

Prosecutors on the Front Line: A Q&A with Terry Beitner of the Canadian War Crimes Unit

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Joseph Rikhof, a member of the editorial board interviewed Terry Beitner, General Counsel and Director of Canada's Crimes Against Humanity and War Crimes Section of the Department of Justice Canada about the work done by his Section.[1]

JR: What is Canada's War Crimes Unit and what do you do?

Firstly, the official name is the Crimes Against Humanity and War Crimes Section located in Ottawa at the Department of Justice Canada. Let's call it the "unit". The unit was created over thirty years ago.

We work with our partners within the Crimes Against Humanity and War Crimes Program to investigate allegations that there are war criminals in Canada. Our partners are the Canadian Border Services Agency, Immigration Refugees and Citizenship Canada and the Royal Canadian Mounted Police.

JR: Why did the government create the Unit?

The government created the unit in response to the recommendations made by the late Justice Jules Deschênes, Chief Justice of the Quebec Superior Court, in his report titled Commission of Inquiry on War Criminals published on December 30, 1986. The Commission inquired into the presence of alleged World War II war criminals in Canada. Today our focus is on international crimes committed in

contemporary times. The crimes in question are war crimes, crimes against humanity and genocide. When I refer to “war crimes” during this interview, I usually mean any one or all three of these offences.

JR: Who works at the unit?

The unit is composed of lawyers, analysts, paralegals, legal assistants and an administrative and financial support group. We are a group of approximately 35 employees.

JR: What do you mean “investigate allegations”?

Program partners receive reports about people who may be in Canada and, for example, may have been involved in war crimes committed in Syria. We collectively examine the allegation and determine whether the facts merit further investigation. If an investigation turns up evidence to confirm the report, then we decide whether the evidence is sufficient for a criminal prosecution or proceedings that will ultimately lead to deportation from Canada, or both.

JR: From all of the allegations that you receive how do you pick the cases to investigate?

I would like to make it clear from the outset that in criminal matters, the RCMP is in charge of the investigations. As I mentioned above, program partners collectively examine the allegations and assess the situations against a set of criteria. The criteria *include* considerations such as the presence of an international obligation to investigate, an assessment of the availability of the evidence and the immigration status of the individual in Canada. There is a special committee (File Review Committee) made up of all of the program partners (Justice, CBSA, IRCC & RCMP) that applies the criteria and examines all allegations that are brought to the government’s attention. Once the committee tags a file for a potential criminal remedy, the RCMP with the support of the war crimes unit commences the investigation.

JR: How are investigations in war crimes cases conducted?

Whether the case is an alleged fraudulent acquisition of immigration status leading to revocation of citizenship or a criminal matter, the process begins with a legal and political/historical analysis of the armed conflict during which the events are said to have occurred. Although the presence of an armed conflict is not required for certain international crimes treated by the Program (namely, crimes against humanity), history shows that an armed conflict of some sort is usually in play. Therefore, an analysis of the conflict is critical to understanding the intentions of the parties involved in these international crimes. The analysis will also provide the context of the situation to determine whether the specific crimes at issue may be connected to the armed conflict or if the conduct was part of a widespread or systematic attack against civilians. The historical analysis is therefore critical to make out the legal elements of the offenses in question. Once the contextual analysis is complete, in the ideal scenario, investigators then put together an investigative plan to secure physical and documentary evidence in addition to witness testimony.

JR: What does your unit actually do to support these investigations?

Firstly, our historians conduct the historical and political analysis of the facts in an allegation. Once the historical analysis is complete, our counsel conduct a legal analysis of the facts contained in the allegation and determine whether, if true, they give rise to an international offence. Then a summary report is submitted to File Review Committee mentioned above. The report contains a brief analysis of the history, the alleged facts and the applicable law along with a recommendation that the file be considered for a criminal investigation, an investigation for immigration fraud, or that the matter be closed. If the matter proceeds to an investigation, then a team is formed at my unit to work with the RCMP throughout the life of the investigation and subsequent trial. Our support during the investigation includes on site assistance during witness interviews, international negotiations for assistance with NGOs, other governments or tribunals, international organizations, and ongoing legal and historical analysis as required.

