



The Committee for Justice in Canada
B'NAI BRITH CANADA
Le comité pour la justice au Canada

Mandating public disclosure of records regarding Nazi war criminals and establishing a public archive of Canada's Holocaust records

Submission to the Standing Committee on Access to Information, Privacy and Ethics for its study of the *Access to Information Act* February 14, 2023

I. Introduction and overview of B'nai Brith's submissions

B'nai Brith Canada ("B'nai Brith") urges the Standing Committee on Access to Information, Privacy and Ethics (the "Committee") to consider amendments to the *Access to Information Act*, RSC 1985, c. A-1 ("AIA") to mandate disclosure of records relating to the history of Canada's responses to Nazi war criminals who moved to Canada after World War II. In addition, the Government of Canada (the "Government") should create a publicly accessible digital archive of all Holocaust materials possessed or controlled by the federal institutions. These recommendations are explained in part V below.

Canada's approach to Nazi war criminals was, until at least the mid-1980s, marked by "indifference" and "deliberate ... inaction," the "intentional harbouring of known Nazi war criminals," and a "file destruction policy that indicated a total absence of any moral sensibility to the horrors of the Holocaust."¹

Rising public concern about the Government's approach culminated in the proceedings of the Commission of Inquiry on War Criminals (the "War Crimes Commission" or simply the "Commission"). Led by the Honourable Mr. Justice Jules Deschênes, the War Crimes Commission issued a comprehensive report in December 1986.² This report recommended, among other things, that the Government give "urgent attention" to investigating 20 files of alleged Nazi war criminals who might still be living in Canada. The report also recommended further investigation of 218 other possible Nazi war criminals living in Canada.³

¹ David Matas and Susan Charendoff, *Justice Delayed – Nazi War Criminals in Canada* (Summerhill Press Ltd., Toronto, 1987) at 17.

² Commission of Inquiry on War Criminals, *Report* (30 Dec. 1986). Part I of the Report is online at: <https://publications.gc.ca/collections/collection_2014/bcp-pco/CP32-52-1986-1-eng.pdf>.

³ *Ibid*, Chapter I-1 at 12-14 (findings/recommendations #s 63-79). See also Matas and Charendoff, *Justice Delayed*, *supra* note 1, at 157; and, Jewish Telegraphic Agency, "Report Shows Canada's Role in Harboring Nazi War Criminals (Aug. 10, 1987), online: <<https://www.jta.org/archive/report-shows-canadas-role-in-harboring-nazi-war-criminals>>.

Unfortunately, the War Crimes Commission did not publicly disclose Part II of its Report which includes the names and details of each of the individuals the Commission identified for follow up investigation. The Commission also did not release a copy of a key report, prepared for the Commission by historian Alti Rodal, on Canadian policy with respect to the settlement of Nazi war criminals in Canada after World War II.⁴ The Government later released a heavily redacted copy of the Rodal report, significantly undermining the context of the report.

The Government generally accepted the Commission's recommendations. However, the public record is largely incomplete as to what if any follow up investigations the Government has actually conducted.⁵

B'nai Brith has made several requests under the AIA for relevant records relating to Canada's actions and inaction with respect to Nazi war criminals in Canada. Yet, the Government continues to release only a redacted version of the Rodal report and none of Part II of the Commission's report. In addition, the Government is stonewalling B'nai Brith's recent efforts to obtain records showing the extent to which the Government investigated the roughly 240 individuals flagged by the Commission.

A public record of this history is necessary for public accountability—that is, for B'nai Brith, other human rights groups, and historians and journalists to assess Canada's actions and inaction in relation to Nazi war criminals in Canada and its actions following the Commission's recommendations. We are now well over 75 years since the end of World War II; social media and other factors are fuelling Holocaust denials; and, antisemitism is again on the rise. For all these reasons, public disclosure of this history is essential for Canada and Canadians to document, openly acknowledge, and learn from this terrible era in our history.

In addition, the passage of time—nearly 40 years since the Commission issued its report, and nearly 80 years since WWII—has surely nullified any privacy or national security interests (or any other governmental interests) in continuing to shield this history from public view.

