



IMMIGRATION AND REFUGEE BOARD  
(REFUGEE PROTECTION DIVISION)

LA COMMISSION DE L'IMMIGRATION  
ET DU STATUT DE RÉFUGIÉ  
(SECTION DE LA PROTECTION DES RÉFUGIÉ)

IN PRIVATE  
HUIS CLOS  
TA2-25504

CLAIMANT(S)

DEMANDEUR(S)

DATE(S) OF HEARING

**February 9, 2004**

DATE(S) DE L'AUDIENCE

DATE OF DECISION

**February 16, 2004**

DATE DE LA DÉCISION

CORAM

**William T. Short**

CORAM

FOR THE CLAIMANT(S)

**Steven Beiles  
Barrister and Solicitor**

POUR LE(S) DEMANDEUR(S)

REFUGEE PROTECTION OFFICER

**P. Bono**

AGENT DE PROTECTION DES RÉFUGIÉS

DESIGNATED REPRESENTATIVE

REPRÉSENTANT DÉSIGNÉ

MINISTER'S COUNSEL

CONSEIL DE LA MINISTRE

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is a citizen of Poland, who claims to be a Convention refugee within the meaning of section 96 and a person in need of protection within the meaning of subsection 97(1) of the Immigration and Refugee Protection Act.

#### ALLEGATIONS

The claimant alleges that he was the victim of persecution in Poland because of his sexual orientation. In particular, the claimant alleges that he became the victim of ultra nationalists, who were associates of his male lover's brother-in-law.

#### DETERMINATION

The panel accepts the valid Polish passport as tendered into evidence<sup>1</sup> and finds that the claimant is a citizen of Poland. Furthermore, although the panel is somewhat puzzled by the claimant's apparent lack of knowledge about the gay scene both in Poland and Toronto, the panel finds, on the balance of probabilities, after considering the claimant's testimony, that he is a homosexual. The panel further finds that the claimant is not a Convention refugee and is not a person in need of protection.

#### ANALYSIS

By claiming that he was persecuted because of his sexual orientation, the claimant

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<sup>1</sup> Exhibit R/A-2

has demonstrated a linkage to a particular social group, one of the five grounds, which describe a Convention refugee. The panel has found, however, that the claimant is not a Convention refugee, nor is he a person in need of protection because there is sufficient state protection for him in Poland.

In his evidence, which included his PIF narrative and his oral testimony, the claimant recounted various problems which he had encountered on account of his sexual orientation while growing up. The claimant's real problems began, however, in of 2000 when he met . Soon the claimant and had moved in together. Unfortunately, was a married man and his wife, did not take kindly to her husband leaving her to take up with another man. Soon her brother, who is an ultra nationalist or a skinhead was making life dangerous for the claimant. In the claimant and were both beaten when returning from a bar one night. The police were contacted, but they made little headway in their investigation.

In their apartment door was vandalized. In of 2001, the claimant was badly beaten up. In 's brother-in-law and his friends broke into the apartment and wrecked it. appeared at 's work place and demanded that he return home. complied.

The claimant and kept in touch, however. 's wife, upon hearing that the claimant and were still in touch had the claimant accosted on the street, forced into a car and taken to the outskirts of the city and beaten up.

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In [redacted] the claimant left for Canada. He and [redacted] are no longer in touch.

The panel is of the view that the real problems encountered by the claimant were a result of the jealousy of [redacted] s wife [redacted]. Inasmuch as the claimant and [redacted] are no longer in touch, it is difficult for the panel to see what danger the claimant would be in, should he return to Poland.

The claimant has submitted that as soon as he as a gay male enters into a serious and lasting relationship with someone, that society will act negatively. With respect, the panel does not share this view. The real problems, which the claimant suffered at the hands of [redacted] and her brother, were particular to that situation. The claimant was abused by people who knew him and those circumstances, as unjust and difficult as they may have been, could just as easily have been encountered by two heterosexual lovers, suffering the wrath of a spurned ex-spouse.

The claimant has further alleged that the police did not properly investigate his assaults. The panel is of the view, however, that in similar circumstances in Canada, if one were to be mugged on the street by strangers, the chances of successfully convicting the perpetrators might be difficult.

Furthermore, the panel is mindful that the claimant resided in [redacted] a city of about sixty thousand. The police and general public in larger centres would be (as in Canada) more open-minded and tolerant. The claimant was unable to give any real reason as to

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why he did not try moving to a larger centre in Poland before moving all the way to Canada.

