the number of real war criminals; for many of them, the allegations on the surface could not bear scrutiny. A single example: the denunciation as war criminals of a couple bearing a German name, living in a secluded place under the protection of two black dogs and offering old European furniture for sale (cases 179 and 180).

The Commission accordingly *FINDS* that:

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

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

Before turning to the individual examination of all the cases on the Master List, it is worthwhile to pause and examine the blanket accusation brought against the members of the Galicia Division. (This Division is known interchangeably as "Galicia", from its German name, or "Halychyna", from its Ukrainian name. The Commission has decided to use Galicia. This choice has been made for reasons of stylistic convenience only and denotes absolutely no preference of substance.)

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2) *The Galicia Division*

In February 1949 one of the grounds for rejection of an immigration applicant was stated as follows:[6]

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

In June 1949, an Order-in-Council was passed prohibiting all immigration, save certain exceptions. Relevant to this discussion were the following ones: the immediate relatives of a person legally resident in Canada; agriculturists; farm labourers; persons experienced in mining, lumbering or logging.[7]

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[6] Exhibit P-35, document no. 16, 7 February 1949.

[7] P.C.-2743, 2 June 1949, in exhibit P-14.

There were then living in the United Kingdom several thousand men of Ukrainian origin who had been made prisoners towards the end of the war. In April 1948, Immigration had "decided that favourable consideration cannot be given to the admission to Canada of Ukrainian surrendered enemy personnel held in the United Kingdom as prisoners of war."[8]

But on 31 May 1950, the Canadian cabinet decided "that Ukrainians, presently residing in the United Kingdom, be admitted to Canada notwithstanding their service in the German army provided they are otherwise admissible. These Ukrainians should be subject to special security screening, but should not be rejected on the grounds of their service in the German army."[9]

On 9 June 1950, Order-in-Council P.C.-2856 revoked P.C.-2743, liberalized immigration rules and allowed immigration into Canada, amongst others, of:[10]

> 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 Canadian citizenship within a reasonable time after his entry.

On 15 June 1950, a directive from the Immigration Branch conveyed to the interested services the cabinet's decision of 31 May, adding that the prospective Ukrainian immigrants should conform to P.C.-2743 (by then, should have read: P.C.-2856), be in good health and be in possession of a proper travel document. It also provided for "full security screening" of both "the applicant in Canada and the proposed immigrant".[11]

On the same 15 June, the Honourable Walter Harris, Minister of Citizenship and Immigration, declared in the House of Commons:[12]

> When they were taken prisoners of war by our troops in Italy it was recognized by the allied commander that there were special circumstances in connection with that division because they were not treated entirely as other prisoners of war were. They have been in England since the spring or fall of 1945 (*sic*). We have investigated not individuals but the group as a whole, and we are quite prepared to accept them provided they come within the ordinary rules with respect to immigrants; that is, they might be agricultural workers, settlers, and the like.

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[8] Memorandum from Commissioner, Overseas Service, to Superintendent of European Emigration for Canada, London, England, 26 April 1948.

[9] Memorandum from Deputy Minister of Citizenship and Immigration, 6 June 1950.

[10] P.C.-2856, 9 June 1950, in exhibit P-14.

[11] Directive No. 26 by the Acting Director of the Immigration Branch.

[12] *Hansard*, House of Commons Debates, 15 June 1950, p. 3696.

This statement drew the wrath of the Canadian Jewish Congress. On 4 July 1950, the National President of the C.J.C. sent a long telegram to the Minister protesting the decision. Referring to the Division, he said:[13]

> Its history would suggest need of extraordinary close scrutiny and an examination into the political creed of its members.

The C.J.C. asked for delay.

On 7 July 1950, upon instructions from the Minister, the London immigration office was instructed: "until further notice hold any action concerning that group".[14]

In the meantime the Minister had given to the C.J.C. the assurances it required:[15]

> The decision which I mentioned in the House of Commons merely was that we would no longer refuse these applications solely on the grounds that the Ukrainians in the United Kingdom had served in this Division. There was no suggestion that we would admit anyone who could not conform to the existing requirements in Canada. On the contrary, we shall apply to each of those persons, the same careful scrutiny to the character which is being applied in all cases.