The other briefs submitted to the Committee, and the witnesses before this Committee, have recommended many reforms to the AIA. (The Act's flaws are discussed in detail in the briefs that have already been submitted to the Committee.⁶) If implemented, these reforms likely would only somewhat improve the Government's responses to B'nai Brith's records requests. However, a more direct, proactive approach is also needed. B'nai Brith recommends that the Committee consider:

- Initiating AIA amendments that would mandate disclosure of records relating specifically to alleged Nazi war criminals in Canada and to any other Canadian resident who may have been involved in carrying out the Holocaust; and

⁴ Alti Rodal, *Nazi War Criminals in Canada: The Historical and Policy Setting from the 1940s to the Present – Prepared for the Commission of Inquiry on War Criminals* (Sept. 1986) (the “Rodal report”).

⁵ B'nai Brith is aware of roughly 25 enforcement-type proceedings against Nazi war criminals in Canada, which the Government initiated since the Commission issued its report. However, without access to Part II of the report, there is no way to know which of those 25 proceedings relate to the sets of 20 and 218 files identified by the Commission for further investigation.

⁶ See also, e.g. Office of the Information Commissioner of Canada, *Observations and Recommendations from the Information Commissioner on the Government of Canada's Review of the Access to Information Regime* (Jan. 2021) (“OIC Observations”), online: <https://www.oic-ci.gc.ca/en/resources/reports-publications/observations-and-recommendations-information-commissioner-review>; Sean Holman, “Canada's Access to Information Act is built to be broken,” *Policy Options* (Nov. 8, 2021), online: <https://policyoptions.irpp.org/magazines/november-2021/canadas-access-to-information-act-is-built-to-be-broken/>.

- Establishing a publicly accessible digital archive of Holocaust materials by requiring all Government of Canada agencies to compile and submit to Library and Archives Canada (“LAC”) all the agencies’ Holocaust-related records, and then require LAC to organize and place the records in a digital archive that is readily accessible to the public.

Part II of this brief is an overview of B’nai Brith and its involvement in human rights advocacy and education. Part III provides additional background on the War Crimes Commission. Part IV summarizes B’nai Brith’s records requests to date. Part V addresses B’nai Brith’s recommended AIA reforms and proposed archive of Holocaust materials.

II. B’nai Brith

B’nai Brith is Canada’s oldest independent Jewish human rights organization. B’nai Brith is dedicated to eradicating racism, antisemitism and hatred in all its forms, championing the rights of the marginalized, and providing basic human needs for community members.⁷

Toward those ends, B’nai Brith runs several community service programs as well as the “League for Human Rights”. The League advocates for human rights in Canada and internationally by, among other things, developing and distributing policy positions, intervening in various legal proceedings, and providing historical and educational materials.⁸

For many years the League’s work has included monitoring reports of Nazi and other war criminals in Canada. The League has also advocated for rigorous government efforts to deport or criminally prosecute Nazi war criminals in Canada and for legislative reforms to facilitate those efforts. This work included participating in the Commission of Inquiry on War Criminals, discussed in Part III below. (Members of the League have been handling the ATIP files discussed in part IV below and have prepared this brief.)

III. The War Criminals Inquiry

The Commission of Inquiry on War Criminals was established pursuant to Order in Council No. 1985-348 on February 7, 1985, with the Honourable Mr. Justice Jules Deschênes appointed as its commissioner.⁹ The Commission was established to consider whether Nazi war criminals had been allowed to enter Canada after World War II, how they obtained entry, and whether they were still residing in Canada. The Commission was also directed to provide advice and recommendations on

“what further action might be taken in Canada to bring to justice such alleged war [Nazi] criminals who might be residing within Canada, including recommendations as to what legal means are now available to bring to justice any such persons in Canada or whether and what legislation might be adopted by the Parliament of Canada to ensure that war criminals are brought to justice and made to answer for their crimes.”¹⁰

The Commission’s report was divided into two parts. Part I, which was designed for publication, includes sections addressing the concept of war criminals and discussing existing and recommended new

⁷ See B’nai Brith Canada – Who We Are, online: <<https://www.bnaibrith.ca/who-we-are/>>.

⁸ For background information on the League for Human Rights, see online: <<https://www.bnaibrith.ca/league-for-human-rights/>>.

