

The History of the Oberlander Case

updated October 10, 2018

The German-Canadian Congress (GCC) has very closely followed the case against Mr. Helmut Oberlander of Waterloo and others accused of war crimes. The GCC has always taken the following position: *If someone is accused of a war crime, let's put him before a criminal court, where he can defend himself, including appealing a Judge's verdict. Everyone, from a traffic violator to a mass murderer has that right! Why does the Government take that right away from an exemplary Canadian citizen who is accused (there is no proof) of an immigration violation in 1954?*

Because of this, the GCC has taken a stand in favour of Mr. Oberlander and others whose basic human rights are violated in a similar manner. Below is the information available to us and our opinion on the Canadian governments actions.

Since 1995 the Government of Canada has accused and investigated Mr. Oberlander concerning war crimes that were committed during the Second World War. After spending countless hours and large amounts of taxpayer dollars on this investigation, the Government appointed Judge, Andrew MacKay, on February 28, 2000 reported his findings: He concluded that there is absolutely no evidence that Mr. Oberlander was either, **directly or indirectly**, involved in committing any war crimes or any crimes against humanity. However, he **might** have obtained his entry into Canada in 1954 by not telling the truth.

Mr. Oberlander, at age 17, was used by the German Military Security Forces (Einsatz Kommandos) as an interpreter when they entered the Ukraine in 1941. The Canadian Government claims, that lying about this is sufficient reason to revoke Mr. Oberlander's Canadian Citizenship and deport him from Canada. Mr. Oberlander says that he was never asked about his military service when interviewed by Canadian Immigration officers and numerous witnesses have since come forward informing us that they were not asked either. **Neither Judge MacKay, nor the Government provided any proof that Mr. Oberlander was asked that question**, but Judge Andrew MacKay ruled, that **"on the Balance of Probabilities"** he must have been asked. Therefore, the Canadian Government and the Canadian Jewish Congress claim that Mr. Oberlander came to Canada by fraud in 1954 and should be deported.

Please consider this: The case is called "The Government of Canada against Helmut Oberlander". The Government appoints the prosecutor; it appoints the Judge who makes the final decision.

"On the Balance of Probability" is based on the assumption that there is a **more** than 50% chance that Mr. Oberlander was asked about his service as a translator with the Einsatzkommando 10. If he falls into the category of **less** than 50%, will this mean that the law is applied in a different manner?

In addition, it is our opinion that enabling people to communicate by being an interpreter is certainly not a crime and serves both sides; the side that does the interrogation and the one being interrogated. This was clearly revealed by the Canadian Government's own witness, Mr. Siderenko.

Who is Helmut Oberlander and what is the case against him?

- 1700/1750 The ancestors of Helmut Oberlander emigrate from Germany/Switzerland to the Ukraine
- 1924 Oberlander is born in Halbstadt (Molonchansk). His grandfather and his father were both physicians, his mother was a nurse.
- 1930 At six years of age, Oberlander loses his father due to illness.
- 1931 to 1941 Oberlander attends both, Russian and German schools
- Oct. 1941 Molonchansk is occupied by German Troops.
- Oct./Dec. 1941 All citizens of Molonchansk are registered by the occupying German forces. Because of his language skills, Oberlander is used by the German military as an interpreter. He is allowed to live at home.

