

CRIME, DEPORTATION, AND THE IMMIGRATION AND REFUGEE BOARD OF CANADA

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1. INTRODUCTION

The purpose of this research project is to analyze decisions made by the Immigration and Refugee Board of Canada (“IRB”) in order to perceive connections between the areas of immigration and criminal law. Specifically, the objective of the project is to identify the reasons underlying the IRB’s decisions on whether an individual is to be deported. This can be achieved by accessing IRB court files and determining the reasons for deportation and non-deportation decisions.

This research project was in part inspired by Professor João Velloso’s study on the plurinormative institutionalisation of criminal activities committed by street gangs. In his paper, Professor Velloso explains how government goes beyond the criminal law system to respond to crimes committed by street gang members, often resorting to normative systems such as administrative tribunals for additional punitive measures. Because of this use of multiple systems when responding to criminal activities, an over-penalisation can be observed when it comes to individuals that are in contravention of the law.

This research project consists of a statistical and legal analysis seeking to complement this hypothesis of over-penalisation. The cases that were studied were those of individuals that had already appeared in front of a criminal court, and that were now facing an administrative tribunal – namely the IRB.

2. METHODOLOGY

This study was conducted through a documentary analysis of admissibility hearing decisions on the grounds of criminality made by the IRB in 2014. These deportation records and decisions are not accessible through legal databases and can only be accessed through internal IRB databases (IRB, 2017).

The main purpose is to compile and analyze admissibility hearings and decisions on grounds of criminality in order to build a chart with the reasons and the distribution of different kinds of offences committed by foreigners (permanent residents or non-status individuals) facing deportation procedures.

The IRB case files were split among 4 student-researchers, from which 17 were studied for this portion of the research project. These 17 cases were carefully analyzed and the information needed for this project was extracted and compiled.

- **Status of the offender** (permanent-resident or non-status)
- **Type of crime committed under the Criminal code**
- **Applicable statutes** under the *Immigration and Refugee Protection Act* (“IRPA”)
- **Decision made by the board** (deportation or admissibility orders)

The research project proved to be successful considering that the information needed to solidify the hypothesis was found in the admissibility hearings that were examined.

Canadian citizens that commit crimes are charged, convicted and sentenced under the Criminal Code of Canada. Permanent residents, refugees and other non-citizens on Canadian territory are subject to the same Criminal Code, in addition to the IRPA. As outlined in section 3, one of the objectives of the act is to “protect public health and safety and to maintain the security of Canadian society.” For this reason, parliament has entrenched certain sections designated to expulse non-citizen individuals that are convicted of crimes under the Criminal Code :

36 (1) A permanent resident or a foreign national is inadmissible on grounds of serious criminality for

- (a) having been convicted in Canada of an offence under an Act of Parliament punishable by a maximum term of imprisonment of at least 10 years, or of an offence under an Act of Parliament for which a term of imprisonment of more than six months has been imposed;
- (b) having been convicted of an offence outside Canada that, if committed in Canada, would constitute an offence under an Act of Parliament punishable by a maximum term of imprisonment of at least 10 years; or
- (c) committing an act outside Canada that is an offence in the place where it was committed and that, if committed in Canada, would constitute an offence under an Act of Parliament punishable by a maximum term of imprisonment of at least 10 years.

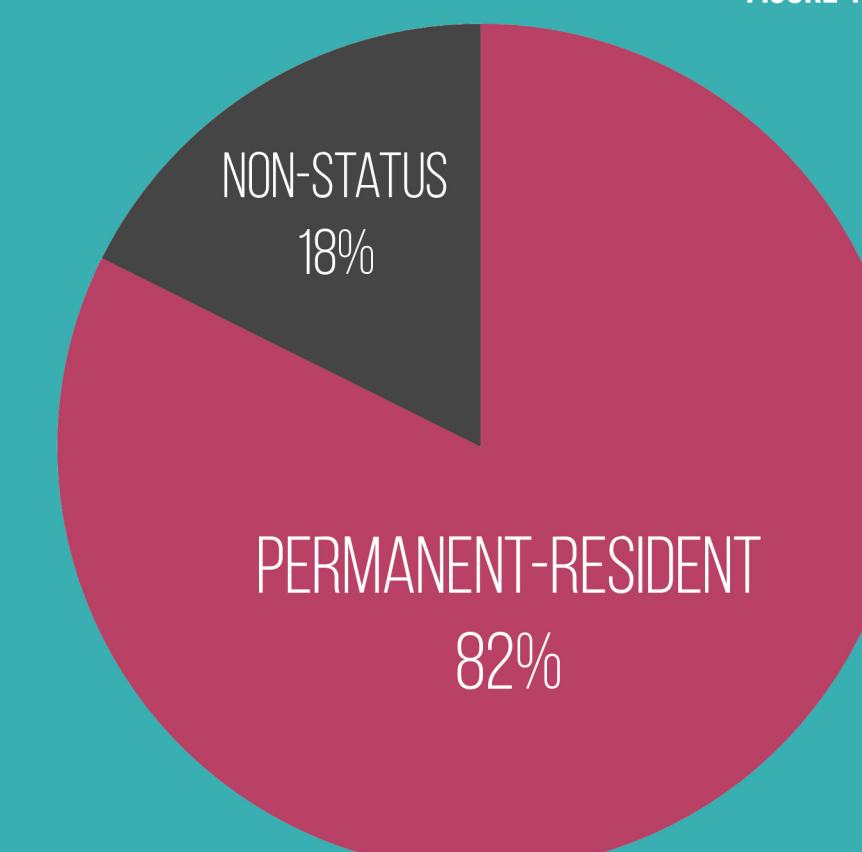
37 (1) A permanent resident or a foreign national is inadmissible on grounds of organized criminality for