The C.J.C. then furnished the department with two sworn statements (one of which was bearing on events posterior to the hostilities) as well as, at an indeterminate date, a list of 94 suspects from the Galicia Division. Unfortunately, no witnesses were offered in support of the allegations, and in exactly half the cases not even a first name was given to help identify the suspects (the transliteration of names from the Cyrillic to the Roman alphabet rendered the situation still more treacherous).[16]

For its part, Immigration had asked External Affairs on 9 August 1950 to ascertain from the United Kingdom what was the record of the Division. Immigration requested specific information:[17]

> It would be helpful if we knew when and where the Division was recruited, what war service the Division engaged in and where; if they were employed in combat against the "Western Allies". Further, is there any justification for the intimation that this Division was actively engaged in the elimination of the Jewish population of the Ukraine.

The British Foreign Office answered on 4 September 1950, and its answer was relayed to Canada in a dispatch of the following day. In the main it stated:[18]

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[13] Littman Report, exhibit P-159, Appendix B.

[14] Quoted in memorandum from Acting Director, Immigration Branch, 7 July 1950.

[15] Letter from Walter Harris to Samuel Bronfman, 5 July 1950, in Mr. Botiuk's submission, exhibit P-163, p. 63

[16] See original Littman report under heading: The Canadian Jewish Congress List.

[17] Letter from Acting Deputy Minister of Citizenship and Immigration to Under Secretary of State for External Affairs, 9 August 1950, reproduced in Mr. Botiuk's submission, exhibit P-163, at p. 66 *ff.*

[18] *Ibid.*, p. 74

While in Italy these men were screened by Soviet and British missions and neither then nor subsequently has any evidence been brought to light which would suggest that any of them fought against the Western Allies or engaged in crimes against humanity. Their behaviour since they came to this country has been good and they have never indicated in any way that they are infected with any trace of Nazi ideology.

(...)

From the reports of the special mission set up by the War Office to screen these men, it seems clear that they volunteered to fight against the Red Army from nationalistic motives which were given greater impetus by the behaviour of the Soviet authorities during their earlier occupation of the Western Ukraine after the Nazi-Soviet Pact. Although Communist propaganda has constantly attempted to depict these, like so many other refugees, as "quislings" and "war criminals" it is interesting to note that no specific charges of war crimes have been made by the Soviet or any other Government against any member of this group.

Indeed the Division had been recruited by the Germans in the summer and fall of 1943. According to an author quoted by Mr. Botiuk:[19]

They volunteered for the Division not because of a love of the Germans but because of their hatred for the Russians and the Communist tyranny.

In the summer of 1944 the Division was largely destroyed by the Soviet forces in the battle of Brody, in Western Ukraine: 14,000 men went to battle; 3,000 returned. The Division was reorganized and engaged the Red Army in Austria in the spring of 1945. In early May 1945, the Division surrendered to the British forces. In summary, the Unit was then moved to Italy where it stayed at Rimini for about two years. It was then transferred to England in the spring of 1947. This transfer, however, did not take place before screening by the British authorities: see the report of the Refugee Screening Commission, dated 21 February 1947 and signed by the officer in charge, D. Haldane Porter.[20] According to this report there were, in 1947, 8,272 officers and men of the Division in the camp.

It is interesting to note that the Division had already been screened by a Soviet Mission in August 1945. The British Commission reported in that connection:[21]

9. The only effect, which the Soviet Mission's visit appears to have had on the Ukrainians, was to convince any waverers there might have been never to return to the Soviet Union, and to cause a great deal of probably justified anxiety to those who still had relatives there. We must, I think, accept as a definite fact, that all those Ukrainians now in Camp 374 who were screened by the Soviet Mission — that is to say the great majority — are now regarded by the Soviet Government as Soviet citizens, and that having failed to secure their voluntary repatriation the Soviet Government will demand their forcible repatriation as War Criminals when the Italian Treaty comes into force.

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[19] *Ibid.*, p. 11, quoting from Wasyl Veryha, *Along the Roads of World War II*, New Pathway, Toronto, 1980, p. 184.

[20] Reproduced in full in *Heroes of Their Day: The Reminiscences of Bohdan Panchuk*, Multicultural History Society of Ontario, Toronto, 1983, pp. 140-148; also Public Archives of Canada, Ottawa, Citizenship and Immigration Branch, RG-26, vol. 147, file 3-43-1 (copy).

