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Ottawa, Ontario, November 13th, 2007

PRESENT: The Honourable Mr. Justice O'Reilly

BETWEEN:

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Plaintiff

and

MICHAEL SEIFERT

Defendant

FINDINGS OF FACT

I. Overview

[1] The Minister of Citizenship and Immigration informed Mr. Michael Seifert in 2001 that the Minister intended to take steps to revoke his Canadian citizenship. Mr. Seifert responded by asking that this Court determine the facts.

[2] The Minister alleges that Mr. Seifert entered Canada in 1951 and later obtained Canadian citizenship by false representation, fraud, or by knowingly concealing material circumstances. In particular, the Minister alleges that Mr. Seifert failed to disclose his correct place of birth and misrepresented his activities during World War II when he applied for a Canadian visa in Hannover, Germany during the summer of 1951. Contrary to what he told Canadian officials at the time, Mr. Seifert admits that he was born in Ukraine and served as a guard in the German forces in Ukraine and, later, at a police transit camp in Bolzano, Italy in 1944-45. The Minister also accuses Mr. Seifert of killing prisoners and committing various acts of cruelty in the camp. Mr. Seifert adamantly denies these accusations.

[3] I am satisfied, based on all of the evidence I have heard, including expert testimony on Canadian immigration policy during the post-war years, the German police and security apparatus during the war, the practices and procedures followed by Canadian officials in European consular offices and the extensive documentary record in all of these areas, that Mr. Seifert obtained entry to Canada and Canadian Citizenship by misrepresentation and non-disclosure of material facts. Had he told the truth, Mr. Seifert would not have been allowed into Canada.

[4] However, I am not satisfied that the atrocities of which Mr. Seifert has been accused have been proved on the balance of probabilities. The Court heard the testimony of three witnesses who had been prisoners in the Bolzano camp. While I have no doubt that these persons suffered greatly and have vivid and painful memories of the camp, looking at the evidence as a whole, I am unable

to conclude that the particular acts of violence and brutality alleged to have been carried out by Mr. Seifert personally have been proved.

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II. Background to Proceedings

[5] On June 26, 1999, an article appeared in the Italian newspaper called “La Stampa” under the headline “The two Ukrainian SS men accused of 14 murders and of acts of torture carried out against prisoners have been traced. The Kapos of the Bolzano camp are in Canada. The military prosecutor is to request their extradition”.¹ The article described “two bloodthirsty madmen”, former guards named “Misha Seifert” and “Otto Seit”, who were believed to have committed more than fifty acts of brutal violence.

[6] Later that year, Mr. Seifert learned about the subject matter of the legal proceedings against him when his then friend, Mr. Peter Makelke, showed him an article that appeared in a Prince George newspaper. Shortly thereafter, Mr. Seifert received notice from an Italian court that criminal proceedings were being brought against him.

[7] In 2000, Mr. Seifert was tried in his absence by a Military Tribunal in Verona, Italy. He was convicted on nine charges and sentenced to life imprisonment.² Subsequent appeals were denied.³

[8] The Minister of Citizenship and Immigration notified Mr. Seifert by letter dated August 23, 2001 that the Minister intended to initiate steps to revoke Mr. Seifert’s citizenship under the *Citizenship Act*, R.S.C. 1985, c. C-29, ss. 10, 18 (relevant enactments are set out in Annex A). Mr.

Seifert responded in a letter dated September 6, 2001 asking that the issue be referred to the Federal Court (s. 18(1)(b)).

[9] Alongside these proceedings, the Attorney General of Canada, on behalf of the Republic of Italy, has sought Mr. Seifert's extradition to Italy to serve the sentence imposed on him by the Italian courts. In 2003, Mr. Seifert was committed for surrender on seven of the nine charges for which he was sought.⁴ The Minister of Justice ordered his surrender on those charges in 2005. Appeals of the committal and the surrender order were dismissed in 2007.⁵ Mr. Seifert has sought leave to appeal to the Supreme Court of Canada.⁶

III. Nature of the Proceedings

[10] This proceeding⁷ is, in essence, a fact-finding process⁸ and cannot be appealed.⁹ My role is to determine whether Mr. Seifert obtained Canadian citizenship by false representation, fraud or material non-disclosure.¹⁰ My findings will be submitted by the Minister to the Governor in Council which will decide whether Mr. Seifert should cease to be a Canadian citizen.

[11] As mentioned, the Minister of Citizenship and Immigration alleges that when Mr. Seifert applied to enter Canada in 1951 he failed to tell the truth about his place of birth and his service in the German forces during World War II. A person who gains entry to Canada by misrepresentation, fraud or concealing material circumstances, and subsequently becomes a citizen, is deemed to have obtained citizenship by improper means.¹¹

[12] Mr. Seifert concedes that he did not tell the truth when he applied for a Canadian visa or when he applied for Canadian citizenship. He lied about his place of birth and failed to mention his activities during the war as a guard in Ukraine and northern Italy. However, he maintains that he had a good reason for his behavior, namely, that he was afraid of being returned after the war to the Soviet Union where he would have been punished or killed as a traitor for having served in the German forces. Further, he disputes the Minister's most serious accusations that he mistreated and killed prisoners in the Bolzano camp where he served as a guard.

[13] At one level, given Mr. Seifert's admissions, this is a simple case. Clearly, Mr. Seifert deliberately failed to tell the truth when he sought entry to Canada and when he applied for Canadian citizenship. However, on another level, the case is complex. This is because Mr. Seifert submits that his misrepresentations were not material – in other words, that he would have been granted a Canadian visa in 1951 even if he had told the truth. To deal with this assertion, I must consider a number of complicated issues, including Canada's post-war immigration policy, procedures and criteria for screening visa applications abroad, the organization of the German security and policing apparatus in Ukraine and Italy during the relevant time period, Mr. Seifert's status within that apparatus, and the role he played as a camp guard. Further, to consider whether Mr. Seifert's conduct was justified in the circumstances, I must consider the reasonableness of his claim to have feared repatriation to the Soviet Union, as well as the possibility that Canadian officials might have been sympathetic to his plight.

[14] In addition, given that Mr. Seifert denies the most serious allegations against him – those involving the mistreatment and killing of prisoners – I must review carefully the testimony of surviving witnesses to events in the camp, including former prisoners, another former guard at the same camp, and Mr. Seifert himself.

IV. Allegations Against Mr. Seifert Regarding Mistreatment of Prisoners

[15] The Minister asserts that Mr. Seifert served as a guard in the German forces first in Nikolayev, Ukraine and, later, at police transit camps in Fossoli and Bolzano, Italy. Mr. Seifert admits this. The Minister also alleges that Mr. Seifert mistreated prisoners at the Bolzano camp. In the Statement of Claim¹², the Minister makes the following particular allegations:

- (a) Mr. Seifert participated in the beating and killing of a prisoner who attempted to escape around Christmas-time, 1944. The prisoner was tied to a pole and then beaten to death by Mr. Seifert and other guards.
- (b) In the winter of 1944-45, Mr. Seifert and another guard whipped a prisoner.
- (c) In February 1945, Mr. Seifert and another guard, Otto Sein, beat a young male prisoner over the course of two or three nights. One of them held the prisoner while the other poked him in the eyes. The prisoner died.
- (d) In February or March 1945, Mr. Seifert and other guards beat an elderly male prisoner to death when he failed to rise for the morning roll call.
- (e) In February or March 1945, Mr. Seifert and two other guards beat and then shot two prisoners.
- (f) In February or March 1945, Mr. Seifert and Mr. Sein poured cold water over a female prisoner. She later died.

- (g) In March of 1945, Mr. Seifert and other guards beat and killed a prisoner who had tried to escape.

[16] In addition, the Minister alleges that Mr. Seifert, in his role as a camp guard, assisted in the forced deportation of Jews and other prisoners to other kinds of facilities, including extermination camps, concentration camps and forced labour camps.

[17] Mr. Seifert denies all of these allegations.

V. Burden and Standard of Proof

[18] The burden of proof rests with the Minister. The standard of proof is the usual civil threshold of a balance of probabilities.

[19] Given the serious nature of the allegations that arise in this kind of proceeding, courts have concluded that the evidence must be reviewed and considered with greater care than in other types of civil proceedings.¹³ Mr. Seifert also urged me to apply a higher standard of proof, given that the allegations against him are equivalent to criminal accusations. However, there is no support for an elevated standard of proof in proceedings of this kind and, in any case, I am not satisfied that a different standard of proof would have had any effect on my findings.

VI. Government Policy on Alleged War Criminals

[20] Canadian government policy is to pursue citizenship revocation proceedings where there is evidence that a Canadian citizen was directly involved or complicit in war crimes, crimes against humanity or genocide. This includes persons who are former members of organizations with a limited brutal purpose, such as a death squad.¹⁴

[21] Mr. Seifert submits that it falls to me to decide whether he fits within the government's policy. It appears that it is open to me to decide this question.¹⁵ However, in my view, the better course is for the Court to determine the facts and to leave it to the Governor in Council to decide how its policy applies to those facts.

VII. General Circumstances in Italy 1943-1945

[22] Italy and Germany became allies in 1939 and, in 1940, Italy entered World War II on Germany's side. German troops were stationed throughout Italy and set up commands in several cities. By 1943, however, Benito Mussolini was dismissed as head of the Italian government and Allied troops moved in. In September 1943, Italy reached an armistice with the Allies. In turn, German troops tried to consolidate their positions in Italy, particularly in the north. As part of that effort, the head of the German SS, Heinrich Himmler, appointed SS General Karl Wolff as Highest SS and Police Leader in Italy to take command of security and police functions. Soon after, Wolff chose Dr. Wilhelm Harster as commander of the security police and *sicherheitsdienst*, or SD, with

headquarters in Verona.

[23] In 1944, as Allied troops continued to move north, German commanders considered their police transit camp at Fossoli, near Carpi, to be vulnerable to attack. Allied bombs had fallen nearby and had destroyed a number of bridges across the Po River. The decision was taken to move the Fossoli camp farther east to Bolzano. Bolzano was in an area of northern Italy called the South Tyrol, bordering Austria. This district had previously been part of the Austro-Hungarian Empire, but was ceded to Italy after World War I. Many of the residents in the area were German-speaking. Towns often had both Italian and German names, *e.g.* Bolzano was also known as Bozen, Merano as Meran, Mosso as Moos, and so on.

VIII. Organization of the SS, Security Police and SD¹⁶

1. General structure

[24] The *schutzstaffel*, or SS, served originally as a protective squad for Nazi party leaders. It evolved into an elite military organization under the command of the *Reichsführer-SS*, Heinrich Himmler. The *Waffen-SS* was an armed branch of the SS formed in 1934, whose members often fought at the front lines of the war. The *sicherheitspolizie*, or security police, was originally created as a corps of personal bodyguards for Adolf Hitler. It eventually expanded to include the Gestapo (the political police) and the *kriminalpolizei* (the regular civilian police). The *sicherheitsdienst*, was

the security service of the SS.

[25] The SD's operations included both intelligence and police functions. While the security police and SD were separate organizations, they cooperated in targeting groups and individuals believed to be dangerous. The SD conducted research and developed guidelines that would be passed to the security police for implementation. Their respective roles were meant to complement one another.

[26] According to Dr. Peter Black, Senior Historian at the Holocaust Memorial Museum, Washington, D.C¹⁷, members of the SD were also members of the SS, with few exceptions. Generally, a person would join the SS first and then be assigned to the SD. To join the SS, one had to swear an oath of loyalty to Adolf Hitler, as well as undergo a careful check of racial ancestry and political reliability. The process could take a year or longer. Members of the SD saw themselves as elite members of the SS. They instructed other police organizations in how to deal with perceived enemies of the state in keeping with Nazi party ideology.

[27] The regional operations of the security police and SD were coordinated by the *Reichssicherheitshauptamt*, the security main office or RSHA, headed by Reinhard Heydrich. The RSHA was a key organization in the implementation of the Third Reich's political aims. For example, the RSHA determined whether ethnic Germans from occupied territories were racially acceptable, politically reliable and, therefore, eligible for German citizenship. In that connection, it included an immigration and naturalization office called the *einwanderer zentrale*, or EWZ.

Through the security police and SD, the RSHA was also responsible for removing unwanted persons. As Germany expanded after the beginning of the war, each regional office of the security police and SD in an occupied territory was headed by a *Befehlshaber des Sicherheitspolizei und SD*, or BdS, a commander of security police and SD. As mentioned, in 1943, Dr. Wilhelm Harster was appointed the BdS for Italy with headquarters in Verona. Sub-regional commanders were called *Kommandeur des Sicherheitspolizei und SD*, or KdS. Below them were field officers of the security police and SD.

[28] Himmler also appointed personal representatives in the various regions. These were called *Höhere SS-und Polizeiführer*, or Higher SS and Police Leaders. As discussed above, SS General Karl Wolff became Himmler's representative in Italy in 1943. Beneath him were SS and Police Leaders and, in turn, district commanders.

[29] These parallel reporting structures of the SS and Police Leaders, on the one hand, and the security police and SD on the other, crossed over at a certain level. For example, the KdS was part of the SS and Police Leader's staff. Similarly, the BdS would report to the Higher SS and Police Leader.

[30] In occupied areas, a task force of the security police and SD, called an *einsatzgruppe*, would move in after the military in order to find and arrest political enemies. Each *einsatzgruppe* was subdivided into various *einsatzkommandos*. Once a region had been stabilized, an *einsatzgruppe*

might be converted or evolve into a BdS, and an *einsatzkommando* into a KdS. As will be seen, this was the case in Ukraine.

2. Organization of the SS and SD in Italy¹⁸

[31] In his capacity as *Befehlshaber des Sicherheitspolizei und SD*, or BdS, Dr. Wilhelm Harster was responsible for, among other things, the treatment of Jews, aliens, weapons and curfews.¹⁹ More particularly, he was responsible for the police transit camp at Fossoli.²⁰ He appointed Karl Titho, his former driver, as commander of the Fossoli camp and, later, the Bolzano camp. Dr. Harster was also responsible for various subsidiary offices of the security police and SD, including the regional KdS in the town of Bolzano.

[32] The security police and SD were responsible for imprisoning enemies of the state under a system of *schutzhaft*, or protective custody. Some of these prisoners were transferred to concentration camps. Assigned to each of those camps was a security police and SD officer, responsible for keeping records relating to the prisoners brought to the camp.

[33] Police transit camps, such as those at Fossoli and Bolzano, were not the same as concentration camps and, in fact, were under a separate command structure. Police transit camps were under the authority of the local security police and SD offices. They had a dual purpose. They housed prisoners who might eventually be sent to concentration camps. They also kept prisoners who could not be accommodated in other kinds of prisons – Gestapo facilities, labour and education

camps, or SD prisons. Some prisoners were kept in protective custody pending an investigation or a decision whether they should be transferred to a concentration camp.

3. Invasion of German Forces into Ukraine

[34] In 1941, German forces moved into Ukraine, then part of the Soviet Union. In Nikolayev, where Mr. Seifert was living at the time, an *einsatzgruppe* administered the area until 1943 when a KdS was set up. The *einsatzgruppe* then moved farther east. When it invaded the Soviet Union, the *einsatzgruppe* was under orders to execute communist party officials, at all levels, and other “radical elements”²¹. Under the KdS, field offices, or *Aussendienststellen der Sicherheitspolizei und des SD*, were established. The KdS Nikolayev was responsible for the police prisons run by the security police and SD. In addition, an SS and Police Leader was appointed for Nikolayev.

