Immigration is about Deportation: An Exploration of Immigration Hearings and the Penalization of Im/migrants in Canada

By

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ABSTRACT

IMMIGRATION IS ABOUT DEPORTATION: AN EXPLORATION OF IMMIGRATION HEARINGS AND THE PENALIZATION OF IM/MIGRANTS IN CANADA

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The year 2015 was characterized by large-scale movements of im/migrants, asylum seekers, and refugees who attempted to escape civil and political unrest and violence. Described as the “immigration crises” this movement of people generated international attention and caused concerns regarding border control, terrorism, national security, and humanitarianism. Whereas some countries constructed barricades and erected fences to keep out migrants, other countries altered their policies in order to resettle them. At the same time, nation-states are grappling with their own immigration law and its administration as more and more im/migrants cross borders “legally” or “illegally”. Situated within this context, my thesis research observes the process by which nation-states create and enforce immigration laws that restrict, exclude, and remove im/migrants who are considered to be “undesirable” or “harmful” to a country’s social and cultural mosaic. Through my analysis of immigration hearings, in-depth interviews, and archival research, I argue that im/migrant illegalization is a sociopolitical and juridical process that implicates various institutions and actors who are tasked with administering immigration law. By exploring the ways in which ideas like “deservingness”, “(im) morality”, “credibility”, and “rationality” operate in immigration hearings, I emphasize that illegalization is not simply about removal. It is about the legal and administrative interactions and processes that dehumanize and demean im/migrants who are constructed to be “illegal” in Canada.
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This thesis would not have been possible without the cooperation of the Immigration Holding Centre, where I conducted my fieldwork. I also thank my informants for taking the time out of their busy schedule to meet with me. My gratitude also goes out to Muriam and Louise of End Immigration Detention Network for their insights as I conducted my fieldwork.

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<table>
<thead>
<tr>
<th>Acronym</th>
<th>Full Form</th>
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<tbody>
<tr>
<td>CBSA</td>
<td>Canadian Border Services Agency</td>
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<tr>
<td>CIC</td>
<td>Citizenship and Immigration Canada</td>
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<tr>
<td>IAD</td>
<td>Immigration Appeal Division</td>
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<tr>
<td>ID</td>
<td>Immigration Division</td>
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<td>IRB</td>
<td>Immigration and Refugee Board of Canada</td>
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<tr>
<td>IRCC</td>
<td>Immigration, Refugee, and Citizenship Canada</td>
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<td>IRPA</td>
<td>Immigration and Refugee Protection Act</td>
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<td>IRPR</td>
<td>Immigration and Refugee Protection Regulations</td>
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<tr>
<td>PR</td>
<td>Permanent Resident</td>
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<td>PRRA</td>
<td>Pre-Removal Risk Assessment</td>
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<td>RAD</td>
<td>Refugee Appeal Division</td>
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<td>RPD</td>
<td>Refugee Protection Division</td>
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Chapter 1: Introduction

1.1- The Case of Abdirahmaan Warssama (Warssama v. Canada)

Abdirahmaan Warssama, a citizen of Somalia, first arrived to Canada in 1989. He was 25 years old. Upon his arrival, he submitted a refugee claim that was later refused. He was ordered deported from Canada in 1991. He was later given a ministerial permit which allowed him to remain in Canada on humanitarian and compassionate grounds. He continued to reside in Canada until he came to the attention to the Criminal Justice System. In 2006, he was convicted of assault, threatening death, and failing to comply. He also failed to appear for two immigration admissibility hearings. Because of his absence, the hearings were declared abandoned and Warssama was ordered deported in 2009. Two years later, he was arrested by the Toronto Police and was placed in immigration detention. It was also around this period of time that his Pre-Removal Risk Assessment (PRRA) was refused. This risk assessment review is used by Citizenship and Immigration Canada to consider whether or not a person’s removal from Canada would put them at risk (especially of torture or death). If the risk of torture of death is present, then, Canada will not return the person to their home country. In addition to this, the Toronto Bail Program refused to accept him for supervised release. In the absence of these alternatives, and because he was considered a flight-risk, the Immigration and Refugee Board (IRB) members concluded that his continued detention was the best course of action. In his decision, the IRB member referred to contradictory statements that Warssama made during his monthly detention reviews. For example, in January 2011 he stated: “I want to stay in Canada, will not go back to Somalia, too many bad things going on there” (Warssama v. Canada 2015). However, in June 2011 he stated that he is ready to return to Somalia even though he felt unsafe. In his July 2011

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1 This is commonly called the principle of non-refoulement.
detention review, he once again stated that “he will not return to Somalia because he fears he will be killed there” (Warssama v. Canada 2015). In the end, after considering factors such as the length of his detention, the reason for his detention, impediment(s) to removal, and alternatives to detention, the member ordered the continued detention of Warssama.