[21] *Ibid.*, Panchuk pp. 144-145, paragraph 9.

The overall findings of the Screening Commission can be highlighted by the two following quotations:[22]

> The general impression which we have formed of all the men in the camp is favourable, as they strike us all as being decent, simple minded sort of people. The national emblem of the Ukraine, in the form of a trident, is freely displayed all over the camp, and the inmates clearly regard themselves as a homogeneous unit, unconnected either with Russia or Poland, and do not seem conscious of having done any wrong.
>
> (...)
>
> They probably were not, and certainly do not now seem to be at heart pro-German, and the fact that they did give aid and comfort to the Germans can fairly be considered to have been incidental and not fundamental.

No doubt, largely on the basis of that information and also because no factual information had been produced to incriminate members of the Division, the Minister finally advised the Canadian Jewish Congress on 15 September 1950 that he "intend[ed] to give approval now to applications on hand and to continue the screening process of any applications received in the future."[23]

On 25 September 1950, the President of the C.J.C., Mr. Samuel Bronfman, replied at great length to the Minister.[24] His was an overall attack:

> That each individual who was a member of the Halychina Division ought to be stamped with the stigmata that is attached to the entire body of the SS.

This call, however, went unheeded: on the very same day, the ban was lifted[25] and both Immigration and External Affairs advised their London offices accordingly, reinstating generally the terms and conditions of Directive Number 26 of 15 June 1950[26] which had opened the door to Ukrainian immigrants from the United Kingdom. Last year, according to Mr. Clay Powell, Q.C., the former members of the Galicia Division living in Canada numbered "approximately six hundred".[27]

It is now claimed before the Commission that the decision of the Canadian government in 1950 was a "serious error",[28] that "the investigation, in any event, appears to have been hasty and ill-informed"[29] and that the matter should be examined afresh.

The Commission has refused to embark upon such a collective undertaking, for several reasons:

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[22] *Ibid.*, p. 143, paragraph 6; p. 147, paragraph 11 (C).

[23] Botiuk's submission, exhibit P-163, p. 76.

[24] *Ibid.*, p. 77.

[25] Immigration Branch Directive No. 26, revised 25 September 1950; External Affairs Dispatch C-2805, 2 October 1950.

[26] See footnote 11, this chapter.

[27] Evidence, vol. III, p. 268. Mr. Clay Powell, Q.C., was then acting as counsel to the Brotherhood of Veterans of the 1st Division of the Ukrainian National Army in Canada.

[28] See telegram quoted in footnote 13, this chapter.

[29] Littman report, footnote 16, this chapter.

a) The Commission has not been created to indict one or several particular groups of Canadians. The Commissioner stated in the clearest way in Winnipeg:[30]

> Let me say bluntly that this Commission has not been set up in order to start the Second World War all over again. Therefore, the Commission is not sitting here, nor has it been sitting and will it be sitting elsewhere, to stir unkind feelings among various groups of people in this country. This Commission is not directed at any group of people of any ethnic origin whatsoever, and it is not, therefore, to be used as a kind of platform where old wounds would be re-opened.
>
> The purpose of this Commission, as you know from the Order in Council, is to find out if undesirable individuals, otherwise called war criminals, have slipped into this country and, if so, to advise the government as to how they should be dealt with. There should be, therefore, no fear that, through the process of this Commission, any number of people, large or small, be smeared as a group. The Commission is geared otherwise and shall protect groups, as it has announced it would protect individuals.

b) The Commission has not been created to review government decisions taken by previous generations of public officials. Commission counsel, Mr. Yves Fortier, stated with the approval of the Commission:[31]

> It is a matter of public record that in 1951 [should read: 1950] the Government of Canada, pursuant to certain Cabinet Directives, authorized, subject to appropriate security screening the immigration into Canada of surrendered army personnel who were then detained in the United Kingdom, and who had been members of the so-called Galician Division. It is not the mandate of your Commission of Inquiry to inquire as to whether or not that Directive should have been issued.

c) The Commission has not been created to revive old hatred that once existed abroad between communities which should now live in peace in Canada;

d) The Commission is only interested in individuals, of whatever ethnic origin, who may be seriously suspected of war crimes. In that connection, Mr. Yves Fortier stated rightly:[32]

