[94] On August 19, 1949, A.J. Desjardins, Attaché, Visa Section, Paris, in a memorandum addressed to the Commissioner, Overseas Service, Immigration Branch, discussed the immigration forms being used at the Canadian Consulate in Paris in regard to prospective immigrants. In his memorandum, Mr. Desjardins suggests that it would be preferable if the applicants were "to complete the form himself, thus avoiding at least some additional work by our visa officers, ...". To the memorandum is attached a proposed form with numerous questions and answers. One of the proposed questions is question number 35 which requires an applicant to provide details regarding his residences and employments between 1938 and the date of his application.

[95] In an instruction dated February 14, 1950 issued by the Acting Director of the Immigration Branch of the Department of Citizenship and Immigration, immigration officers are informed:

> 1. The following categories of immigrants are exempt from security screening: -
>
> (a) British subjects, citizens of Ireland, and citizens of the Union of South Africa.
>
> **(b) Citizens of France born in France and residing in France.**
>
> (c) Citizens of the United States of America.
>
> (d) Aliens legally admitted to the United States of America for permanent residence and residing therein.
>
> (e) Native born citizens of Central and South American countries residing therein.
>
> 2. All other immigrants are subject to security screening. [Emphasis added]

[96] On August 21, 1950, copies of immigration form O.S.8 were sent to the heads of Canadian posts abroad by the Department of External Affairs. The covering letter indicated that:

> I enclose a supply of Settlement Forms Imm. O.S. 8 to be completed by applicants abroad who have no relatives or friends in Canada, but who otherwise satisfy the Visa officers as being desirable immigrants, see paragraph 9 of the "Administration of new Immigration Regulations Order-in-Council P.C. 2856" enclosed with Consular Document No. 21 of July 4, 1950.
>
> Additional copies of Form Imm. O.S. 8 will be forwarded upon request.

[97] This form does not specifically request an applicant to provide details of either his residences or employments during the war years. However, question 36 requires the applicant to provide details on the longest job he has had in the last ten years and question 37 requests the applicant to indicate how many jobs he has had in the last ten years.

[98] In a memorandum dated November 6, 1950, to the Officer i/c Special Branch, Headquarters, R.C.M.P. in Ottawa, Major Wright of the London office reported to his superiors with respect to his visit to Paris in October 1950. The relevant points of Major Wright's report are as follows. He met with Sergeant Constable Colville and the immigration officer in charge, Mr. Cormier, and discussed with them the possibility of posting an additional man to the Paris office. Major Wright was informed that the work in Paris was increasing to such an extent that Sergeant Colville did not believe that he would be able to cope without further assistance. During the meeting, Sergeant Colville complained that it was extremely difficult to obtain complete information from French

officials about criminal records. Mr. Cormier informed Major Wright that having a second person to help Sergeant Colville "would enable personal interviews of all immigrants to be made". In his memorandum, Major Wright goes on to explain what follows:

> 6. On the 26th October I had a lengthy interview with Mr. Cormier and Colville. Relations between them appeared to be quite satisfactory. Mr. Cormier officially made two requests. Firstly, that a second man be stationed at Paris to assist Colville. This would enable personal interviews of all immigrants to be made. The great majority of those going to Canada were non-French and required personal screening as much or more than those in the D.P. Camps of Germany, as the foreigners in France were mainly newcomers concerning whom very little was known. Secondly, that the office system inaugurated by Cpl. De Miffonis - with the co-operation of Mr. Desjardins (Mr. Cormier's predecessor) be simplified. Colville was endeavouring to continue the very thorough but to some extent unnecessary office and filing system inaugurated by de Miffonis which created too much work for both Departments, Mr. Cormier's and Colville's.
>
> 7. Mr. Cormier advised that in 1951 it was anticipated that approximately 6,000 visas would be issued, and for that number to be issued, allowing for rejections etc. probably would mean some 10,000 examinations. Obviously if all prospective Immigrants were to be personally examined by Security, Colville would require assistance.
>
> 8. Later, after interviewing Colville and going into his filing system, with a view to eliminating work, I instructed him to discontinue the long Questionnaire Form at present in use, photographs, etc. and other forms and in place thereof to use the London 'Green Form', to be compiled direct from Immigration Files and this to constitute his permanent record for each case. This should simplify the office work very considerably.
>
> 9. Colville has not been granted leave of absence since terminating his leave in December 1949. If he is to be stationed permanently at Paris, I would request instructions if the leave arrangements made when he was engaged for service in Germany viz, 10 days every three months are still to apply.
>
> 10. I recommend strongly that an additional Security Officer be posted to Paris as soon as possible, and would request your instructions hereon, please[14].

---

[14] There is no evidence as to whether Major Wright's recommendation that an additional security officer be posted in Paris was ever followed up.

[99] On January 2, 1951, by way of a memorandum, the Director of the Immigration Branch informed the Undersecretary of State for External Affairs that immigration form O.S.8 had been revised and that all copies of the former form O.S.8 should be destroyed. As in the previous O.S.8 form, there are no questions which deal specifically with an applicant's residences and employments during the war years. The form does contain, however, the two following questions:

> 27. Give the same details on the longest job you have had in the last ten years.
> *Donnez les mêmes détails sur l'emploi que vous avez occupé le plus longtemps au cours des dix dernières années:*
>
> 28. How many jobs have you had in the last ten years?
> *Combien d'emplois avez-vous eus au cours des dix dernières années?*

[100] On January 8, 1951, Mr. Cormier, the visa officer in charge in Paris, wrote as follows to the Director, Department of Citizenship and Immigration, regarding revised form OS-8:

> Acknowledging receipt of your communication of 2nd January, we are very glad that the prescribed questionnaire has been simplified.
>
> For Stage "B" purposes[15], we require to know the maiden name of the wife and the history of movements of applicant for visa, and as regards persons not born in France, the date of their arrival into this country. In connection with applicant's history, the "Former addresses and other countries of residence" under item 2 of Part I of O.S.8, is not considered sufficient by our Stage "B" officer.
>
> So far as the maiden name of the wife is concerned, we are preparing a stamp reading "Wife's maiden name - Nom de jeune fille de l'épouse" to be placed under Item 14 of the new type of O.S.8, for the time being. We will also attach to the questionnaire to be filled a chit as per sample herewith.

---

[15] "Stage B", as we will see later, was the process by which the security officer screened a perspective immigrant.

[101] The questionnaire attached to Mr. Cormier's memorandum is as follows:

(Veuillez remplir ce feuillet séparément)

Renseignements sur vos résidences et emplois antérieurs depuis 1939

Date	Employeur	Genre d'emploi	Votre résidence
.....	.....	.....	.....
.....	.....	.....	.....
.....	.....	.....	.....
.....	.....	.....	.....
.....	.....	.....	.....
.....	.....	.....	.....
.....	.....	.....	.....
.....	.....	.....	.....

Si vous n'êtes pas né en France, indiquez le lieu et la date de votre entrée en ce pays: .....

[102] On February 4, 1951, Directive No. 69 dated December 15, 1950, was amended . Page 5 of the amendment provides, in part, as follows:

9. Cases for which Visa Officers may not grant visas without prior reference to Canada. (Refers to Part "A" of this Directive, paragraph 5, Other Suitable and Desirable Immigrants).

(a) Procedure Overseas

Two copies of Part I and Part II of Form O.S. 8 will be completed for distribution as follows:

i) The first copy will remain in the Visa Office to be used for stage "B", if required, and for subsequent use as office record of visa granted or refused.

ii) The second copy will be forwarded, by air mail, to the District Superintendent or Inspector-in-Charge of the authorizing port or office (see Para. 14) in whose area the prospective immigrant wishes to locate. If an area of establishment or settlement is not chosen by the immigrant and is not determined by the Visa Officer, this copy will be forwarded by air mail to the Superintendent, Settlement Division, at Immigration Branch Headquarters, Ottawa.

OR

When the Visa Officer considers that reference to the Department of Labour for placement is required, the fact will be indicated on the Form O.S. 8, (see Para. 16(f)(v)) and the second copy will be forwarded by air mail, to the Superintendent, Settlement Division.