In 2015, a judicial review was conducted by the Federal Court concerning IRB member’s decision to continue Warssama’s detention. The Honourable Mr. Justice Harrington introduced his decision by saying “Mr. Warssama has been held in jail for more than five years. Why? Because he will not sign a piece of paper!” (Warssama v. Canada 2015). Along with this statement, the judge also pointed out that although immigration authorities had every reason to believe that Warssama would not appear for his removal from Canada, he did not pose a danger to the public. Despite this, he spent 57 months or almost five years in detention. Justice Harrington found the IRB member’s decision to be “patently unreasonable” and criticized the Minister of merely building upon previous detention decisions. He also added that by building upon these decisions, the minister does not add any more evidence and that “nothing else has transpired except the passage of 30 days (between each monthly detention reviews). There comes a point in time in which time itself becomes overwhelming requiring the parties, and the Immigration Division, to think outside the box”. Justice Harrington recognized that “Somalia is a failed state and Mr. Warssama may remain incarcerated in Canada for the rest of his life” (Warssama v. Canada 2015). He also stated the Minister had failed to meet his burden of proof and simply relied on previous decisions. By doing so, the Minister had failed to identify other alternatives to detention or deportation. Justice Harrington also stated that if Warssama cannot be returned, the member must seriously consider other alternatives to detention.
One month after the judicial review, Abdirahmaan Warssama was released from immigration detention under the supervision of his sister who posted cash and performance bonds\(^2\). Conditions of his release also include residence in his sister’s home, regular reporting with CBSA, and his prompt attendance when ordered by immigration authorities.

1.2- Immigration, Detention, and Deportation in Canada

Abdirahmaan Warssama’s case is a significant example of the fickle nature of Canada’s immigration law. It emphasizes one of the most important concerns facing migrants in this country: status. Warssama was denied refugee status; he was not given permanent residency (PR) status; as a result of his criminal behaviour and his failure to present himself at hearings, he was labelled a “flight-risk”, a type of status that impacted his chances for release. For many immigrants (and for refugees like Warssama), the presence or absence of a “legal” status in Canada is the difference between a stable life and constant hiding. Apart from his criminality, Warssama’s non-status resulted in his inadmissibility, and later, his lengthy detention in Canada. Looking closely at his detention review, we can also see that his non-status stemmed from the restrictive legal parameters that distinguish between people who can and cannot obtain ‘legal’ Canadian citizenship. Warssama’s failure to attain Canadian citizenship resulted in his double incarceration: first, by the Criminal Justice System and second, by the Immigration System. His case, as well as that of many individuals currently serving time in detention facilities awaiting removal, requires closer attention by academia as it can enable us to evaluate the significant processes that contribute to the “illegalization” of im/migrants.

\(^2\) A bond refers to an obligation or promise that is bound by money (for e.g. a cash bond) or action (e.g. Performance bond). Similar to bail in criminal hearings, these promises are made by a close family member or friend who is able to supervise and support the accused im/migrant. If the im/migrant fails to appear for a hearing or fails to comply with the conditions of his or her release, the bondsperson loses the money (or an equivalent collateral).
Warssama’s case also brings up recurring ideas such as illegality/illegalization, credibility, “deservingness”, and reasonableness that are common in immigration hearings, and which are central themes of this thesis. His history of criminal offences and his non-compliance of immigration laws resulted in his lack of credibility. In addition to this, his contradictory statements regarding his willingness to leave Canada also contributed to the IRB members’ perception of him as unreasonable and lacking in credibility. Furthermore, his rich criminal history made him “undeserving” of Canada’s humanitarianism as he was deemed to be a “danger to the public”. This danger determination made him an unlikely candidate for release; as a result, he faced a lengthy detention.

Immigration, detention, and deportation have become “hot topics” in recent years as images of displaced migrants from Syria and Libya crossing the Mediterranean Sea on dinghies and rafts have caught the attention of politicians and laypeople alike. Whereas some countries (like Canada) made commitments to resettle large number of refugees, others attempted to close their territorial borders and increase police and military presence as deterrents to migrants. In addition, many governmental and non-governmental organizations address the issue of human displacement and continue to urge international communities to participate in resettlement efforts. At the same time, nation-states are also grappling within their immigration laws and administration to balance obligations to their citizens and obligations to international communities. Therefore, situating my research on Canada’s immigration law and practices within this context is important to understand the implications of the politics of transnational im/migration and the ways in which this politics plays out in immigration hearings.
1.3- **Background and Aims**

This study explores the manner in which im/migrants in Canada are illegalized through immigration hearings. This ethnographic research project set out to answer the following question: *How are im/migrants constructed to be “illegal” through laws, policies, and everyday practices?* More specifically, I ask: *How does im/migrant illegalization become visible in different types of immigration hearings in Canada?* I conducted my fieldwork for a period of three months in the summer of 2016 at the Toronto Immigration Holding Center where I observed detention reviews and admissibility hearings. I also conducted three formal interviews with immigration consultants and informal conversations with many IRB members and legal representatives for Canada’s Immigration Minister. Through my study, I attempt to identify complexities that arise at the nexus of transnational mobility, human displacement, individual rights, and national security. In this work, I will discuss, in detail, the procedural aspects of immigration hearings; I will also attempt to link these quasi-judicial practices to the larger framework of immigration and deportation that have become essential to modern sovereignty. Additionally, this thesis will explore the ambiguities and inconsistencies in laws and policies concerning procedures for determining an im/migrant’s admissibility to Canada. In doing this, I proceed to complicate De Genova’s (2002) notion of “illegality” and try to bring the abstract concept of “illegality” to the level of everyday individual interaction.

