

CRIME AND DEPORTATION

Esther De Vos, University of Ottawa- Faculty of Law
supervised by Professor Joao Velloso



uOttawa

1. Introduction

Serious criminality, according to article 36(1) of the *Immigration and Refugee Protection Act*, is grounds for inadmissibility for permanent residency in Canada. Article 36(1) defines serious criminality as having been convicted in Canada of a criminal offence “punishable by a maximum term of imprisonment of at least 10 years” or “for which a term of imprisonment of more than six months has been imposed”. This means that any person with permanent residency in Canada loses this privilege in the case of serious criminality.

The goal of the study was to find the correlation between the imposed sentences and the immigration effects for the accused. Specifically, did the Board strictly apply 36(1) of the *Immigration and Refugee Protection Act*, or did the Board also consider mitigating factors? Lastly, if the Board looks only to the article in question, is there cause for legislative reform with more flexibility?

2. Methodology

The study analyzed the outcomes of 43 deportation hearings for grounds of serious criminality from the Montreal Region of the Immigration and Refugee Board of Canada in 2015. Admissibility hearing outcomes and details about related criminal offences were initially analysed and then compiled into a spreadsheet. Data from the transcripts of the hearings were condensed into summaries, which were coded into a spreadsheet. This allowed for comparisons to be made and trends to be noticed.

The following information was taken from the 43 hearings:

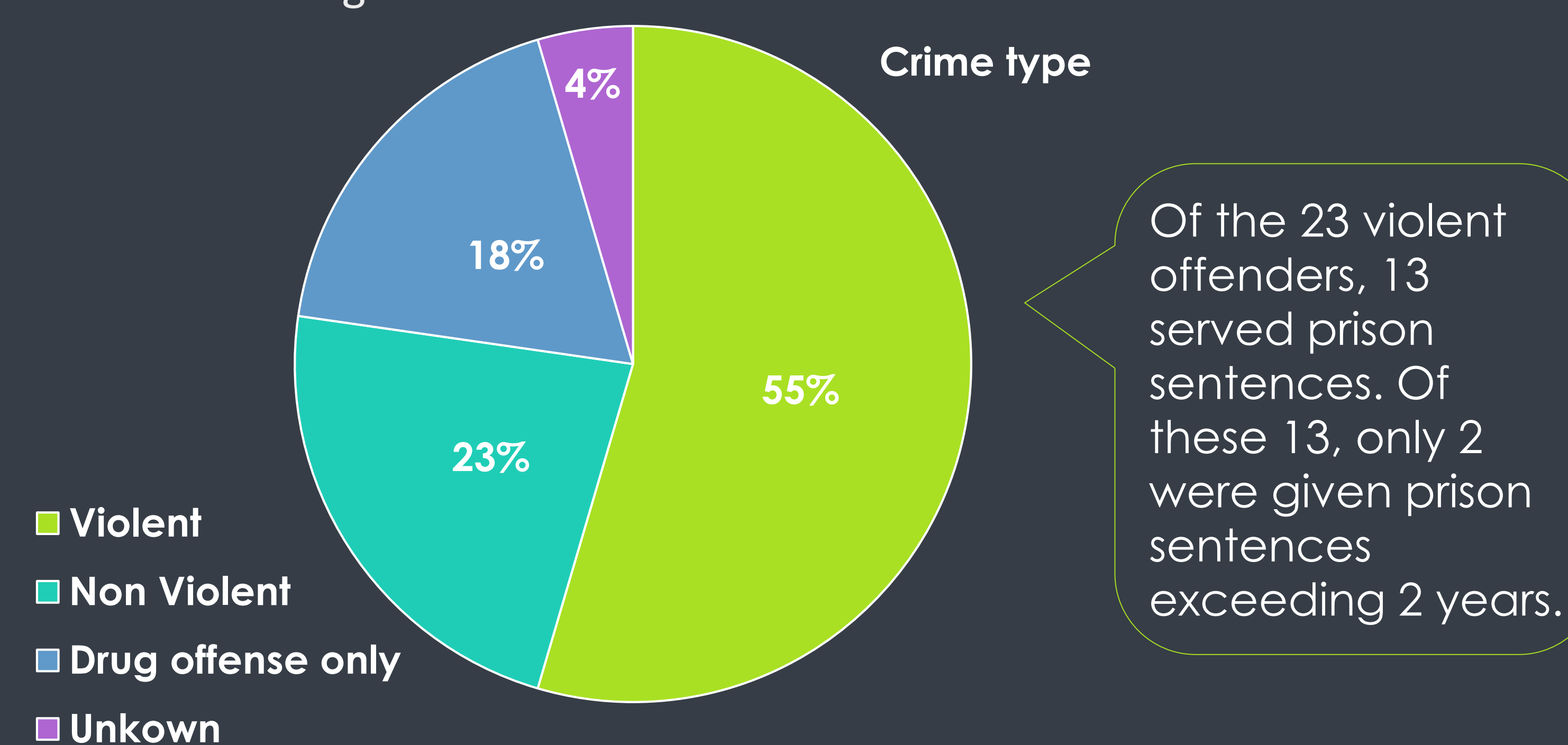
- *Status of the offender* (permanent resident or foreign national)
- *Relevant section in the Immigration and Refugee Protection Act*
- *Criminal offence under the Criminal Code*
- *Imposed sentence* (imprisonment, probation, fines, detention)
- *Decision of the Board* (deportation order)