- (a) being a member of an organization that is believed on reasonable grounds to be or to have been engaged in activity that is part of a pattern of criminal activity planned and organized by a number of persons acting in concert in furtherance of the commission of an offence punishable under an Act of Parliament by way of indictment, or in furtherance of the commission of an offence outside Canada that, if committed in Canada, would constitute such an offence, or engaging in activity that is part of such a pattern; or
- (b) engaging, in the context of transnational crime, in activities such as people smuggling, trafficking in persons or laundering of money or other proceeds of crime.

These statutes act as a secondary measure in dealing with those that are in contravention of the Criminal Code. Often, these individuals have already served or are serving a sentence under Canadian criminal law, and the statutes act as an extra step to make Canadian society ‘safer’.

Of the 17 cases studied, 14 involved permanent-residents and 3 involved foreign nationals without status in Canada. (See figure 1) What needs to be underlined here is that the IRPA applies to all of these individuals, as long as they are not Canadian citizens.

STATUS OF INTERESTED PARTIES
FIGURE 1



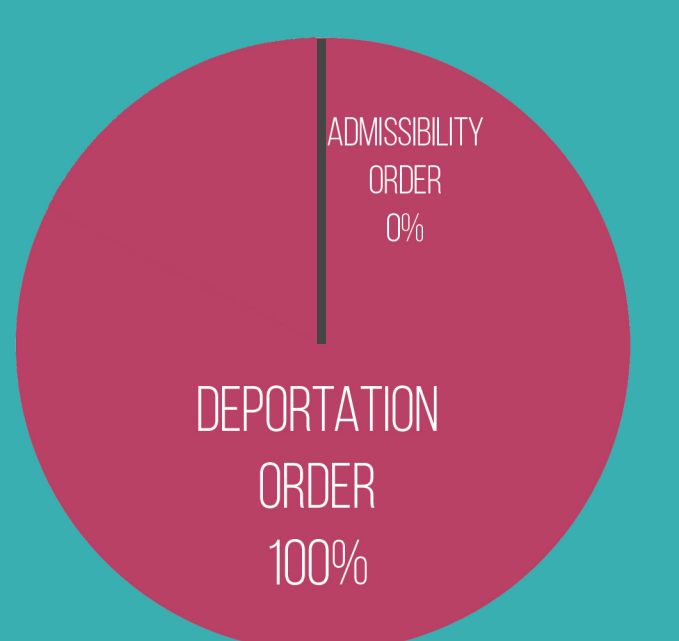
TYPES OF OFFENCES
FIGURE 2

Type of Offence	Count
VIOLENT OFFENCES	6
DRUG RELATED	4
FRAUD/THEFT	7
SEX CRIMES	3
ORGANIZED CRIME	2

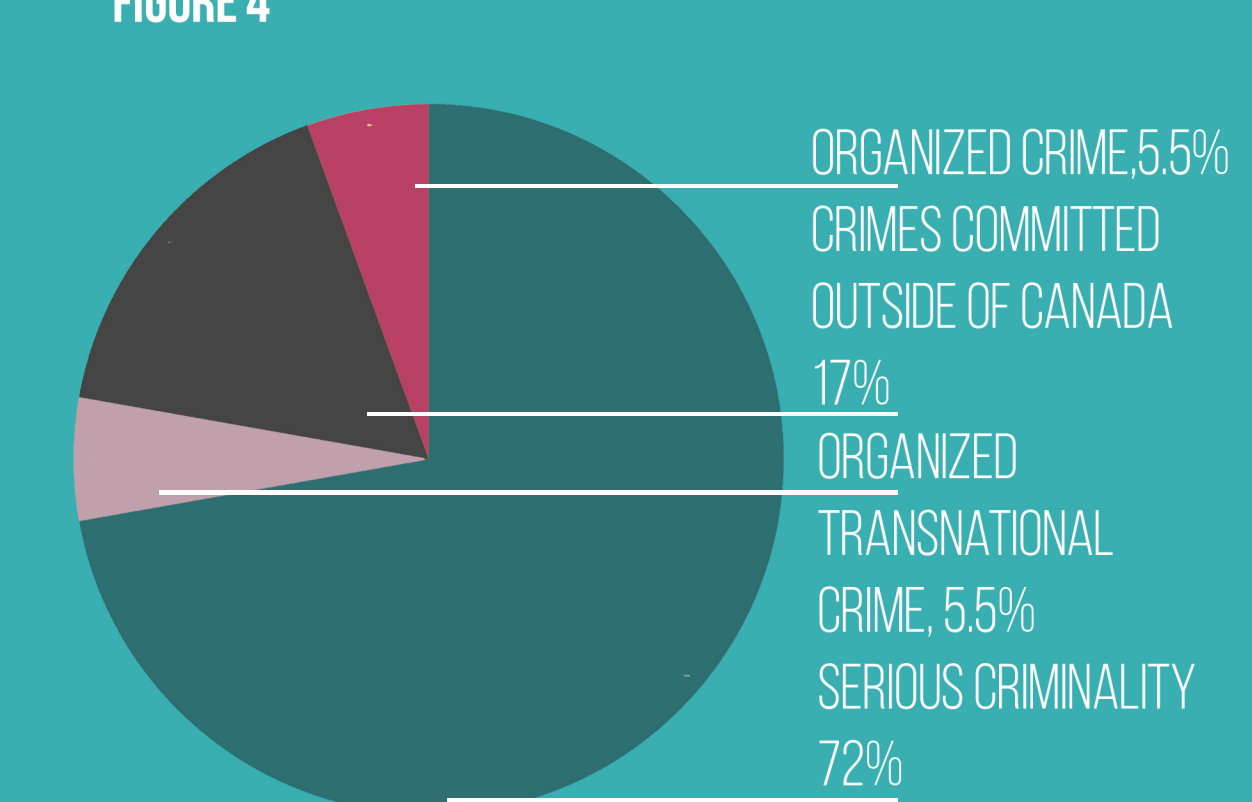
The IRPA underlines that a criminal offence that constitutes a maximum term of imprisonment of at least 10 years for which a term of imprisonment of more than six months has been imposed can lead to a deportation sentence. All of the individuals studied fell into one of the IRPA deportation regulation categories.

The IRB’s role in these types of situations is to a) determine if the individual in front of them has been convicted of an act under the Criminal Code and b) determine if this act triggers a deportation order under the IRPA. The IRB has a very black-and-white role. In all cases, when there was presence of a, b was sure to follow. The IRB does not practice any discretion in these cases, all individuals that faced the board were subject to deportation orders. (See figure 3)

DEPORTATION VS PERMISSION TO STAY
FIGURE 3



INFRACTIONS UNDER THE IRPA
FIGURE 4



Finally, figure 4 displays the distribution of infractions under the IRPA. It can be observed that most individuals were deported for having participated in serious criminality, while others were found inadmissible depending on location of crime, or if there was involvement of a criminal organization.

