

Immigration and Refugee Board  
Refugee Protection Division



Commission de l'immigration et du statut  
de réfugié  
Section de la protection des réfugiés

RPD File # / No. dossier SPR : MA3-03652

Private Proceeding  
Huis clos

<b>Claimant(s)</b>		<b>Demandeur(e)s d'asile</b>
<b>Date(s) of Hearing</b>	July 13 <sup>th</sup> , 2004	<b>Date(s) de l'audience</b>
<b>Place of Hearing</b>	Toronto, Ontario	<b>Lieu de l'audience</b>
<b>Videoconferencing heard in</b>	Montréal, Québec	<b>Fait par vidéoconférence à</b>
<b>Date of decision</b>	October 8, 2004	<b>Date de la décision</b>
<b>Panel</b>	M <sup>c</sup> Stéphane Hébert	<b>Tribunal</b>
<b>Claimant's Counsel</b>	Smedley Prescod	<b>Conseil du demandeur d'asile</b>
<b>Refugee Protection Officer</b>	Deposit of documents	<b>Agent de la protection des réfugiés</b>
<b>Designated representative</b>	N/A	<b>Représentant désigné</b>
<b>Minister's Counsel</b>	N/A	<b>Conseil du ministre</b>

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**I) INTRODUCTION:**

Mr. \_\_\_\_\_ a 30 year-old national of Mexico, requests asylum from Canada according to section 96 and 97 of the *Immigration and Refugee Protection Act* (The Act).

**II) EVIDENCE:**

The evidence consisted of claimant's Personal Information Form, his oral testimony and personal documents. Moreover, copious documents about the socio-political and human rights situation in Mexico were filed by the Refugee Protection Officer (RPO) including documents from Citizenship and Immigration Canada.

The claimant was granted a delay expiring on August 12th, 2004, in order to file additional corroborative evidence. Accordingly, on August 10th, 2004, he filed a police report from the

\_\_\_\_\_, some hospital reports from the Mexican Institute of social security, Direction of \_\_\_\_\_ and finally a letter from Dr.

**III) ALLEGATIONS:**

The claimant alleged being from Colonia Del Valle, a neighbourhood of Mexico, District Federal.

Claimant's alleged persecution derived from his sexual orientation which lead to his harassment and persecution from school mates originally and police later on. In deed, on

2000 the claimant was arrested during a police raid conducted at \_\_\_\_\_ morning time along with four other customers. The claimant stated having brought to the \_\_\_\_\_ which is commonly known as police station \_\_\_\_\_ He was allegedly taken into a cell where he was kept for seven to eight hours during which he was beaten up and psychologically abused. Ultimately, the claimant was found on the street and taken to hospital by ambulance. He would have given a deposition about the circumstances of the incident.

s.19(1)

Following his hospitalization, the claimant received a phone call in order to confirm if he was willing to pursue the investigation of the incident. Eventually, the claimant went to the police station in order to ratify his decision notwithstanding that he was reminded that this would be at his own risk.

The claimant was intercepted in the streets by the police involved in the incident and ordered to withdraw his complaint within two days or he would be killed.

Being fearful, the claimant decided not to pursue the matter nor to seek assistance from the state. Moreover, the claimant did not relocate himself but decided to leave Mexico in order to seek asylum in Canada where he had been in January 2000.

**DETERMINATION:**

The Refugee Protection Division determines that the claimant is not a "Convention refugee" nor a "person in need of protection" for the following reasons:

**ANALYSIS:**

The undersigned clearly stated at the opening of the hearing that state protection and internal flight alternative were the determinative issues in this claim.

• **State Protection**

The issue of state protection is determinative since international protection only becomes engaged when national or state protection is unavailable to the claimant<sup>1</sup>.

Considering that claimant's alleged agent of persecution belong to the same police station, it was open to him to seek assistance elsewhere if the said protection was not forthcoming;

Claimant's testimony suggest that he did not seek protection nor assistance from any other authority after his first deposition as he was lacking faith in the police system adding that they collaborate with each other and are very much corrupt.

Considering that except situations where the state is in a complete breakdown, states must be presumed capable of protecting their citizens. Having refused, omitted or neglected to seek protection from any other police station nor from any other state authority, the claimant has not advanced before this court any "clear and convincing" evidence establishing that the Mexican state

is unable to protect him. Indeed, the claimant has not shown having taken all reasonable steps in the circumstances, taking into account the context of the country of origin in general, the steps taken and the claimant's interactions with the authorities.

The documentary evidence reveals that notwithstanding the corruption dilemma to which the police and judicial system is confronted to Mexico remain a state in effective control of its territory, has military, police and civil authority in place, and makes serious efforts to protect its citizens and the mere fact that it is not always successful at doing so will not be enough to justify a claim on the basis of being unable to avail themselves of such protection. Moreover, the failure to provide local protection can not be seen to be as state failure to provide protection as it is only a mere local failure.

Notwithstanding the state of corruption and un-professionalism allegations against the police in Mexico, there is also evidence that the state authority are attempting to redress the situation and many recourses do exist to citizen alleging prejudice at the hands of the police. The state of Mexico is a democracy and therefore claimant's burden of proof was to establish absence of protection "directly proportional" to the level of democracy prevailing in the said state.<sup>2</sup> Accordingly, the claimant failed to rebut the said presumption.

**CONCLUSION:**

Your claim for asylum is rejected. The Panel finds that you, Mr. s.19(1)  
are not a "Convention refugee" pursuant to section 96 nor a "person in need of protection"  
pursuant to section 97 of *the Immigration and Refugee Protection Act*.

*Stéphane Hébert*  
\_\_\_\_\_  
**M<sup>e</sup> Stéphane Hébert**

**October 8, 2004**  
\_\_\_\_\_  
**Date**

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<sup>1</sup> *Canada (General attorney) v. Ward*, [1993] 2 S.C.R. 689.

<sup>2</sup> *Kadenko, Ninal v. S.G.C.* (F.C.T.D., no. IMM-809-94), Tremblay-Lamer, June 8, 1995. Reported: *Kadenko v. Canada (Solicitor General)* (1995), 32 Imm. L.R. (2d) 275 (F.C.T.D.)