- Feb. 1942 Despite protests by his mother, Oberlander is required to work for the German forces. His duties are listening to and translating Russian radio transmissions, acting as an interpreter during negotiations and interrogations between the German military and the local population. He is also required to guard military supplies. Most units for which Oberlander worked are so called SD (Sicherheits Dienst) Einheiten. (Security Units) Today SD Einheiten are accused of having committed crimes against humanity during the Second World War.
- 1943 The SD Einheit (Security Unit), Oberlander worked for, is dismantled and Oberlander is taken over by the German Army. His duties continue to be translating Russian radio messages.
- 1944 Oberlander is wounded. His mother applies for German citizenship for the whole family.
- May/July 1945 Oberlander is a prisoner of war of the British forces.
- 1945/1947 Due to the upheavals of the war and the complete destruction of the German infrastructure, many families are torn apart and must search for their families, as does Helmut Oberlander.
- 1947 After two years of searching, Oberlander finally finds his family in Korntal near Stuttgart in Germany.
- 1950 Oberlander marries his wife Margaret.
- 1948-1952 He starts an apprenticeship as a bricklayer in Stuttgart and at the same time studies construction engineering.
- 1952 Oberlander and his wife file an application to emigrate to Canada.
- Aug. 1953 Oberlander and his wife are granted an interview with Canadian immigration officers in Karlsruhe, Germany. Questions are asked about experience in his trade, their status of health and were they ever involved with the Communist Party. **Questions about his military service are not asked.** Several persons who had their interview around the same time as Mr. and Mrs. Oberlander have since come forward to let us and the government know that they were not asked either. (A copy of the questionnaire used by Canada at that time is on file in our archives). In addition, Mr. Oberlander did not belong to any category that was prohibited from coming to Canada. That list was issued by the Canadian Government and a copy is also on file at our office.
13. May 1954 Mr. And Mrs. Oberlander arrive in Quebec City, Canada.
- 1954 – 1958 Mr. Oberlander is employed by various construction companies in the Kitchener-Waterloo area.
- 1958 Helmut Oberlander starts his own company, Oberlander Construction.
- 1960 The Oberlanders apply for and receive their Canadian Citizenship.
- 25 Jan. 1995 Two RCMP officers visit Oberlander at his home in Waterloo and question him about his military service during the Second World War.
- Jan. 1995 The Canadian government accuses Oberlander of having participated in crimes against humanity during the Second World War. The then minister of justice, Alan Rock, announces, "you will be surprised at the evidence on file against Mr. Oberlander at the Canadian War Crimes Commission".
- Aug. 1998 The hearing of the case against Mr. Oberlander begins.
28. Feb. 2000 Finally, 1 ½ years after the start of the hearings, the federally appointed Judge, Andrew Mackay, **clears Mr. Oberlander of all accusations. He states that there is no evidence that Mr. Oberlander was either directly or indirectly involved in any crimes against humanity.** However, "**On the Balance of Probability**" he rules, that Oberlander did not tell the truth about his military service, when he was interviewed by immigration officials in 1953. Neither Judge MacKay, nor the Canadian government

supplies any proof that this was the case. The ruling is simply based on an opinion by Judge MacKay. According to Canadian law, based on that ruling, the Minister for Citizenship and Immigration has the right to make a recommendation to cabinet to revoke the citizenship of Mr. Oberlander and deport him.

A number of other judges have since voiced their opinion on this case, questioning Judge MacKay's ruling.

12. July 2001 Minister of Citizenship and Immigration, Elinor Caplan, makes her recommendation to the Governor in Council to revoke Mr. Oberlander's Canadian Citizenship, which was done.

It seems, that in order to get majority support for her recommendation, Caplan waited until most cabinet members were on their summer holidays. Some members of the cabinet did not know about this decision until the 17th of July. It is also interesting that the document, which was issued, was kept secret, when previous actions by the government on this case, were announced through press releases. We are convinced that this is a terrible violation of basic human rights. As citizens of a country that prides itself on its human rights record we have the obligation to speak out, not only for Mr. Oberlander, but also for anyone whose human rights are violated in a similar manner.

May 31, 2004 A Federal Appeals Court, consisting of three judges after reviewing the case, unanimously finds that the Canadian Government was wrong in revoking Mr. Oberlander's citizenship and orders the government to restore Oberlander's Canadian citizenship. Which was done

May 17, 2007 On the recommendation from the Minister of Citizenship and Immigration the Hon. Diane Finley, Mr. Oberlander's Canadian citizenship is again revoked by the Governor in Council. This was all done behind closed doors, by unnamed people without allowing Mr. Oberlander representation. Mr. Oberlander did appeal the case to the Federal Court of Appeal.