4. CONCLUSION

This research project underlines several key considerations in terms of deportation laws in Canada.

- 1) Individuals that face deportation have either already served or are currently serving a sentence in relations to the crimes that they committed. Deportation is an extra measure taken by the government to penalize those that have contravened the law. This may seem excessive, but the government justifies it by highlighting the ‘safety’ aspect.
- 2) The IRB practices no discretion when deciding on deportation. If the crime exists, so does the deportation order. This leads us to question the *raison-d’être* of these admissibility hearings. If the tribunal is not going to practice any discretion and look at the context of the crime, why even have these hearings? Why does the government not legislate automatic expulsion for non-citizens in the confines of the Criminal Code. This seems to fit the definition of *over-legislation*.

It would be interesting to further examine the admissibility hearings and study appeal decisions, although this would be difficult. Under the IRPA, it is not possible to appeal a decision of the IRB when a sentence of at least 6 months of imprisonment has been handed out. So, unless procedural fairness rules apply, the deportation orders in this research are conclusive.

3. RESULTS

It is also interesting to consider what types of crimes each individual has committed. This helps in better understanding why a certain individual is facing the IRB. By a quick examination of the case list, it can be understood that a wide range of criminal activities can lead to a summoning in front of an immigration tribunal. These include violent acts, drug-related offences, sex acts, fraud/theft offences, etc. (See figure 2)

5. REFERENCES

I would like to thank Professor João Velloso for his active support during the completion of this research project. Below is a list of references used in this work.

Criminal Code, RSC 1985, c C-46.

Immigration and Refugee Protection Act, SC 2001, c 27.

IRB [Immigration and Refugee Board of Canada], *Access to Information Request no. A201603482_2017* (Compilation of Decisions and Records of an Admissibility Hearing of the year 2014) (Ottawa, IRB, 2017, 675p)

João Velloso, “Le contrôle plurinormatif des gangs de rue : contribution des études sur la délinquance des élites à la compréhension de la judiciarisation de la criminalité de rue” (2016) 49:1 *Criminol* 153.