[103] On February 7, 1951, the Director of the Immigration Branch in Ottawa sent a memorandum to the Deputy Minister regarding security screening. The memorandum reads as follows:

> The introduction of P.C. 2856, designed to stimulate immigration to Canada, is bringing about the desired results insofar as the development of interest in Canada is concerned.
>
> Available figures show that there was an 8% increase in November, 1950, over the corresponding month in 1949. In December, 1950, the increase over December, 1949, amounted to 36.7%. In addition, statistics furnished by Immigration Visa Officers establish that there has been a great increase in the number of enquiries from potential immigrants. There is every indication that there will be a marked increase in immigration, provided that we take advantage of present interest - developed through the widening of admissible classes, publicity, etc., - by impeding the flow as little as possible.
>
> We have taken the necessary steps to streamline our procedure through such means as delegation of authority to Visa officers to process, immediately, persons who are suitable and desirable immigrants with good prospect of becoming established in Canada. Provided the only delay is that occasioned by the necessity for the immigrant to undergo a medical and civil examination, we hope to take full advantage of the interest shown by the intending immigrant.
>
> Unfortunately, the present security procedure has hindered and, as presently constituted, will continue to hinder the implementation of the immigration programme. To understand some of the reasons why this is so and to explore ways and means of obviating this situation, the security procedure currently in effect is reviewed briefly in the following paragraphs.
>
> 1. At the present time, all immigrants are security screened except British subjects, citizens of Ireland, citizens of the United States, legal and permanent residents of the United States and native-born citizens of Central and South American countries residing therein.
>
> 2. Security screening, at points outside Europe, may be carried out by the Visa officers through local contacts except in those cases which are referred directly by the Immigration Branch to the R.C.M..P. Headquarters in Ottawa for full

security screening. In these excepted cases, it is understood that R.C.M.P. Headquarters obtain the clearance through the Security Office in London.

3. In Europe, where our main concern lies, security screening is carried out primarily by Security officers where attached to our Visa offices. Their screening procedure may be broken down into two general classifications :

(a) Personal interrogation of the prospective immigrant ;

(b) Reference to local police, British authorities, local contacts, and/or London Security Office for information as to the status of the intending immigrant.

The speed with which an immigrant is screened for security, under the method outlined in (b) naturally depends on the length of time it takes the various organizations to reply. A normal delay is from 4 to 7 weeks, although in some cases, it is considerably longer.

4. In Germany and Austria, intending immigrants are screened primarily by personal interrogation, although in some cases, reference to local contacts, London, etc., may be necessary.

5. In Sweden, the Netherlands, Belgium, **France**, and Italy, Security officers generally rely on the reference to local police, British authorities, local contacts or to London when necessary.

6. In Greece, Switzerland and Denmark where no Security officers are located, Visa officers develop local contacts and carry out the same procedure as do Security officers in the other European countries.

7. In the United Kingdom we have, in essence, the focal point of all security screening. The London Security Section is used as the final source of reference when other methods - local police, etc., - either fail to produce the required information or are not considered sufficiently reliable in specific cases under consideration.

In addition, London not only clears all aliens residing in the United Kingdom who apply for admission to Canada, but also processes applications referred from R.C.M.P. Headquarters. London, therefore, deals with :

(a) Aliens in the United Kingdom;

(b) referrals by Security officers and Visa officers in Europe for a further check;

(c) referrals by R.C.M.P. Headquarters for information on aliens residing at any point in the world outside of Europe.

The London Security Section processes only 35 cases per day, referred from points outside the United Kingdom, and at the present they are 7 weeks behind. This quota is fixed by the British authorities whose facilities are being used. In London, then, with enquiries feeding in from many sources, a backlog is building up which, as the immigration programme becomes intensified, will be even greater, with most serious effects.

> Any consideration of ways and means of alleviating this problem, naturally, would revert to the question of additional staff. Undoubtedly, the allocation of additional Security officers to the Visa offices on the Continent would improve the situation. However, this antidote in itself, if the present screening procedure remains in effect will not help the overall picture. More Security officers would merely mean a greater number of references to local police, British authorities, London, etc., whose rate of processing is now inadequate to meet our needs. In other words, additional Security officers without changes in procedure will hardly bring about the desired result.
>
> Personal interrogations (if additional Security officers were appointed) and fewer references to other sources by Security officers might be a partial answer to the problem. Certainly, the London Security Office, if relieved of the referrals from the Security officers on the Continent, might improve its present record in dealing with enquiries from other points throughout the world. For instance, a delay of one year is not uncommon in obtaining security clearance through London by R.C.M.P. Headquarters on a person residing in South America.
>
> Then too, consideration of the principles involved in security screening might be justified, when it is considered that since security screening was instituted, approximately 220,000 immigrants who required security screening have come forward and of the total number examined only 4,146 were rejected on security grounds. Of the 4,146 rejected, undoubtedly a fairly large proportion might now be considered for admission since the reasons for rejection no longer exist, e.g., service in the German Army is, in itself, no longer a clause for rejection.
>
> On the whole, it is felt that some streamlining of the present security procedure should be considered as an interim measure, to implement to the fullest degree possible the present immigration programme. While a revision of security procedure is desirable immediately, as a stop-gap measure, to take advantage of the extremely great current interest in immigration, a review of the principles of security screening should be instituted as soon as possible.

[104] On May 23, 1951, Laval Fortier[16] wrote to the Secretary of the Security Panel in the following terms:

> I have your letter of May 18th, with reference to paragraph 10(3) of the minutes of the 36th meeting of the Security Panel. **I would recommend the following changes in the present policy affecting the categories of rejection of certain classes of immigrants**:
>
> Category "B" - Waffen S.S. (non Germans) present blanket clause for rejection.
>
> It is felt that some relaxation should be given to classes involving compassionate grounds, age or circumstances

[16] Laval Fortier was the Deputy Minister, Department of Citizenship and Immigration.

> surrounding enlistment. Recommended that service in the Waffen S.S., in itself, be no longer a cause for rejection.
>
> Category "G" - Black Market Racketeer, present blanket clause for rejection.
>
> Recommended Black Market activities, in itself, be not a cause for rejection, except for those who were professional racketeers.
>
> **Category "K" - Collaborators, present blanket cause for rejection.**
>
> **Recommended collaboration, in itself, be not a cause for rejection, except for those whose crimes are such that they are not desirable.**
>
> Category "L" - Member of the Italian Fascist Party or of the Mafia, present blanket cause for rejection.
>
> As Category "C" - Member of the Nazi Party, is not now considered, in itself, a cause for rejection, recommend same consideration be given Italian Fascist Party, Member of Mafia to remain as at present. [Emphasis added]

[105] On July 5, 1951, the Security Panel met and a discussion took place of proposed changes to the security screening criteria. A memorandum of the discussion dated July 6, 1951, reads as follows:

> At a meeting of the Security Panel held on July 5th, at which the writer and Mr. Hickman accompanied the Deputy Minister, there was discussed the Immigration Branch Security Screening Directive of February 14th, 1950, and some changes were recommended.
>
> Discussion on the categories introduced by the Mounted Police resulted in recommendations as follows: -
>
> **CATEGORY "B" -**
>
> Non-German members Waffen S.S. found to bear mark of S.S. Blood Group were to be considered "Not Clear".
>
> Non-German members Waffen S.S. who joined this Organization prior to January 1st, 1943, to be considered "Not Clear".
>
> Non-German members Waffen S.S. who voluntarily enlisted subsequent to January 1st, 1943, to be considered "Not Clear".
>
> Non-German members Waffen S.S., who were conscripted or forced to enlist subsequent January 1st, 1943, cases to be reviewed on their merits.

CATEGORIES "D", "E", "F" and "G"

R.C.M.P. to follow present procedure of advising Visa Officers.

The remaining Categories to be dealt with under the present procedure.

It was suggested that External Affairs and the R.C.M.P. prepare a memorandum dealing with the categories as a whole.