3. Results

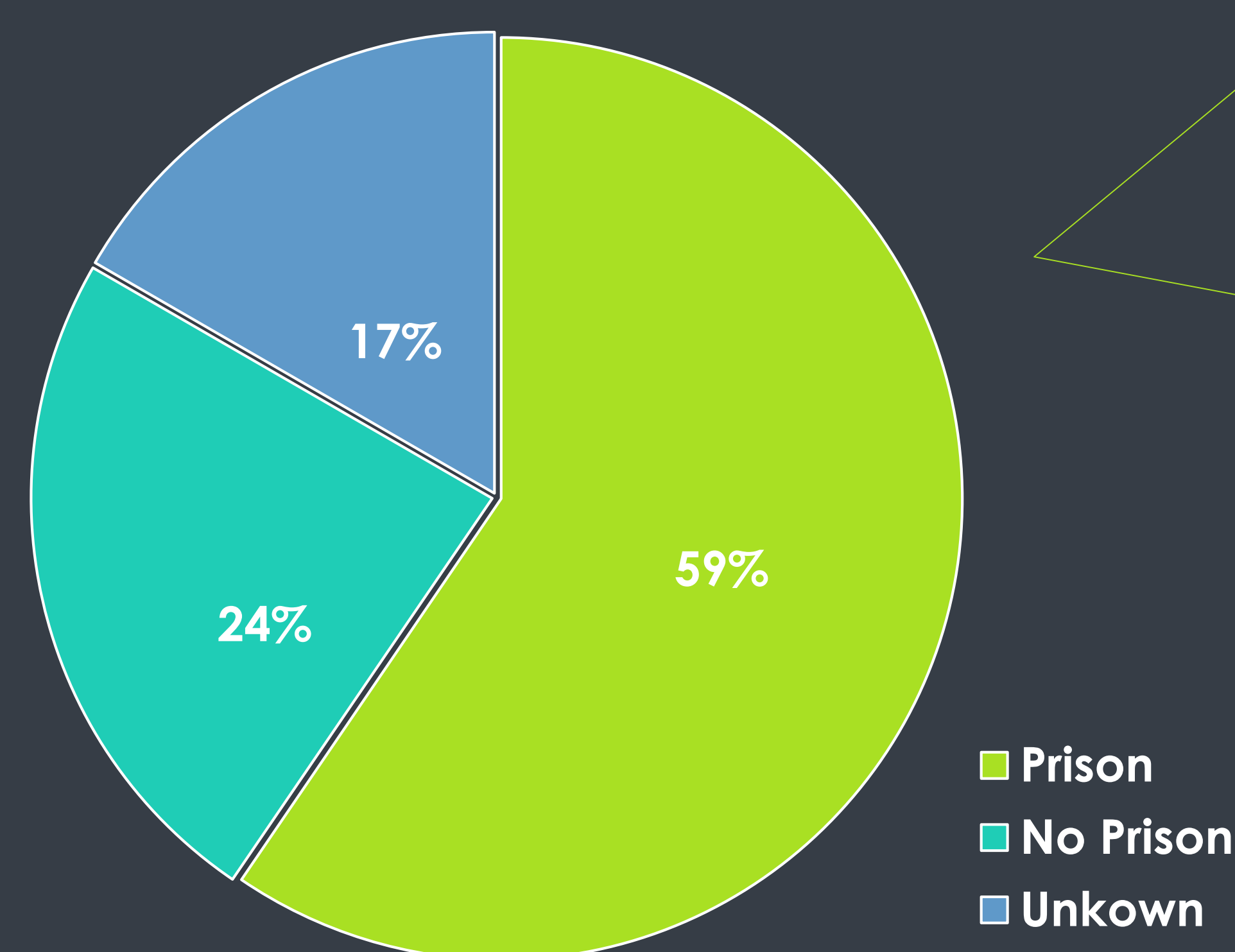
This study found that the judge only took into consideration the maximum possible penalty when giving deportation orders. Most infractions had a maximum sentence of 10 years, the length required for an infraction to imply serious criminality. However, the gravity of the crime varied, as did the imposed sentence. Though 55% of the crimes were violent in nature, 23% were non-violent crimes, such as fraud, theft and conspiracy. 16% of the crimes were exclusively drug-related, such as possession.