> If the only allegation against a resident of Canada is that he was a member of the Galician Division, that is not an individual which we consider should be made the subject of an investigation by your Commission. If the allegation is that while he was a member of the Division, he committed atrocities at such-and-such a place, if there is evidence of the committing of atrocities alleged in the information which was conveyed us, then that person becomes of interest to your Commission. We have not before, and will not tomorrow, undertake to rewrite history.

e) A public debate on the Galicia Division would have opened the door to an examination of the whole history of the relations among Ukrainians themselves and between Ukraine and its neighbours, which exceeded by far the time-limits and the human resources of the Commission.

That much being said, a few undeniable facts must nevertheless be faced and dealt with. The so-called Galicia Division had been formed under the name

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[30] Evidence, vol. XII, pp. 1368-1369.

[31] Evidence, vol. XIX, p. 2433.

[32] *Ibid.*, p. 2432.

"14th SS Volunteer Division Galicia". When its training was finished and just before it was sent to the Eastern front, in the spring of 1944, the Division received a new name: "14.Waffengrenadierdivision der SS (gal. Nr. 1)."[33]

It is an acknowledged fact that the members of the Division were volunteers who had enlisted in the spring and summer of 1943, essentially to combat the "Bolsheviks"; indeed, they were never used against Western allies.

During the war and in the immediate post-war period, Flight Lieutenant Bohdan Panchuk, originally from Saskatchewan, headed both the Ukrainian-Canadian Servicemen's Association (U.C.S.A.) and the Central Ukrainian Relief Bureau (C.U.R.B.). On 31 May 1948, he wrote a detailed memorandum designed to help the members of the former Galicia Division achieve, in the United Kingdom or elsewhere, a stable civilian status.[34] In paragraph 12 of this memorandum, Panchuk made the following observation (p. 154):

> In accordance with the general policy for all non-German "foreign" units, the unit was termed Waffen S.S. This should not, however, be mistaken for the actual German S.S. in which only "pure bred" Germans could serve. The Ukrainians were permitted to have priests in their units, they were not given any S.S. identity marks whatsoever and the terminology of their ranks and titles were those of the Wehrmacht.

The International Military Tribunal in Nürnberg did not see fit, however, to go into those fine distinctions: its pronouncements were all-encompassing. It must be remembered that the Tribunal drew its authority in this respect from art. 9 of its *Charter* (p. 8), the first paragraph of which read:

> At the trial of any individual member of any group or organization the Tribunal may declare (in connection with any act of which the individual may be convicted) that the group or organization of which the individual was a member was a criminal organization.

After noting that "Article 10 of the Charter makes clear that the declaration of criminality against an accused organisation is final, and cannot be challenged in any subsequent criminal proceeding against a member of that organisation",[35] the Tribunal added significantly (*ibid.*):

> The effect of the declaration of criminality by the Tribunal is well illustrated by Law Number 10 of the Control Council of Germany passed on the 20th day of December, 1945, which provides:
>
> "Each of the following acts is recognised as a crime:
>
> . . .
>
> (d) Membership in categories of a criminal group or organisation declared criminal by the International Military Tribunal.
>
> . . .

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[33] George H. Stein, *Geschichte der Waffen-SS*, Athenäum/Droste Taschenbücher Geschichte, 1978, p. 167.

[34] Reproduced in full in Panchuk's previously quoted memoirs, pp. 152-166: see footnote 20, this chapter.

[35] Judgment of the International Military Tribunal, 30 September—1 October 1946, London, Comd. 6964, p. 66.

(3) Any person found guilty of any of the crimes above mentioned may upon conviction be punished as shall be determined by the Tribunal to be just. Such punishment may consist of one or more of the following:

(a) Death.

(b) Imprisonment for life or a term of years, with or without hard labour.

(c) Fine, and imprisonment with or without hard labour, in lieu thereof.

The Tribunal then devoted a full chapter to the SS. Its main findings can be excerpted as follows (p. 77):

The SS was even a more general participant in the commission of war crimes and crimes against humanity.

(...)

The SS played a particularly significant role in the persecution of the Jews.

(...)