[106] On December 11, 1951, George B. McClellan, Superintendent, Officer i/c Special Branch, wrote to Colonel Laval Fortier with respect to collaborators. Mr. McClellan informed Colonel Fortier as follows:

> I have for reply your letter to the Commissioner, dated November 29, 1951, **regarding collaborators.**
>
> 2. Your request for further particulars regarding collaborators raises a rather difficult question, as at the present time our Security Officers are very fully occupied in processing visa applicants, and, if they are required to conduct field investigations on collaborators, unless we considerably strengthen our staff overseas, the balance of interrogation must of necessity suffer.
>
> 3. As you know, it has been the policy, where any doubt exists, to resolve that doubt in the favour of Canada, and as our sources of information must of necessity be very meagre, it is necessary to develop as much information as possible during personal interviews. It would require a great deal of field work to produce positive evidence, and the production of such evidence would, in most cases, be impossible.
>
> 4. It would, perhaps, be desirable to discuss this matter with Inspector Hall who handles this work. If you would call him at 7602, he will call on you at your convenience. [Emphasis added]

[107] In a memorandum to the Security Panel prepared by its secretary P.M. Dwyer, dated April 30, 1952, the Panel was asked to consider possible changes to the screening criteria and, in particular, with respect to collaborators. The memorandum reads, in part, as follows:

Immigration Security Policy -
Nazis, Fascists and Collaborators

1. The application of Canadian immigration security policy to former members of Nazi organizations, Fascists and collaborators has for some time been under discussion by members of the Panel. The Department of Citizenship and Immigration and the RCM Police have asked that the question of collaboration be discussed by the Panel. An examination of present immigration security police shows that a similar consideration of membership in Nazi and Fascist organizations would also be desirable.

...

III. Collaborators

10. The Department of External Affairs, at the request of members of the Panel, has consulted a number of its European missions and asked to what degree immigration restrictions should be applied against former collaborators in German occupied countries. Present immigration security policy prohibits the immigration of collaborators, but cases have so far been dealt with on their individual merits or demerits.

11. The consensus of opinion of missions consulted in that while we should continue to enforce restrictions against those guilty of major crimes, collaboration should now be ignored except where a clear and present danger to Canada or Canadian institutions is involved. Our representatives add that where a prison sentence for collaboration has been served, the slate should be regarded as wiped clean. The following are listed as major collaborators:

(a) Those convicted of fighting against, or engaging in activities harmful to the safety and well-being of the Allied forces;

(b) Those convicted of implication in the taking of life, or engaging in activities connected with forced labour and concentration camps;

(c) Those who were employed by German police or security organizations and who acted as informers against loyal citizens and resistance groups;

(d) Those charged and found guilty of treason.

12. However, the RCM Police incline to the view that collaboration itself does involve a danger to Canada and Canadian institutions, because they believe that a person who has been disloyal to his country of birth may, if the occasion arises, be equally or more disloyal to a country of adoption. The RCM Police would therefore be reluctant to accept any relaxation of restrictions at present imposed on former collaborators.

13. The Panel may wish to bear in mind that collaboration sometimes resulted only after intolerable pressures had been applied by the Germans, and may wish to make some provision for cases of this kind.

14. The Panel is asked to consider this problem and make a fifth recommendation.

[108] On May 15, 1952, the Security Panel met and discussed, *inter alia*, the proposals suggested in the April 30, 1952 memorandum. After due consideration, the Panel agreed that the following changes were in order. The changes agreed to by the Panel appear in paragraph 5 of the minutes of the meeting:

> 5. The Panel then considered the paper in detail, made a number of emendations [*sic*] after discussion, and agreed that the following persons should be refused entry into Canada as immigrants:
>
> (a) Former members of the S.S. the Sicherheitsdienst, the Abwehr, the Gestapo, and any former member of the Nazi party who, under Allied Control Council Directive No. 38 of 12th October 1946, was classified as a Major Offender or Offender of who, on the evidence before a Security Officer is in his opinion within either of these categories. Particular care should be taken to exclude persons who were responsible for brutalities in concentration or labour camps.
>
> ...
>
> (c) Former collaborators who should be excluded on grounds of moral turpitude, except minor collaborators whose actions resulted from coercion.

[109] Pursuant to paragraph 38(*c*) of the *Immigration Act*, R.S. 1927, c. 93, (the "*Immigration Act, 1927*") the Governor in Council was given wide discretion to prohibit or limit, by way of proclamation or by order in council, the entry into Canada of certain immigrants:

> **38.** The Governor in Council may, by proclamation or order whenever he deems it necessary or expedient,
>
> ...
>
> (*c*) prohibit or limit in number for a stated period or permanently the landing in Canada, or the landing at any specified port or ports of entry in Canada, of immigrants belonging to any nationality or race or of immigrants of any specified class or occupation, by reason of any economic, industrial or other condition temporarily existing in Canada, or because such immigrants are deemed undesirable having regard to the climatic, industrial, social, educational, labour or other conditions or requirements of Canada or because such immigrants are deemed undesirable owing to their peculiar customs, habits, modes of life and methods of holding property, and because of their probable inability to become readily

> assimilated or to assume the duties and responsibilities of Canadian citizenship within a reasonable time after their entry.

[110] In furtherance of the objective stated in paragraph 38(*c*) of the *Immigration Act, 1927*, order in council P.C. 1950-2856, S.O.R./50-232, C. Gaz. 1950.II.765, was passed in June of 1950. This order in council, entitled Immigration Act: Prohibiting the landing in Canada of immigrants with certain exceptions, prohibited the landing in Canada of immigrants of all classes and occupations, save for the exceptions provided in the order. Paragraphs 4(*a*) and (*b*) read as follows:

> **4.** A person who satisfies the Minister, whose decision shall be final, that: -
>
> (*a*) he is a suitable immigrant having regard to the climatic, social, educational, industrial, labour, or other conditions or requirements of Canada; and
>
> (*b*) is not undesirable owing to his peculiar customs, habits, modes of life, methods of holding property, or because of his probable inability to become readily adapted and integrated into the life of a Canadian community and to assume the duties of Canada citizenship within a reasonable time after his entry.

[111] In *Canada (Minister of Citizenship and Immigration)* v. *Dueck*, (21 December 1998), Ottawa: F.C.T.D., T-938-95 [unreported], my colleague Mr. Justice Noël comes to the conclusion that, until the enactment of order in council P.C. 1950-2856, there was no authority under the *Immigration Act, 1927* and the orders in council enacted thereunder, to refuse entry into Canada of immigrants on security grounds. I agree with the view taken by Noël J.. However, on August 14, 1951, when the respondent was landed in Canada, there was clearly a legal basis to refuse entry to immigrants who did not meet the security requirements.

[112] I now turn to the process by which prospective immigrants were screened for security by the R.C.M.P. in light of the criteria set out in the above memoranda. The Minister called a number of former R.C.M.P. officers to testify on this point. William H. Kelly, a former Deputy Commissioner of the R.C.M.P., explained his role in London between 1951 and 1954. While there, Mr. Kelly was in charge of security control for the whole of Europe. A number of countries, including France, were, at that time, under the jurisdiction of the London office. One of Mr. Kelly's duties was to visit the countries under his jurisdiction and to ensure that files were reasonably handled. He, on occasion, would sit on interviews conducted by security officers. He would also be asked to make rulings in borderline cases. When shown the memorandum dated September 16, 1949, setting out the list of inadmissible categories on security grounds, Mr. Kelly stated that he had never seen this document but, when referred to paragraph 4 thereof, stated that the R.C.M.P. worked on the basis of the criteria set out in that paragraph. He indicated that his point of reference was Cabinet Directive No. 14. With respect to paragraph 4(g) of the September 16, 1949 memo entitled "collaborators presently residing in previously occupied territory", Mr. Kelly testified that, as far as he was concerned, "collaboration" necessarily meant exclusion. Mr. Kelly stated that it was only in May of 1952 that the exclusion of collaborators was changed to allow some flexibility in that "minor collaborators" would not be excluded where their actions "resulted from coercion"[17]. Mr.

---

[17] This appears in the minutes of a meeting of the Security Panel dated May 21, 1952 relating the discussions which took place on May 15, 1952.