⁹ That Order in Council was issued under the *Inquiries Act*, RSC 1985, c. I-11.

¹⁰ Commission of Inquiry on War Criminals, *Report – Part I: Public* (“Report”), Chapter I-1 at 17 (quoting Order in Council P.C. No. 1985-348).

legislative tools to deport, extradite, and internally prosecute war criminals in Canada. Chapter I-8 of Part I provides the result of the Commission's extensive investigation of alleged war criminals who had entered Canada after WWII. This investigation started with a "master list" of 774 names, an addendum of 38 names, and a list of 71 German scientists and technicians.¹¹

From the master list, the Commission recommended that 606 files be closed immediately. The Commission broke the remaining files down into several (overlapping) groups for various follow up investigations and other action. These groups included one with 20 names of people who, according to the Commission, should either be deported or criminally prosecuted in Canada. The Commission recommended that the government give "urgent attention" to this group. From among the other groups, the Commission recommended that 218 files warranted further investigations.¹²

According to an introductory chapter in Part I of the report, Part II of the report

contains the particulars of the in-camera sittings of the Commission and spells out the Master List with names and corresponding numbers as well as two other lists. It also contains detailed opinions in 29 specific cases.¹³

To B'nai Brith's knowledge, Part II of the report has never been publicly released. In addition, the Government has also not released an unredacted copy of the Rodal report prepared for the Commission, as noted in Part I above.

B'nai Brith's "League of Human Rights" participated in the Commission's inquiry. That participation was led by David Matas, B'nai Brith's Senior Counsel and international human rights legal expert.¹⁴

Shortly after the Commission issued its report, Mr. Matas and co-counsel Susan Charendoff published the above-referenced book *Justice Delayed*, which recounts the history of Canada's laissez faire approach to Nazi war criminals entering Canada up to the start of the Commission's Inquiry. According to the book, with the exception of a single extradition proceeding in 1982, "alleged Nazi war criminals in Canada have enjoyed a virtual safe haven from prosecution."¹⁵

The complete history of Canada's response to Nazi war criminals still needs to be told publicly. Part I of the Commission's report was a significant milestone in exposing this history. However, the public record is still silent on the nature of the investigations, the former Nazis identified by the Commission, and what actions the Canadian government has taken on the several hundred files identified by the Commission for follow up.¹⁶ Without an unredacted copy of the Rodal report, there is also an incomplete public record of the history of the Government's action and inaction with respect to Nazi war criminals finding safe haven in Canada.

¹¹ *Ibid*, Chapter I-8 at 261-262.

¹² *Ibid*, Chapter I-1 at 12-14 (findings/recommendations #s 63-79). See also David Matas and Susan Charendoff, *Justice Delayed – Nazi War Criminals in Canada* (Summerhill Press Ltd., Toronto, 1987) at 157; and, Jewish Telegraphic Agency, "Report Shows Canada's Role in Harboring Nazi War Criminals (Aug. 10, 1987), online: <<https://www.jta.org/archive/report-shows-canadas-role-in-harboring-nazi-war-criminals>>.

¹³ Report, Chapter I.2 at 21.

¹⁴ *Justice Delayed*, *supra* note 1 at 14.

¹⁵ *Ibid* at 13.

¹⁶ B'nai Brith is aware of legal proceedings the Canadian government has pursued against 28 individuals, since the Commission issued its report. However, without seeing the Part II report, B'nai Brith does not know which if any of these 28 people are among the lists of 20 and 218 identified by the Commission for further action.

The Government should now release Part II of the Commission’s report, an unredacted version of the Rodal report, and all records regarding the Government’s response to the alleged war criminals noted in the Commission’s report. Release of these records is necessary to ensure public accountability and is essential for Canada and Canadians to document, openly acknowledge, and learn from this terrible era in our history.

IV. B’nai Brith’s ATIP Requests To Date

To date, multiple attempts have been made to obtain records about Nazi war criminals in Canada. These efforts, which have been largely unsuccessful, are summarized below.

Requests for the Rodal report

In the mid-1980s, a journalist submitted an ATIP for the Rodal report to the Commission. In response, the Government released a copy that was “slashed with major deletions which left whole portions of the document blacked out.”¹⁷

B’nai Brith recently ordered another copy of the Rodal report from Library and Archives Canada (LAC). The copy provided by LAC appears to have the same redactions as those in the copy released to the journalist (and subsequently obtained by B’nai Brith) in the 1980s.