It is impossible to single out any one portion of the SS which was not involved in these criminal activities.

(...)

The Tribunal finds that knowledge of these criminal activities was sufficiently general to justify declaring that the SS was a criminal organisation to the extent hereinafter described.

In concluding, the Tribunal included specifically the "members of the Waffen SS". The governing paragraph of the conclusions stated (p. 79):

The Tribunal declares to be criminal within the meaning of the Charter the group composed of those persons who had been officially accepted as members of the SS as enumerated in the preceding paragraph who became or remained members of the organisation with knowledge that it was being used for the commission of acts declared criminal by Article 6 of the Charter, or who were personally implicated as members of the organisation in the commission of such crimes, excluding, however, those who were drafted into membership by the State in such a way as to give them no choice in the matter, and who had committed no such crimes. The basis of this finding is the participation of the organisation in war crimes and crimes against humanity connected with the war; this group declared criminal cannot include, therefore, persons who had ceased to belong to the organisations enumerated in the preceding paragraph prior to 1st September 1939.

The Galicia Division, as part of the organization of the Waffen SS, falls under the terms of this blanket condemnation. However, an extremely important aspect of the condemnation must be stressed. In the body of the judgment, the Tribunal observed (p. 78) "that the SS was a criminal organisation *to the extent hereinafter described*" (emphasis added). In its conclusions, the Tribunal described the group it condemned by imposing certain limitations and recognizing certain exceptions. Quite relevant here is the following explicit passage "... those persons ... who became or remained members of the organisation with knowledge that it was being used for the commission of acts declared criminal by Article 6 of the Charter, or who were personally implicated as members of the organisation in the commission of such crimes ...".

The condemnation is therefore pronounced against the group of persons who either had knowledge of, or were personally implicated in, the commission of war crimes by the organization. Membership alone in the Waffen SS does not, in itself, amount to a crime under international law; it must be membership as qualified by the Tribunal in Nürnberg. It implies either knowledge or participation.

This important aspect of the Nürnberg Judgment was stressed by Peter Calvocoressi in his 1947 book on *Nuremberg: The Facts, the Law and the Consequences*:[36]

> For those who were genuinely ignorant the judgment of the Tribunal makes provision by condemning only those members of a criminal organisation who became or remained members with knowledge that it was being used for a criminal purpose. Even the condemned members are not subjected *ipso facto* to pains and penalties by the Nuremberg declaration. No individual can be punished without first having specific charges brought against him personally and without being brought before a court of law. In practice there can be no doubt that only a fraction will be prosecuted.

Now, whether on account of actual participation or mere knowledge, evidence is required. As already outlined, evidence of participation had not been forthcoming in 1950. In 1984, Simon Wiesenthal had supplied a list of 217 former members of the Galicia Division who, according to him, "survived the war and [were] not living in Europe". Since then the Commission has tried repeatedly to obtain the incriminating evidence allegedly in Mr. Wiesenthal's possession, through various oral and written communications with Mr. Wiesenthal himself and with his solicitor, Mr. Martin Mendelsohn of Washington, D.C., but to no avail: telephone calls, letters, even a meeting in New York between Mr. Wiesenthal and Commission Counsel on 1 November 1985 followed up by further direct communications, have succeeded in bringing no positive results, outside of promises. This situation is regrettable; the explanation may lie in the following findings of the Commission.

When Mr. Wiesenthal supplied the above-mentioned list of 217 names to the then Solicitor General Robert Kaplan, he wrote in part:

> Enclosed please find the list of the Ukrainian SS-Officers, who survived the war and are not living in Europe. According to our experience a great number of them should live in Canada.
>
> (...)
>
> I hope that the emigration authorities in Canada will find out a great number of that list as Canadian inhabitants (citizens or residents).

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[36] Calvocoressi, Peter. *Nuremberg: The Facts, the Law and the Consequences*, Chatto and Windus, London, 1947, p. 80.

The Commission has investigated the matter and found, as of 22 October 1986, the following results:

never set foot in Canada	187	(i.e., 86 per cent of Wiesenthal's list)
came to Canada and died	11	
came to Canada and left for another country	2	
no *prima facie* case	16	
not located	1	
Total:	217	

It must be known that the RCMP had received the same list in 1984 from Mr. Wiesenthal through the Solicitor General's office. The RCMP's investigation in 1984-1985 failed to uncover any evidence of war crimes against the 31 individuals on that list who, it appeared, *might* have entered Canada.[37]

The investigation by the RCMP and the subsequent inquiries by this Commission were carried out quite independently; yet they reached the same results.