[35] Nikolayev was recaptured by the Soviet Army in March 1944. German forces ordered ethnic German residents to be evacuated before the Army arrived. Among the evacuees were Mr. Seifert’s parents.

IX. Mr. Seifert’s Early Life in Ukraine

[36] Mr. Seifert was born in 1924 in Landau, Ukraine. His father was a postal worker. His mother was a homemaker and helped out looking after their few animals – a pig, a cow and two horses. His parents were of German ancestry and everyone spoke German in the home.

[37] In 1933, when he was nine years old, Mr. Seifert's father lost his job because he was suspected of being a Hitler sympathizer. The family had to leave Landau. At that point, Mr. Seifert had been in school for only two and a half years.

[38] Mr. Seifert's family first went to the Crimea to live with an aunt. After several months, they moved to Dzhankoy and Mr. Seifert went back to school for a year or two. They stayed there until 1939, when they returned to Ukraine. The family worked in the fields near Schönfeld, about twenty-five kilometers from Landau, and then moved to Nikolayev to look for work. Mr. Seifert found a job in a tool factory. He said that everyone lived in fear in those days. They were constantly afraid of being sent to Siberia if they said or did anything the Soviet authorities found offensive. Ethnic Germans felt particularly vulnerable.

X. Mr. Seifert Joins the German Forces

[39] As explained, when the German forces went into new territories, such as Ukraine, they set up a local administrative apparatus along with a security police and SD operation. In doing so, they sometimes engaged local auxiliary personnel. The *einsatzgruppe* that entered Ukraine in 1941 had authority to engage local reinforcements who were racially and politically suitable. The KdS had similar authority once it was established. In a place like Ukraine, German forces would specifically look for ethnic Germans, who would both be loyal to Germany and possess useful language skills. Additionally, they might look for people whose families had lost a member through deportation. In

the early 1940s, Soviet authorities deported many ethnic Germans out of fear that they would join German forces and fight against the Soviet Union. Mr. Seifert fit this description perfectly. He was from an ethnically pure German family, he could speak German and Ukrainian, and his brother, Johann, had been conscripted by the Soviet Union in 1941.

[40] When the war broke out, Mr. Seifert had avoided conscription in the Soviet army by staying home from work. Other workers who showed up at the tool factory to receive their paycheques were sent to dig trenches.

[41] Mr. Seifert said that people in Nikolayev were excited to hear that German forces were advancing toward them. He was unemployed at the time, and remained so for several months after the arrival of German forces in the summer of 1941. However, his father secured a job as a postal worker at the local German field post.

[42] While the Germans occupied Ukraine, Mr. Seifert said that Ukrainians worried that the Soviet forces would return. If they did, he believed they would have attacked both Germans and Ukrainians. He understood that this had occurred in other German-occupied areas.

[43] Mr. Seifert went looking for a job in the winter of 1942. He applied to a person in a German navy uniform and was given a job as a security guard at Shipyard 61 in Nikolayev. Sometimes, he acted as an interpreter for people going in and out of the yard. In 1943, the shipyard closed and Mr. Seifert was out of work again. He received a dismissal slip that instructed him to report to the SD.

He had no idea at that time what the SD was. When he presented himself, he was handed a gun and told to guard a sanatorium building containing three cells. He was aware that the SD was interrogating political prisoners inside and that some of the prisoners were beaten in order to get information out of them.

[44] Mr. Seifert was given a uniform – first a brown and black uniform and then a field grey – as well as a small Walther pistol. During his testimony, he did not remember swearing an oath to Hitler, but in his earlier affidavit²² and his testimony in the extradition hearing,²³ he said that he and the other recruits swore an oath to the “Führer, the Folk, and the Fatherland.” He said he received little training; he was simply shown how to load his weapon and where to stand guard. He was given an identification card saying that he was serving in the SD, but he still did not know what the SD was. His superior wore an SD uniform.

[45] Mr. Seifert worked as a guard until the spring of 1944 when the Soviet forces returned. His parents had left for Germany in February 1944, so he was all alone.

[46] Dr. Peter Black explained that the rigorous process of becoming a member of the SS and, in turn, of the SD, did not apply to auxiliary personnel. Auxiliaries were not members of the SS; they were merely employees of the security police and SD. Indeed, if they were not German citizens, they were not even eligible to be members of the SS or the SD. They went through a less formal screening process, but one that still involved checking ancestry and political affiliations. Auxiliaries were given a variety of routine assignments – translation, guarding, etc. In Nikolayev, auxiliaries

would have been on the KdS payroll. It is unlikely that the average person employed by the SD as an auxiliary would understand where he or she fit into the organizational structure or mandate of the SS, the security police or the SD itself.

[47] Mr. Peter Makelke, who, like Mr. Seifert, served as a guard at the Fossoli and Bolzano camps, also considered himself to be an auxiliary policeman. He was part of the SD, wore an SD uniform and reported to SD officers, but was not a member.

[48] I note that when Mr. Seifert's parents applied for German citizenship at the EWZ in Kallies in March 1944, they stated that their son Michael was "currently with the SD Field Post 42819".²⁴ Based on this evidence, I am satisfied that Mr. Seifert was an auxiliary in the service of the SD, but was not a full member of the SD.

XI. From Ukraine to Verona

[49] Mr. Seifert left Nikolayev in April 1944. An SD officer named Zites (whom he later encountered in Vancouver in the 1960s) had issued him a leave slip which entitled him to visit his parents in Kallies, Germany. He was anxious to leave Ukraine because he was aware of the advancing Soviet troops. He traveled to Odessa with an SS officer, an interpreter, several prisoners, and a few oxen. In Odessa, he boarded a train for Germany. Along the way, he saw the burning oil tanks in Ploiesti, Romania, which had been bombed by the Allies. The train stopped at Przemysl, where the soldiers were deloused, and then it continued to Berlin and, finally, to Kallies. He

managed to find his parents and spent three weeks with them. When he left to return to Nikolayev, the field police in Litzmannstadt told him that he could not return to Nikolayev as it was no longer under German control. He was allowed to go back to Kallies and was told to report to Verona, Italy in three weeks' time.

[50] In keeping with his orders, Mr. Seifert reported to the BdS, Dr. Wilhelm Harster, head of the security service and SD in Verona. At first, Dr. Harster assigned him no particular duties but after a few weeks Mr. Seifert started acting as Dr. Harster's personal guard. In Verona, he met Mr. Peter Makelke, who had arrived from Kiev. He also met several other men with whom he would later share guard duties. Many of them were ethnic Germans from the Soviet Union and Poland.

[51] After three or four weeks of guard duty for Dr. Harster, Mr. Seifert was assigned to the transit camp at Fossoli.

XII. Events at the Fossoli Camp

[52] Prior to 1944, the Fossoli camp had been used by the Italian army for prisoners of war. When it came under the control of Dr. Harster, it was used for the custody of those persons the security police and SD sent to it - mainly Jews and Italian partisans. The Fossoli camp was under the direct command of SS Lieutenant Karl Titho, Dr. Harster's former driver.

[53] When Mr. Seifert left Verona, Lieutenant Titho picked him up in the nearby town of Carpi and took him to the Fossoli camp. At the time, there was only a handful of German guards at the camp, as it was still under the control of Italian authorities. However, a few weeks later, the Italians left.

[54] While Mr. Seifert was at Fossoli, 67 Italian partisans were shot in reprisal for the killing of seven German sailors in Genoa.²⁵ Mr. Seifert and other guards had been ordered to dig a hole for the bodies. He heard the death sentence read out by a fellow guard named Gutweniger, but says he was not present when the shooting took place. He was ordered to intercept any escaping prisoners on the street nearby. But those who could get away took a different route through the adjacent apple orchard, so none came his way. Still, he fired toward the street as he had been ordered to do. After the shooting, he saw bodies being dragged into the hole by other guards. Other than the shooting, Mr. Seifert said that the only mistreatment of prisoners he saw at Fossoli was performed by Sergeant Hans Haage, who doused three women prisoners with a bucket of water.

[55] Mr. Peter Makelke was, like Mr. Seifert, originally from Ukraine – in fact, he was from Rastadt, a town not far from Mr. Seifert's hometown of Landau. He had made his way from Rastadt through the oil fields at Ploiesti, where he was put to work making repairs after the Allied bombing campaign. He then made his way to Krakow, Poland. In Poland, he was given orders to report to Verona. After presenting himself to the BdS in Verona and doing some clerical work for a few days, he was sent to the Fossoli camp where, in May 1944, he worked with Mr. Seifert. Both at the

Fossoli camp and at the Bolzano camp, Mr. Makelke was in charge of small arms. He says he does not remember the shooting of Italian prisoners at Fossoli.

[56] Soon after the shooting incident, the Fossoli camp was closed out of fear of the advancing Allied forces. Guards and prisoners moved to the Bolzano camp. As many as 2000 prisoners were transferred from Fossoli to Bolzano in August 1944.²⁶

[57] Mr. Seifert testified that he traveled by truck between Fossoli and Bolzano. At one point, a plane shot at the truck and it went into a ditch. A box of ammunition landed on his right ankle and broke it.

XIII. Conditions in the Bolzano Camp

1. General Layout

[58] Mr. Luca Pedrotti, who is a professional photographer, identified certain photographs of the Bolzano camp that had been taken by his late father, Mr. Enrico Pedrotti, after the war. Mr. Pedrotti stated that his father had been a prisoner at the camp for about five months near the end of the war. He visited the camp with his father on at least three occasions. On one of their visits, Mr. Enrico Pedrotti, who was also a photographer, took several pictures. The camp has since been demolished, so there was no way of viewing it other than through these photographs.

[59] The photographs show various wooden buildings with painted metal roofs and open common areas between them. I am satisfied that these photographs fairly represent of what the camp looked like a few years after the war. Some changes had taken place. Some of the buildings had been put to other purposes – for example, an automotive shop and a children’s summer camp – but, by and large, the camp was essentially the same as it had been during the war. Various witnesses confirmed this, although some remembered more than others.

[60] The camp was situated in an area of Bolzano called Don Bosco. When he was a young boy, Mr. Enio Marcelli played at the camp during summer holidays. He explained that, due to a shortage of housing after the war, some families took up residence in the camp’s barracks. He agreed that the photographs presented by Mr. Pedrotti depicted the camp accurately. Mr. Marcelli made a hobby of tracing the history of Don Bosco, including the Bolzano camp. He created a computer drawing of the camp’s layout based on a hand-drawn original found in a museum in Trento. Mr. Marcelli’s drawing was made an exhibit in these proceedings, but only after the designations of specific buildings and locations had been removed²⁷. This way, witnesses could be shown the drawing and asked if they remembered which buildings were which.

[61] The Bolzano camp was under the same command as the Fossoli camp. The commander was SS Lieutenant Karl Titho, assisted by Sergeant Hans Haage, who was chief of the *Schutzhaftlager*, the protective custody unit. While Bolzano was primarily a transit camp, it was also used as a police prison, where prisoners could be housed and interrogated on orders of the BdS in Verona or the KdS in Bolzano.²⁸

2. Prisoners' Memories of the Camp

(i) *Mrs. Theresa Scala*

[62] Mrs. Theresa Scala had been arrested in 1944 along with her cousin, Mr. Luigi Scala, because of their involvement in anti-fascist activities. Mr. Scala was sent to a camp in Mauthausen while Mrs. Scala was locked up in Turin. She was released after a month, on condition that she report every day to the SS. She was arrested again in July 1944 along with her brother, who was sent to Buchenwald. She escaped after a few weeks, but was free for only five days before being arrested again and returned to the SS prison. In November 1944, she was transported to the Bolzano camp and remained there until April 1945.

[63] Mrs. Scala said that her street clothes were taken away from her when she arrived at the camp and she was told to wear trousers and a top that were, essentially, rags. Her "uniform" displayed her prisoner number and a patch designating her as a political prisoner. She resided in the women's block. Outside the women's barracks was a fenced area. Next to her block were the barracks for dangerous prisoners, outside of which was another fenced area.

[64] Many women prisoners were allowed to work outside the camp, but not Mrs. Scala. She described her typical day as involving a wake-up call at 5:00 am, followed by a roll-call outdoors. The prisoners lined up in rows to be counted. They were served ersatz coffee, dry bread and a thin broth for breakfast. They were served the same meal in the evening after the second roll-call. During the day, they had to remain outdoors, no matter what the weather was.

[65] The interior of the women's block consisted of rows of bunk beds, covered in thin straw mattresses. Some women used rags as blankets, but there were no sheets or pillows. The barracks housed a few hundred women. The only source of heat was a barrel-type stove that burned wood shavings. It had little effect. There was no source of water or toilet facilities. The interior wall did not reach the ceiling, so it was possible to communicate with the male prisoners in the adjacent block.

[66] Mrs. Scala said that the camp's guards wore military uniforms, but their outfits differed from the usual SS uniform.

[67] For a time, Mrs. Scala was imprisoned in the camp's isolation cells after she was wrongly accused of supplying fellow inmates with tools to open up the railway cars that transferred prisoners to Mauthausen or Flossenbug. Her experience in the cell-block is discussed below.

(ii) *Mr. Mario Vecchia*

[68] Mr. Mario Vecchia was also a prisoner at the Bolzano camp. He had been a member of a unit of partisans in the Monferrato area of northern Italy. He was arrested in November 1944 and transported to Bolzano by bus. He resided at the camp until late April 1945. He said that his own garments were taken from him in exchange for a pack of clothes and underwear and a pair of wooden clogs. His clothing bore a red badge bearing an identification number. Other prisoners wore

different coloured badges – for example, yellow for Jews, and blue for hostages. His head was shaved in such a way as to leave a white stripe through the centre of his scalp.

[69] The camp's barracks each had a letter designation – A, B, C, D, and so on. Mr. Vecchia resided in G Block. During the days, he worked in the courtyards and helped build the foundations for the various workshops outside of the camp walls – the carpentry shop, the cobbler, the mechanical shop, the seamstress, etc. He was also a member of a work unit that helped repair damage caused by the bombing of a nearby railway. Sometimes, he worked in the carpentry shop making window frames and make-shift coffins. Once, he helped carry sand from a creek bed up to a chateau outside of Bolzano. He had a choice whether to work. He preferred to work because it allowed him to get out of the camp. He was not paid, but was given an extra piece of bread for his labour. Workers were always supervised by guards and would be beaten if they stopped working.

[70] Mr. Vecchia said that his meals consisted of a ladle of broth and a half-piece of bread. Everyone was hungry. Sometimes, prisoners tried to steal potato peelings from the Germans' garbage. The accommodation in G Block was very much the same as in the women's block – bunk beds, a single blanket, a small stove, no water or toilet facilities. Three hundred prisoners were housed there.

[71] Each day began with roll-call at 5:00 am. Mr. Vecchia said that guards would try to strike the prisoners with whips or sticks as they exited the block, and would hurl insults at them. The prisoners then lined up to be counted. This process could take hours if it appeared that a prisoner

was missing. Sergeant Haage would read out the names of prisoners who were to be transported to Germany. The prisoners were then served breakfast in their barracks before going to work. They returned at lunch-time. They worked until 5:00 pm, when another roll-call was taken and they were served their evening meal. After that, they were locked in their barracks. This daily routine was observed every day but Sunday, when the prisoners were excused from work and permitted an hour of free time in the courtyard.