Requests for Part II of the War Crimes Commission’s report

In January, 2022, B’nai Brith submitted an ATIP to LAC for a copy of Part II of the War Crimes Commission’s report.¹⁸

To date—over a year since B’nai Brith submitted its ATIP—LAC has not responded to this request, except to acknowledge receipt and to indicate (as of October, 2022) that the request had not yet been assigned to an access to information “analyst.” This non-response is a “deemed refusal” to provide the requested record, under section 10(3) of the AIA. Accordingly, on December 8, 2022, B’nai Brith submitted a complaint about this deemed refusal to the Information Commissioner.¹⁹

¹⁷ *Justice Delayed*, supra note 1, at 245.

¹⁸ This ATIP request has LAC file # A-2021-09147. B’nai Brith also requested this same record from the Privy Council Office (PCO). (This ATIP request has PCO file # A02022-00429/ALB.) In response, the PCO stated that it could not find the record in its files and advised B’nai Brith to request the record from LAC. (Jan. 11, 2023 letter from D. Neilson/PCO to D. Rosenfeld. All correspondence and related documents referenced in this Brief are on file with the authors and can be provided upon request.)

¹⁹ This complaint has OIC file # 5822-05376. To date, the Commissioner’s office has not responded to the complaint, except to acknowledge its receipt.

Requests to LAC, Justice Canada and the RCMP for records of the Government's investigations of Nazi war criminals

B'nai Brith has submitted identical ATIPs to three separate institutions for records of investigations of those alleged war criminals referenced in the Commission's report, who have been deceased for at least 20 years.²⁰ This request is limited to records from the War Crimes Unit established by the Department of Justice and the RCMP and the Crimes Against Humanity and War Crimes Program.²¹

B'nai Brith used the period of 20 years from death to define the scope of its records request, in order to avoid the AIA exemption for personal information. That exemption is inapplicable to information relating to individuals who have been dead for more than 20 years.²²

B'nai Brith submitted one of these ATIPs to LAC in January 2022.²³ To date (over a year later), LAC has not responded to this request, except to acknowledge receipt and to indicate (as of October, 2022) that the request had not yet been assigned to an access to information "analyst." This non-response is a "deemed refusal" to provide the requested record, under section 10(3) of the AIA. Accordingly, on December 8, 2022, B'nai Brith submitted a complaint about this deemed refusal to the Information Commissioner.²⁴

B'nai Brith had somewhat more, but still limited, success in a January 2022 request for these same war crimes investigation records from the RCMP.²⁵ The RCMP originally responded to this request by asking B'nai Brith to clarify the scope of requested records.²⁶ In a phone call in April, 2022, the RCMP stated that the request was too broad and, at any rate, that the RCMP did not have access to the names of individuals identified in Part II of the Commission's report, and the RCMP could not determine whether and when the relevant individuals died for purposes of determining which of them have been dead for over 20 years.

This response created a Catch 22 for B'nai Brith, because no Government agency has disclosed these names.²⁷

The RCMP then provided a list of 39 Nazi war criminals, which list the RCMP had apparently provided in response to a 2019 records request. The RCMP said it did not have files on 36 of the named individuals, at least in part, because RCMP files on some of those individuals had already been sent to LAC. However, the RCMP noted that it was providing the other requester records relating to the remaining three individuals and offered to provide those same records to B'nai Brith.²⁸

In October, 2022, the RCMP disclosed a pdf file with copies of 268 pages of records. The disclosed copies are replete with redactions, although the full scope of redactions is hard to determine, because they

²⁰ LAC file # A-2021-09150.

²¹ The Crimes Against Humanity and War Crimes Program is delivered by the Department of Justice, RCMP, CBA and IRCC: <https://www.justice.gc.ca/eng/cj-jp/wc-cdg/inter.html>.

²² See AIA s 3 and *Privacy Act* s 3 ("personal information" definition, subparagraph (m)).

²³ LAC file # A-2021-09150.

²⁴ This complaint has OIC file # 5822-05377. To date, the Commissioner's office has not responded to the complaint, except to acknowledge its receipt.