Kelly explained that the same criteria was being applied by the R.C.M.P. throughout Europe and that it was his responsibility to ensure that that was taking place. He explained that security screening was one step in a three step immigration process.

[113] Security screening was conducted on the basis of information provided by the immigrant in his application form and, in particular, information providing his residences and employments between 1938 and the date of his application. Security screening involved paper screening with intelligence organizations of the countries where the applicant had indicated he had been and with intelligence organizations from the United Kingdom and the United States which might be in a position to provide information regarding the applicant. Following the paper screening, there would be a personal interview during which the immigrant would be questioned by a security officer regarding his identity and history. Mr. Kelly conceded that the R.C.M.P.'s security screening was not very effective since it was difficult, if not impossible, for the security officer to ascertain whether an applicant was telling the truth. It was only when the officer could discover something through the intelligence network that an applicant would be refused entry into Canada. Finally, Mr. Kelly emphasized that collaboration with the Germans to any degree meant rejection. In cross-examination, Mr. Kelly stated that the main security concern was Communist infiltration which rose dramatically after the Gouzenko affair in 1945.

[114] Another R.C.M.P. officer called by the Minister was Donald Graham Cobb. Mr. Cobb spent three and one half years in Paris between 1954 and 1958 as a visa control officer (which, in effect, meant security officer) and was then posted to Rome and Cologne between 1958 and 1962. He testified that in Paris he worked under the tutelage of senior officers namely, Percy Colville, a retired British police officer, and Sergeant Henri Chénier. He indicated that the first order of business in screening an applicant was to establish the person's identity. If there was any doubt, the applicant would be asked to provide documents to verify his identity. The second order of business was to obtain information from the applicant regarding his activities during the war. Finally, Mr. Cobb explained that the security officer would attempt to obtain information regarding the applicant's political history. Mr. Cobb stated that what he did between 1954 and 1958 was simply a continuation of what the Paris office had been doing in the past. He indicated that the rejection criteria which appears in the memorandum of September 16, 1949 was the criteria that he applied in dealing with applicants. Mr. Cobb made it clear that "they were not focussing on the small fry". He explained that there was a group of four to five people working together in the Paris office who consulted with each other and with the London office. Mr. Cobb explained that French citizens were screened like all other applicants. However, contrary to non-French applicants, French citizens were not interviewed. In cross-examination, Mr. Cobb stated that a great majority of people who applied through the French office were non-French. He indicated that he believed he had processed approximately 3,000 cases during his years in Paris. The rejection rate,

according to Mr. Cobb, was probably five percent of all cases. In redirect, Mr. Cobb indicated that a non-French applicant who had obtained a medal from the French resistance would nonetheless have been screened thoroughly.

[115] The Minister also called Donald D. Cliffe who had been posted to Italy in March 1951 where he spent three years. He returned to Canada in September 1954 for two months and was then sent to Stockholm and Helsinki for two and one half years. In 1957, he was sent to Switzerland until the summer of 1958. Mr. Cliffe explained that he was the "control" officer and worked with a medical doctor and a visa officer. He explained the visa control process as follows. Applications would be received by the visa officer who would then pass the file on to the security officer. The security officer would attempt to gather information regarding the applicant's activities from 1938 onwards and would attempt to obtain data from various intelligence networks. The security officer would then conduct interviews with the applicants. He referred to this process as "stage B". He testified that, if the security officer informed the visa officer that the applicant did not pass security, it was the end of the matter. He also stated that, as part of the process, an applicant would be seen and examined by a medical officer. He stated that the London office had overall responsibility for the screening process and that the rejection criteria which appears in the memorandum of September 16, 1949 was the criteria that he based his decision on in deciding whether or not an applicant should be rejected. He made it clear that all collaborators were to be rejected and that he acted accordingly. He testified

that auxiliary police in Ukraine and in the Baltic States were, as far as he was concerned, collaborators and should have been rejected. In cross-examination, Mr. Cliffe explained that it was possible for him and other security officers to exercise some discretion in dealing with applicants. He gave as an example the case of an Italian uneducated labourer who would have joined the Italian Fascist Party because it was the thing to do but, in fact, had not participated in any of the party's activities. In such a case, Mr. Cliffe stated that he would probably not have rejected such an applicant.

[116] The Minister also called Lucien Roger St-Vincent who joined the immigration services in November 1947. In 1948, he was posted to Germany as a visa officer. While in Germany, he worked with a doctor and a security officer and they travelled together to various refugee camps, including camps in Austria. He stated that the applicant's file was always brought to the security officer and then to the medical officer. He made it clear that he would never overrule a security officer's decision. He explained that an applicant's war time activities fell under the responsibility of the security officer and that evasive applicants were always sent to the security officer. In 1951, Mr. St-Vincent returned to Montreal for five years where he was a port of entry officer. By "port of entry", Mr. St-Vincent meant that he would, on occasion, be called upon to attend on ships which arrived in Montreal with sometimes 600 to 900 immigrants on board. He explained that immigrants were landed in Canada upon their arrival in the country and that the port of entry officer would verify, amongst other things, where the immigrants

had boarded the ship in Europe. He explained that port of entry officers would board a ship upon its arrival in Quebec City or Montreal and conduct an examination of every immigrant on board that ship. This would take approximately four to five hours. Mr. St-Vincent explained that the immigrant's visa was evidence of his admissibility to Canada but that, in the end, landing in Canada was the decision of the landing officer at the port of entry.

[117] Walter Gunn was also called by the Minister. He joined the immigration services of Canada in 1946 as an immigration officer in the Montreal downtown office. From 1950 to 1954, Mr. Gunn was a port of entry officer and explained that teams of six to twelve officers would go on board ships arriving in Montreal and Quebec City. He explained that the duty of a port of entry officer was to enforce the *Immigraction Act and Regulations* so as to exclude from Canada inadmissible persons. He explained that, until the end of 1951, port of entry officers used a particular form, namely the Canadian Government Return Form ("C.G.R."). Mr. Gunn explained that the C.G.R. would be filled out during the voyage by the ship's purser. Presumably, the ship's purser would accomplish this task while speaking to the immigrants onboard and verifying their documents. Upon the ship's arrival in Canada, the port of entry officers would review the information appearing in the C.G.R. with the immigrants to verify whether that information was accurate.

[118] I should point out that the C.G.R. for the ship *NELLY* which sailed from Le Havre on August 6, 1951 and arrived in Quebec City on August 14, 1951, was adduced in evidence. It contains entries in the name of Nicolas and Maria Schpirka. The form clearly shows that the Schpirkas were landed by an immigration officer in Quebec City on August 14, 1951. I should also point out that the form indicates that the respondent declared that he was born in Mamaieski[18], Ukraine. The form also shows that the respondent declared that his nationality was Ukrainian. In his application for Canadian citizenship, however, the respondent declared that he was born in Luzhany, Romania, and that his nationality was Romanian.

[119] From 1954 to 1957, Mr. Gunn was posted to Brussels where he was a visa officer. He explained that there were two doctors, one security officer and three visa officers employed in the Brussels office. Mr. Gunn stated that he issued over 4,000 visas during his three years in Brussels.

---

[18] Attached as an exhibit to form part of the C.G.R. form is a typewritten documentn reproducing the manual entries which appear in the C.G.R. form. At the end of Column 7 of Line 22, the maker of the typewritten entries has indicated that Nicholas Schpirka was born in Mamaieski, Ukraina. However, I read the manual entry as possibly indicating the place of birth as being Mamaiesti. There appears to have been a village of the name Mamaiesti Vechi situated thirteen kilometres west north west of Chernovtsy. This village is apparently now named Altmamayeshti. The village of Luzhany, where the respondent was born, appears to also be situated thirteen kilometres west north west of Chernovtsy. (See *Where Once we Walked: A Guide to the Jewish Communities Destroyed in the Holocaust.* By Gary Mokotoff]Avotayu, Inc. 1991]).