[72] Mr. Vecchia's memory of the layout of the camp was quite detailed. Despite his failing eyesight, he was able to identify virtually all of the buildings and open areas of the camp. He was also able to identify the various buildings in the Pedrotti photographs.

(iii) *Mrs. Luciana Menici*

[73] Mrs. Luciana Menici was arrested in October 1944. She had acted as a messenger between groups of partisans in the mountains and their contacts in Milan. She was imprisoned in Edolo until early November and then taken to the Bolzano camp. She arrived in the evening and the next morning was given a uniform consisting of a grayish pullover, trousers, clogs, and a jacket with a white cross on the back. On her uniform was a badge with her prisoner number, 5929, as well as a triangular patch. The patches indicated each category of prisoner – yellow for Jews, red for political prisoners, pink for hostages, and blue for foreigners. She kept her own clothes under her pillow. Ms. Menici remained in the camp until February 1945 when she was transferred to Merano.

[74] Like Mrs. Scala, Mrs. Menici stayed in the women's block. She gave a similar description to Mrs. Scala's of the interior and exterior of the barracks. However, Mrs. Menici said that there was, indeed, a source of potable water in the women's block, as well as a rudimentary water-closet. Mrs. Menici also had a very clear memory of the layout of the camp and could identify the various buildings and common areas.

[75] Mrs. Menici said that two Ukrainian guards wore grey-green SS uniforms. She could not recall if their uniforms bore the SS lightning-bolt insignia. Other guards, the police guards, wore a different uniform. Sometimes, they wore caps with an eagle on them. Mrs. Menici said that only the higher officers, not guards, carried whips. They were small riding crops.

[76] Mrs. Menici said that she was never imprisoned in the cells or subjected to any abuse when she was at the camp.

[77] Mrs. Menici said that her day began at 6:00 am. The prisoners washed under a tap and then were served a breakfast of weak coffee and dark bread. Then the prisoners assembled for roll-call. After that, some of the women would leave to go to work. Some worked inside the camp, in the laundry or the tailor's shop, but Mrs. Menici usually worked just outside the walls organizing equipment and tools. She said that sometimes prisoners were able to supply tools to those who were being sent to Mauthausen or Dachau. They could use the tools to pry up the floorboards of the rail cars and escape (as mentioned, Mrs. Scala was suspected to be involved in this activity and was imprisoned in the cell-block as punishment). Mrs. Menici also worked at sewing on buttons and

repairing tents at another location outside the camp's walls, as well as at a military hospital. She was served broth and another piece of bread at lunch-time. A similar meal was served at the end of the day, around 5:00 pm, when she finished work. Another roll-call took place in the evening.

3. Guards' Memories of the Camp

(i) *Mr. Peter Makelke*

[78] Mr. Peter Makelke confirmed that prisoners wore badges to indicate their category – red for political prisoners, yellow for Jews, white for homosexuals. They wore civilian clothes. The prisoners were served soup and bread twice a day. Sometimes, prisoners were taken out of the camp to clean up or make repairs after a bombing. They were not required to do so. Prisoners were allowed to receive food and gifts from the local population and from home. He would inspect the packages before the prisoners could take possession of them. There was a source of running water where prisoners could wash.

[79] The guards wore boots but not gloves. They wore caps with an eagle and a death's head insignia. Only one guard carried a stick (an Austrian named Lanz), but no one had a whip. The general rule was that guards should not touch prisoners but the rule was not strictly enforced. However, he never saw any prisoners mistreated. Lieutenant Tithe gave the guards firm instructions not to misbehave.

[80] Mr. Makelke was promoted to sergeant while he was at the Bolzano camp. His role was to assign the guards to the various posts. For example, at night, there were guards in each of the four towers on the perimeter of the camp. During the day, they were positioned on the ground and at the front gate.

[81] Mr. Makelke said that in the spring of 1945, discipline at the camp softened somewhat because everyone realized the war was nearly over. The prisoners started getting more food and gradually began to be released. In fact, he was personally involved in taking prisoners out of the camp in a truck. When the war ended, he decided to stay in the Bolzano area, so he just put on his civilian clothes and walked up into the surrounding mountains. Other guards, he said, needed to get away because they feared reprisals from former prisoners. He never heard of any allegations against him for his behaviour at the camp. He stayed in the Bolzano area for nearly five years before traveling to Germany to connect with a cousin.

(ii) *Mr. Michael Seifert*

[82] Mr. Seifert said that when he arrived in Bolzano, the camp doctor put a cast on the ankle he had injured on the trip from Fossoli. He was confined to his quarters while his ankle healed. Four weeks later, it had still not healed so he was sent to hospital in Merano. He spent another three weeks there. He says his ankle still bothers him (although his family doctor's file indicates that there was no evidence of any abnormalities in the bones or muscles of his right foot when an x-ray was

taken in 1979).²⁹ Mr. Makelke remembered that Mr. Seifert had injured his ankle, but he did not recall seeing him in a cast.

[83] Mr. Seifert said he did not begin guard duty until he returned from Merano in November, 1944. His duties mainly involved patrolling inside the perimeter wall. Sometimes, he was assigned to the main gate. Other times, he opened the barracks to let prisoners out for the day. Once, he supervised a work crew that had been sent to repair machines from a ball-bearing factory. He was on duty for a maximum of two months before he himself was incarcerated in the cell-block. His rank was simply *SS-mann*, but he was promoted in 1944 to *gefreiter* or *sturmmann* – equivalent to a private.

[84] Mr. Seifert did not recall any fenced enclosures within the camp. He said that prisoners were free to walk around during the day. They wore civilian clothes, even wrist-watches, although their clothes did bear patches indicating their classification – political, Jewish, etc. Prisoners' heads were not shaved. Prisoners did not have to work, but many did so because they wanted to get out of the camp.

[85] Mr. Seifert said that prisoners were allowed to exchange their money for a kind of currency that was used in the camp. They could make purchases such as stamps, chocolate or soft drinks.

[86] Mr. Seifert said that he rarely spoke to prisoners except those who spoke German. For example, the block leader of the Communist prisoners was from Hamburg.

[87] Mr. Seifert claims he never saw any prisoners beaten or abused. In particular, he never saw Lieutenant Titho act harshly toward any prisoner. Titho was always friendly with them. Mr. Seifert says he did not see any executions, or any dead bodies in the camp.

[88] Mr. Seifert remembered several of the other guards at the camp – Otto Sein, from Estonia; Wilhelm Aplas, from Kiev; Peter Makelke from Rastadt; Artur Bartz; Albert Mayer; Konstantine Mayer; Eugen Hapvoff from Russia; Filipp Lanz, from South Tyrol; Mittermaier, from South Tyrol; Gottfried Pescosta; Karl Gutweniger.

[89] Mr. Seifert said that guards were addressed by their family names or rank, not their first names or any nicknames. He was called *Sturmmann* Seifert. He was unaware of any nicknames given to guards by the prisoners.

[90] Mr. Seifert said that a photograph showing him wearing a uniform with the SS lightning bolts on the collar³⁰ was taken when he was promoted to *gefreiter* in the fall of 1944. It was Sergeant Haage's idea to have him wear the SS uniform. Haage himself wore an SS uniform (but Titho wore an SD uniform). Although Mr. Seifert was not entitled to wear the SS uniform, Lieutenant Titho did not seem to mind. His previous uniform was field grey and may have had an SD badge on it – he could not remember for sure (however, he was sure that his uniform in Nikolayev did not have the SD badge on it). He always wore a hat because it was mandatory to do

so in the German forces. He carried a Beretta machine gun, but never used it or even pointed it at anyone. He never wore gloves or carried a whip.

XIV. Transports from the Fossoli and Bolzano Camps to Other Camps

[91] As mentioned, both Fossoli and Bolzano were designated as police transit camps. One document before the Court indicated that Lieutenant Titho had sent 63 Jews from Bolzano to Flossenbürg on orders from the RSHA in December 1944, and that they had arrived³¹. Another showed that 59 Italian Jews had arrived at Auschwitz from Bolzano in October 1944.³²

[92] Mr. Seifert said that he was aware of prisoners being transported to Germany, but he was never directly involved in that process.

XV. Treatment of Escapees at Bolzano

[93] Mr. Vecchia stated that Sergeant Haage made clear to the prisoners that escapees would be captured and killed. He recalled an announcement to that effect being made a morning roll-call when an escapee was dragged through the camp by his feet. He said that escaped prisoners could easily be identified outside the camp by their uniforms and their shaved heads. Mr. Vecchia also testified that prisoners were made to stand outside during air raids out of fear that they might escape if the camp was bombed.

[94] Mr. Vecchia stated that in late December 1944 he saw three men tied to the fence outside the dangerous prisoners' block, which was next to the women's block. He first saw them at morning roll-call, but it appeared to him that they had probably been tied up the night before because their hands were already purple. They were still there the next morning. The first morning, he thought they were alive, but he was sure they were dead the next day. The word at the camp was that the men had been caught trying to escape through a tunnel. On cross-examination, Mr. Vecchia mentioned for the first time that he saw the guard called "Sette" whip one of the men. In an earlier statement, Mr. Vecchia said that he had seen seven or eight men tied to the fence, not three.

[95] In a published article, a person who claimed to be involved in creating the tunnel stated that, when the participants were captured, they were returned to the Bolzano camp and confined to the cell-block. He did not mention the treatment described by Mr. Vecchia. Another participant said that the existence of the tunnel had been disclosed by fellow prisoners and those who identified themselves as having been involved were beaten. He did not mention any deaths.³³ Mr. Vecchia could not explain the discrepancies.

[96] Mrs. Menici had no memory of the incident described by Mr. Vecchia. She agreed that it would have been impossible to miss it.

[97] Later, in February or March 1945, Mr. Vecchia said that Sergeant Haage ordered the prisoners to assemble in the courtyard. They observed the guards known as "Sette" and "Otto" dragging a dead man by the legs through the courtyard to a point behind the cell-block. The man

had a bullet-hole in his forehead. Mr. Vecchia recognized him as a person from his barracks who had tried to escape. Mr. Vecchia did not mention this incident in his earlier statements about events at the camp.

[98] Mrs. Menici described an incident in which a boy was tied to a pole and beaten to death with a stick. Lieutenant Titho called the prisoners into the yard one evening, just before or just after Christmas 1944. He told the prisoners to observe what would happen to those who tried to escape. The boy was dragged into the courtyard by guards and tied up to a post. The guard known as "Misha" used the butt end of a rifle to beat him. She could recognize him even in the dark, but she did not recognize the other guards who were involved. She did not believe the boy had a bullet wound to his head. She thought he was still alive at that point, otherwise he would not have been beaten. The boy was still there the next morning at roll-call. Sergeant Haage took the opportunity to remind prisoners what would happen to them if they tried to escape. Mrs. Menici stated that this rule was repeated frequently.

[99] Mrs. Scala confirmed that the rule at the camp was that prisoners who escaped would be recaptured and killed.

[100] Mr. Makelke described an incident in which a prisoner who had attempted to escape had an altercation with a guard. The prisoner was shot and his body was brought back into the camp and placed within the fenced enclosure outside the women's block.

[101] On another occasion, he heard that there were some bodies by the cell-block, but he never saw them. He conceded that it would be possible to take bodies out of the isolation cells without being seen by the guards on duty. They could have been loaded on a truck and taken away without anyone seeing them.

[102] Mr. Makelke remembered that a tunnel had been discovered at some point. He had taken a look at it. He could not recall when the discovery was made or what happened afterwards. He thought the tunnel was simply closed up.

[103] Mr. Seifert said that he never saw any captured escapees, or any other prisoners, tied to a pole or a fence. He conceded, however, that guards were under orders to shoot prisoners who escaped. Prisoners knew what would happen to them. He said that no one tried to escape because everyone knew that the war was almost over.

XVI. Deaths at Bolzano

[104] A report, known as the Schoster Report, prepared shortly after the end of the war, referred to a number of deaths that had occurred in the Bolzano camp.³⁴ The report mentions the execution of prisoners at the Bolzano camp in September 1944 on orders from the BdS Verona. It also refers to the deaths of seventeen prisoners during the period from January 1, 1945 to April 30, 1945. Eight of those prisoners died in the cell-block. Various causes of death are mentioned. Mr. Seifert's name appears in this report, but the Minister concedes that this does not prove that Mr. Seifert was

responsible for the killing or mistreatment of any prisoners.

[105] Death certificates from the town of Bolzano correspond with the cell-block deaths cited in the Schoster Report. However, the death certificates do not mention any cause of death.³⁵

[106] Lieutenant Titho gave various statements after the war in which he made allegations against Mr. Seifert. For example, in 1965, he stated that he had heard that Mr. Seifert and Mr. Sein had murdered an Italian prisoner.³⁶ In a later statement, he said that he did not know any details of this alleged crime and had never seen a body.³⁷ Lieutenant Titho did not profess any direct knowledge of any murders.

XVII. Charge, Prosecution and Detention of Mr. Seifert

[107] Mr. Makelke described an evening when he and Mr. Seifert, along with some other guards, went to a party in the town of Bolzano. At some point, the party got quite rowdy. Mr. Makelke and a guard named Eugen Hapvaff decided to leave. The next day, a young lady came to the camp to see Lieutenant Titho. She accused Mr. Seifert of rape. Mr. Seifert was arrested and put into the cell-block along with Otto Sein. Mr. Makelke said he attended the trial against Mr. Seifert, which took place in a villa outside the camp. The court was presided by an SS Captain. All the guards who were off-duty were ordered to attend. Mr. Makelke heard the sentence imposed on Mr. Seifert – nine and a half years' imprisonment for rape. Mr. Makelke said that there was no prohibition against consorting with local women. He and Lieutenant Titho both had local girlfriends.

[108] Mr. Seifert admitted that, while he was a guard at Bolzano, he had had sex with an Italian woman, which was a military offence at the time. He said that he had gone out drinking in Bolzano one evening with Otto Sein and Peter Makelke. On their way home, at about 2:00 am, an Italian woman appeared at a second-storey window and exposed herself to them. She then came to the door and led Mr. Seifert and Mr. Sein to the basement. After he had consensual sex with her, he returned to the camp. The next morning, Sergeant Haage appeared and asked him to surrender his gun. He was arrested, taken to the cell-block and locked up with Mr. Sein. He believed this took place in November 1944.

[109] Mr. Seifert said he was confined to the cell-block until just before Christmas 1944, when he was tried and convicted. SS Captain Guido Held, who had been sent from the SS and Police Tribunal in Verona,³⁸ presided over the trial. The SS and Police Tribunal had jurisdiction over SS members, the staff of the SS and Police Leader, and members of police units engaged in special operations³⁹. (This is further evidence of Mr. Seifert's service in the SD.)

[110] Mr. Seifert said that the complainant was present at the trial, but did not testify. He was found guilty of associating with the enemy and sentenced to four years and nine months' imprisonment, to be served after the war. Mr. Sein was sentenced to over five years. Mr. Seifert insisted that he was convicted merely of the military offence of associating with the enemy, not rape. Mr. Makelke's and Lieutenant Titho's girlfriends were ethnic Germans, not Italian, so that was

not a problem.