Nov. 17, 2009 After 1 1/2 years, the Federal Court of Appeal made a judgement and by a 2 to 1 decision restored Mr. Oberlander's Canadian citizenship. It stated that the Governor in Council, when revoking Mr. Oberlander's citizenship in 2004, ignored very important facts that should have been considered.

2010 The Canadian Government appealed the decision and the case is now again before the courts

Nov. 2012 Mr. Oberlander was notified by the minister of Citizenship and Immigration, that his Canadian Citizenship has been revoked again and he was informed that he has 30 days to appeal the decision

Dec. 2012 Mr. Oberlander has appealed and he is waiting for a hearing date.

Feb. 18, 2013 The case is heard in the Federal Court in front of Justice Blanchard

June 27, 2013 Justice Blanchard dies before he issues a decision. The file is assigned to Justice Russell who reads the transcripts of the Feb. 18th hearing.

Jan. 2015 Judge James Russell announces his decision upholding the revocation. He writes "He served (*Oberlander*) the Nazi cause for three or four years, surrendered at the end of the war, voluntarily accepted an award of the War Service Cross Second Class and voluntarily joined his mother's application for German citizenship." In addition, he says that Mr. Oberlander has shown no remorse.

We are asking remorse for what? As stated above, Mr. Oberlander was cleared of any wrong-doing in the year 2000. The award he received, was for saving the life of two wounded German soldiers. Judge Russell also mentions German Citizenship as one of the reason for his decision. We hope he realizes that having German citizenship is not against the law.

Jan 2016 Three judges of the Federal Court of Appeal announce that the Government erred when it revoked Mr. Oberlander's Canadian Citizenship and ruled in favour of Mr. Oberlander. That is the third time that Mr. Oberlander won his case.

July 2016 After losing a unanimous decision in the Federal Court of Appeal, the government asks for leave to go to the Supreme Court of Canada. In July 2016, the Supreme Court announces that it will not hear the government's case. The ruling of the Federal Court of Appeal in favour of Oberlander stands.

Sept. 2016 The government starts a fourth proceeding against Mr. Oberlander, which may again go to the Governor in Council for a determination on revocation.

June 2017 Mr. Oberlander's Canadian Citizenship is revoked for the fourth time by the Governor in Council.

The people who make the decision to revoke Mr. Oberlander's citizenship do so at a meeting behind closed doors. They are called Governor in Council, a small number of unknown members of the cabinet. Mr. Oberlander's lawyer is not permitted to be present at the meeting to defend Mr. Oberlander.

May 2018 Mr. Oberlander appeals the decision, and his appeal was heard by Judge Michael Phelan on May 9, 2018. Judge Phelan has reserved his decision until a later unspecified date. **Judge Phelan was the lawyer who ruled against Mr. Oberlander in the 2 to 1 decision on November 17, 2009.** Why was he appointed to hear Mr. Oberlander's appeal? Can he be unbiased is a question we are asking? The Lawyers who represented Mr. Oberlander at the hearing are Barbara Jackman, Ronald Poulton from Toronto.

Sept 28, 2018: Judge Phelan released his decision on Mr. Oberlander's appeal. He ruled that the Governor in Council acted reasonably in revoking Mr. Oberlander's Canadian Citizenship for the fourth time.

Our Opinion: We do not believe Judge Phelan should have heard this latest appeal, as he is the same judge who ruled against Mr. Oberlander the second time the appeal was heard in the Federal Court in 2008. Mr. Oberlander's lawyers asked Judge Phelan to recuse himself, but he refused. Not surprisingly, he again ruled against Mr. Oberlander, as coming up with a different ruling would have meant that he was not consistent. Another Judge of the Federal Court, who had not prejudged the case, should have been used.

*Finally, something to think about: Mr. Oberlander called his company "**Oberlander Construction**". Every cheque that was written, every application that was filed, every bill that was sent out bore the name Oberlander. Does someone who is so open with his name have something to hide?*

On behalf of the German-Canadian Congress, National: Carola Lange, President. Ernst Friedel, Director
On behalf of the German Canadian Congress, Ontario: Walter Marzinko, President

Note: Paragraphs in *italics* represent our opinion.