De Genova’s study frames “illegality” through a discussion of “deportability”. He argues that “illegality is lived through a palpable sense of deportability… or the possibility of being removed from a country” (2004:161). According to De Genova’s illegality-deportability framework, “illegality” can be seen as the socio-political conditions and processes that marginalize migrants whereas, “deportability” refers to the looming threat of migrants’ removal
which reproduces their “illegality”. He correctly states that im/migrant deportability is closely related to the racialized ways im/migrants are defined by legal as well as social discourse as “invasive violators of the law, incorrigible ‘foreigners’ subverting the integrity of the nation and its sovereignty” (2004: 161). The risk of captivity, deprivation of freedom, and the forced removal of a person can transform an otherwise mundane activity into an illegal one. These “illegalized” practices include subsistence crimes, operating vehicles without a valid or legal license, working for cash ‘under the table’ in factories, farms and private homes, etc. De Genova’s framework is especially relevant in cases of undocumented im/migrants who overstay their visas or cross borders without authorization. However, I argue that this framework must be slightly altered in order to understand the manner in which “legal” migrants such as permanent residents, sponsored im/migrants and conventional refugees lose their residency status. I suggest that although these im/migrants also face the threat of deportation they are made to be illegal through laws and policies that over-police and aggressively penalize them.

One of the common challenges in the study of ‘illegality’ is the diverse language surrounding migration. Throughout this thesis, I use terms such as “migration” and “immigration” to refer to the movement of people across borders. Whereas “migration” is the broader term that refers to the movement of people from one place to another, “immigration” can be used to describe the regulation of people’s movements across borders through bureaucratic institutions (such as IRCC and CBSA), laws (IRPA), and processes (acceptance of visa applications, detention, deportations, etc.). In this thesis, I employ the term “im/migration” to emphasize the precariousness of people’s legal position or status in a country. I use this term to refer to individuals who cross borders with or without documentary authorization (such as visas, passports, and other travel documents) from the state. These individuals include asylum seekers,
refugees, permanent residents, sponsored immigrants, temporary visitors, and temporary foreign workers such as agricultural workers and live-in caregivers. In addition to these terms, ‘illegal’ has been used by social scientists as well as by government agencies to refer to ‘unauthorized’ and clandestine movement of people across borders (Cornelius 2001; Angelucci 2012; Baldwin-Edwards 2008). Scholars have also used the term ‘undocumented’ or ‘unauthorized’ to replace the term ‘illegal’ (Eschbach et al. 1999; Vogt 2013; Chavez 2011). In many cases, the term ‘illegal’ migration has been used in reference to border control strategies and migration management. On the other hand, ‘undocumented’ migration, generally, refers to those people who cross borders to work without authorization.

Despite the uneven language, I find that these terms have been consistently deployed to explain the ‘unlawful’ arrival, residence, and practices of migrants in a particular country. I argue that these terms- each problematic in their own way- naturalize the ‘illegality’ of migrants. Therefore, throughout this thesis, I will define and utilize them differently. I suggest that whereas ‘undocumented’ refers to the lack of bureaucratically recognized identification or travel papers such as visas, passports, etc., ‘illegal’ is the discursive and juridical value placed on migrants who attempt to enter a country with or without documents. Thus, using the concept of ‘undocumented’ to replace ‘illegal’ does not sufficiently explain specific and unequal patterns of marginalization that can make even “documented” im/migrants vulnerable to being made “illegal”.

I also suggest that the illegalization that im/migrants experience is a result of laws (i.e. criminal and immigration), administrative policies, and everyday practices of various institutions and social agents. This illegalization does not simply mean that im/migrants can be removed from the country; instead, it means that im/migrants accused of violations to criminal or
immigration laws are unable to defend themselves properly at hearings. They are unable to hire legal counsel, post bond (similar to bail), or even provide “logical” or “rational” testimonies before a biased immigration system. Therefore, using the term “illegalization” enables us to understand the implications of these processes on the lives of im/migrants who are systematically dehumanized and are reduced to “nobodies”. Their existence as outcasts makes them susceptible to over-policing, lengthy criminal sentences and immigration detention, and eventually, removal from Canada.

1.4- Organization of Chapters

Throughout my thesis, I will use case studies and excerpts from immigration hearings to support my arguments. These cases were obtained from hearings that I attended during my fieldwork as well from online case archives. These cases will have dual purpose within this thesis: they will act as a narrative tool in allowing me to broadly sketch the realities of immigration in Canada; they will also enable us to identify the process of illegalization within micro-exchanges that occur within immigration hearings.

In the chapters that follow, I highlight numerous instances that can provide us insight into im/migrant illegalization and the implications of this process in immigration hearings. In Chapter two, I provide contextual information about Canada’s immigration law, including some of its key provisions that relate to admissibility and detention. I will also draw attention to Canada’s border and immigration control institutions such as Citizenship and Immigration Canada (now, Immigration, refugee and Citizenship Canada) Canadian Border Services Agency (CBSA), and the Immigration and Refugee Board (IRB). Understanding their roles and the vast amount of power they occupy will enable us to identify the way in which they operate together to control
Canada’s borders and its im/migrants. This chapter provides background information into the structures and institutions that administer and enforce Canada’s immigration law. In Chapter three, I provide a review of literature in order to highlight some emerging ideas and frameworks that have been used to study immigration. Through a discussion of ideas such as sovereignty, border control, and citizenship, I look at the broad framework through which immigration has commonly been studied. Then, I explore the ways in which these ideas exist in immigration hearings as im/migrants are treated as “undeserving” of Canadian residency status. This chapter will also highlight legal anthropology as a relevant theoretical framework for the study of immigration and situate my study within in.