[111] Mr. Seifert said that he and Mr. Sein, although confined to a cell within the cell-block, were free to use the bathroom down the hall. Their door was not locked. They also continued to enjoy the food given to guards, which was superior to the prisoners' food. Mr. Seifert said they remained in the cell-block until about ten days before Hitler's birthday in April 1945. He said that after he was released he was no longer on duty in the camp. He left the camp shortly thereafter, on May 1, 1945.

[112] Mr. Seifert mentioned several times that he was in the cell-block from the time he was charged in the fall of 1944 until early April 1945. Yet, he also maintained that he was incarcerated for a maximum of two and a half months. He later said that the two and half months were prior to his court date, so the total period of incarceration was about five months. The Schoster Report notes that Mr. Seifert was incarcerated from December 1944 to April 1945.⁴⁰

XVIII. The Cell-block at Bolzano

[113] Mrs. Theresa Scala was imprisoned in the isolation cells after she was wrongly accused of supplying prisoners with tools to open the railway cars that transferred prisoners out of the Bolzano camp. She spent several weeks in isolation. Her cell measured about 1.5 metres wide and 2.5 metres long. It contained two bunk beds and a small air vent high on the exterior wall.

[114] She saw the two guards who were assigned to the cell block when her cell door was opened in the evening at meal time. The guards ladled out broth and were assisted by two prisoners. Prior to her incarceration, she had noticed these two guards walking from the cell block to the mess hall where they ate their lunch. She said they were known in the camp as the “Two Ukrainians” and their names were “Misha” and “Otto”. She did not know which was which. One was tall and sturdy with a ruddy complexion. The other was thin and dark. They were both in their early 20s and spoke German.

[115] Mrs. Scala testified that the cell next to her was occupied by a priest, Don Gaggero, to whom she could speak through the hollow brick wall. She said that Don Gaggero warned her that she would hear terrible sounds of crying and shouting during the night. Indeed, she did hear those sounds and one evening, she said, she saw the source of the cries. That night, the bolt to her cell door had not been latched and she was able to see through a crack. She said that she saw one of the two guards poke a young prisoner in the eyes while the other held him. The guards were laughing. The next night, and the following night, she heard more cries. She never saw the young prisoner again.

[116] Documentary evidence⁴¹ and Don Gaggero’s autobiography⁴² suggest that Mrs. Scala confused the dates when she was in the cell block. Don Gaggero was sent to Mauthausen in December 1944. In his book, he does not mention Mrs. Scala as being among the prisoners in the cell block. Indeed, he said he was the only prisoner there, except for a young Italian Jew whom he thought was planted there to inform on him. Nor does he describe the torture of the young man Mrs.

Scala claimed to have witnessed. The same documentary evidence placed Mrs. Scala in the cell block from January 9th to February 11th, 1945. Therefore, it supports her testimony that she was in the women's block during Christmas 1944, and was put into the cells sometime later. However, it contradicts her evidence that she was in the cell block at the same time as Don Gaggero.

[117] Mrs. Scala stated emphatically that she was never struck or tortured while in the cell block. In fact, she had not seen any killings or dead bodies in the camp at all. Nor did she see any bodies taken out of the cell-block area.

[118] Mr. Seifert stated that he never entered any of the other cells while he was a prisoner at the cell-block. Nor was he involved in the serving of the prisoners' meals. He said that the prisoners came out of their cells one at a time to be served in the corridor. Then they would return to their cells with their bowls of broth. He says he was not a guard at the cell-block. In fact, he said that there were no guards assigned to the cell-block. An official would visit the cells once or twice a week to check on prisoners. Mr. Seifert had no memory of Don Gaggero.

[119] Mr. Seifert confirmed that the cells were used not just for prisoners from the camp but also for persons put into custody by the KdS in Bolzano.

XIX. Identification of Mr. Seifert at Bolzano

[120] Mrs. Scala testified that she saw a photograph of “Misha Seifert” in 1999 in the newspaper “La Stampa”⁴³ in which it was reported that he had been found in Canada. She said that she recognized him as one of the two guards assigned to the cell block. In the article, the author had stated that most of the camp’s prisoners were now dead. Mrs. Scala contacted the author to let her know that she was very much alive. She was interviewed by the newspaper in a follow-up story.⁴⁴ She also appeared on television programs about the camp. She was then contacted by a military prosecutor named Dr. Vittore Constantini. He showed her various photographs of German soldiers. She recognized one of them as being one of the “Two Ukrainians”. She stated that “afterwards, I learned that it was Misha Seifert”.

[121] In the La Stampa article, Mrs. Scala described both Ukrainians as being blond. She conceded that she relied on the newspaper story to make the connection between the “Misha” she knew to be a guard at Bolzano and the “Michael Seifert” who was found in Canada. Before that, she did not know his family name.

[122] Mr. Vecchia recalled two Ukrainian guards at the camp who were nicknamed (in Italian) “Sette” and “Otto” (corresponding to the words, “seven” and “eight” in Italian). He assumed these nicknames came from the guards’ surnames. These two guards were among those who struck the prisoners when they exited the barracks for roll-call. He said the two of them were always together.

[123] Mr. Vecchia did not mention “Sette” and “Otto” in his earlier statements to Italian authorities. He said that he failed to mention them because he was asked only about Sergeant Haage.

[124] Dr. Constantini showed Mr. Vecchia the same photographs shown to Mrs. Scala. However, Mr. Vecchia was not sure which of the photographs he had identified as being of Mr. Seifert. He was only able to narrow the choice down to four of the six photographs he was shown. Later, the prosecutor showed him a photograph of Mr. Seifert and told him that “it’s this one”. He learned the name “Seifert” at the trial that took place in Italy. Before that, he knew the two Ukrainian guards only by the names “Sette” and “Otto”. He described “Sette” as blond and round-faced with a high-pitched voice. “Otto” looked the same but had slightly darker hair. He said they dressed differently from the other guards, with black boots, black gloves and a whip. Mr. Vecchia conceded, however, that he saw these two guards rarely because of his work responsibilities. He sometimes saw them when he left for work. He believed they were assigned to the cell-block. In an earlier statement, Mr. Vecchia was not able to describe the two Ukrainians and did not remember their names. He conceded that he may have actually heard the names “Sette” and “Otto” and “Misha” in recent years from other former prisoners.

[125] Mrs. Menici said that a guard named “Misha” was often on duty at the main gate and frequently shouted insults at the prisoners. She also said that the “Two Ukrainians” were the only guards who did not wear hats which she took to be an indication that they put themselves above the

others. She knew them as the “Beasts”.

[126] Mrs. Menici says she remembered Mr. Seifert as being the guard called “Misha”. She later conceded, though, that she did not recall the name “Misha” until she was reminded of it recently, after giving statements to Dr. Constantini. Possibly, she heard other witnesses use that name during proceedings against Mr. Seifert in Italy. She was present in the courtroom during some of the testimony, as were other witnesses.

[127] According to Mrs. Menici, “Misha” was considered by some prisoners to be a particularly tough guard. She described him as being of medium height, with high cheekbones, a round face and expressionless eyes. She could not describe the other Ukrainian guard. When shown Dr. Constantini’s photographs, she thought that two of the faces were familiar, and thought that they might be of the same person, one of the two Ukrainian guards, but she was not sure which. Among the photographs Dr. Constantini showed her was an enlarged picture of the person she came to call “Misha”. In an earlier statement given to Dr. Constantini, Mrs. Menici described Misha as being stocky with blue eyes and a fringe of blond hair falling across one eye.

XX. Mr. Seifert’s Response to Allegations Against Him

1. Torture, Beatings and Killings

[128] As mentioned, Mrs. Scala testified that Mr. Seifert had either poked a prisoner's eyes or held the prisoner while another guard poked him. She said she never saw any other misconduct by Mr. Seifert in the camp.

[129] Mr. Seifert denied Mrs. Scala's accusation that he and Sein had poked a prisoner's eyes out. He said he had nothing to do with the prisoners in the cell-block. Mr. Seifert also denied being involved in the incident described by Mr. Vecchia – the dragging of a dead escapee through the camp. Further, Mr. Seifert denied any knowledge or involvement in the killing of an escapee, as described by Mrs. Menici. He says that he would have been in custody in the cell-block from before Christmas 1944 until the spring of 1945.

[130] As mentioned, Lieutenant Titho said in some statements he gave after the war⁴⁵ that he had heard that Mr. Seifert, along with Otto Sein, had been involved in the murder of an Italian prisoner in the cell-block. Mr. Seifert adamantly denied any involvement in any deaths. Mr. Seifert could not explain why Titho, a man he considered a friend, would denounce him.

2. Easter Mass at Bolzano

[131] Mr. Vecchia testified that Easter Mass was celebrated at the camp in the spring of 1945. About 30 or 40 prisoners attended the service, which took place in the courtyard area. During the mass, he heard screams coming from the cell-block. The priest raised his voice to be heard over the cries. The choir of local girls also raised their voices. Looking in the direction of the cell-block, he

saw “Sette” and “Otto” carrying a person in a military blanket. The screaming lasted about fifteen minutes.

[132] Mr. Vecchia was questioned regarding another prisoner’s detailed diary account of the Easter Mass in which no reference is made to any of the events Mr. Vecchia described⁴⁶. Another prisoner’s later account of the mass also omitted any mention of screams or the carrying out of a body from the cells. Mr. Vecchia could not explain the discrepancy.⁴⁷

[133] Mr. Seifert said that he had no knowledge of the events described by Mr. Vecchia on Easter Sunday 1945. Mr. Seifert testified that he would have still been imprisoned at the time and was unaware of any Easter celebration. He denied carrying a body out of the cells during Easter Mass.

XXI. Findings Regarding the Bolzano Camp

[134] I am satisfied that the Bolzano Camp was a thoroughly unpleasant place for the men and women who were incarcerated there in 1944-45. The witnesses before me made this abundantly clear. I am grateful to them for their testimony, and their willingness to relive dreadful memories to assist the Court in making its findings of fact.

[135] As part of his regular guard duties, I am satisfied that Mr. Seifert would have been involved in assembling prisoners for roll-call, supervising work details, patrolling the gates and perimeter of the camp, and escorting prisoners to the trains destined for concentration camps. However, I am not

satisfied that any of the particular acts of torture and killing of prisoners alleged against him have been proved.

[136] I have mentioned the identification evidence above (see Section XIX). I find that there were problems in the manner in which photographic evidence was put before the witnesses by Italian officials which weakens the witnesses' testimony in this area. Further, there has been contamination of the identification evidence through the media and through exposure of the witnesses to each other's testimony. These difficulties relate not just to the physical image of Mr. Seifert, but also to his given name, his family name, and any nickname the prisoners may have given him at the camp. Indeed, were it not for Mr. Seifert's admission that he served as a guard at the Bolzano camp, I might have found it difficult even to make that finding.

[137] It does seem clear, though, that there was a pair of guards, known as the "Two Ukrainians" who had a reputation for treating prisoners particularly harshly. Given the weak identification evidence, it would be difficult to conclude that Mr. Seifert was one of them. There were other Ukrainian guards at the camp, including Mr. Makelke (but not including Otto Sein), so it is difficult to accept that Mr. Seifert would have stood out on that basis alone. But even if Mr. Seifert was one of the "Two Ukrainians", it is quite possible that their reputation for brutality was a product of prisoners' gossip and assumptions, rather than conduct that could be attributed to them directly.

[138] Witnesses referred to the phenomenon of the "prison radio" – the exchange of information from prisoner to prisoner by word of mouth, whether in the courtyard, on work details, or passed

through openings in the walls between barracks. Any reputation that prisoners attributed to Mr. Seifert and Mr. Sein may have been caused or exacerbated by their convictions and incarceration in the cell-block. Prisoners may have perceived them to be responsible for any events that happened in the cell-block between December 1944 and April 1945, when, in fact, it is likely that much of the alleged mistreatment of prisoners in the cell-block was at the instance of the KdS Bolzano, the BdS Verona, Sergeant Haage (as head of protective custody at the camp), or Albino Cologna (who was tried, prosecuted and convicted for his conduct in the cell-block after the war)⁴⁸.

[139] Accordingly, I am not satisfied that the allegations against Mr. Seifert as set out in the Statement of Claim (see para. 11 above) have been proved on the balance of probabilities. Indeed, in respect of most of the allegations, there is simply no evidence before me. In respect of additional accusations made by former prisoners, again, I cannot find that they have been proved. The identification of Mr. Seifert as the perpetrator of those specific acts is weak. Further, events that should have been seen and corroborated by others were not. Some of the alleged events occurred in the dark (the beating of an escapee described by Mrs. Menici and the torture of a young prisoner in the cell-block described by Mrs. Scala). There are inconsistencies in the descriptions of events given by witnesses in their various statements. A lot of time has passed. I hasten to state that I am not suggesting that witnesses fabricated evidence, or even that they are mistaken. I simply conclude that, based on the evidence as a whole, I am not satisfied on the balance of probabilities that Mr. Seifert is responsible for the events witnesses described.

[140] I do find, however, that Mr. Seifert was convicted in 1944 of the more serious offence of sexual assault, not merely of associating with the enemy. I base this finding on the gravity of the sentence imposed on him and the formality of the proceedings taken against him.

XXII. Travel from Bolzano to Lutenrode

[141] Mr. Seifert testified that near the end of the war officers burned the camp's records. He left the camp on May 1, 1945, a week before the war ended. He traveled in a truck with Sergeant Haage, Walter Lessner, Otto Sein and another soldier up into mountains near Bolzano. They stayed the first night at a farm northeast of the camp. The farmer's wife gave him some civilian clothes so that he could discard his uniform. They could go no further by truck so, the next day, they continued on foot toward Germany. He decided to go to Germany because he spoke the language and he hoped to reunite with his parents. His last letter from them indicated that they were in Rügen, an island in the Baltic Sea. He did not want to go there, however, as he believed it was under Soviet control at the time. He felt that if he returned to the Soviet Union, he would have been shot for treason.

[142] Mr. Seifert and Mr. Sein were picked up by the American *Fliegende Streife*, the flying squad, and taken to Bad Reichenhall. He was taken before a German officer, who asked him questions about his place of birth and military service. He no longer had any money or identification papers. He said that these had been taken from him by an American soldier. He had previously burned his passport and birth certificate in Bolzano before he left the camp. When he explained to the officer that he was from Ukraine, the officer said that this was a problem, but that he would

“think of something.” By contrast, Mr. Sein’s place of birth, Estonia, did not present a problem. (Presumably, this was because the Soviet Union’s claim to Estonia was not recognized by the West, so there was less risk of a person born in Estonia being repatriated).

[143] When the officer returned, he presented Mr. Seifert and Mr. Sein with dismissal slips. Mr. Seifert’s slip gave his place of birth as Narva, Estonia (the same as Mr. Sein’s). It was dated May 23, 1945. It also stated that Mr. Seifert had never been a German soldier and had been released from the prisoner of war camp at Bad Reichenhall with the consent of the American commander.⁴⁹ Mr. Seifert believed that the officer assumed that he was a migrant worker because he was in civilian clothes at the time. The officer told him that when things calmed down after the war, he should resume using his correct place of birth. Mr. Seifert never made the correction.