[120] In her rebuttal evidence, the Minister called Alex Trupp who joined the R.C.M.P. in 1947 at the age of twenty. Mr. Trupp was posted to Germany from 1953 to 1956 as a visa control officer. He testified that, while there, they (he and two other "seasoned" officers) were looking for Gestapo, S.S. criminals, communists and collaborators.

[121] I will now address the evidence submitted by the respondent regarding obtaining his visa through the Paris office in 1951. The respondent and his wife applied for visas in the names of Vladimir and Maria Schpirka. They applied for their visas under false names. As I have already indicated, the respondent's position is that he was never asked, when he applied to come to Canada, what he did during the war years. He also testified that he was not interviewed. He indicated that a form had been filled out by an employee at the Consulate who had taken information from his identity card. Finally, as no one asked him about his activities during the War, the respondent stated that he did not volunteer the information.

[122] I now turn to the evidence of Mrs. Katriuk. When the Schpirkas applied to come to Canada in 1951, Mrs. Schpirka knew that her husband's real name was Katriuk. She testified that they attended the Canadian Consulate on three occasions. The first time, they obtained information with regard to what had to be done. The second time, they brought their documents and the third time, they saw a doctor who took chest x-rays. She

explained that an employee of the Consulate asked questions which they answered and that the employee filled out a form on their behalf. Although she could not specifically remember, Mrs. Katriuk, in cross-examination, conceded that she and her husband must have signed the form. Mrs. Katriuk did not remember being asked any questions regarding her residences and employments since 1938.

[123] The respondent called two former Ukrainian colleagues of Battalion 118 to testify on his behalf. The first witness was Ivan Serbyn. Mr. Serbyn was born in 1919 in Bukovina, Romania. He, like the respondent, left Bukovina in 1941 to go to Kiev. Mr. Serbyn was part of a group of men who, in 1944, left their battalion to join the FFI. Mr. Serbyn also refused to return to Russia and, as a result, enrolled in the FFL for a period of three years. As a member of the FFL, he was sent to Algeria where he underwent training in preparation for Indochina. While in Algeria, a Soviet Reconnaissance Group asked him to return to Russia and the FFL suggested that he change his name and go to Indochina. He decided to return to the Ukraine. The Russians put him on a ship bound for Europe and, when he arrived in the Russian zone of Germany, he left and made his way to Paris. In Paris, he obtained a temporary permit of three months which, in due course, was extended to ten years. He then went into business with Mr. Katriuk. Mr. Serbyn, like Mr. Katriuk, was a butcher.

[124] In the spring of 1951, after receiving a letter of invitation from a M. Bannet, a Ukrainian who had immigrated to Canada around 1949, Mr. Serbyn attended the Canadian Consulate in Paris to inquire about his chances of being admitted as a permanent resident. Mr. Serbyn testified that he was informed by someone at the Consulate that, if he could pass the medical examinations and demonstrate that he owed no taxes to the French government, he should have no difficulty. Within a short period of time, Mr. Serbyn and his wife (a French national) were back at the Consulate with their documents. Mr. Serbyn's wife presented her French passport and Mr. Serbyn presented his identity card. Both Mr. and Mrs. Serbyn were examined by a medical doctor. Shortly thereafter, the Serbyns were informed that their visas would be issued. Mr. Serbyn does not remember being asked any questions regarding his activities during the Second World War. Mr. Serbyn became a Canadian citizen in 1957 or 1958.

[125] The respondent also called as a witness George Hiltschuk, another Ukrainian from Bukovina. Mr. Hiltschuk was born on July 18, 1921. He met the respondent during the march to Kiev in the fall of 1941. In 1942, Mr. Hiltschuk became a member of Battalion 118. He was in platoon number 2 of company 1. He also joined the FFI in August 1944. In November 1944, Mr. Hiltschuck enrolled in the FFL for a period of three years. Shortly after joining the FFL, he was sent to Oran, Algeria, for military training. He spent one and one half years in Africa and was sent to Vietnam. He remained in Vietnam for eighteen months and then returned to Paris. As he already knew

the respondent and his wife, he contacted and stayed with them. In 1950, Mr. Hiltschuk decided that he wanted to visit his uncle who had been living in Toronto for over thirty years. On the basis of a letter of invitation received from his uncle and evidence that his travel costs were paid, Mr. Hiltschuk was given a visa for six months. Mr. Hiltschuk testified that, in the course of obtaining his visa, he was never asked about his activities between 1938 and 1945. He boarded a ship at Le Havre and landed in Halifax in December 1950. He stayed with his uncle for a few months and, at the end of January 1951, commenced work in a factory on St-Clair Avenue in Toronto, even though he did not have a work permit. At the end of his six months in Canada, he informed his uncle that it was his desire to remain in Canada. He went to an immigration office in Toronto with his uncle and his uncle signed an application to sponsor him as a permanent resident. In April 1953, Mr. Hiltschuk was landed as an immigrant to this country. Five years later, he applied for Canadian citizenship and was successful. At no time during this whole process does Mr. Hiltschuk remember being asked anything about his activities during the Second World War.

SUMMARY AND FINDINGS

[126] Order in council P.C. 1950/2856, enacted pursuant to paragraph 38(c) of the *Immigration Act, 1927*, allowed the Government of Canada to prohibit or limit the landing in Canada of certain categories of immigrants. By way of Direction No. 14, Cabinet made it clear that collaborators and users of false or fictitious names or

documents were inadmissible under the *Immigration Act, 1927* and should be refused a visa.

[127] The R.C.M.P., which had been entrusted with the responsibility of screening prospective immigrants on security grounds, was made aware of Cabinet's decision to reject certain categories of immigrants and, more particularly, had been told that collaborators and users of false or fictitious names or documents should be rejected. It is clear from the documents and from the testimony of the former R.C.M.P. officers that the officers in the field had been informed with respect to the rejection criteria and, more particularly, regarding collaborators and users of false or fictitious names or documents. Of that, in my view, there cannot be any doubt whatsoever.

[128] I am satisfied that there was an immigration process in place which, if followed, would, in all likelihood, have led to the rejection of the respondent. When I say that there was an immigration process in place, I mean that the government, through the Security Panel, had established criteria by which the admissibility of applicants for permanent residence in Canada would be decided and that the relevant criteria had been passed on to the agency whose responsibility it was to apply the criteria to those who applied for a visa. "Collaborators" and those who used false or fictitious names were categories of immigrants who were not to be admitted into this country by the R.C.M.P.. The former R.C.M.P. officers who testified before me all agreed that non-Germans who had fought

with the German army or who had helped the German Forces against the allies were, as far as they were concerned, collaborators and were to be rejected.

[129] One of the issues which I must decide is whether the respondent, when he applied for a visa to enter this country in 1951, was asked to provide information concerning his activities between 1938 and 1945, either by way of questions in the form that he signed or by way of questions posed by the security officer during an interview.

[130] There is not much evidence concerning the Paris Consulate in 1951. The closest we get to the Paris Consulate is by way of the information which appears in Major Wright's report to R.C.M.P. Headquarters in November 1950. In that report, Major Wright relates his meetings and discussions with the security officer in the Paris office, Sergeant Colville, and the immigration officer-in-charge, Mr. Cormier. It appears from Major Wright's report that Sergeant Colville was overwhelmed with work and, as a result of his discussions with Colville and Cormier, Major Wright made a strong recommendation that a second security officer be posted to Paris "as soon as possible". Major Wright makes it clear in his report that one of the reasons a second officer is necessary in the Paris office is that this "would enable personal interviews of all immigrants to be made". As I indicated earlier, there is no evidence that a second security officer was sent to Paris to assist Sergeant Colville. Was Sergeant Colville in the Paris office when the respondent applied in 1951? If he was, was he the only security

officer or had another officer been posted to Paris? There is no evidence whatsoever in that regard.

[131] I know for a fact that the immigration officer in charge of the Paris office, Mr. Cormier, was still there in January 1951 since I have evidence of correspondence between Mr. Cormier and the Department of Citizenship and Immigration in Ottawa regarding the revised O.S.8 form. In his letter to Ottawa dated January 8, 1951, Mr. Cormier indicates that the Paris office, for stage "B" purposes, will attach to the revised O.S.8 form a questionnaire which the applicant will have to fill out. The questionnaire, which I reproduced earlier, requests the applicant to provide his residences and employments since 1939. It also requests the applicant, if not born in France, to indicate where and when he entered France.