In Chapter four, I will provide an overview of my fieldsite, explain and justify my research, and I will also describe my methodology. I will also describe some of the challenges I faced in conducting this study, especially in my attempts to formally interview IRB members and lawyers, and members of advocacy organizations. In Chapter five, I report my findings and provide a descriptive analysis of these findings. I explain the role of social actors such as IRB members, lawyers, and minister’s counsels in the construction of im/migrant illegalization. Additionally, I explore four significant themes that emerged throughout my research process: perceived morality (or immorality) of im/migrants, ideas of “deservingness”, perception of credibility, and the relationship between reasonableness and culture. These themes are essential to our understanding of the ways in which immigration hearings contribute to im/migrant illegalization. I conclude by pointing out that more ethnographic research in the area of im/migrant illegalization can enable us to gain new understanding of the ways in which legal policies and everyday practices illegalize im/migrants.
Chapter 2- Immigration Law and Hearings: A Brief Overview

2.1- Introduction

This chapter provides a brief overview of the Immigration and Refugee Protection Act of Canada and some of its important provisions that are commonly used in immigration hearings to determine a person’s admissibility. I begin by tracing the origins and goals of the Act. This will be followed by a brief introduction to some of the key institutions and agents that are given the authority to enforce the Act. Then, I will draw attention to two types of hearings that I observed during my fieldwork at the detention center in Toronto: admissibility hearings and detention reviews. Understanding these types of hearings within the context of immigration law is significant for observing the manner in which “undesirable” immigrants are effectively removed from Canada.

2.2- The Act- A Brief Description

Immigration in Canada is governed by the provisions set out by the Immigration and Refugee Protection Act (the Act or IRPA). The IRPA came into effect on June 28, 2002 and replaced the Immigration Act of 1976. Along with a change in name, the new Act contains additional amendments that introduced and expanded its objectives. Section 3(1) of the IRPA outlines its objectives for immigration. They are:

(a) to permit Canada to pursue the maximum social, cultural and economic benefits of immigration; (b) to enrich and strengthen the social and cultural fabric of Canadian society, while respecting the federal, bilingual, and multicultural character of Canada; (b.1) to support and assist the development of minority official languages communities in Canada; (c) to support the development of a strong and prosperous Canadian economy, in which the benefits of immigration are shared across all regions of Canada; (d) to see families are reunited in Canada; (e) to promote the successful integration of permanent residents into Canada, while recognizing that integration involves mutual obligation for new immigrants and Canadian society; (f) to support by means of consistent standards and prompt processing, the attainment of immigration goals established by the
government of Canada in consultation with the provinces; (g) to facilitate the entry of visitors, students, and temporary workers for purposes such as trade, commerce, tourism, international understanding and cultural, educational and scientific activities; (h) to protect public health and safety and to maintain the security of Canadian society; (i) to promote international justice and security by fostering respect for human rights and by denying access to Canadian territory to persons who are criminals or security risks; (j) to work in cooperation with the provinces to secure better recognition of the foreign credentials of permanent residents and their rapid integration into society. (IRPA SC 2001, c. 27)

Close attention to the language used to describe these objectives enables us to see the ways in which Canada’s immigration law highlights the difference between “desirable” and “undesirable” im/migrants. This categorization of im/migrants is important for understanding the ways in which they can face illegalization. It also shows us the lack of protection that certain im/migrants contend with under Canada’s immigration system. For example, economic class im/migrants comprising of high-skilled and business class are often considered beneficial to Canada as they are assumed to be able to successfully integrate and adapt to the society. These types of im/migrants are able to obtain their permanent residency status, arguably, with ease. Temporary im/migrants such as labour migrants are useful for the country’s economic and developmental success as they provide cheap labour. Whereas many of these im/migrants later become permanent residents, others are forced to return to their home countries when their visas or work permits expire. Many im/migrants arrive in Canada through family class visas, such as spousal sponsorships. If the sponsored spouse meets all the conditions of their sponsorship, then the sponsorship can later turn into permanent residency. In addition to these types of im/migrants, Canada is also the temporary or permanent home to many asylum seekers and refugees who claim asylum at an airport (or other port of entry) or who are sponsored by the federal government and other private citizens.
Despite the presence of numerous types of im/migrants, each with their own circumstances, they do not enjoy similar protections and rights that are provided for citizens, and to some extent permanent residents, in Canada. There is an increasing degree of distrust and suspicion toward asylum seekers, refugees, sponsored spouses and many labour migrants who are merely tolerated by Canada’s immigration system as well as by the general public. Despite being tolerated, these im/migrants can be deported easily if they violate criminal laws, attempt to work without proper authorization (i.e. “under the table”), or violate the conditions of their sponsorship. In addition, im/migrants who are found to be inadmissible also lose their right to appeal their case to a higher court, a right that is afforded to citizens and permanent residents. This lack of legal protection makes im/migrants easily deportable from Canada for any violation of criminal and/or immigration laws.