[144] From Bad Reichenhall, Mr. Seifert traveled north-east, toward Hannover. He avoided going too far east because he was afraid of encountering Soviet troops. From Hannover, he went west to Lutenrode, where he found work on a farm owned by Mr. Wilhelm Ahlborn. He arrived on August 20, 1945. When he registered with local authorities, he gave his birthplace as Narva, Estonia.⁵⁰ He stayed in Lutenrode for about two years and then moved to Eddigehausen, where he lived with and worked for a farmer named Mr. Otto Gastrock.⁵¹ He stayed there until he left for Canada in 1951.

XXIII. Applying for a Canadian Visa

[145] While Mr. Seifert was working in Lutenrode, he encountered Mr. Walter Lessner in Bovenden. Mr. Lessner had been the paymaster both at the Fossoli and Bolzano camps. Mr. Lessner invited him for lunch at his home.

[146] Mr. Makelke testified that he also bumped into Mr. Lessner in 1951. Mr. Lessner told him that Mr. Seifert was in the region. Mr. Makelke said he was not keen to renew his acquaintance with Mr. Seifert but, nevertheless, ended up meeting him at Mr. Lessner's home for lunch. They both expressed their hope of immigrating to Canada.

[147] Mr. Seifert says he was keen on moving to Canada because he was afraid of living and working so close to the Soviet border. He understood that the Yalta Agreement required Soviet citizens to be repatriated, and he was afraid of the consequences if he returned to Ukraine. Lieutenant Titho had explained this to him when Mr. Seifert visited him in Detmold in 1947. Mr. Seifert said that Soviet troops were able to locate former Soviet citizens through records kept by local mayors. They conducted raids during the night in order to repatriate former citizens forcibly. In addition, Mr. Seifert said he was obviously interested in improving his economic circumstances by moving to Canada.

[148] Based on instructions he received from the Canadian consulate in Hannover, Mr. Seifert obtained a birth certificate, a passport and references from his doctor and a Protestant minister to support his application for a Canadian visa. To get the necessary documents, he swore a statutory

declaration giving his birthplace as Narva, Estonia.⁵² That information made its way into his passport, issued in Göttingen on July 6, 1951.⁵³

[149] When he returned to Hannover with the required documents, a Canadian official approached him in the line-up and asked him if he wanted to go to Canada. Mr. Seifert followed the official and an interpreter into the building and presented his documents. When the official, who spoke both German and Russian, asked him about his activities during the war, Mr. Seifert lied. He said that he had been in Italy working as a horse-handler with the Cossacks. He says that he felt compelled to lie. He was afraid that if he had told the truth, he would not have been allowed to go to Canada. He was aware that there was a lot of concern about what had transpired in some of the camps, such as Auschwitz, during the war. Even though the Bolzano camp he served in was nothing like Auschwitz, Mr. Seifert felt, as a former camp guard, he would not be allowed into Canada. Had he told the truth, Mr. Seifert felt sure he would have been sent back to the Soviet Union.

[150] Mr. Seifert also lied about his place of birth. He explained that he was still worried that he might be repatriated to the Soviet Union if he had said that he was born in Ukraine. And, if that had happened, he would have been sent to Siberia or shot.

XXIV. Security Screening of Prospective Immigrants⁵⁴

1. The Balance Between Security Concerns and Increased Immigration

[151] Until 1950, Canadian immigration matters were dealt with in the Department of Mines and Resources. In 1950, a new *Immigration Act* was enacted, which created a Department of Citizenship and Immigration. These developments grew from an increased awareness, both within Cabinet and the public service, that immigration policy was a matter of pressing significance in the post-war years. Prior to the war, Canada's immigration policy was focused mainly on grounds for prohibiting, rather than receiving, immigrants. However, after the war, Canada was interested in welcoming greater numbers of immigrants. Yet, officials remained concerned about the suitability of some of those wishing to establish themselves in Canada. Prime Minister Mackenzie King declared his view of the direction of Canadian immigration policy in a speech delivered in the House of Commons on May 1, 1947.⁵⁵ The Prime Minister made clear that Canada was interested in welcoming greater numbers of immigrants, particularly those displaced by the war, and that new immigration rules were to be established by legislation, regulation and administrative action.

[152] Since 1923, prospective immigrants to Canada had been required to have a visa issued by a Canadian visa office.⁵⁶ Further, as early as 1945, Cabinet directed that new entrants to Canada be screened by the RCMP for security purposes.⁵⁷

[153] In 1946, Prime Minister Mackenzie King established a committee called the Security Panel whose role was to consider and provide advice on issues relating to the security of Canada generally, including security issues arising in the immigration context. The Security Panel was chaired by Mr. Arnold Heeney, who was Secretary to the Cabinet. Other members included staff

members of the Privy Council Office, External Affairs and National Defence, as well as representatives of the various armed forces and the RCMP. The Panel first met in June 1946.⁵⁸

[154] At the Security Panel's second meeting, in July 1946, it considered whether there was adequate legal authority to refuse entry to prospective immigrants on security grounds. It established a sub-committee to investigate the matter further.⁵⁹ The sub-committee reported back and recommended an amendment to the *Immigration Act* prohibiting entry to Canada by members of particular groups. However, when the responsible Minister brought the proposal to Cabinet, it was not accepted. Rather, the decision was taken to deal with security screening of prospective immigrants by other means; that is, by administrative action.⁶⁰

[155] The Security Panel also decided in July 1946 that assistance should be sought from the British Foreign Office in setting up a system of security screening. The British agreed, and RCMP officers were dispatched to London to begin their work in the fall of 1946.⁶¹ The RCMP discovered that there was a large backlog of applications waiting for screening in London. In due course, Cabinet was asked to provide direction as to how the RCMP should proceed in the circumstances. In essence, Cabinet left it to the RCMP's discretion to decide how and where to conduct security screening.⁶²

[156] The RCMP sought further guidance from Cabinet in 1949. Again, Cabinet left the matter to the RCMP to deal with. The criteria the RCMP were using at the time were set out in a memorandum sent to Prime Minister Louis St. Laurent on September 21, 1949.⁶³ Persons excluded

from Canada on security grounds included members of the “SS or German Wehrmacht and found to bear mark of SS blood group (non-Germans)”. It did not mention the SD specifically.

[157] In March 1950, Cabinet passed an Order-in-Council making German nationals with relatives in Canada and ethnic Germans who had not been citizens of Germany prior to September 1, 1939 eligible for admission to Canada.⁶⁴ This policy shift was reflected in an official circular of the Department of Citizenship and Immigration.⁶⁵ An additional Order-in-Council, PC 1950-2856, came into force on July 1, 1950, making eligible for entry to Canada those persons who could establish their suitability “having regard to the climactic, social, educational, industrial, labour, or other conditions or requirements of Canada”. A further Order-in-Council that year removed German nationals from the category of enemy aliens.⁶⁶

[158] In August 1950, the exclusion of former Nazi party members was also relaxed.⁶⁷ The Commissioner of the RCMP instructed officers in the field not to exclude immigrants on the basis of membership in the Nazi party.⁶⁸ This loosening of eligibility for entry to Canada gave rise to a reconsideration of the criteria used to screen out potential entrants. When the Security Panel was asked for its advice in the fall of 1950, it confirmed that persons who were members of certain organizations, including the SD, should continue to be excluded, but it also stipulated that this prohibition should not extend to persons in German-occupied territories who might have been pressured to serve in the German forces.⁶⁹

[159] In July 1951, the Security Panel advised that membership in the Waffen SS should no longer be considered a basis for blanket exclusion of immigrants.⁷⁰ This advice was based on information about the pressure imposed by German forces on young men to enlist, particularly in the Baltic states. As a result, those who could establish that they had been conscripted into the Waffen SS were considered admissible. The RCMP remained concerned about Waffen SS members, whether conscripted or not, and continued to apply the previous criteria strictly. The following year, the Security Panel formally confirmed its general position that members of particular organizations should continue to be screened out, but it also repeated its policy on conscripted members of the Waffen SS. The RCMP took the position that only those persons who had been conscripted after the end of 1943 were eligible for entry to Canada.⁷¹

[160] Security screening involved research into various sources of intelligence. For prospective immigrants from Germany, for example, important sources of information were the Berlin Document Centre and the Criminal Record Centre in Hamburg. Allied sources, such as MI6 or the U.K. Home Office, would also be consulted on a regular basis. Due to backlogs, however, it was recognized in early 1951 that the primary tool of security screening was the personal interview with the applicant, even though it had its obvious limitations.⁷²

[161] On May 15, 1952, the Security Panel again identified the particular groups whose members ought to be excluded from Canada.⁷³ Those groups included “former members of the SS, the *Sicherheitsdienst*, the *Abwehr*, the Gestapo and any former member of the Nazi Party who under Allied Control Council Directive 38 of October 12, 1946 was classified as a major offender or

offender.” “Major offenders” included active members of the Gestapo, the SD and the SS.⁷⁴ It also advised that “particular care should be taken to exclude persons who were responsible for brutalities in concentration or labour camps.”⁷⁵

[162] The Security Panel’s decision can be read in two ways. First, it can be read as prohibiting all members of the SS, SD, *Abwehr* and Gestapo absolutely, as well as members of the Nazi party who came within the categories of “major offender” or “offender”. Alternatively, it could be read as prohibiting members of the SS, SD, *Abwehr*, Gestapo and the Nazi party, *only* if they fit within the categories of “major offender” or “offender”. RCMP Inspector William Kelly seems to have interpreted the decision in the latter manner. However, having analyzed the Security Panel’s decision, he prepared a simplified list of prohibited groups for use by officers in the field.⁷⁶ In effect, his list is consistent with the first interpretation of the Security Panel’s instruction to the extent that he would exclude all members of the named organizations absolutely. Inspector Kelly’s list did not make reference to Allied Control Council Directive 38; nor did it use the terms “major offender” or “offender”. Instead, based on his interpretation of the Security Panel’s guidance and his analysis of the Allied Control Council Directive itself, Inspector Kelly’s conclusion was that all former members of the SD, for example, were, by definition, “major offenders”. It was unnecessary, therefore, for there to be any reference to that term, or to the Directive itself, in the instructions given to officers overseas. Inspector Kelly’s list appears to be consistent with the criteria that were being applied in the field as early as December 1950,⁷⁷ and in place at the time that Mr. Seifert applied to enter Canada.

[163] Accordingly, persons who were former members of the SS or SD would have been screened out on security grounds if they applied for a Canadian visa in 1951. Former camp guards would have received particularly close scrutiny. Some allowance might have been given to persons who could show that they had been pressured to join the German forces, particularly in the Baltic States. Mr. Seifert did not claim to be under any particular pressure to serve in the German forces. He simply needed a job.

2. The Security Screening Process

(i) *Visa Officers*

[164] Mr. J.A.W. Gunn served as fighter pilot in the RCAF during WWII and, after returning from the war, took up a position in the immigration branch of the Department of Mines and Resources. He started out working at the Dorval Airport examining entrants to Canada – tourists, business people, and prospective immigrants. In January 1954, he was transferred to the Canadian Embassy in Brussels where he was employed as a visa officer. When he first began his work in the immigration area, the prevailing government policy on immigration was set out in Order in Council PC-695, dated March 21, 1931 and entitled “General Prohibition to Admission”.⁷⁸ In general terms, it prohibited entry to Canada except by members of certain specified groups. Over time, as discussed above,⁷⁹ Cabinet amended that order to allow greater numbers of immigrants into Canada.

[165] Mr. Gunn described the process of security screening of persons seeking entry to Canada. The process was the responsibility of the RCMP. Visa officers were not involved in security screening. Rather, “visa control officers”, who were members of the RCMP, performed that function. According to the instructions given to immigration officers in 1947, persons who served with the enemy in any capacity during the war were not eligible for entry to Canada.⁸⁰

[166] Mr. Gunn explained that persons seeking entry to Canada had to complete a form called an “OS8”. In an overseas office, the OS8 would be reviewed by a visa officer to see if the person was eligible for admission to Canada. It included a range of personal information about the applicant and his or her employment history since 1939 (the latter was not originally included on the form⁸¹ but was captured separately; later, the form was changed⁸² so as to include it). The applicant would also have to supply supporting documents, such as a police certificate. If the documentation appeared to be in order, it would then be sent to a visa control officer, who would conduct the security screening. Security screening was sometimes referred to as “Stage B” of the processing of a visa application. While the screening process was being carried out, the applicant would be asked to supply any additional documentation required and undergo a medical exam. After the security screening and medical clearance processes were completed, the visa officer interviewed the applicant. Only if the applicant passed security screening could he or she be granted a visa. Similarly, if the person was found to be medically unfit (*e.g.* suffering from tuberculosis), the visa officer would not issue a visa. The visa officer always checked the applicant’s file to see if he or she had “Passed Stage B”.

[167] At the interview, the final stage in the visa application process, the visa officer attempted to determine whether the applicant was likely to become successfully established in Canada. In other words, not all persons who passed the security and medical clearances obtained a visa. The visa officer had the ultimate discretion whether to issue a visa.

(ii) *Visa Control Officers*

[168] Mr. D.D. Cliffe was a flight engineer in the RCAF during WWII. After the war, he joined the RCMP. In 1951, he was posted to Italy (Rome, Naples and Genoa) as a visa control officer. In 1953, he was transferred to Germany, then to Sweden, Finland and Switzerland. He returned to Canada in 1958.

[169] As a visa control officer, Mr. Gunn explained, his role was to apply the criteria for rejecting visa applicants on security grounds. Once he received the applicant's OS8 form, he would ask local (e.g. Italian, German, etc.), as well as British and American authorities for any records on the person. In order to check those records, it was important to know the applicant's date and place of birth.⁸³ He would then question applicants about their past, particularly their activities during the war. Applicants did not give their answers under oath, but they were instructed to tell the truth. Applicants could be rejected for being evasive or untruthful. Based on the information at his disposal, Mr. Gunn would stamp the applicant's OS8 form with either "Passed Stage B" or "Not Passed Stage B". In the latter case, he would prepare a report giving his reasons, but the applicant was never informed of those reasons.

[170] Mr. Cliffe described the situation in Germany when he was posted there in 1953. In contrast to the situation in Italy, where applicants usually had numerous supporting documents, in Germany applicants had little. German nationals would usually have a birth certificate and passport, but resident aliens had few documents. Canadian immigration authorities relied on interviews to get the information they needed. Overall, though, the screening process was essentially the same as it had been in Italy.

[171] Mr. Cliffe said that he would reject members of the SD on the basis of his understanding, and written instructions, that SD members were also members of the SS. The original rejection criteria he was asked to apply included “Members of the SS or German Wehrmacht, found to bear mark of SS blood group (non-Germans)”.⁸⁴ If an applicant had stated that he was a camp guard during the war, Mr. Cliffe would ask for particulars about the camp, its location and purpose, the applicant’s duties, what kind of uniform he wore, the kinds of prisoners that were being held in custody, and so on. Mr. Cliffe confirmed that members of the SS had to swear an oath of loyalty to Adolf Hitler. They wore a distinctive uniform, whether in the Waffen SS or the Allegemeine SS, and SD members had a special patch on the sleeve of their uniforms. If he had encountered an applicant who admitted that he had worn an SD uniform, carried a weapon, and served within the structure of the SD, he would have excluded him under the prevailing criteria. In his experience, camp guards were generally SS members and were not permitted to enter Canada.