[132] The above is, for all intents and purposes, the whole of the evidence concerning the Paris office in 1951. No one who was employed at the Paris Consulate in 1951, either as a security officer or visa officer, was called by the Minister to testify. Further, no one was called by the Minister to testify with respect to the specific process in place in that office in 1951 and, more particularly, the manner in which visa applications were processed.

[133] The evidence has shown, for example, that Mr. L.M. Carter was an employee in Canada's Consular Service in Paris in January 1949. The evidence has also shown that Mr. A.J. Desjardins was the attaché, Visa Section, Paris, in August 1949. I also have evidence that Sergeant Colville of the R.C.M.P. and a Mr. Cormier were in the Paris office in November 1950. Through the evidence of George Hiltschuk, it was also shown that, in December 1950, one of the visa officers in the Paris office was a Mr. Mitchell. According to Joseph Gunn, Mr. Mitchell, a high ranking officer in the Visa Section in Paris, had been living in Canada when he died three or four years ago. The Minister did not offer any explanation as to why none of these potential witnesses were called. I know through the evidence that Mr. Mitchell is dead. However, with respect to the other potential witnesses, the evidence is silent.

[134] One would also have expected the Minister to call as witnesses, persons who immigrated to Canada at about the same time as Mr. and Mrs. Katriuk in order to show how visa applications were being processed by the Paris office and to show that the Paris office was asking prospective immigrants what they did between 1938 and 1945. These witnesses could have also testified with respect to the immigration process as implemented by the Paris Consulate. For example, the C.G.R. form, to which I referred earlier in these reasons, contains the names of every passenger who came to Canada in August 1951 onboard the ship *NELLY*. Many of these passengers, as appears from sheet number 49 on which the names of Mr. and Mrs. Schpirka are found, boarded the *NELLY*

at Le Havre. All I have in evidence is one sheet of the C.G.R. form and it is clear that there were at least 49 sheets and perhaps more, each containing the names of at least 20 immigrants. Once again, the Minister did not offer any explanation as to why no one was called to testify with respect to the form being used and the questions being asked at the Paris office in 1951.

[135] The end result is that the Minister adduced no evidence, other than the documentary evidence to which I have already referred, to demonstrate that the respondent was specifically asked about his war time activities. I am not concluding that the respondent was not asked about these activities, rather I am concluding that the Minister has not met the burden imposed upon her to establish that fact.

[136] Before moving on to the events of 1957 and 1958 in Montreal, I must say a few words about the immigration form in use in the Paris office in 1951. Form O.S.8 and revised form O.S.8 were sent to the various consulate offices abroad, including the Paris office. Revised form O.S.8 did not contain questions which dealt specifically with an applicant's war time activities. As appears from Mr. Cormier's memorandum of January 8, 1951, he informed his superiors in Ottawa that the Paris office did not believe that the revised O.S.8 form was sufficient for the purposes of stage "B". That is why Mr. Cormier indicated that a questionnaire would be attached to the form so as to obtain from the applicant information regarding his residences and employments since 1939.

Was there a question in the form which Mr. and Mrs. Schpirka filled out when they applied in 1951, which sought from them specific information regarding their activities during the war years? On the evidence, I am not prepared to make such a finding. However, I am prepared to find, and do find, that the respondent must, at the very least, have been asked to answer the two questions which appear on either form O.S.8 or revised form O.S.8., namely details regarding the longest job he had had in the last ten years and the number of jobs he had had during those ten years. I am also finding that the respondent must have been asked when and how he arrived in France. Mrs. Katriuk made it clear during her cross-examination that a number of questions had been asked by an employee of the Consulate. She conceded that she and her husband must have signed an application. She specifically remembered answering a number of questions which appear either on form O.S.8 or on revised form O.S.8. In discussing the events which took place in Montreal, I will be returning to the questions which I believe were asked of the respondent and which, in my view, were not truthfully answered.

[137] The above findings do not, however, allow me to answer the question posed by the Minister as to whether the respondent obtained his Canadian citizenship by false representations or fraud or by knowingly concealing material circumstances. In order to answer this question, it is necessary to examine the events which took place in Montreal in 1957 when the applicant applied to the Department of Immigration to correct the name under which he was landed in Canada on August 14, 1951.

[138] The purpose of the respondent's application for correction of his visa application was not simply to correct his name. The true purpose, in my view, was to allow the landing of Vladimir Katriuk on August 14, 1951, in Quebec City, failing which the respondent could not apply and obtain, as he did, Canadian citizenship in 1958. I have already related the relevant facts and made reference to the relevant correspondence which led to the Department's decision to amend its records and to show that Vladimir Katriuk and his wife Maria Stephanie Katriuk were granted landing at Quebec City on August 14, 1951.

[139] Mr. and Mrs. Schpirka were landed in Quebec City on August 14, 1951. In applying for a visa to come to Canada and in obtaining landing, they knowingly concealed material circumstances in that they failed to divulge their true identities. As a result, the officers in the Paris Consulate were, no doubt, deprived of essential information that might have enabled them to determine whether or not the respondent should be admitted to Canada. That is why, in my view, the question posed by the Minister cannot be answered without considering together the events in Paris in 1951 and in Montreal in 1957. In other words, in order to decide whether the respondent obtained his Canadian citizenship by false representation, or fraud, or by knowingly concealing material circumstances, the respondent's application in 1957 and the information provided by him to obtain the correction of his name must be considered as part and

parcel of his 1951 visa application. This, in my view, is the correct approach in law since the respondent, Vladimir Katriuk, was granted landing in Quebec City by reason of the decision taken in Montreal in 1957.

[140] The respondent's affidavit dated October 18, 1957 is not in evidence. No explanation was given to me why the affidavit was not available. All I know concerning that affidavit is what appears in the memorandum of October 17, 1958 sent by the Department of Immigration to the Registrar of Canadian Citizenship. It appears from that memorandum that the respondent declared that he was born on October 10, 1921 at Luzhany, Bukovina, Romania, that he took refuge in France in 1944 and that he enlisted a few months later in the FFL under his true name. I know for a fact that the respondent did not say anything in his affidavit concerning his activities prior to his arrival in France in 1944. I know this because the respondent testified that he had not provided this information to his attorney Me Massé.

[141] The respondent's statement that he "took refuge in France in 1944" is not, on the evidence before me, an accurate and truthful statement. The respondent came to France, not as a refugee, but as a member of a battalion which had been fighting with Germany against one of the allied powers. It is true that at the end of August or September 1944, the respondent and many of his colleagues left the German camp to join the French

underground. However, in my view, it cannot be said by any stretch of the imagination that the respondent "took refuge in France in 1944". That is simply not the case.

[142] It must be pointed out that the respondent's application in 1957 is an application whereby he asks the Department of Immigration to amend its records on the basis of new information. The decision to allow the name change, and hence to land him as of August 14, 1951, was made on the basis of that information. This appears quite clearly from the letter dated May 13, 1958, sent by the Department to Me Massé to advise him that his clients' application had been granted.

[143] The documents introduced into evidence by the Minister show that, commencing June 1955, a number of persons applied to the Department of Immigration to amend their landing records so as to allow them to revert to their true names. In a memorandum dated June 13, 1955 from the Chief, Admissions Division, to the Director of the Department, the following information appears:

> 1. The following are suggested instructions to the field:
>
> There has come to light during applications for citizenship, a number of cases of persons having come to Canada under names other than their rightful ones and now wish to assume their proper names. If any of these persons come to the attention of the field officers, examination

> under Section 19[19] is not to be invoked unless it is definitely established that the change of name was for the purpose of gaining illegal entry.
>
> The procedure to be followed is to secure the full particulars and the reasons for coming forward under assumed names. Such cases should be referred to Branch Headquarters so that consideration may be given to their request and to the amending of our records.
>
> Cases such as above where the persons are simply reverting to their correct name, should not be confused with the change of name which requires court action and the aid of a lawyer.