Paying close attention to the language used in the IRPA and situating it with larger socio-economic and political context of transnational migration can enable us to understand that certain migrants are designed to be removable. For example, labour im/migrants, often selected from economically depressed nations such as Mexico, Jamaica, Trinidad and Tobago, etc., are contractually bound to a particular employer. However, if they attempt to challenge unfair or exploitative working (or living) conditions, their employment may be subject to termination. Im/migrants who are no longer bound to their employers can become deportable as they are now seen as violating the conditions of their work permit. I highlight this issue in chapter five, where I use the example of Carlos, a labour im/migrant from Antigua and Bermuda, who was deported for his failure to comply with the conditions of the work visa and for working without authorization. Many im/migrants, especially those from economically depressed countries choose to overstay their visa. This may be particularly the case if they feel like they can
contribute more in remittances as a result of their stay. However, as existing laws and policies prohibit these im/migrants from overstaying legally, CBSA officers issue arrest warrants for these im/migrants who are now deemed “without status”. Upon their capture, they are often declared “unlikely to appear” or a “flight risk” and held in detention until their successful removal from Canada. Similarly, many sponsored spouses face similar status loss due to their failure to follow the conditions of their sponsorship. Until May of 2017, sponsored spouses were required to co-habit with their sponsors in the same residence for a period of two years before obtaining their permanent residence status. Failure to follow this condition was considered a violation of the immigration law. As a result, sponsored spouses were stripped of their conditional status and removed from Canada. These forms of status-loss and the ensuing removal are a few examples of the ways in which im/migrants face illegalization through the language used in Canada’s immigration law. Exploring this language and the impact of codified laws and administrative application of these policies are essential for understanding the ways in which nationalistic interests of the state and the benefits that it receives from transnational migrants outweighs the needs of individual im/migrants who arrive in Canada.

2.3- The Immigration Structure in Canada

Institutions and Agencies

Immigration in Canada is overseen by various agencies with different mandates. The Immigration, Refugees, and Citizenship Canada (IRCC, formerly known as Citizenship and Immigration Canada) is responsible for facilitating the arrival of im/migrants, protecting refugees and granting citizenship (2017b). The Canada Border Services Agency (CBSA), created in December 2003, is responsible for border enforcement and national security. CBSA is also
tasked with the removal of a foreign national or permanent resident who has been determined to be inadmissible to Canada (Canada Border Service Agency 2011)

In addition to these institutions, the Immigration and Refugee Board of Canada (IRB) plays a very significant role in determining the legality of an immigrant in Canada. The IRB was created in 1989, following the 1985 Supreme Court decision in the case of *Singh v Canada*. This case involved seven people whose application for convention refugee status was initially refused under the Immigration Act (Satzewich 2015:46). Upon appeal, the initial decision was upheld by the then Immigration Appeal Board. Unlike today, appeals that occurred before 1985 did not allow refugee applicants to present their case in an oral hearing (Satzewich 2015:46). Upon further appeal, Canada’s Supreme Court ruled that this practice contravened the Canadian Charter of Rights and Freedoms and the Canadian Bill of Rights (Satzewich 2015:46). It also ruled that refugee applicants in Canada must have the right to oral hearings in order to defend themselves against allegations by the Canadian government (Singh v. Minister of Employment and Immigration 1985)

Today, as mandated by the IRPA, the IRB is an independent, administrative, and quasi-legal tribunal that makes decisions on immigration and refugee matters. It conducts admissibility hearings, detention reviews, refugee hearings as well as appeal hearings. The IRB consists of adjudicators who are referred to as “members”. These adjudicators render decisions on different types of immigration hearings. The IRB is further divided into four divisions: Immigration Division (ID), Immigration Appeal Division (IAD), Refugee Protection Division (RPD), and Refugee Appeal Division (RAD). The Immigration Division conducts admissibility hearings for immigrants who violate Canada’s criminal or immigration laws. In addition to this, the ID hears cases for individuals who are also deemed inadmissible to Canada on health, safety, and security
grounds (Satzewich 2015:46). It also conducts detention reviews for im/migrants who are detained in holding centers following their admissibility hearing. The Immigration appeal division hears appeals on matters such as removal orders, residency obligation, and sponsorship cases (Canada 2017b). The Refugee Protection Division is responsible for hearing and processing refugee claims (Canada 2017b). The Refugee Appeal Division hears appeal against decisions made at the Refugee Protection Division. Parties (either an im/migrant or the minister) can also appeal against decisions made the IAD or RAD to the federal court or the Supreme Court for further consideration. This thesis focuses on hearings that occurred at the Immigration Division. I also draw upon cases and decisions from the IAD in order to contextualize my experiences as an observer at immigration hearings. However, I will not make references to RPD or RAD as they exceed the scope of my thesis.

2.4- Types of Hearings

The following section will highlight the two types of hearings that I observed during my fieldwork at the Immigration Holding Center: admissibility hearings and detention reviews. The legal and institutional nature of these hearings are complex and contains many nuances, some of which I highlight in this thesis. By identifying and describing these types of hearings, my goal is to situate the law, its policies, practices, and agents within the context of im/migrant illegalization.