XXV. Security Screening of Mr. Seifert

[172] Mr. Seifert's German passport⁸⁵ was issued on July 6, 1951 in Göttingen. It indicates that he was issued a visa by an officer named J.M. Logan under the authority of PC-2856 on July 19, 1951 in Hannover. The passport shows that Mr. Seifert also received an Assisted Passage Loan, which he repaid in 1953. The passport bears the stamp of a medical officer dated July 16, 1951.

[173] Mr. Cliffe testified that he knew the visa control officer in Hannover in 1951, Mr. Fontanne, who spoke German and Russian fluently. Dr. Angelika Sauer, Professor of History at Texas Lutheran University⁸⁶, who specializes in Canadian history and Canadian foreign policy during and after World War II, researched personnel lists for the Hannover office and, based on those, believed that Mr. Fontanne did not begin working in Hannover until November 1951. Still, Mr. Cliffe's evidence on this point was very clear – he visited Mr. Fontanne in Hannover in the summer of 1951. Given that Mr. Seifert said he met with a man who spoke both German and Russian fluently, it is likely that he was screened by Mr. Fontanne.

[174] Mr. Seifert, as a refugee of German ethnicity who had acquired German citizenship after 1939, was eligible for entry into Canada,⁸⁷ so long as he did not fit into any of the criteria for inadmissibility that were in place at the time. However, in my view, Mr. Seifert would have been screened out on the basis of his association with the SD, as well as his service as a camp guard. Even though Mr. Seifert was not a "member" of the SD, and was merely an auxiliary, I am satisfied that a visa control officer would have considered him to be inadmissible under the prevailing

criteria. In short, if Mr. Seifert had disclosed his war record, he would not have been allowed entry to Canada. Further, by giving his place of birth as Estonia, he may have benefited from a more generous attitude on the part of Canadian officials, even if they suspected he was lying about his war record. As mentioned, persons from the Baltic States were thought to have been coerced into service in the German forces, particularly after 1943 (when Mr. Seifert became a soldier). Finally, if Canadian officials had checked the foreign intelligence records at their disposal under the name “Michael Seifert”, they may have uncovered information suggesting that he was one of the “Two Ukrainians” at the Bolzano camp.⁸⁸ However, they might not have made a connection to the Michael Seifert who said he was from Estonia.

XXVI. Mr. Seifert’s Life in Canada

1. Generally

[175] Mr. Seifert arrived in Quebec City aboard the SS Nelly in August 1951. The landing record says that he gave his place of birth as Narva, Estonia and his nationality as German.⁸⁹ He made his way to Prince George, British Columbia by train. He stayed in Prince George for five years, working for Canadian National Railways. He then moved to the Vancouver area and worked in the lumber industry for many years. His employment records show that he continued to give his birthplace as Narva, Estonia.⁹⁰

[176] In the early 1950s, Mr. Seifert and Mr. Makelke met up again in Vancouver and, in fact, became neighbours. Their families socialized frequently over the ensuing decades. They later had a falling-out.

[177] Mrs. Christine Seifert came to Canada in 1954. She lived with her brother and his family in New Westminster, British Columbia and worked in a plywood factory. She met Mr. Seifert at a dance at the Alpen Club in the spring of 1956. They married in the autumn of that year. Mr. Makelke was Mr. Seifert's best man.

2. Applying for Citizenship

[178] Mr. Seifert applied for Canadian citizenship in 1966.⁹¹ He did not fill out the application; he was assisted by his neighbour and by Mrs. Seifert. However, the application was signed by Mr. Seifert and he confirmed that the information in it was true. The application gave his birthplace as Narva, Estonia. The application also indicates that Mr. Seifert had never been charged with an offence or sentenced to prison. Mr. Seifert acknowledged that this information was incorrect. Mrs. Seifert also knew that the application contained false information both about her husband's place of birth and about the charge and punishment imposed on him during his time in the Bolzano camp. Mr. Seifert was granted Canadian citizenship on June 24, 1966.

[179] Mr. Seifert applied for a Canadian passport in 1969. Again, he gave his birthplace as Narva, Estonia.⁹² Mr. Seifert testified that he did not correct the information about his birthplace because he was afraid he might be sent back to Germany.

[180] During his years in Canada, Mr. Seifert never changed his name or otherwise tried to hide from authorities.

XXVII. The Defence of Necessity

[181] Mr. Seifert argues that he was justified in failing to disclose his correct place of birth because of a well-founded fear of being forcibly repatriated to the Soviet Union, where he would have been severely punished or killed. Further, he suggests that he had to get out of Germany because of a constant fear of being captured by nearby Soviet forces. Accordingly, he believes he was also justified in failing to disclose his activities during the war because, had he been truthful, he would not have been allowed to enter and live safely in Canada.

[182] The defence of necessity is recognized in criminal law and is defined by very strict parameters.⁹³ Generally speaking, it applies in situations where a person faces an urgent and imminent danger, has no reasonable alternative to breaking the law, and his or her unlawful conduct is proportionate to the harm that was avoided. The defence can also arise in civil matters (for example, in tort actions), but it is rare.⁹⁴ The strict requirements of the criminal law do not apply.

However, to succeed on the defence, the defendant still must prove that he or she faced a genuine danger, and that his or her response was reasonable and proportionate in the circumstances.⁹⁵

[183] The Federal Republic of Germany, or West Germany, became a country in 1949. The Minister argues that there was no longer a risk of any German citizens, such as Mr. Seifert, being repatriated to the Soviet Union after 1949. Mr. Seifert said that, while he had not observed this directly, Soviet authorities were still capturing former Soviet citizens in 1951 when he left Germany.

[184] Dr. Sauer testified that a person in Mr. Seifert's circumstances would have had a legitimate fear of forced repatriation to the Soviet Union in 1945, but not in 1951 when he applied for entry to Canada.

[185] Mr. Makelke believed that Allied forces, at the end of the war, undertook to repatriate Soviet citizens. It was common knowledge that Allied soldiers would pick up German ex-soldiers and, if they were originally from the Soviet Union, would turn them over to Soviet authorities. Mr. Makelke said that the persons who were turned over in these circumstances would never be heard from again. They would be shot or sent to Siberia. He understood that this is what happened to his friend, Eugen Hapvaff, who had also been a guard at Bolzano.

[186] Mr. Makelke stated that one of the reasons why he had wanted to immigrate to Canada was because there were Soviet troops just a few kilometers away from where he was staying in Germany. Had those troops decided to march west into Germany, he felt he would be shot.

[187] Mr. Gunn testified that he was aware of some forced repatriation of Soviet citizens after the war. He believed that there was a general agreement among agencies dealing with immigrants and refugees that persons displaced by the war should be returned to their countries of origin. With respect to the Soviet Union specifically, Mr. Gunn was aware that some of those who were forced to return there after the war were later sent to Siberia as punishment for having served with German forces. He agreed that repatriation to the U.S.S.R. was dangerous.

[188] Mr. Gunn said that all applicants for visas were asked for their place of birth. Visa officers did not single out persons from the Soviet Union – they were not trying to identify people who should be repatriated to the U.S.S.R.

[189] Mr. Cliffe said that he was unaware of anyone being repatriated from Germany to the Soviet Union. In fact, his understanding was that there was a law prohibiting repatriation. However, he agreed that if a Soviet citizen who had served in the German forces had been repatriated, he or she would probably have been shot.

[190] There is some documentary evidence to support Mr. Seifert's claim that forced repatriation to the Soviet Union was a real possibility in the years immediately following the war. A Canadian

visa control officer named J.M. Knowles, stationed in Fallingbommel, Germany, wrote to his superior in Karlsruhe in January 1950, and outlined the circumstances of former Soviet citizens who wished to obtain entry to Canada.⁹⁶ He noted that many Ukrainians, for example, welcomed German troops when they arrived in 1941 and gladly supported them. However, this put those supporters who, like Mr. Seifert, found themselves outside the Soviet Union after the war's end in a difficult position:

As the recent War drew to a close in 1945, it was seen by these persons then in Germany that it would be a great mistake to be found with any papers which would indicate that they are actually Soviet citizens, as the only two alternatives would be slow death in Siberia or a quick drop suspended from a hempen rope.⁹⁷

[191] Mr. Knowles' memorandum confirms that, until 1947, Soviet citizens were forcibly repatriated to the Soviet Union under the terms of the Yalta agreement. To avoid this, Soviet citizens would often obtain false papers, including passports, showing that they were citizens of Poland. Mr. Knowles' practice, which he recommended be continued and followed by his colleagues, was to issue visas to applicants in these circumstances and simply indicate on the application form or the visa that their place of birth was in the Soviet Union, notwithstanding their documents to the contrary. He considered the security implications of this practice, noting that security screening would have to be redone using the correct information; otherwise, a "security reject" might be cleared on the basis of inaccurate information. However, it is clear that Mr. Knowles thought that this was unlikely. Further, he genuinely believed that persons in these circumstances represented "the truest refugees from political oppression" and did not present a security risk. Still, I note that he said he granted visas to persons who were "otherwise admissible" to Canada, suggesting that he still conducted security screening of those applicants in the

predicament he described.

[192] It is unclear what happened in response to Mr. Knowles' memorandum. It appears, however, that the issue was regarded as a sensitive one. There was some concern that relations with the Soviet Union would worsen if it became known that Canada was knowingly admitting persons who should have been repatriated to the Soviet Union.⁹⁸ In addition, it was recognized that some prospective immigrants had changed their names in order to protect relatives remaining in the Soviet Union from reprisals. Obviously, Canada did not wish to force these persons to use their correct names.⁹⁹ It seems that Canada regarded the problem as a temporary one and was content to leave it to immigration officers in the field to deal with it.¹⁰⁰

[193] A longer-term problem arose with respect to applications for citizenship on the part of those who had provided incorrect information when they obtained Canadian visas. The Canadian government was asked how it intended to deal with persons who, out of fear, gave false information to immigration officials but who had to swear to the accuracy of their personal data before a citizenship judge in order to obtain Canadian citizenship.¹⁰¹ The Department of Immigration suggested that these persons should arrange to have their landing records corrected.¹⁰² In turn, the applicants' prior misrepresentation would not be held against them in their citizenship application. They would be entitled to keep their assumed identities and their real names would be kept confidential.¹⁰³

[194] This evidence confirms that Mr. Seifert's fear of forced repatriation to the Soviet Union was well-founded, particularly in the early years following the war. I have no doubt that his fear continued to exist for some time thereafter, perhaps even to the point when he acquired Canadian citizenship.

[195] However, in legal terms, Mr. Seifert has not established that his conduct can be excused under the defence of necessity. He had other reasonable options open to him other than to obtain entry to Canada by misrepresentation. He spent several years in a location close to the Soviet border, rather than move to a safer location. The likelihood of repatriation diminished over time and, by 1951, it would not have been reasonable to believe that it was imminent. Further, Mr. Seifert conceded that his desire to go to Canada was partly motivated by economic factors. To my mind, to succeed on a defence of necessity, a person must show that he or she acted with the singular purpose of avoiding an imminent peril. An alternative economic objective is incompatible with a defence of necessity.

[196] This evidence shows that, but for his war record, Mr. Seifert might have received favourable consideration when he applied for a Canadian visa, even though he lied about his birthplace. Canadian officials might have turned a blind eye if they suspected that he was simply a Soviet citizen trying to avoid repatriation. However, as explained above, Mr. Seifert was clearly asked about his activities during the war and he deliberately misrepresented them. Had he told the truth, he would have been screened out as a camp guard serving in the SD. Therefore, I find that Mr. Seifert

obtained entry to Canada, and subsequently acquired Canadian citizenship,¹⁰⁴ by misrepresenting and concealing his activities during the war and his place of birth.

XXVIII. Charter Arguments

[197] Mr. Seifert argues that these proceedings violate the principles of fundamental justice as guaranteed by s. 7 of the *Canadian Charter of Rights and Freedoms*. In particular, he submits that the Government of Canada's decision to initiate proceedings both to extradite him to Italy and to revoke his Canadian citizenship is oppressive. In addition, he argues that he has been denied the rights an accused person would normally enjoy because of the civil nature of these proceedings. For example, had he been charged with a crime, he would have had the right to be tried within a reasonable time and the right not to incriminate himself.

[198] However, the jurisprudence is clear that section 7 does not apply to these proceedings.

Justice Allen Linden explained in *Luitjens v. Canada (Secretary of State)*¹⁰⁵:

First, *at the time of the decision of the Court, at least*, s. 7 was not engaged in that there was not yet any deprivation of Mr. Luitjens' "life, liberty and security of the person". All that was decided by the trial judge was the fact that Mr. Luitjens obtained his Canadian citizenship by false representation. This finding may well form the basis of decisions by others, which *may* interfere with those rights *at some future time*, but this decision does not do so. Therefore, it is merely one stage of a proceeding which may or may not result in a final revocation of citizenship and deportation or extradition. (Emphasis in original.)

[199] In other words, my findings of fact will not, in themselves, deprive Mr. Seifert of liberty or security of the person. They will simply form the basis of a report which may or may not result in revocation of citizenship and deportation.¹⁰⁶

[200] I note also that section 7 can apply both to extradition proceedings¹⁰⁷ and deportation proceedings¹⁰⁸, because there is a closer causal connection between government action and any potential adverse consequences. Mr. Seifert had the opportunity to raise *Charter* arguments within the extradition proceedings against him and, in fact, did so.

[201] I have no doubt that Mr. Seifert and his family found these proceedings to be oppressive in the circumstances, as well as a personal and financial hardship. I have been unable to find another case where extradition proceedings and citizenship revocation proceedings have been mounted in parallel, as they were in this case. However, extradition and deportation proceedings have been pursued simultaneously in other cases.

[202] In *Yousif v. Canada (Minister of Citizenship and Immigration)*,¹⁰⁹ the applicant was the subject of an immigration inquiry in which it was alleged that he was inadmissible to Canada. At the same time, the United States sought his extradition to face murder charges. The applicant sought to prohibit the immigration proceedings on grounds that it amounted to an abuse of process and double jeopardy. Justice Max Teitelbaum determined that the multiplicity of proceedings did not constitute an abuse of process.¹¹⁰ He relied on *Blanusa v. Canada (Minister of Employment and Immigration)*,¹¹¹ in which the applicant sought a prohibition order or an injunction against the

continuation of an immigration inquiry until after extradition proceedings had been concluded. Justice Barry Strayer held he could issue the order only he was satisfied that the immigration adjudicator was about to do something beyond his jurisdiction or contrary to law, including the *Charter*.¹¹² The applicant raised issues similar to those put forward by Mr. Seifert here. Justice Strayer concluded that the two processes were completely separate. The immigration proceedings involved an allegation that the applicant had violated Canadian law when he entered Canada. The extradition proceedings alleged violation of the laws of the United States.¹¹³ He denied the order.