In a general sense the position of gays in Poland does not rise to the level of persecution. In considering the position of lesbians and gays in Poland, the panel considers the United Kingdom, Home office Country Reports as being the preferred and most authoritative source because they make heavy use of material supplied by the International Lesbian and Gay Association (ILGA) and Lamda, an association of the Polish lesbian and gay community.

Homosexuality was decriminalized in Poland in 1932,<sup>2</sup> several decades before it was decriminalized in Canada. There is an equal age of consent of 15 years regardless of sexual orientation.<sup>3</sup> Poland, in common with other European countries, however, does have a degree of societal prejudice against homosexuals, though a survey carried out in 2000 showed that it was less pronounced than had been the case seven years earlier. A higher level of tolerance is evident in big cities and amongst the better educated. Twenty-two percent of gays claim to have been the victims of violence on at least one occasion.<sup>4</sup>

The ILGA has stated that the Polish police have been observed to show an increasing tolerance of gays and lesbians since 1985. In particular, ILGA states that lesbians and gays, who are the victims of violent crimes, have received more

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<sup>2</sup> Exhibit RA-5, U.k. Home Office Reports, Poland, April 2003, page 32, para # 6.142

<sup>3</sup> Ibid., page 32, para #6.142

<sup>4</sup> Ibid., page 32, para # 6.143

comprehensive assistance and better treatment from the police in recent years.<sup>5</sup>

There are no known cases of discrimination against gays or lesbians in the health service, including those who are HIV positive.<sup>6</sup>

Gay clubs, bars and discotheques have been established in several cities and towns. Five Polish lesbian and gay magazines are available in regular newspaper kiosks. Lambda also provides a counselling service through its Rainbow Centre. Other major associations include ISOMS, a lobbying organization and the Lesbian Archives.<sup>7</sup>

A gay pride parade is held each year in Warsaw and other major population centres and directories of gay hotels, clubs and establishments are available.<sup>8</sup> In 2002, the gay pride parade in Warsaw was protected by a heavy and visible police presence against a small group of right wing protesters.<sup>9</sup>

If the claimant were to return to Poland and took up with someone other than (with whom he has lost touch), the panel can see no reason why he would encounter serious difficulty. Furthermore, although many in Polish society harbour prejudices against gays, the panel is of the opinion, that if the claimant were to settle in a larger centre like Warsaw, he would find a more tolerant atmosphere.

Furthermore, the panel is mindful of the Supreme Court's decision in Ward.<sup>10</sup> In

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<sup>5</sup> Ibid., page 33, para # 6.144

<sup>6</sup> Ibid., page 33, para # 6.145

<sup>7</sup> Ibid., page 33, para # 6.146

<sup>8</sup> Exhibit R/A-6

<sup>9</sup> Ibid., page 4

<sup>10</sup> Canada (Attorney General) v. Ward [1993] 2 S.C.R. 689

that decision, the Court laid down the proposition that refugee protection is a surrogate and can only be properly sought after the claimant has presented clear and convincing proof that his home state is unable to offer protection. In the present case the claimant has certainly not presented such clear and convincing proof that the protection of the Polish state would be unavailable to him. He has accordingly failed to rebut the presumption of state protection and on that basis alone his claim must fail.

On the evidence before it, the panel has concluded that the claimant is not a Convention refugee, because state protection would be available to him, should he return to Poland.

The panel also considered whether the claimant is a person in need of protection because of a risk to his life or a risk of cruel and unusual treatment or because he faces a danger of torture. No evidence was adduced that would support a finding that the claimant faces a danger of torture. With respect to a risk to life or cruel and unusual treatment, the panel's finding with respect to the availability of state protection applies to this ground as well.

#### **CONCLUSION**

The Refugee Protection Division determines that the claimant is not a Convention refugee and further finds that the claimant would not face a danger believed on substantial grounds to exist of torture, nor would he face a serious possibility of risk to

life, cruel and unusual treatments or punishments if he were returned to Poland and he is, therefore, not a person in need of protection within the meaning of subsection 97(1) of the Immigration and Refugee Protection Act.

His claim for refugee protection is, therefore, rejected.

“William T. Short”  
William T. Short

DATED at Toronto this 16th day of February, 2004