Admissibility Hearings

A foreign national or a permanent resident may be ordered to appear for an admissibility hearing if the CBSA has reason to believe that the person concerned may be removable from Canada on grounds of health, public safety, or national security (Canada 2006:2). The IRB
member begins the proceeding with a brief introduction of participants, interpreters, and observer present in the hearing room (see Appendix A). If an interpreter is present, then he or she is asked to introduce themselves to the person concerned in order to make sure that both parties can understand each other. Following this, the interpreter takes an oath affirming that the translation they provide is true and accurate. Next, the member explains the reasons for the hearing and outlines its process and scope. After this, the Minister’s counsel describes the reasons for the im/migrant’s inadmissibility and argues for the person’s immediate removal. In this case, the burden of proof falls on the Minister who must provide sufficient evidence to prove the im/migrant’s culpability. The Minister’s counsel proceeds to ask the person concerned questions regarding their citizenship, the reason for their arrival to Canada, and details regarding their alleged violation of criminal or immigration law. Following the Minister’s questioning, the person concerned or the counsel is given the opportunity to present an oral defence. During this phase, the counsel for the im/migrant may ask questions regarding the immigration matter for which the admissibility hearing is being held. The Minister’s counsel or the counsel for the person concerned may also present witnesses to provide information. The IRB member also asks questions throughout the hearing. After hearing from both parties, the member makes a determination regarding a person’s admissibility and justifies the decision using case law and other legal precedents. If an unfavourable decision is rendered, then the decision can be appealed to the Immigration Appeal Division for reconsideration.

If a person is declared a danger to the public or unlikely to present themselves for removal, they are held in a detention facility. Based on my observations at immigration hearings and further literature consultation, I emphasize that admissibility hearings have garnered little

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3 Unlike a criminal proceeding, immigration hearings use the standard of “balance of probabilities”. This means that the Minister does not have to prove the culpability of the person concerned “beyond a reasonable doubt”.
attention as compared to detention reviews. Therefore, I focus on admissibility hearings in order to point out instances where an im/migrant’s illegality and deportability becomes visible. In the next chapter, I complicate commonly used ideas of credibility and “deservingness” and draw attention to the myriad ways through which admissibility hearings illegalize im/migrants in Canada.

**Detention Reviews**

Detention reviews are conducted when a person has been detained in an immigration holding center or provincial jail in order to facilitate their removal. In most cases, a person is detained if they have been deemed a risk to the society as a result of their criminal history or their history of non-compliance. A person may also be detained if immigration authorities have reason to believe that they will not present themselves for admissibility hearings or removal from Canada. As a result, many im/migrants and foreign nationals spend a considerable amount of time in detention prior to their removal. Detention reviews are held within the first 48 hours following a person’s detention. After this, another detention review is held within seven days; following this, another detention review is held within 30 days. Detention reviews can occur in the facility in which a person is being held; they can also occur via videoconference or teleconference, especially if the detention center is located far away. During my fieldwork, I attended many detention reviews that were conducted over videoconference as the detainee was held in the Central East Correctional Center in Peterborough.

Whether conducted in person or through videoconference, an IRB member presides over detention reviews (see Appendix A). Also present in detention reviews are the person concerned, their counsel (if they have one), an interpreter, the minister’s counsel, witnesses, a bondsperson

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4 Also known as the Lindsay jail, this provincial correctional facility houses criminal offenders as well as immigration detainees.
or any other representatives (Canada 2006: 2-3). Like admissibility hearings, the member will begin the hearing by introducing everyone and explaining the detention review process. If an interpreter is present, the member will confirm that the person concerned and the interpreter can understand each other, after which the interpreter takes an oath. Following this, the Minister’s counsel will argue their case and explain why they are seeking the continued detention of the person concerned. The person or their counsel will also be given the opportunity to present an oral defence or make suggestions regarding alternates to detention. A guarantor or a bondsperson is most commonly used as an alternative to detention. Similar to bail in the criminal justice system, the member may choose to release a person under a bond. A bond is a monetary sum paid by the bondsperson as collateral for a detainee’s release. The bondsperson must make sure that the person concerned follows the conditions of release as failure to do so will result loss of large sums of money. If a guarantor is not present or is deemed untrustworthy by the minister’s counsel and/or IRB member, then the person concerned will not be released from detention. After hearing from the Minister’s counsel and person concerned, the IRB member makes a determination either to release the detainee or continue their detention.

A detention review is conducted every 30 days to allow the Minister to present updates on the detainee’s removal from Canada. However, these hearings have been described as a “rubber stamp” by many immigration lawyers and critics who argue that little progress is made between monthly hearings (Perkel 2016). Detention reviews carry severe implications on the accused im/migrant because any processing delays or mistakes can cost an im/migrant further imprisonment and loss of freedom. In many cases, delays are blamed on detainees who are accused of lying or willfully failing to provide sufficient information to process their removal. It is not uncommon to hear a member or Minister’s counsel state that “the delay is the [detainee’s]
own fault. He has a long history of dishonesty” (Fieldnotes July 2016). I will address this idea of blame and “deservingness” in chapter 5.