[144] In June 1955, the Chief, Administration Division, sent a similar memorandum to the Chiefs of Divisions and Heads of Sections. In July 1955, a similar memorandum was sent to the District Superintendents. As appears from the memorandum of June 13, 1955, field officers were not to invoke Section 19 of the *Immigration Act, 1927* unless they could "definitely" establish that the applicant had changed his name "for the purpose of gaining illegal entry". I must therefore conclude that the respondent's application was granted because there was no evidence that he had changed his name for an improper or illegal purpose.

---

[19] *Immigration Act*, R.S. 1952, c. 325 (the "*Immigration Act, 1952*"). Section 19(1)(*e*)(viii) reads as follows:

> **19.** (1) Where he has knowledge thereof, the clerk or secretary of a municipality in Canada in which a person hereinafter described resides or may be, an immigration officer or a constable or other peace officer shall send a written report to the Director, with full particulars concerning
>
> ...
>
> (*e*) any person, other than a Canadian citizen or a person with Canadian domicile, who
>
> ...
>
> (viii) came into Canada or remains therein with a false or improperly issued passport, visa, medical certificate or other document pertaining to his admission or by reason of any false or misleading information, force, stealth or other fraudulent or improper means, whether exercised or given by himself or by any other person,

[145] Why did the respondent state in his application that he had taken refuge in France in 1944? There is no evidence that he was asked any questions in respect of his 1957 application. The respondent is the one who approached the Department of Immigration for the purpose of correcting his visa application file. In my view, he provided that information because he believed it was necessary for him to explain how he had arrived in France in 1944. In my view, he was of that belief because, in all likelihood, that question had been asked of him in France in 1951. The questionnaire proposed to be attached to the revised O.S.8 form by Mr. Cormier contains a question which requires an applicant, not born in France, to state when and where he entered France. That question appears below the question concerning his residences and employments since 1939. Although I am unable to find that the question relating to the respondent's activities since 1939 did appear in the form which the respondent signed or that that question was asked to the respondent, I am prepared to find, and I do so find, that the respondent must have been asked in France to indicate when and where he entered France. That is why, in my view, he provided that information in his affidavit of October 1957. In any event, even if the respondent was not asked such a question in 1951, that information was furnished to the Department of Immigration with a view of convincing the authorities that he had not entered Canada under a false name for an improper or illegal purpose. Consequently, that information was, in my view, relevant and material to the decision which the Department took. If the respondent had not concealed that he had arrived in France in August 1944 as a member of the merged battalion and his subsequent defection to the French

underground, the likelihood is that the Department, in view of the applicable rejection criteria prescribed by the Government, would have, at the very least, investigated the respondent through the available channels. As a result of this investigation, the Department would have then been in a position to decide whether the respondent fell under an excluded category of immigrants. Whether or not the decision would have been favourable to the respondent is not, in my view, relevant. In saying this, I am prepared to recognize that there was a possibility that an immigration officer could have decided to admit the respondent to Canada. The evidence has shown that the Security Officers were vested with some discretion in making their decisions regarding the admission of collaborators. A number of documents support this point of view. In his February 9, 1949 memorandum to the Commissioner, the Associate Commissioner of Immigration, Overseas Service, states that "[a]ccording to instructions, if the proposed immigrant has been forced to serve the enemy forces and could obtain evidence to that effect he was then admissible". To the same effect is the memorandum sent by the Secretary of the Security Panel to the Panel dated April 30, 1952, where the Secretary states, at paragraph 10, that: "[p]resent immigration security policy prohibits the immigration of collaborators, but cases have so far been dealt with on their individual merits or demerits".

[146] The decision of the Supreme Court of Canada in *Minister of Manpower and Immigration* v. *Brooks*, [1974] S.C.R. 850, stands, in my view, for the proposition that, even if the department's investigation had not led to the rejection of the respondent, the circumstances concealed by the respondent are nonetheless material. In *Brooks*, the Supreme Court of Canada had occasion to consider Section 19(1)(*e*)(viii) of the *Immigration Act, 1952*, which reads as follows:

> **19.** (1) Where he has knowledge thereof, the clerk or secretary of a municipality in Canada in which a person hereinafter described resides or may be, an immigration officer or a constable or other peace officer shall send a written report to the Director, with full particulars concerning
>
> ...
>
> (*e*) any person, other than a Canadian citizen or a person with Canadian domicile, who
>
> ...
>
> (viii) came into Canada or remains therein with a false or improperly issued passport, visa, medical certificate or other document pertaining to his admission or by reason of any false or misleading information, force, stealth or other fraudulent or improper means, whether exercised or given by himself or by any other person,

[147] Section 19(1)(*e*)(viii) is similar to subsection 33(2) of the *Immigration Act, 1927* which provides that:

> **33.** ...
> 2. Every passenger or other person seeking to enter or land in Canada shall answer truly all questions put to him by any officer when examined under the authority of this Act; and any person not truly answering such question shall be guilty of an offence and liable on conviction to a fine of not more than one hundred dollars or to a term of imprisonment not exceeding two months or to both fine and imprisonment, and if found not to be a Canadian citizen or not to have Canadian domicile, such offence shall in itself be sufficient cause for deportation whenever so ordered by a Board of Inquiry or office in charge, subject however to such right off appeal as he may have to the Minister.

[148] The respondent Brooks applied for permanent residence in Canada and arrived in this country as a landed immigrant on July 18, 1963. On December 4, 1964, an immigration officer made a report to the effect that the respondent was a person described in Section 19(1)(*e*)(iv) and (viii) of the *Immigration Act, 1952* and, on the same day, a deportation inquiry was ordered. Following the inquiry, the respondent was found to be a person described under Section 19(1)(*e*)(viii) of the *Immigration Act, 1952* and, as a result, a deportation order was made against him. The respondent appealed the decision to the Immigration Appeal Board which, on January 7, 1971, set aside the deportation order. The matter was taken to the Supreme Court of Canada on five questions of law in respect of which the Minister was given leave to appeal. The fifth question was as follows:

> 5. Did the Immigration Appeal Board err in law in deciding that the Respondent could not be deported under section 19(1)(*e*)(viii) because it had not been proved that he was, at the time of his admission to Canada, in a prohibited class?

[149] The reasons given by the Supreme Court, in answering the fifth question, are relevant. At pages 866 to 873, Laskin J. (as he then was) states:

> The fifth question arises out of the Minister's contention that the Board erred in law in deciding that Brooks could not be deported under s. 19(1)(*e*)(viii) unless it was proved that he was at the time of his admission to Canad within a prohibited class. If this is what the Board decided, then it clearly erred because s. 19(1)(*e*)(viii) is not dependent for it application upon proof that a person was within a prohibited class (under s. 5) when he was admitted. Section 19(1)(*e*)(iv) is the provision that deals with membership of a prohibited class at the time of admission, and it is not *per se* involved in the present appeal.

I do not read the Board's reasons as involving the bald proposition suggested by the formulation of the fifth question. It appears, however, that the fifth question arose out of a contention by the Minister that by failing to disclose the Philippines deportation order and the grounds upon which it was made, Brooks forestalled further inquiries by the immigration authorities which, if pursued as a result of the disclosure, would have shown him to be a member of the prohibited class described in s. 5(*m*) of the Act. Putting the matter another wa3y, Brooks' failure to inform the authorities about the Philippines deportation order resulted in his coming into Canada or remaining there "by reason of false or misleading information".

In his submission on the fifth question to the Court, counsel for the appellant Minister put the issue in a form different from what appeared to be the Board's appreciation of it. He contended that it was irrelevant to determine what the immigration officers would have done had they known the true facts about the Philippines deportation order at the time Brooks applied for admission; it was a sufficient basis for invoking s. 19(1)(*e*)(viii) that Brooks had been admitted on false and misleading information. Counsel for the Minister did not find any element of reliance in the words, "by reason of" in s. 19(1)(*e*)(viii). He appeared to treat them as meaning simply that the immigration officers had acted upon the allegedly false and misleading information. In effect then, any falsity or anything of a misleading character would support deportation. I do not agree with this view if that is what counsel intended to convey.