[203] I note that Justice Campbell expressed concern about multiple proceedings in *Bembenek v. Canada (Minister of Employment and Immigration)*.¹¹⁴ In that case, there were several proceedings underway, including a refugee claim and a deportation proceeding, as well as an extradition proceeding. The applicant argued that the immigration proceedings were a disguised form of extradition. Justice Campbell stated:

Counsel for the Minister takes the position that the deportation and extradition should both proceed at the same time. Counsel was unable to say which proceeding will go first, which proceedings will take precedence, or which proceedings would defer to the other. The position, that both would proceed simultaneously, poses obvious practical problems. It aggravates the multiplicity of proceedings when the applicant has to face two simultaneous attacks on her presence in the country by two separate branches of the government at the very same time with no hint how the two simultaneous proceedings are intended to interact and no assurance that the practical problems of multiplicity have been or will be determined.¹¹⁵

[204] Still, Justice Campbell concluded that immigration officials have an independent duty to seek deportation on the principal that Canada should not become a haven for foreign convicts.¹¹⁶ In addition, he noted that the danger of disguised extradition would arise where extradition

proceedings had failed for lack of evidence and deportation proceedings were commenced as a “back-up”. That was not the situation before him.

[205] I have no basis for concluding that the proceedings before me were undertaken for any improper or oblique motive, or to obtain a remedy that was denied elsewhere.

[206] Mr. Seifert also argues that Canada’s security screening process violates his freedom of association under s. 2(b) of the *Charter*, as well as the right of equality under s. 15. In respect of s. 2(b), he submits that it offends the *Charter* to prohibit all members of a particular group, such as the SD, entry to Canada, unless the group can be shown to have a “single, brutal purpose.” Similarly, he suggests that the security screening process discriminates on grounds of national origin. These additional Charter arguments were not seriously pursued before me. No case law or scholarly writing was tendered to support them and, therefore, I decline to deal with them.

XXIX. Summary of Findings

[207] I am satisfied that, in his capacity as guard in Nikolayev and in the Fossoli and Bolzano camps, Mr. Seifert was an auxiliary in the service of the SD. However, he was not a full member of the SD.

[208] As part of his regular guard duties at the Bolzano camp, Mr. Seifert would have been involved in assembling prisoners for roll-call, supervising work details, patrolling the gates and perimeter of the camp, and escorting prisoners to the trains destined for concentration camps.

[209] I am satisfied that there was a pair of guards, known as the “Two Ukrainians”, who had a reputation for treating prisoners particularly harshly. Given the weak identification evidence, it would be difficult to conclude that Mr. Seifert was one of them. But even if Mr. Seifert was one of the “Two Ukrainians”, the evidence does not establish that he carried out acts of torture or killing.

[210] Accordingly, I am not satisfied that the allegations against Mr. Seifert as set out in the Statement of Claim (see para. 11 above) have been proved on the balance of probabilities. Indeed, in respect of most of those allegations, there is simply no evidence before me. In respect of additional accusations made by former prisoners who testified in these proceedings, again, I cannot find that they have been proved. I do not suggest that witnesses fabricated evidence, or even that they are mistaken. I simply conclude that the evidence does not establish on the balance of probabilities that Mr. Seifert is responsible for the acts alleged against him.

[211] I do find, however, that Mr. Seifert was convicted in 1944 of sexual assault, not merely of associating with the enemy.

[212] In 1951, Mr. Seifert, as a refugee of German ethnicity who had acquired German citizenship after 1939, was eligible for entry into Canada.¹¹⁷ However, in my view, Mr. Seifert would have been screened out on the basis of his association with the SD, as well as his service as a camp guard.

[213] Even though Mr. Seifert was not a “member” of the SD, and was merely an auxiliary, I am satisfied that a visa control officer would have considered him to be inadmissible under the prevailing criteria. In short, if Mr. Seifert had disclosed his war record, he would not have been allowed entry to Canada. Further, by giving his place of birth as Estonia, he may have benefited from a more generous attitude on the part of Canadian officials, even if they suspected he was lying about his war record. They may have thought that he had been pressured to enlist. In addition, if Canadian officials had checked the foreign intelligence records at their disposal under the name “Michael Seifert”, they may have uncovered information suggesting that he was one of the “Two Ukrainians” at the Bolzano camp.¹¹⁸ However, they might not have made a connection to the Michael Seifert who said he was from Estonia.

[214] The evidence also shows that, but for his war record, Mr. Seifert might have received favourable consideration when he applied for a Canadian visa, even though he lied about his birthplace. Canadian officials might have turned a blind eye if they suspected that he was simply a Soviet citizen trying to avoid repatriation. However, Mr. Seifert was clearly asked about his activities during the war and he deliberately misrepresented them. Had he told the truth, he would have been screened out as a camp guard serving in the SD. Therefore, Mr. Seifert obtained entry to

Canada, and subsequently acquired Canadian citizenship,¹¹⁹ by misrepresenting and concealing his activities during the war and his place of birth.

[215] The evidence confirms that Mr. Seifert's fear of forced repatriation to the Soviet Union was well-founded, particularly in the early years following the war. I have no doubt that his fear continued to exist for some time thereafter, perhaps even to the point when he acquired Canadian citizenship.

[216] However, in legal terms, Mr. Seifert has not established that his conduct can be excused under the defence of necessity. He had other reasonable options open to him other than to obtain entry to Canada by misrepresentation. He spent several years in a location close to the Soviet border, rather than move to a safer location. The likelihood of repatriation diminished over time and, by 1951, it would not have been reasonable to believe that it was imminent. Further, Mr. Seifert conceded that his desire to go to Canada was partly motivated by economic factors. To succeed on a defence of necessity, a person must show that he or she acted with the singular purpose of avoiding an imminent peril. An alternative economic objective is incompatible with a defence of necessity.

[217] I have no doubt that Mr. Seifert and his family found these proceedings, which were undertaken in parallel with extradition proceedings, to be oppressive and as a personal and financial hardship. I have been unable to find another case where extradition proceedings and citizenship revocation proceedings have been mounted simultaneously, as they were in this case. However,

I have no basis for concluding that the proceedings before me were undertaken for any improper or oblique motive, or to obtain a remedy that was denied elsewhere. Therefore, I reject Mr. Seifert's submission that these proceedings violate the principle of fundamental justice as guaranteed by s. 7 of the *Canadian Charter of Rights and Freedoms*.

XXX. Conclusion

[218] Mr. Seifert obtained entry to Canada and Canadian citizenship by misrepresentation and by knowingly concealing material circumstances.

[219] Should the parties wish to address the Court on any outstanding matter, they may arrange to do so by communicating with the Court's Registry.

“James W. O’Reilly”

Judge

References

¹ Exhibit C-14.

² Exhibit UU, Judgment and Sentence of the Military Tribunal of Verona dated October 18, 2001 (Doc. 743).

³ Exhibit VV, Sentence and Reasons for Judgment of the Military Court of Appeal, Verona District, dated October 18, 2001 (Doc. 744); Exhibit WW, Sentence of the Supreme Court of Cassation, dated October 8, 2002 (Doc. 745).

⁴ *Italy v. Seifert*, 2003 BCSC 1317.

⁵ *Italy v. Seifert*, 2007 BCCA 407.

⁶ *Michael Seifert v. Attorney General of Canada on behalf of the Republic of Italy, et al* (SCC file No. 32155; leave to appeal filed October 1, 2007).

⁷ The Federal Court Rules, 1998 (SOR/98-106) provide by Rule 169(a) that a reference under s. 18 of the *Citizenship Act* shall proceed as an action pursuant to Part 4 of the Rules.

⁸ See *Canada (Secretary of State) v. Luitjens* (1993), 142 N.R. 173 (F.C.A.) (or [1992] F.C.J. No. 319 (F.C.A.) (QL); *Canada (Minister of Citizenship and Immigration) v. Tobiass et al.*, [1997] 3 S.C.R.; and *Canada (Minister of Citizenship and Immigration) v. Oberlander*, [2000] F.C.J. No. 229.

⁹ *Citizenship Act*, R.S.C. 1985, c. C-29, s. 18(3).

¹⁰ *Citizenship Act*, R.S.C. 1985, c. C-29, s. 18(1)(b).

¹¹ *Citizenship Act*, R.S.C. 1985, c. C-29, s. 10(2).

¹² See paragraph 31 of the Statement of Claim.

¹³ See the cases cited in *Canada (Minister of Citizenship and Immigration) v. Skomatchuk*, 2006 FC 994, para. 23, especially *Canada (Minister of Citizenship and Immigration) v. Bogutin*, (1998), 144 F.T.R. 1 (T.D.), at para. 113; and *Canada (Minister of Citizenship and Immigration) v. Oberlander* [2000] F.C.J. No. 229 (QL), at para. 187.

¹⁴ See *Canada's Crimes Against Humanity and War Crimes Program*, 2004-2005 Annual Report, online: Justice Canada <http://canada.justice.gc.ca/en/ps/wc/index.html>

¹⁵ *Oberlander v. Canada (Attorney General)*, [2005] 1 F.C.R. 3 (C.A.).

¹⁶ Much of the discussion in this section derives from the expert testimony of Dr. Peter Black, Senior Historian at the Center for Advanced Holocaust Studies, United States Holocaust Memorial Museum, Washington, D.C., whose written report was introduced in evidence by the plaintiff (Exhibit 40, "The Role of the SD in the Nazi SS and Police Apparatus, Historical Report", dated September 15, 2004).

¹⁷ See footnote 16.

¹⁸ Much of the discussion in this section derives from the expert testimony of Mr. Carlo Gentile, an Italian Historian with particular interest and expertise in the German occupation of Italy, whose written report was introduced in evidence by the plaintiff (Exhibit 37, "The Police Transit Camps in Fossoli and Bolzano, Historical Report", dated July 2004)).

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- ¹⁹ Exhibit BBB, memorandum dated December 12, 1943 re: Deployment of the security police and the SD in Italy (Doc. 370).
- ²⁰ Exhibit CCC, Service Order No. 8 dated March 29, 1943 (Doc. 381).
- ²¹ Exhibit 40, Report of Dr. Peter Black (see above, footnote 16), at footnote 96.
- ²² Trial Record, Tab 7.
- ²³ Exhibit AAAA, pages 6 and 7 from the transcript of the extradition proceedings dated 14th of July, 2003.
- ²⁴ Exhibit PPP, affidavit of Babette Heusterberg dated November 28, 2002 and attachments.
- ²⁵ See Mr. Gentile's report, above, footnote 18, at p. 23.
- ²⁶ Exhibit GGG, list of recommendations for the conferral of the war service cross second class with sword, dated January 15, 1945 (Doc. 387).
- ²⁷ Exhibit C-11, Camp diagram extracted from Exhibit C-A.
- ²⁸ Exhibit 38, Expert Report addressed to the War Crimes Commission, Merano, to the HQ of the 2677 Reg. SSU (Prov.), APO 512 (Rome) and to the HQ of the FSS, Bolzano, by Artur Schoster, dated Bolzano, 26 November 1945.
- ²⁹ Exhibit CCCC, Medical Record of Mr. Seifert.
- ³⁰ Exhibit 4, individual photograph of M. Seifert (formerly marked as exhibit 1 at the discovery of Mr. Seifert dated October 14, 2003).
- ³¹ Exhibit LLL, telegram from Titho dated December 16, 1944 RE: transport of Jews on 14:12:44 at 18:00 Hours (Doc. 385).
- ³² Exhibit NNN, affidavit of Piotr Setkiewicz dated May 21, 2002 and attachments.
- ³⁴ Exhibit 38, Expert Report addressed to the War Crimes Commission, Merano, to the HQ of the 2677 Reg. SSU (Prov.), APO 512 (Rome) and to the HQ of the FSS, Bolzano, by Artur Schoster, dated Bolzano, 26 November 1945 (at pp. 5-9).
- ³⁵ Exhibit MMM, Affidavit of timothy K. Nenninger, Schedule A, Item 10.
- ³⁶ Exhibit FFFF, statement of Karl Titho Number 711.
- ³⁷ Exhibit IIII, statement of Karl Titho Number 717.
- ³⁸ Exhibit OOO, affidavit of Babette Heusterberg dated July 28, 2005 and attachments.
- ³⁹ Exhibit RRR, document relating to footnote 87 of Dr. Black's report "Decree on a special jurisdiction in criminal matters for members of the S.S. and for persons belonging to the police units in special deployment" signed by Goring, Frick and Lammers.
- ⁴⁰ Exhibit 38, Expert Report addressed to the War Crimes Commission, Merano, to the HQ of the 2677 Reg. SSU (Prov.), APO 512 (Rome) and to the HQ of the FSS, Bolzano, by Artur Schoster, dated Bolzano, 26 November 1945.

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- ⁴¹ Exhibit C-21, excerpts from *Foundation of Memory of the Deported* with English translations.
- ⁴² Exhibit C-20, excerpts from autobiography of Andrea Gaggero, *Vestīa Da Omo*, pages 128, 129, 130, 131, 133 and front page with English translations.
- ⁴³ Exhibit C-14, copy of *La Stampa* article dated June 26, 1999 “The two Ukrainian SS men accused of 14 murders and of acts of torture carried out against prisoners have been traced. The Kapos of the Bolzano camp are in Canada. The Military prosecutor is to request their extradition”, with English translation.
- ⁴⁴ Exhibit C-15, copy of *La Stampa* article, “I witnessed the crimes at the Bolzano camp” dated June 28, 1999 with English translation
- ⁴⁵ Exhibits FFFF, GGGG, HHHH, IIII, statements of Karl Titho Numbers 711, 713, 715 and 717.
- ⁴⁶ Exhibit C-34, excerpt from article from *Anche a Volarlo Raccontare È Impossibile*, with English translation.
- ⁴⁷ Exhibit C-33, Article from *Protagonisti* (June 2005).
- ⁴⁸ Exhibit YYY. Affidavit of Leonardo Simeoni, Exhibit 4.
- ⁴⁹ Exhibit 54, Dismissal Slip dated May 23, 1945 with heading “To all guards”.
- ⁵⁰ Exhibit UUU, affidavit of Herbert Weibmann dated July 21, 2003 attaching municipal records from Germany.
- ⁵¹ Exhibit RR, affidavit of Sigfried Dost dated July 21, 2003.
- ⁵² Exhibit QQ, affidavit of Thomas Brandes dated July 21, 2003.
- ⁵³ Exhibit 19, copy of passport of Michael Seifert.
- ⁵⁴ Much of the discussion in this section is derived from the expert testimony of Mr. Nicholas D’Ombrain and his written report, which was introduced into evidence by the plaintiff (Exhibit 27, “The Government of Canada’s Policy on Security Screening for Immigrants in the Post-War Period”, dated March 2004), as well as the expert testimony of Dr. Angelika Sauer whose written report was also introduced into evidence by the plaintiff (Exhibit 32, “Immigration Report”, dated July 2004).
- ⁵⁵ Exhibit 28, Prime Minister MacKenzie King’s speech to Commons, May 1, 1947, excerpt from Hansard (Tab 10/Doc 89).
- ⁵⁶ Exhibit DD, Order-in-Council PC 185.
- ⁵⁷ Exhibit H, Memorandum dated September 20, 1946 for Mr. Robertson, External Affairs/Privy Council re: Landing of refugees (Doc. 54); Exhibit I, Memorandum to Cabinet dated October 15, 1945 from Allison Glen, Minister re: Disposition of refugees in Canada (Doc. 21).
- ⁵⁸ Exhibit J, Minutes of First meeting of Security Panel dated June 24, 1946 (Tab 2/Doc. 42).
- ⁵⁹ Exhibit L, Security Panel minutes, second meeting, July 8, 1946 (Tab 4/Doc. 45).
- ⁶⁰ Exhibit M, Cabinet conclusion dated August 5, 1946 (Tab 6/Doc. 49).
- ⁶¹ Exhibit N, letter dated October 9, 1946 from L. St. Laurent to RCMP Commissioner Wood.