2.5- Conclusion

In recent years, Canada’s immigration hearings and processes have received increasing attention as a result of many high-profile cases and events. In the summer of 2016, as I was conducting my fieldwork, fifty immigration detainees at the Central East Correction Centre staged a hunger strike to draw attention to the conditions that detained im/migrants experience in maximum-security prisons. Supported by advocacy groups such as No One is Illegal (NOII) and End Immigration Detention Network (EIDN), this hunger strike also drew attention to the death of fifteen immigration detainees since 2000 (End Immigration Detention Network 2016). This strike garnered a lot of attention from the public as well as the media and led to several discussions surrounding the treatment of detained im/migrants in Canada. In August 2016, Federal Public Safety Minister, Ralph Goodale responded to this strike by announcing that the Canadian government would commit $138-million to upgrade and expand detention centers in Canada. He also committed to developing more alternatives to detention so that detention could only be used as a last resort (CBC News 2016)

Understanding the significance of the IRPA is necessary in order to explore the ways in which it is enforced and administered by lawyers, CBSA agents, and im/migration adjudicators. It is also important to consider the ways in which im/migrants, in Canada, are subjected to differential treatment that can impact their experiences in the country. In this chapter, I provided a brief introduction and background to Canada’s immigration law, outlined its objectives, and elaborated on the role of its institutions and agencies. I also provided an outline of admissibility
and detention hearings in order to highlight the process by which im/migrants lose their “legal” residency status in Canada. By understanding the roles of bureaucratic institutions and processes we can situate the administration of the immigration law within the larger politics of im/migration and sovereignty.
Chapter 3: Immigration Law and Adjudication as Exercises of Sovereignty-
A Literature Review

3.1- Introduction

This chapter will bring together some important bodies of literature that have provided significant insight in understanding the politics of transnational im/migration and im/migrant illegalization. Through this literature review, I explore, critically, some macro, meso, and micro themes that can be useful in analyzing arguments that have been used to study im/migration. I start by exploring the concept of sovereignty to make the point that immigration and citizenship policies are areas where the production of sovereignty is most visible. This production of sovereignty can be seen through laws and policies that are designed to categorize certain groups of people as “undesirable” to the state. Consequently, these “undesirable” im/migrants are over-policied at borders, stopped on the road as part of “routine” police checks, and deported for working without authorization. In all this, the body of the im/migrant is regarded as “unwanted” and “illegal”; it is the recipient of the society’s misconceptions and fears. Next, I provide a discussion of the juridical and discursive implications of terms such as “illegal”, “unauthorized”, “undocumented”, etc. in addressing im/im/migration. Then, I take a closer look at some literature on immigration hearings-- the site where sovereignty, language and power converge to render a person “illegal” in Canada. In this discussion of immigration hearings, I will also introduce the themes of reasonableness and credibility, which I will explore in more detail in chapter five.

3.2- Sovereignty, Border Control, and Illegalization

Generally defined as the ability of a state to govern itself, sovereignty has been traditionally used to justify stringent laws, militarization of territorial borders, internal policing
of boundaries, erection of walls, and the deployment of surveillance mechanisms such as thermal imaging cameras, unmanned aerial vehicles (UAVs, or drones), and sensors (Jones and Johnson 2016). Through notions of sovereignty, states are able to make decisions regarding the permeability (or impermeability) of its borders to authorized and unauthorized movements of people, labour im/migrants, asylum seekers, and refugees. Jones and Johnson (2016) argue that this militarization and hyper-securitization of borders have also contributed to the dehumanization of im/migrants who face increased mortality as they attempt to avoid surveillance and deterrence measures at border spaces.

According to Sassen (1999), ideas of sovereignty are predicated upon the assumption that nation-states are bounded containers of people and of social processes and solely possess territorial authority. As containers, states have the ability to exercise authority over their territorial borders and social boundaries without succumbing to extra-territorial influences or needs. Sassen points out that there have been many periods in history when states and territories were subjected to multiple (political) systems of rule. She states that the Middle Ages (in the eleventh century) in Europe, was characterized by three complex political systems: feudalism, church, and empire. No one system had fixed, exclusive territorial authority; instead, this complex system of rule enabled mini-soveriegnties to exist within a “vast system of often overlapping jurisdiction” (Sassen 2006:24). However, “monetization, trade, and the growing wealth and numbers of towns” weakened feudal systems and led to rise of territorial state sovereignty (2006:24). Additionally the period after the World wars saw increased tightening of state borders as more and more states attempted to protect “their national economies from external forces rather than forming a global economy”(2006:72). Today’s economic globalization challenges such assumptions because states are no longer seen as discrete and
bounded entities; rather, contemporary states are linked together by national and transnational networks and institutions with the goal of market expansion (or other similar goals) (Sassen 1999). As a result, ideas of “national” and “global” become contingent and shifting depending upon a state’s obligations and responsibilities to other states. In addition to economic globalization and trade agreements, the presence of international human rights conventions and treaties also play significant roles in reducing the state’s sovereignty. One of the most significant ways in which this can be observed is through obligations to the United Nations through agreements, namely the United Nations Convention relating to the Status of Refugees (1951), Protocol Relating the Status of Refugees (1967), and the Convention against Torture and Other Cruel, Inhuman, and Degrading Treatment or Punishment (1984), to which Canada is a signatory. So, Canada is faced with the need to balance its obligations to the international community alongside its responsibility towards its own citizens. In these ways, the insertion of the global in the national has caused a de-nationalization of what has been traditionally constructed as the national (Sassen 1999:1)

Wicker’s (2010) observation about the loss of sovereignty and increasing border control practices in Switzerland lends itself very well to Sassen’s (1999) analysis of de-nationalization. He traces the legal and discursive changes to immigration that began in the 1970s as the state abolished its guest worker program. Along with decreases in the number of guest workers, Switzerland also saw increases in refugees and asylum seekers, whose arrival sparked public concern of “illegal” im/migrants. Wicker observes that this concern about “illegal” im/migrants was based on underlying racial assumptions regarding the origins of these people. Whereas labour im/migrants to Switzerland in the 1970s emerged from countries such as Portugal and Slovakia, refugees and asylum seekers came from non-EU regions such as the Balkans, Eastern
Europe, Latin America, Africa and the Middle East (2010:224). As a result “illegality” was attributed to members of these latter countries as opposed to Portuguese or Slovak individuals who could be working without authorization in the country (2010:224-225).