²⁵ RCMP file # A-2022-00266.

²⁶ Jan. 28, 2022 Email from L. Turner/RCMP to D. Rosenfeld.

²⁷ Apr 5, 2022 Email from D. Rosenfeld to A. Pokrywka/RCMP.

²⁸ May 2, 2022 Email from A. Pokrywka/RCMP to D. Rosenfeld; Oct. 19, 2022 letter from R. Duguay/RCMP to D. Rosenfeld, re: ATIP File # A-2022-00266 (RCMP).

were made by *white out* rather than with a black or other obvious colour. As such, the redactions are hard to distinguish from the pages' white background.

In addition, the RCMP did not originally identify the legislative exemptions it was relying on to make these redactions. This omission contravenes section 10(1)(b) of the AIA, which requires government institutions to identify the “specific provision” of the AIA “on which the refusal [to provide the requested information] was based....”

B'nai Brith subsequently asked for a list of the specific AIA exemptions the RCMP was relying on. In response, the RCMP listed five AIA exemptions, but did not state which of the exemptions applied to which redactions.²⁹ Absent a redaction-specific listing of exemptions, it is impossible to even begin to assess which if any of the RCMP's exemption claims are valid. B'nai Brith then asked the RCMP to identify the specific exemptions it was relying on for each redaction, but the RCMP denied this request, stating that “this is the way we process our requests following the [Access to Information] Act.”³⁰

B'nai Brith is currently preparing a complaint to the Information Commissioner about the RCMP's response to this records request.

In February 2022, B'nai Brith's submitted its third ATIP for these same records, this one to the Department of Justice (DOJ).³¹ DOJ originally responded by asking B'nai Brith to “identify for whom ... [B'nai Brith was] seeking the information, as we are not in a position to know who has since passed and whether or not it has been twenty(20) or more [years].” DOJ's response also noted that LAC may have responsive information and would be “in a better position to advise if individuals have been deceased for twenty(20) or more [years].”³²

This response posed the same Catch 22 as that from the RCMP. Without knowing the names of the suspected war criminals identified by the Commission for further investigation, B'nai Brith could not itself determine which of them had been dead for over 20 years.³³

Further correspondence ensued about the breadth of records B'nai Brith was requesting, following which B'nai Brith agreed to narrow the requested scope of records somewhat. Even with this narrowing, in mid-July 2022—roughly six months after receiving the ATIP—DOJ notified B'nai Brith that it needed **1285 more days**—that is, roughly 43 months, until September, 2026—to sort through the nine boxes of paper records that had been identified and some unspecified quantity of electronic records.³⁴

V. Recommended amendments to the AIA

B'nai Brith has little confidence that its records requests (as summarized in part IV above) will succeed any time soon, if ever, under the current version of the AIA. As the summaries in part IV above show, the Government has largely stonewalled in responding to B'nai Brith's requests for Nazi war crimes records. Responses to two records requests are a year overdue. In addition, released records have redactions which

²⁹ Dec. 23, 2022 Email from A. Pokrywka/RCMP to D. Rosenfeld

³⁰ Jan. 4, 2023 Email from D. Rosenfeld to A. Pokrywka/RCMP and Jan. 17, 2023 Email from A. Pokrywka/RCMP to D. Rosenfeld.

³¹ DOJ file # A-2021-00985.

³² Feb. 16, 2022 Email from R. Durocher/DOJ to D. Rosenfeld.

³³ March 9, 2022 Email from D. Rosenfeld to R. Durocher/DOJ.

³⁴ July 13, 2022 letter from H. Valerie/RCMP to M. Mostyn/B'nai Brith.

are excessive and unjustified, especially when viewed in light of the public interest in exposing the history of Canada's responses to Nazi war criminals.

When LAC finally responds to B'nai Brith's records requests, LAC will likely decline to produce Part II of the Commission's report and will redact all or most of the other requested records, based on numerous disclosure exemptions in Part I of the AIA.

From B'nai Brith's experience and knowledge of other parties' experiences, many of the LAC's exemption claims will likely fail on close scrutiny by the Information Commissioner and/or by a reviewing court. However, that process will likely take years to complete. In addition, the public interest in disclosing these records far outweighs the interests underlying any validly claimed exemptions. A different, more transparent and progressive approach is sorely needed.