...

It was the Board's conclusion after an examination of the *Immigration Act* and Regulations that the mere existence of a foreign deportation order did not automatically bar landing in Canada or lead to deportation if landing had been effected. Nonetheless, as I read its reasons, it considered that two points arose for its determination: first, whether s. 19(1)(*e*)(viii) may be invoked in respect of non-disclosure where neither the Act nor the Regulations were otherwise applicable to the matter, and where no duty of disclosure could be based upon some question asked of Brooks which he evaded or which he answered by suppressing or misstating facts; and, second, whether, as a matter of materiality to admission there was a duty of disclosure which could be dealt with under s. 19(1)(*e*)(viii).

On this second point, the Board appears to have treated materiality as itself giving substance to the element of "false or misleading information" even if there was no information sought on a particular matter, instead of considering whether the false or misleading information that was given was material to admission. ...

...

In my opinion, if the materiality of matters on which no question are asked is cognizable under s. 19(1)(*e*)(viii), it would be under the words "other fraudulent or improper means". They are broad enough to embrace non-disclosure of facts which would be material to admission or non-admission if known. It is quite clear that in enunciating a duty of disclosure of facts if material to landing or no landing, the Board relied on a number of American authorities where the question of materiality was considered in relation to deportation of aliens who were alleged to have entered under visas obtained by false statements, and where the test applied by the courts was whether the fact suppressed or misstated was one which, if known,

would have justified a refusal to issue a visa. These cases, beginning with *United States ex rel. Ioris v. Day*, were decided prior to 1952 at a time when American immigration legislation did not expressly make falsity *per se* a ground of deportation; and hence it was that the Courts required materiality. Amendments in 1952 made fraud or wilful misrepresentation of a material fact a ground for exclusion and for deportation: See U.S. Code, Title 8, ss. 1182(*a*)(19) and 1252(*a*) (1 and 2). In post-1952 cases, the Courts were expressly required to determine, *inter alia*, whether in the case of an alleged misrepresentation of fact, it was, if established, wilful and material.

Section 19(1)(*e*)(viii) in its expression of grounds for an inquiry which could lead to deportation does not expressly require proof of materiality where falsity of a relevant document or false or misleading information, or other fraudulent or improper means is relied upon. It does, however, stipulate that where false or misleading information is the basis of deportation proceedings against a previously landed immigrant, it be shown that it was *by reason of* any such information that he came into or remained in Canada. The phrase "by reason of" imports something beyond the mere giving of false or misleading information; it connotes an inducing influence of the information, and hence I agree with the Immigration Appeal Board that it brings in materiality. It is on this basis that, in my opinion, the inadvertence or carelessness of an answer must be weighted as to its consequences; and it is in this connection and not as importing any element of *mens rea* (as the Board stated) that the certification statement in the admission documents herein, namely, "my answers ... are true .... to the best of my knowledge" has significance for the purposes of s. 19(1)(*e*)(viii). In so far as the certification statement may relate to *mens rea*, it would be for the purposes of criminal prosecution under s. 50 of the *Immigration Act*.

Despite the broad view which the Board appeared to take of materiality as related to a general duty of disclosure, it came to a conclusion on a narrower base in rejecting the submission of the appellant Minister that the suppression of information by Brooks cut off further inquiry as to his desirability as an immigrant an that this was a matter for consideration under s. 19(1)(*e*)(viii). The Board answered in the negative the first point on non-disclosure to which I alluded earlier, and it summed up on this and on its assessment of materiality as follows: ...

...

In view of the Board's finding on the evidence that there was no proof that Brooks was at the time of his admission in a prohibited class, I do not pursue any further the question whether a failure to disclose facts showing a person to be within that class would attract the "other fraudulent or improper means" portion of s. 19(1)(*e*)(viii). Although I agree with the submission of counsel for the appellant Minister that it is s. 19(1)(*e*)(iv) and not s. 19(1)(*e*)(viii) that applies where the facts show, irrespective of whether false or misleading information on the matter was given, that a person was within a prohibited class at the time of his admission to Canada, I do not agree that the Board erred in refusing to find s. 19(1)(*e*)(viii) applicable whenever a false or misleading answer was given to a question, irrespective of whether it was or was not material to admission.

Lest there be any doubt on the matter as a result of the Board's reasons, I would repudiate any contention or conclusion that materiality under s. 19(1)(*e*)(viii) requires that the untruth or the misleading information in an answer or answers be such as to have concealed an independent ground of

> **deportation. The untruth or misleading information may falls hort of this and yet have been an inducing factor in admission. Evidence, as was given in the present case, that certain incorrect answers would have had no influence in the admission of a person is, of course, relevant to materiality. But also relevant is whether the untruths or the misleading answers had the effect of foreclosing or averting further inquires, even if those inquiries might not have turned up any independent ground of deportation.**
>
> **I note in this connection that s. 20(2) of the *Immigration Act* requires every person at an examination for entry into Canada to answer truthfully all questions put to him, and his failure to do so is declared to be itself sufficient ground for deportation where so directed by a Special Inquiry Officer. Although the present case concerns an inquiry into deportation and not examination for admission, the emphasis in s. 20(2) on the *per se* effect of the failure to anser truthfully lends support to a construction of s. 19(1)(*e*)(viii) which makes material falsity or misleading information a basis of deportation although no independent ground apart therefrom is established.** [Emphasis added]

[150] I am also of the view that the questions relating to an applicant's jobs during the ten years prior to his application were such as to require an applicant to disclose, if that be the case, that he had been a participant in the Second World War. On the evidence before me, I can only find that the respondent did not truthfully answer those questions. I should point out that I did not find the respondent's evidence concerning his application for a visa in Paris in 1951 very credible. The respondent's evidence was simply that the visa officer did not ask him anything. I do not find his version of these events plausible.

[151] For these reasons, I must conclude that the respondent was not lawfully admitted to Canada for permanent residence. Consequently, the respondent is deemed to have obtained his Canadian citizenship by false representation, or fraud or by concealing material circumstances contrary to the *Citizenship Act*.

[152] A few final points. During the hearing, I ruled that the evidence of Michael Jankowsky taken by way of Commission Evidence in Poland in April 1998 was inadmissible. In making the ruling, I orally gave my reasons. If the parties wish to obtain more detailed reasons, they shall so advise me.

[153] I also heard an application by the respondent to stay these proceedings on a number of grounds. That application is denied. Separate reasons will be given within fifteen days.

[154] At the end of the hearing, counsel for the respondent asked me not to dispose of the costs issue before he could address the issue. I will therefore not make a ruling on this and will leave it to the parties to speak to me on that issue as soon as it is convenient.

Ottawa, Ontario
January 29, 1999

JUDGE

FEDERAL COURT OF CANADA
TRIAL DIVISION

NAMES OF SOLICITORS AND SOLICITORS ON THE RECORD

COURT FILE NO.:	T-2408-96
STYLE OF CAUSE:	THE MINISTER OF CITIZENSHIP AND IMMIGRATION v. VLADIMIR KATRIUK
PLACE OF HEARING:	MONTRÉAL, QUÉBEC TORONTO, ONTARIO
DATES OF HEARING:	MAY 13, 14, 15, 19, 20, 21, 22, 25, 26, 1998; JUNE 11, 15, 16, 22, 23, 1998; JULY 2, 3, 1998

REASONS FOR JUDGMENT OF THE HONOURABLE MR. JUSTICE NADON

DATED: JANUARY 29, 1999

APPEARANCES:

DAVID LUCAS
MARTINE VALOIS

FOR THE APPLICANT

OREST H.T. RUDZIK
NESTOR WOYCHYSHYN

FOR THE RESPONDENT

SOLICITORS ON THE RECORD:

MORRIS ROSENBERG
DEPUTY ATTORNEY GENERAL OF CANADA
OTTAWA, ONTARIO

FOR THE APPLICANT

OREST RUDZIK
TORONTO, ONTARIO

FOR THE RESPONDENT