Another variable was prison sentence versus no prison sentence. Only 59% of the offenders were given a prison sentence. This contradicts the idea of serious criminality, which implies a need to separate the offender from society. 24% of the offenders were not given any prison time. The sentence imposed on 17% of the offenders in the study was unknown.

Finally, the results of the hearings were divided into whether the Board imposed a deportation order. Of the 43 admissibility hearings examined in this study, all but one resulted in a deportation order. However, this one hearing was an anomaly as the offender did not meet the standards for serious criminality. The maximum possible imprisonment was 24 months, not 10 years. Therefore, in all cases with a maximum sentence of 10 years, the Board imposed a deportation order. This shows the lack of discretion the Board is exercising.

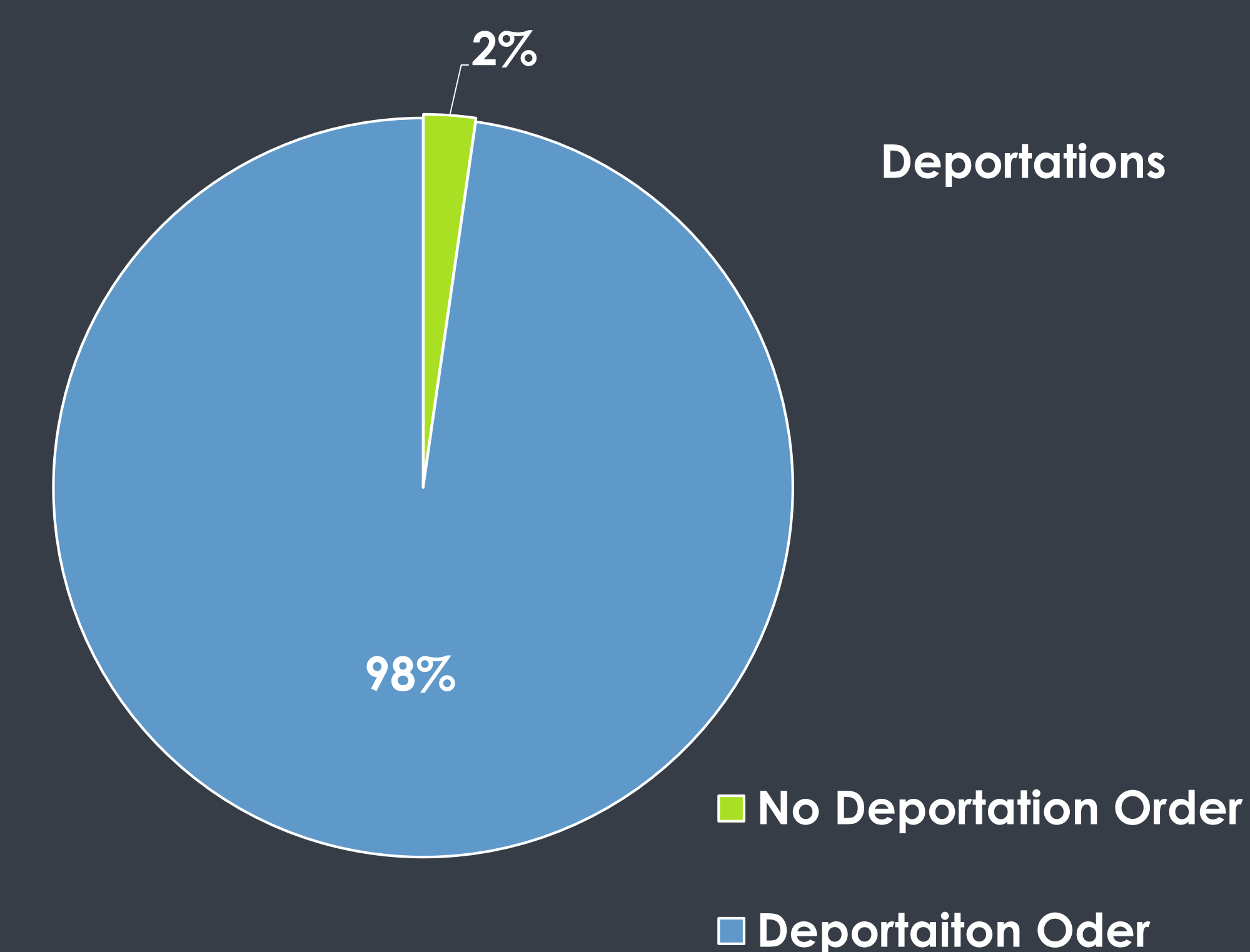


Served Prison Sentence



Of the 24 offenders who were given prison sentences, 7 were sentenced to less than 6 months, 7 were sentenced to serve between 6 months and 1 year, 5 between 1 and 2 years and 5 were sentenced to longer than 2 years in prison.

Deportations



4. Conclusion

This study suggests that judges do not take into consideration other factors, such as deportation costs, socioeconomic disadvantages for permanent residents and refugees, the role of the defendant in the crime, the possibility of rehabilitation and other mitigating factors, when imposing a deportation order.

As the Board did not utilize their discretion when imposing a deportation order, the necessity and usefulness of the hearings is called in to question. A comparison with other Boards across Canada would reveal the trends. If no discretion is used, automatic deportations based on serious criminality would be more cost efficient.

This would then allow offenders to appeal the decision based on humanitarian or compassionate grounds.

The results of the study also suggest that the principles that govern our criminal law, such as presumption of innocence, using prison as a last resort and rehabilitation, or not implemented in deportation hearings.

Next steps would be a cost-benefit analysis of deportation, recidivism of permanent residents who are not deported, and the possibility of an immigration and refugee board reform.

5. References

Criminal Code
Immigration and Refugee Protection Act

I would like to thank Professor Joao Velloso for giving me the opportunity to work on his important and innovative research.

Esther De Vos
JD candidate 2019
esther.devos@uottawa.ca