

**Date: 20090204**

**Docket: A-168-08**

**Citation: 2009 FCA 31**

**CORAM: LÉTOURNEAU J.A.  
BLAIS J.A.  
TRUDEL J.A.**

**BETWEEN:**

**RALPH PROPHÈTE**

**Appellant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION CANADA**

**Respondent**

Heard at Montréal, Quebec, on February 4, 2009.

Judgment delivered from the Bench at Montréal, Quebec, on February 4, 2009.

**REASONS FOR JUDGMENT OF THE COURT BY:**

**TRUDEL J.A.**

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**REASONS FOR JUDGMENT OF THE COURT**

**(Delivered from the Bench at Montréal, Quebec, on February 4, 2009)**

**TRUDEL J.A.**

[1] This is an appeal of an application to answer the following question :

Where the population of a country faces a generalized risk of crime, does the limitation of section 97 (1)(b)(ii) of the IRPA apply to a subgroup of individuals who face a significantly heightened risk of such crime?

[2] The appellant was found by the Refugee Protection Division of the Immigration and Refugee Board (the Board) not to be a Convention refugee within the meaning of section 96 of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the Act) nor a "person in need of protection" within the meaning of section 97 of the Act.

[3] To be a person in need of protection, the appellant had to show the Board, on a balance of probabilities, that his removal to Haiti would subject him *personally*, in every part of that country, to a risk to his life or to a risk of cruel and unusual treatment that is *not faced generally* by other individuals in or from Haiti (emphasis added) (the relevant legislation is annexed to these reasons).

[4] The certified question correlates with the appellant's position. Mr. Prophète, a citizen of Haiti, sought asylum in Canada alleging persecution in the form of vandalism, extortion and threats of kidnapping. Although the appellant recognized the upheaval faced generally by Haitian citizens, he submitted that being a businessman put him and other business persons especially at risk because those with money or those perceived to have money were at greater risk than the general population which, for the most part, lived in poverty. According to the appellant, as soon as *a significantly heightened risk* is not faced by the rest of the population, that risk is not captured by the exclusion of subparagraph 97(1)(b)(ii) of the Act because that risk is no longer a risk faced generally by other individuals in or from a given country (appellant's memorandum of fact and law at paragraph 90).

[5] For the following reasons, the appeal will be dismissed.

[6] Unlike section 96 of the Act, section 97 is meant to afford protection to an individual whose claim “is not predicated on the individual demonstrating that he or she is [at risk] ... for any of the enumerated grounds of section 96” (*Li v. Canada (Minister of Citizenship and Immigration)*, 2005 FCA 1, [2005] 3 F.C.R. 239 at paragraph 33).

[7] The examination of a claim under subsection 97(1) of the Act necessitates an individualized inquiry, which is to be conducted on the basis of the evidence adduced by a claimant “in the context of a *present or prospective risk*” for him (*Sanchez v. Canada (Minister of Citizenship and Immigration)*, 2007 FCA 99 at paragraph 15) (emphasis in the original). As drafted, the certified question is too broad.

[8] Taking into consideration the broader federal scheme of which section 97 is a part, answering the certified question in a factual vacuum would, depending on the circumstances of each case, result in unduly narrowing or widening the scope of subparagraph 97(1)(b)(ii) of the Act.

[9] For these reasons, we decline to answer the certified question.

[10] In the case at bar (*Prophete v. Canada (Citizenship and Immigration)*, 2008 FC 331), there was evidence on record allowing the Applications Judge to conclude:

[23] ... that the applicant does not face a personalized risk that is not faced generally by other individuals in or from Haiti. The risk of all forms of criminality is general and felt by all Haitians. While a specific number of individuals may be targeted more frequently because of their wealth, all Haitians are at risk of becoming the victims of violence.

[11] Therefore, this appeal will be dismissed without costs.

"Johanne Trudel"

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J.A.

## ANNEX

Subsection 97(1) and subparagraph 97(1)(b)(ii) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27:

**97(1)** A person in need of protection is a person in Canada whose removal to their country or countries of nationality or, if they do not have a country of nationality, their country of former habitual residence, would subject them personally

(a) to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture; or

(b) to a risk to their life or to a risk of cruel and unusual treatment or punishment if

(i) the person is unable or, because of that risk, unwilling to avail themselves of the protection of that country,

(ii) the risk would be faced by the person in every part of that country and is not faced generally by other individuals in or from that country,

[Emphasis added.]

**97(1)** A qualité de personne à protéger la personne qui se trouve au Canada et serait personnellement, par son renvoi vers tout pays dont elle a la nationalité ou, si elle n'a pas de nationalité, dans lequel elle avait sa résidence habituelle, exposée:

a) soit au risque, s'il y a des motifs sérieux de le croire, d'être soumise à la torture au sens de l'article premier de la Convention contre la torture;

b) soit à une menace à sa vie ou au risque de traitements ou peines cruels et inusités dans le cas suivant :

(i) elle ne peut ou, de ce fait, ne veut se réclamer de la protection de ce pays,

(ii) elle y est exposée en tout lieu de ce pays alors que d'autres personnes originaires de ce pays ou qui s'y trouvent ne le sont généralement pas,

[Non souligné dans l'original.]

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** A-168-08

**STYLE OF CAUSE:** Ralph Prophète v. MCI

**PLACE OF HEARING:** Montréal, Quebec

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TRUDEL J.A.

**DELIVERED FROM THE BENCH BY:** TRUDEL J.A.

**APPEARANCES:**

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