B'nai Brith recommends the following AIA amendments to specifically reduce current barriers to the Government's disclosure of records relating to Nazi war criminals in Canada.

(1) Removal of exemptions for Holocaust records

B'nai Brith urges Parliament to remove all exemptions from the Government's general duty to disclose records requested under the Act, with respect to records relating to Nazi war criminals in Canada and to Holocaust records more generally. Parliament's removal of exemptions for these records would effectively mandate their disclosure.

Appendix A to this brief is a draft of proposed amendments to the AIA that, in B'nai Brith's view, would achieve this objective.

One of these amendments removes the exemption for personal information protected under the *Privacy Act*, for Holocaust records. B'nai Brith anticipates that this exemption will be the most commonly claimed in responses to its pending records requests. However, the public interests in protecting personal information are clearly outweighed by the disclosure interests discussed above.³⁵

As noted in Part IV above, under the AIA (which in turn cross references the *Privacy Act*), the exemption for personal information is inapplicable to information relating to an individual who has been dead for more than 20 years. However, the 20-years dead provision is problematic because some Nazi war criminals may not have died over 20 years ago and because it takes time and resources for a government institution to determine whether and when a suspected war criminal has died.

In addition, under current law, the head of the institution that has the requested personal information has discretion to disclose that information when "the public interest in disclosure clearly outweighs any invasion of privacy that could result from the disclosure."³⁶ This discretionary authority is not enough to ensure that records relating to Nazi war criminals will be disclosed. B'nai Brith has little confidence that institution heads will willingly release personal information relating to Nazi war criminals in Canada,

³⁵ This position is echoed in the European Union's General Data Protection Regulation. Recital 158 of that regulation states that government agencies that hold records of "public interest" should have a "legal obligation to acquire, preserve, appraise, arrange, describe, communicate, promote, disseminate and provide access to records of enduring value for general public interest." The recital adds that EU members should be able to archive "personal data" to provide "specific information related to the political behaviour under former totalitarian state regimes, genocide, crimes against humanity, in particular the Holocaust, or war crimes." Regulation (EU) 2016/679 of the European Parliament and of the Council, p. I. 119/29, online: <<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016R0679>>.

³⁶ See AIA ss 19(2)(c) and *Privacy Act*, s 8(2)(m).

given the pathetic history of Canada’s response to Nazi war criminals (at least, up to the Commission’s report), and the Government’s general aversion to disclosing records and its specific resistance to B’nai Brith’s access to information requests.

Institutions should be mandated to disclose this personal information rather than simply have discretion to disclose it.

(2) Creation of a public archive of Holocaust records

B’nai Brith believes that the long-term solution goes beyond ensuring that the Government of Canada provide timely and fulsome responses to requests for Holocaust records (including records of Nazi war criminals in Canada). The onus should not be on B’nai Brith or on other non-governmental organizations, and academics, etc., to create a robust digital archive of these records. Rather, the Government should proactively undertake to create a publicly accessible digital archive of Holocaust records.

Toward this end, B’nai Brith requests that Parliament provide for the creation of a Holocaust records archive. This initiative should, at a minimum, include legislative mandates for:

- LAC to create a publicly accessible digital archive of Holocaust materials;³⁷ and
- Government of Canada institutions to, by a specified date, search for, compile, and declassify all Holocaust records in their possession or control, and to provide nonredacted copies of those records to LAC.

The initiative should also include sufficient funding for LAC and Government institutions to carry out these mandates. Incidental legislative amendments should

- Waive all AIA disclosure exemptions for the newly archived Holocaust records; and
- Apply the AIA’s existing enforcement provisions, in sections 67 (“Obstruction”) and 67.1 (“Obstructing right of access”), to contraventions of the new legislative mandates listed above.

B’nai Brith is willing to work with the Committee to draft these legislative provisions.