It is obvious that the list of 217 officers of the Galicia Division furnished by Mr. Wiesenthal was nearly totally useless and put the Canadian government, through the RCMP and this Commission, to a considerable amount of purposeless work. That additional information be long in coming may not be surprising, under those circumstances. As a result, evidence of participation in war crimes has remained elusive.

As to evidence of knowledge, it is of course more difficult to proffer. Participation is a physical fact liable to have been witnessed; knowledge is a state of mind which, if not admitted, must be inferred. This was indeed the way which the Nürnberg Tribunal adopted with respect to the SS organization *en bloc* (p. 78):

> . . .its criminal programmes were so widespread, and involved slaughter on such a gigantic scale, that its criminal activities must have been widely known.

To draw such an inference with respect to each individual member of the Galicia Division is a much more difficult process, especially since it is acknowledged that the Division was used only in combat on the Eastern front from the middle of 1944.

It is true that a national court seized with a prosecution alleging the crime of membership in a (Nürnberg-declared) criminal organization can adopt one of two alternative courses:[38]

> The first would be to hold the view that the declaration made by the Nuremberg Tribunal creates a presumption of guilt against every member, and that consequently all the

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[37] Letter from RCMP Commissioner Simmonds to Solicitor General Perrin Beatty, P.C., 12 December 1985.

[38] *Law Reports of Trials of War Criminals*: Selected and Prepared by the United Nations War Crimes Commission, vol. 15, p. 151.

prosecution is required to do is to establish that the accused was a member of the organization. In this case it was to be presumed, until proof to the contrary was established by the defendant, that he knew of the criminal purposes or acts of the organization or that, if he did not join the organization on a voluntary basis, he was personally implicated in the commission of crimes. The second course would be to hold the view that no presumption of individual guilt derives from the declaration of the Nuremberg Tribunal, and that consequently, the prosecution is called to prove not only that the accused was a member of the organization declared criminal, but also that he knew the relevant facts or (if an involuntary member) that he was personally implicated in the commission of crimes.

(...)

In the event the courts have in many cases explicitly ruled that the burden of proof remains on the prosecution.

However, everyone knows that, from peripheral facts a presumption may emerge on which the prosecution can rely to discharge the burden under which it must labour. But this is very different from a reversal of the burden of proof, which the *Charter* in any event has not explicitly sanctioned.

The principle itself that the burden of proof rests on the prosecution has been repeatedly acknowledged by various courts which tried alleged war criminals under the above-quoted provisions of the *Charter*. For example:

In the **Flick** case:[39]

As we have stated in the beginning, the burden was all the time upon the Prosecution.

In the **Krauch** case:[40]

This assumption is not in our judgment, a sound basis for shifting the burden of proof to a defendant or for relieving the Prosecution from the obligation of establishing all of the essential ingredients of the crime.

In the **Scheide (Pohl)** case:[41]

The defendant admits membership in the S.S., an organisation declared to be criminal by the Judgment of the International Military Tribunal, but the Prosecution has offered no evidence that the defendant had knowledge of the criminal activities while a member of such organisation.

The courts, however, have also found, on suitable occasions, that the facts established by the prosecution gave rise to a presumption of knowledge on the part of the defendant. In the **I.G. Farben** case,[42] the court held:

Proof of the requisite knowledge need not, of course be direct, but may be inferred from circumstances duly established.

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[39] *Ibid.*, p. 152; vol. IX, p. 29.
[40] *Ibid.*, vol. X, p. 59.
[41] *Ibid.*
[42] *Ibid.*, vol. X, p. 59.

Yet, the courts have stressed that this did not relieve the prosecution of its burden: it only showed that the Prosecution had successfully met the challenge. For instance, in the **Justice** case:[43]

> ... no man ... could possibly have retained membership of the second and third mentioned organizations without knowledge of their criminal character.
>
> (...)
>
> ... it would be impossible for a man of the defendant's [Oeschey's] intelligence not to have known of the commission of these crimes, at least in part if not entirely.