JR: When you say “international organizations”, do you mean the United Nations?

Yes. We have worked with the UN in New York who have provided us with access to their archives for some of our cases and we have also worked with various special tribunals created under Chapter VII of the Charter of the United Nations (such as the International Criminal Tribunal for the Former Yugoslavia, known as the ICTY). Additionally and most critically, we have an ongoing close relationship with the Genocide Network. The Genocide Network is a branch of the European Union’s Judicial Cooperation Unit (Eurojust) that was created to ensure close cooperation between national authorities in investigating and prosecuting war crimes cases. Canada is an observer state member of the Genocide Network and I or my deputy director attend meetings at The Hague twice a year to discuss concrete, operational matters. In my view, this is the most important, productive and effective international network that provides real time assistance to nations involved in ongoing war crimes investigations.

JR: These investigations must be expensive because the events have taken place outside of Canada. Why should we care about events that have happened so far away and in some cases very long ago?

Canada, like many countries, has a zero tolerance for the presence of war criminals in our country. Our policy is called the “No Safe Haven” policy. Canada will not be a safe haven for anyone against whom there are reasonable grounds to believe that they may have been involved in crimes against humanity, war crimes, or genocide.

JR: You have been doing this work for many years. When did you join the Unit?

I joined the unit in 1997 as counsel. Prior to that, I was in private practice as a sole practitioner doing primarily family law litigation.

JR: Do you have any interesting files that you can discuss publically?

We have several files that are currently before the Federal Court of Canada. One matter is a long running World War Two case and the other three are cases that arise out of more recent conflicts. For example, one matter concerns allegations of participation in crimes against humanity in Guatemala, during an event known as the Las Dos Erres massacre that took place in 1982. The other ongoing cases concern allegations of participation in atrocities committed in Bosnia during the war that followed the break-up of the former Yugoslavia.

JR: What does the future hold in this area of law?

Firstly, I think that globally we will see more investigations arising out of the Syria conflict. Secondly, we will (or should) see more collaboration with private companies who I think are showing governments around the world how to harness the available technology to leverage the information on the internet for investigative purposes. I have seen some amazing applications used to recreate events based on available information from Google and other services. Finally, I think that we will (or again, should) see more collaboration with NGOs. In addition to their traditional role of calling attention to atrocities as they occur and subsequently lobbying for accountability, I think that today, there is greater room for collaboration between governments and NGOs in these complex investigations. I believe that we will improve this collaboration by building greater trust between governments and NGOs.

JR: You mentioned Google, what about Facebook? Facebook has made a lot of news lately for issues that stretch from privacy to the election of Donald Trump. Has Facebook affected your work?

Yes. Facebook has played a leading role in several prosecutions in the war crimes context. I think that Sweden leads in this area having conducted several prosecutions based on Facebook postings. Indeed some have chosen, unwisely, to publish highly self-incriminating and extremely graphic postings to their personal social media pages which have led to their conviction for war crimes. In addition to this result and due to the offensive nature of these postings, social media companies are now removing these images (and sometimes videos) from their site. This has led to other questions surrounding the loss of potential evidence for future war crimes prosecutions but let's leave this question for another day.

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References

1. This article is a continuation of the series in this journal about war crimes units which started on May 7, 2018 with the article by Noémi Manco and Valérie Paulet, “Prosecutors on the Front Line: Inside European War Crimes Units” republished in the PKI Global Justice Journal by arrangement with the authors and TRIAL INTERNATIONAL. For a personal account of the work in the Canadian War Crimes Unit, see “In Profile: Timothy Radcliffe” in the August 2018 issue of the Forum for International Criminal Justice (FICJ) of the International Association of Prosecutors (IAP), pages 5-7.