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- ⁶² Exhibit O, letter dated February 7, 1947 from A. Heeney to Minister Glen (Doc. 69).
- ⁶³ Exhibit Q, Memorandum to the Prime Minister – Rejection of prospective immigrants on security grounds dated September 21, 1949 (Tab 16/Doc. 204).
- ⁶⁴ Exhibit 29, Canada Gazette Copy of P.C 1606, dated March 28, 1950 (Tab 18/Doc. 234).
- ⁶⁵ Exhibit X, Department of Citizenship and Immigration Official Circular number 72 dated May 20, 1950 re: Application of Regulations to German Nationals and Immigrants of German Ethnic Origin (Tab 23/Doc. 247).
- ⁶⁶ Exhibit 33, Order-in-Council 4364 of September 14, 1950, Entry of German Nationals Permitted (Doc. 266).
- ⁶⁷ Exhibit II, memorandum from RCMP Inspector MacNeil to Superintendent McClellan re: members of Nazi Party and Waffen SS dated August 11, 1950 (Doc. 277).
- ⁶⁸ Exhibit W, document to Major J.E. Wright from S.J. Wood, dated November 30, 1950 (Doc. 281); Exhibit V, document dated December 4, 1950, McNeil to Wright (Tab 30/Doc. 282).
- ⁶⁹ Exhibit U, Minutes of Security Panel meeting of October 27, 1950 (Doc. 275).
- ⁷⁰ Exhibit KK, memorandum for file by the Deputy Minister Fortier dated July 9th, 1951 (Doc. 318); Exhibit LL, letter from Inspector Hall to Major Wright dated July 11, 1951 (Doc. 319).
- ⁷¹ Exhibit AA, letter to Special Branch from Inspector Kelly, dated January 21, 1953 (with copy of exhibit 22 attached) (Doc. 342); Exhibit 26, list headed “Reasons for rejection” (Doc. 342).
- ⁷² Exhibit MM, minutes of meeting between RCMP and Department of Citizenship and Immigration on February 26, 1951 (Doc. 301).
- ⁷³ Exhibit Z, Minutes of 42nd Security Panel meeting dated May 15, 1952 (Tab 44/Doc. 335).
- ⁷⁴ Exhibit JJ, Allied Control Council Directive No. 38 dated October 14, 1946 (Doc. 56).
- ⁷⁵ Exhibit Z, Minutes of 42nd Security panel meeting dated May 15, 1952 (Tab 44/Doc. 335).
- ⁷⁶ Exhibit AA, letter to Special Branch from Inspector Kelly dated January 21, 1953 (with copy of exhibit 22 attached) (Doc. 342); Exhibit 22, Screening of Applicants for Admission to Canada, dated November 20th, 1948 (rejection criteria) (Tab 14/Doc. 145).
- ⁷⁷ Exhibit V, document dated December 4, 1950, McNeil to Wright (Tab 30/ doc. 282); Exhibit W, document to Major J.E. Wright from S.J. Wood, dated November 30, 1950 (Doc. 281).
- ⁷⁸ Exhibit 8, PC-695 General Prohibition to Admission dated March 21, 1931 (Tab 1/Doc. 2).
- ⁷⁹ Exhibit 11, PC-2856 “Immigration Act”: Prohibiting the landing in Canada of Immigrants with certain exceptions dated June 9, 1950 (Tab 24/Doc 250).
- ⁸⁰ Exhibit 9, procedure in handling alien immigration (Instruction No. 1).
- ⁸¹ Exhibit 15, application for admission to Canada – with employment information form dated 1/2/5 (Tab 33/Doc. 289).

⁸² Exhibit 16, immigration OS8 - Application for admission to Canada (Doc 895).

⁸³ This was confirmed in Exhibit NN, letter from J. Murray 10136 dated Berlin, April 21, 1947 addressed to S/Sgt Hinton, London, Eng., re: Visa Control.

⁸⁴ Exhibit 22, Screening of Applicants for Admission to Canada, dated November 20th, 1948 (rejection criteria) Tab 14/Doc. 145).

⁸⁵ Exhibit 19, copy of passport of Michael Seifert.

⁸⁶ See report cited above at footnote 54.

⁸⁷ Exhibit 29, Canada Gazette copy of P.C. order-in-council 1606, dated March 28, 1950 (Tab 18/Doc. 234).

⁸⁸ Mr. Seifert was named in Exhibit 38, Expert Report addressed to the War Crimes Commission, Merano, to the HQ of the 2677 Reg. SSU (Prov.), APO 512 (Rome) and to the HQ of the FSS, Bolzano, by Artur Schoster, dated Bolzano, 26 November 1945 and Exhibit YYY, Doc. 4 to the affidavit of Leonardo Simeoni dated October 2005 (relating to the proceedings against Albino Cologna).

⁸⁹ Exhibit 18, affidavit of J. David Runnells sworn February 14, 2003.

⁹⁰ Exhibit G, affidavit of Surinder Budial sworn December 8, 2004 with exhibit A attached.

⁹¹ Exhibit F, application for citizenship of M. Seifert dated June 24, 1966.

⁹² Exhibit 7, affidavit of Gary Moore sworn June 4, 2003 with exhibits A-G attached.

⁹³ See *R. v. Perka*, [1984] 2 S.C.R. 232; *R. v. Latimer*, 2001 SCC 1, [2001] 1 S.C.R. 3.

⁹⁴ L. Klar, *Tort Law*, 3rd ed. (Toronto: Thomson Carswell, 2003), at 140.

⁹⁵ *933301 Ontario Inc. v. Loewith*, [1997] O.J. No. 4120 (Gen. Div.).

⁹⁶ Exhibit 58, Doc. 809, letter dated 3rd January 1950 signed by (Sgd) J.M. Knowles, Visa Officer Fallingbostal.

⁹⁷ Exhibit 58, Doc. 809, letter dated 3rd January 1950 signed by (Sgd) J.M. Knowles, Visa Officer Fallingbostal.

⁹⁸ Exhibit 58, Doc. 977, letter dated 24th February 1950 signed by C.E.S. Smith, Acting Director, Department of Mines and Resources.

⁹⁹ Exhibit 58, Doc. 893, p. 2, memorandum for the Deputy Minister dated March 4, 1953.

¹⁰⁰ Exhibit 58, Doc. 981, letter dated 9 March 1950 from Acting Director.

¹⁰¹ Exhibit 58, Doc. 811, letter dated August 17th, 1950 signed by Dimitri Leuchtenberg-de Beauharnais.

¹⁰² Exhibit 58, Doc. 813, Letter from Mr. Laval Fortier of the Immigration Branch to the "Under-Secretary of State for External Affairs, Ottawa," dated August 25, 1950.

¹⁰³ Exhibit 58, Doc. 893, Memorandum for the Deputy Minister, Application for citizenship by newcomers admitted to Canada under assumed names, dated March 4, 1953.

¹⁰⁴ *Citizenship Act*, R.S.C. 1985 c. C-29, s. 10(2).

¹⁰⁵ (1992), 9 C.R.R. (2d) 149 (F.C.A.), at p. 152.

¹⁰⁶ *Ibid.*, see also *Katriuk v. Canada (Minister of Citizenship and Immigration)* (1999), 11 Imm. L.R. (3d) 178, [1999] F.C.J. No. 1884 (F.C.A.) (QL); and *Canada (Minister of Citizenship and Immigration) v. Obodzinsky*, 2001 FCA 158, [2001] F.C.J. No. 797 (C.A.) (QL); affirming (2000), 14 Imm. L.R. (3d) 184 (F.C.T.D.).

¹⁰⁷ See for e.g. *Kindler v. Canada (Minster of Justice)*, [1991] 2 S.C.R. 779, S.C.J. No. 63 (QL) at paras. 172 and following; *United States of America v. Burns*, 2001 SCC 7, [2001] S.C.J. No. 8 at paras. 59 and 60 (QL); *United States of America v. Ferras*, 2006 SCC 33, [2006] S.C.J. No. 33 (QL).

¹⁰⁸ *Suresh v. Canada (Minister of Citizenship and Immigration)*, 2002 SCC 1, [2002] S.C.J. No. 3 at para 54 (QL).

¹⁰⁹ [1998] F.C.J. No. 1083 (T.D.) (QL).

¹¹⁰ At para. 27.

¹¹¹ [1989] F.C.J. No. 244 (T.D.) (QL).

¹¹² At para. 2.

¹¹³ At para. 3.

¹¹⁴ [1991] O.J. No. 2162 (Ont. Ct. J. (Gen. Div)) (QL).

¹¹⁵ At section 5.

¹¹⁶ At section 13.

¹¹⁷ Exhibit 29, Canada Gazette copy of P.C. 1606, dated March 28, 1950 (Tab 18/Doc. 234).

¹¹⁸ Exhibit 38, Expert Report addressed to the War Crimes Commission, Merano, to the HQ of the 2677 Reg. SSU (Prov.), APO 512 (Rome) and to the HQ of the FSS, Bolzano, by Artur Schoster, dated Bolzano, 26 November 1945.

¹¹⁹ *Citizenship Act*, R.S.C. 1985, c. C-29, s. 10(2).

Annex "A"

Citizenship Act, R.S.C. 1985, c. C-29

Loi sur la citoyenneté, L.R.C. 1985, ch. C-29

Order in cases of fraud

Décret en cas de fraude

10. (1) Subject to section 18 but notwithstanding any other section of this Act, where the Governor in Council, on a report from the Minister, is satisfied that any person has obtained, retained, renounced or resumed citizenship under this Act by false representation or fraud or by knowingly concealing material circumstances,

10. (1) Sous réserve du seul article 18, le gouverneur en conseil peut, lorsqu'il est convaincu, sur rapport du ministre, que l'acquisition, la conservation ou la répudiation de la citoyenneté, ou la réintégration dans celle-ci, est intervenue sous le régime de la présente loi par fraude ou au moyen d'une fausse déclaration ou de la dissimulation intentionnelle de faits essentiels, prendre un décret aux termes duquel l'intéressé, à compter de la date qui y est fixée :

(a) the person ceases to be a citizen, or

a) soit perd sa citoyenneté;

(b) the renunciation of citizenship by the person shall be deemed to have had no effect,

b) soit est réputé ne pas avoir répudié sa citoyenneté.

as of such date as may be fixed by order of the Governor in Council with respect thereto.

Presumption

Présomption

(2) A person shall be deemed to have obtained citizenship by false representation or fraud or by knowingly concealing material circumstances if the person was lawfully admitted to Canada for permanent residence by false representation or fraud or by knowingly concealing material circumstances and, because of that admission, the person subsequently obtained citizenship.

(2) Est réputée avoir acquis la citoyenneté par fraude, fausse déclaration ou dissimulation intentionnelle de faits essentiels la personne qui l'a acquise à raison d'une admission légale au Canada à titre de résident permanent obtenue par l'un de ces trois moyens.

Notice to person in respect of revocation

Avis préalable à l'annulation

18. (1) The Minister shall not make a report under s. 10 unless the Minister has given notice of his intention to do so to the person in respect of whom the report is to be made and

18. (1) Le ministre ne peut procéder à l'établissement du rapport mentionné à l'article 10 sans avoir auparavant avisé l'intéressé de son intention en ce sens et sans que l'une ou l'autre des conditions suivantes ne se soit réalisée :

(a) that person does not, within thirty days after the day on which the notice is sent, request that the Minister refer the case to

a) l'intéressé n'a pas, dans les trente jours

the Court; or

(b) that person does so request and the Court decides that the person has obtained, retained, renounced or resumed citizenship by false representation or fraud or by knowingly concealing material circumstances.

Nature of notice

(2) The notice referred to in subsection (1) shall state that the person in respect of whom the report is to be made may, within thirty days after the day on which the notice is sent to him, request that the Minister refer the case to the Court, and such notice is sufficient if it is sent by registered mail to the person at his latest known address.

Decision final

(3) A decision of the Court made under subsection (1) is final and, notwithstanding any other Act of Parliament, no appeal lies therefrom

Canadian Charter of rights and Freedoms, Part I of the Constitution Act, 1982, being Schedule B to the Canada Act (U.K.), 1982, c. 11

Fundamental Freedoms

2. Everyone has the following fundamental freedoms:

- a) freedom of conscience and religion;
- b) freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication;
- c) freedom of peaceful assembly; and
- d) freedom of association.

suivant la date d'expédition de l'avis, demandé le renvoi de l'affaire devant la Cour;

b) la Cour, saisie de l'affaire, a décidé qu'il y avait eu fraude, fausse déclaration ou dissimulation intentionnelle de faits essentiels.

Nature de l'avis

(2) L'avis prévu au paragraphe (1) doit spécifier la faculté qu'a l'intéressé, dans les trente jours suivant sa date d'expédition, de demander au ministre le renvoi de l'affaire devant la Cour. La communication de l'avis peut se faire par courrier recommandé envoyé à la dernière adresse connue de l'intéressé.

Caractère définitif de la décision

(3) La décision de la Cour visée au paragraphe (1) est définitive et, par dérogation à toute autre loi fédérale, non susceptible d'appel.

Charte canadienne des droits et libertés, Loi constitutionnelle de 1982, Éditée comme l'annexe B de la Loi de 1982 sur le Canada, 1982, ch. 11 (R.-U.)

Libertés fondamentales

2. Chacun a les libertés fondamentales suivantes :

- a) liberté de conscience et de religion;
- b) liberté de pensée, de croyance, d'opinion et d'expression, y compris la liberté de la presse et des autres moyens de communication;
- c) liberté de réunion pacifique;
- d) liberté d'association.

Life, Liberty and Security of person

7. Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

Equality before and under law and equal protection and benefit of law

15. (1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

Vie, Liberté, Sécurité

7. Chacun a droit à la vie, à la liberté et à la sécurité de sa personne; il ne peut être porté atteinte à ce droit qu'en conformité avec les principes de justice fondamentale

Égalité devant la loi, égalité de bénéfice et protection égale de la loi

15. (1) La loi ne fait acception de personne et s'applique également à tous, et tous ont droit à la même protection et au même bénéfice de la loi, indépendamment de toute discrimination, notamment des discriminations fondées sur la race, l'origine nationale ou ethnique, la couleur, la religion, le sexe, l'âge ou les déficiences mentales ou physiques.

FEDERAL COURT

NAME OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: T-2016-01

STYLE OF CAUSE: MCI v. SEIFERT

PLACE OF HEARING: Vancouver, B.C.

DATE OF HEARING: 1, 2, Sept. 2005; 6 -9 Sept. 2005; 12-15 Sept. 2005;
13, 14 Oct. 2005, 17-21 Oct. 2005; 9,10 Feb. 2006, 8, 9
Mar, 2006; 13-17 Mar., 2006; 18-21 Apr., 2006; 5-15
Sept., 2006

FINDINGS OF FACT BY: O'Reilly J.

DATED: November 13, 2007

APPEARANCES:

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