On all counts, adducing proof of knowledge by an individual member, of the criminal activities of his organization is necessary; and such is not an easy task, though the accumulation of a number of elements may lead to a presumption, rebuttable, nevertheless, by the member.

Assuming, however, for purposes of discussion, that enough evidence could be marshalled to indict the Galicia Division as a whole, and thus render its members liable to a conviction under Law Number 10 of the Control Council of Germany, a rather obvious observation becomes necessary.

The *Charter* of the International Military Tribunal governs these matters. Article 10 provides:

> In cases where a group or organization is declared criminal by the Tribunal, *the competent national authority of any Signatory* shall have the right to bring individuals to trial for membership therein before national, military, or occupation courts. In any such case the criminal nature of the group or organization is considered proved and shall not be questioned.
>
> (emphasis added)

Now, Canada is not a signatory of the *Charter*, nor of the 1945 *London Agreement* (exhibit P-7) under which the *Charter* was adopted. Canada did not adhere either to the *London Agreement*, as it could have under art. 5 of the Agreement and as, indeed, 19 other governments did.

No Canadian court could, therefore, claim to exercise jurisdiction over that particular kind of offence.

Finally, this is not a case for denaturalization and deportation. The members of the Galicia Division have never hidden their membership in the Division, nor indeed could they. Canadian authorities were fully aware, in 1950, of the history of the Division. When they gave the green light to the admission of its members, they knew where these members came from and what they had been through. There was, therefore, neither false representation, nor fraud, nor concealment of material circumstances: admission to Canada and subsequently, citizenship, were not tainted with any irregularity.

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[43] *Ibid.*, vol. VI, p. 76.

The Commission accordingly *FINDS* that:

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

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

58- Charges of war crimes against members of the Galicia Division have never been substantiated, either in 1950 when they were first preferred, or in 1984 when they were renewed, or before this Commission.

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

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

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

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3) *Individual assessment*

This brings us to what may be the central question of this inquiry: are there indeed war criminals residing in Canada? In order to answer that question, each one of the 774 suspects on the Commission's Master List had to be investigated—here and abroad—outside of the few obviously spurious denunciations received by the Commission. A moment of reflection should bring anyone to realize the colossal amount of work which the Commission had been expected to perform during its short life span; or, more accurately, the amount of work the Commission discovered it must complete within the period of time its creators had deemed sufficient.

But the Master List does not tell the whole story. As is already known[44] two more lists were developed out of necessity: the list called *Addendum* (Appendix II-F) and the list of German scientists and technicians (Appendix

[44] See Chapter I-5: *Methodology*

II-G). The Commission will report separately on those three lists in this chapter. For the time being, the Commission FINDS that:

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

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a) The Master List

i. *Confidential cases and foreign evidence*

After a preliminary survey of its Master List, the Commission isolated 29 cases where the seriousness of the allegations and the availability of evidence warranted special attention. Those are cases number 15, 28, 42, 57, 87, 100, 114, 145, 175, 187, 276, 282, 283, 287, 289, 317, 341, 349, 392, 434, 454, 459, 466, 497, 533, 646, 689, 726 and 766. The Commission has reported fully on all these cases in Part II of its report (Confidential).

At this point the Commission will make an anonymous summary of its conclusions on those 29 cases before dealing explicitly with the question of foreign evidence which has arisen in the majority of those cases.

The Commission's recommendations in Part II of its report are rather elaborate and do not offer an easy prey to an attempt at classification. Furthermore, a given case may well open on more than one avenue, so that the total number of recommendations exceeds the number of cases involved. That much being said, the confidential recommendations of the Commission may be broadly grouped as follows:

To close without prosecution		9
To consider an extradition request		1
To seek revocation of citizenship only		3
To seek revocation of citizenship and deportation		7
To request foreign assistance to get evidence to support criminal prosecution		18, i.e., from
Czechoslovakia	3	
Hungary	1	
Poland	2	
U.S.A.	1	
U.S.S.R.	8	
West Germany	3	

Now, this last figure, 18, corresponds by pure chance to the number of cases where the question of foreign evidence has arisen. Indeed, in the course of its work the Commission had identified at least 18 cases where, the suspects