

CANADA (Attorney General) v. WARD
[1993] 2 S.C.R. 689, 30 June 1993
(Supreme Court of Canada)

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CASE OVERVIEW

- Date: June 30, 1993
- Court: Supreme Court of Canada
- Parties Involved: Patrick Francis Ward (Appellant) vs. Attorney General of Canada

'Facts of the Case'

Joining the INLA

- **Mr. Ward** becomes a member of the **Irish National Liberation Army (INLA)**, a violent paramilitary group with the goal of liberating Northern Ireland from British rule.

Hostage Guard Duty

- Ward is assigned to **guard hostages** held by the INLA to stop one of their arrested members from revealing information to authorities.
- Ward discovers that the hostages are going to be killed and decides to **let them escape**.

Capture and Sentencing

- After the INLA finds out about Ward's role in the escape, they detain, torture, and sentence him to death.
- **Ward escapes** and seeks protection from the Irish police.

Arrest and Imprisonment

- Instead of being protected, Ward is **charged for his involvement** in the hostage situation, pleads guilty to forcible confinement, and serves **three years in prison**.

Flight to Canada

- After his release, with the help of a prison chaplain, Ward **flees to Canada** and applies for **refugee status**.

Appeal Journey

- Ward's refugee claim is initially **approved** by the Immigration Appeal Board.
- The Federal Court of Appeal **overturns the decision** and orders a rehearing.
- Ward **appeals** this to the **Supreme Court of Canada**.

Supreme Court Decision

The **Supreme Court** clarified what it means to have a "well-founded fear of persecution" for someone seeking refugee status. In Ward's case, the Court decided that his fear was based on his **political opinions**, not because he was part of a particular social group.

The Court also looked at his **dual British-Irish citizenship** and considered whether he could be protected by either of those countries.

In the end, the Court **allowed Ward's appeal** but didn't make a final decision. Instead, they sent the case back to the **Immigration and Refugee Board** to reconsider the issue of his dual nationality. Despite this, Ward was ultimately **denied refugee status** and **deported** in 1997.

Aspects of the definition: 'persecution', 'well founded fear', 'unable' and 'unwilling'

- Inability of Irish and UK authorities to protect from attacks by INLA: sufficient grounds for 'well founded fear'.
- Complicity of a state not a prerequisite to refugee claim.
- Killing and torture = paradigmatic examples of persecution.
- Unable: refusal of protection by state.
- Unwilling: Opting not to ask for state protection.
- If the state protection might have been reasonably forthcoming, then a claim for international protection might possibly fail.

BACKGROUND: LEGISLATION

- Definition of 'Convention refugee'

Article 1 of the 1951 -

"owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of [their] nationality and is unable or, owing to such fear, is unwilling to avail [themselves] of the protection of that country; or who, not having a nationality and being outside the country of [their] former habitual residence, is unable or, owing to such fear, is unwilling to return to it."

PARTICULAR SOCIAL GROUP (PSG), Part 1: Introduction

- Broad interpretation of PSG linked to concepts of anti discrimination in Canadian and international law.
- Important: Obiter – gender and sexuality = bases for PSG.
- Materials consulted by the court: travaux préparatoires for the convention, UNHCR handbook, Canadian and U.S. jurisprudence and scholarly authority.

PSG, Part 2: Scholarly authorities helpful to the court (a)

- **Guy S. Goodwin-Gill:** *“The references to ‘race, religion, nationality, membership [in] a particular social group, or political opinion’ illustrate briefly the characteristics of individuals and groups which are considered worthy of special protection. These same factors have figured in the development of the fundamental principle of non-discrimination in general international law, and have contributed to the formulation of other fundamental human rights”* (cited with approval).

PSG, Part 2: Scholarly Authorities helpful to the court (b)

- Also cited with approval – **James Hathaway**: The influence of principles of antidiscrimination is justified on the basis of those who would be protected.

PSG, Part 3: Canadian constitutional law (a)

- S. 15, Canadian Charter of Rights and Freedoms.
- Guarantees, inter alia: equal protection and benefit of the law 'without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability'.
- The phrase 'analogous grounds' is included in the charter.

PSG, Part 3: Canadian Constitutional Law (b)

- La Forest J.: The methodology or approach of the charter and the convention are the same (i.e., PSG is to the convention what 'Analogous grounds' is to the charter).
- Contextual meaning: race, nationality etc. are specific examples of PSG.
- Categories of social group ascription identified by La Forest J. (drawing on lower Canadian courts and U.S. jurisprudence): groups defined by innate or unchangeable characteristic; groups based on voluntary association, but the association is so fundamental to their human dignity that they should not be forced to forsake that association; groups associated by a former voluntary status unalterable/unchangeable as a result of historical permanence.

PSG, Part 4: Analysis and drawing it together

- Ward was categorised as no. 3 by lower court.
- Supreme Court (through La Forest J.): Ward did not have an unchangeable or innate characteristic. His membership of the INLA could not fall under the second head either; neither could the objectives of the INLA. The third status didn't apply to Ward because of the INLA still existing at the time.
- For the third prong, the identity of the persecutor couldn't be the same as identity of the PSG. If the group has disbanded, it can't persecute.

The consequences for the claimant(s) of the adopted PSG definition

- Broadening the scope of the protection → allowing a wide range of claimants to claim international protection under the refugee law regime

The consequences for the claimant(s) of the adopted PSG definition

- PSGs based on innate, unchangeable characteristics
 - Gender-based group
 - Sexual orientation and gender identity
 - Family
 - Age
 - Disability
 - Economic or social class

The consequences for the claimant(s) of the adopted PSG definition

- PSGs based on voluntary association for reasons fundamental to their human dignity
- Examples include:
 - Membership in religious groups
 - Membership in organizations concerned with the realization of human rights
- More controversial: groups defined by reference to an occupation or groups based on wealth and economic privilege

The consequences for the claimant(s) of the adopted PSG definition

- PSGs associated by a former voluntary status, unalterable due to its historical permanence
 - For example: former child soldier; former police officer; former military personnel
 - Controversial - as discussed in *Ward* : former membership of a group that has criminal aims or objectives, or is engaged in criminal behaviour

**PROTECTED
CHARACTERISTICS**

**SOCIAL
PERCEPTION**

UNHCR GUIDELINES

a particular social group is a group of persons who share a common characteristic other than their risk of being persecuted, or who are perceived as a group by society. The characteristic will often be one which is innate, unchangeable, or which is otherwise fundamental to identity, conscience or the exercise of one's human rights.

2004 EU QUALIFICATION DIRECTIVE

ARTICLE 10 - Reasons for persecution

d) a group shall be considered to form a particular social group where in particular:

— members of that group share an innate characteristic, or a common background that cannot be changed, or share a characteristic or belief that is so fundamental to identity or conscience that a person should not be forced to renounce it, **and**

— that group has a distinct identity in the relevant country, because it is perceived as being different by the surrounding society;