* * * * *

B’nai Brith commends the Committee for undertaking to review the AIA. That review is critical because the Act has numerous flaws, including overly broad exemptions from the general duty to disclose, insufficient deadlines for institutions’ responses to records requests, and inadequate appeal and enforcement tools. Because of these flaws, along with a lack of government resources for processing information requests, persistent anti-disclosure attitudes among government leaders and staff, and inadequate proactive declassification and disclosure of non-confidential records, Canada has a poor

³⁷ For this purpose, B’nai Brith suggests defining “*Holocaust materials*” as “*all materials listed in the ‘Working Definition of Holocaust-Related Materials,’ in the International Holocaust Remembrance Alliance’s Guidelines for Identifying Relevant Documentation for Holocaust Research, Education and Remembrance (2022).*” This source is available online at: <<https://www.holocaustremembrance.com/resources/reports/guidelines-archival-documentation>>. These Guidelines are part of a broader effort by the International Holocaust Remembrance Alliance (“IHRA”) to encourage countries to create public archives like the one recommended by B’nai Brith in this brief. See, e.g. IHRA, *Final Report and Recommendations: Multi-Year Work Plan on Archival Access* (30 Nov. 2017), online: https://www.holocaustremembrance.com/sites/default/files/2021-09/IHRA%20Multi-Year%20Work%20Plan%20on%20%20Archival%20Access_Final%20Report%20and%20%20Recommendations.pdf.

system for providing public access to government records.³⁸ This shortcoming in turn impedes government transparency and ultimately injures democracy in Canada.³⁹

There is virtually no transparency with respect to whether Canada followed up on its commitment to investigate the 240 or so suspected Nazi war criminals identified by the War Crimes Commission. Considerable time has elapsed since WWII and since the Commission issued its report in 1986, and there is a compelling public interest in disclosing the history of Canada's follow up to the Commission's report. Under these circumstances, the AIA should be amended to mandate disclosure of the entire text of the Rodal report, Part II of the Commission's report, and all records relating to the Government's follow up to that report. Additional amendments are needed to proactively require the Government to compile all Holocaust records and place them in a public archive managed by LAC.

³⁸ See, e.g. OIC Observations, *supra* n. 6 at 5 (noting that Canada's access to information system "could soon be beyond repair if certain serious problems are not resolved"); Holman, *supra* n. 6 (noting an example of "how broken our access to information system is" and that the system is "built to be broken").

³⁹ As Holman notes, "when the government retains the discretionary power to only tell the public what it wants ... the truth can all too easily be obscured, thwarting democracy itself."

APPENDIX A

Add the following new subsection (3) to section 19 (“Personal information”):

Where disclosure is required

(3) The head of a government institution shall disclose any record requested under this Part that contains personal information relating to any individual

- (1) investigated by, or identified or otherwise referred to, the Commission of Inquiry on War Criminals established pursuant to Order in Council No. 1985-348, as having possibly committed a war crime;
- (2) identified and investigated for being, or alleged to have been, involved in carrying out the Holocaust; or
- (3) who is or was believed to have ordered, incited, assisted, or otherwise participated in the persecution of any person because of race, religion, national origin, or political opinion, during the period beginning on March 23, 1933, and ending on May 8, 1945, under the direction of, or in association with, the Nazi Government of Germany, any government in any area occupied by the military forces of the Nazi government of Germany, any government established with the assistance or cooperation of the Nazi government of Germany, or any government which was an ally of the Nazi government of Germany.

Incidental amendment to s. 19(1) – Change “Subject to subsection 2” to “Subject to subsections (2) and (3)”

Add the following new section after section 26 of the Access to Information Act

Disclosure of information about Nazi war criminals

26.1 Notwithstanding sections 13-26, the head of a government institution shall disclose any record requested under this Part that contains information relating to any individual

- (1) investigated by, or identified or otherwise referred to, the Commission of Inquiry on War Criminals established pursuant to Order in Council No. 1985-348, as having possibly committed a war crime;
- (2) identified and investigated for being, or alleged to have been, involved in carrying out the Holocaust; or
- (3) who is or was believed to have ordered, incited, assisted, or otherwise participated in the persecution of any person because of race, religion, national origin, or political opinion, during the period beginning on March 23, 1933, and ending on May 8, 1945, under the direction of, or in association with, the Nazi Government of Germany, any government in any area occupied by the military forces of the Nazi government of Germany, any government established with the assistance or cooperation of the Nazi government of Germany, or any government which was an ally of the Nazi government of Germany.