Wicker suggests that the post-World War I tightening of state borders and increase in surveillance mechanisms can be seen as responses to changes in transnational mobility (and economic globalization) as “individual states become deprived of their autonomy by growing international connectivity and are increasingly subjected to international conventions” (De Genova and Peutz 2010:225; Sharma and Gupta 2006). Consequently, increased im/migration and border control strategies and deportation practices are ways in which nation-states reclaim their sovereignty without violating international laws and treaties (Jones and Johnson 2016; Dauvergne 2004). This reclamation of sovereignty is made possible through definitional changes that reconstruct the notion of “illegal” immigration. In doing this, immigration law and authorities cast a wider net to capture and remove individuals who are perceived to be “illegal”. However, surveillance strategies and enforcement mechanisms that are created alongside changing definitions do not actually diminish the “problem of illegals”; rather they simply create new categories of legalized immigrants (De Genova and Peutz 2010:237). Here, the question is not simply how are im/migrants “illegalized”, but also, how do constructions of illegality exemplify exercise of sovereignty?

The state’s performance of sovereignty can also be seen through immigration laws that limit or exclude certain types of im/migrants from enjoying the rights and liberties that accompany citizenship. The discursive formulations of “illegal” im/migration have often been constructed alongside articulation of legal forms of citizenship and nationhood. At its most basic level, those born inside a country have the right to citizenship. Contrastingly, people born outside
it cannot enjoy the same rights and liberties as its citizens. Despite this, some people (such as permanent resident and refugees in Canada) are granted the opportunity to become naturalized citizens of the state based on their ability to contribute to the national economy. For example, permanent residents can become naturalized citizens if the immigration authorities believe that they have met all the conditions of their residency such as lack of criminal record, continuous stay in Canada for three out of five years (previously, four out of six years), successful completion of the citizenship examination, meeting language requirement, etc. Similarly, conventional refugees, whose claims were accepted by immigration authorities can become permanent residents and eventually, Canadian citizens. For others, such as temporary foreign workers, the road to naturalization is long and tedious as they may be subjected to stringent conditions and waiting periods. An example of this is Canada’s 2011 “4 in- 4 out” rule which allowed temporary foreign workers (TFW) to work in Canada for four years, after which they were removed to their home countries and banned from returning to Canada for another four years (CBC News 2016). As a result of this “revolving door” labour im/migration policy, many foreign workers could not successfully obtain permanent residency because they could not successfully meet conditions of their residency. Furthermore, other types of im/migrants, such as asylum seekers, must first prove the authenticity of their claims before being granted permanent residence, and eventually citizenship in Canada. In addition to this, legal temporary and permanent residency can also be revoked by the state, thus making “legal im/migrants” into “illegal ones” (Wicker in De Genova and Peutz 2010:227). Through these statuses of precarious legality the state reclaims and performs its sovereign power in visible ways.

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5 This rule was repealed in December 2016.
It is also important to remember that illegalization does not occur only through exclusion; techniques of inclusion such as naturalization have also resulted in the ‘illegalization’ of racialized im/migrants. As Fassin points out, naturalization is a mechanism by which the state separates the wanted from the unwanted im/migrants, but continuing to remind naturalized citizens that they are different from “indigenous” citizens of the country (2011:215). He notes that this can be observed in the French context, where native citizens are sometimes informally referred to as “Francais de souche” which means “purebred French” (Fassin and Mazouz 2009:39). This process of “othering” results in further precariousness even if people are naturalized citizens. As Fassin notes, ideas such as “legality” and “illegality” reaffirm the state’s authority to differentiate between “native” citizens and “foreign” others. This differentiation is problematic because it enables private citizens and institutions to carry out the state’s nativist policies. Elcioglu notes that “popular sovereignty” refers to the process in which that “non-state actors engage in practices aimed at complementing and correcting the state in hope of restoring its capacity to legitimately use physical force over the borderlands” (2015:439). Through her analysis of nativist activism among two grassroots border watch groups in the Arizona-Mexico border, Elcioglu suggests that surveillance mechanisms and patrol systems are utilized by group members to serve as “extra eyes and ears” of the Department of Homeland Security. Additionally, in order to identify who is “legal” and who is “illegal”, state relies on the cooperation of institutions to monitor, observe, and report signs of “illegality”, in other words, to provide surveillance on its behalf.

Mutsaers’ (2014) research on the policing of internal borders in the Dutch context explores the manner in which “multi-agency networks” contribute to the surveillance of Somali im/migrants. He points out that “undesirable” individuals are subjected to surveillance by
schools, hospitals, social welfare agencies, housing companies, and municipalities who operate together to share information about “illegal” im/migrants (2014:8). Thus, the policing of external territorial boundaries (by state’s actors like the military) is accompanied by policing of internal spaces which requires the cooperation of citizens who carry out border surveillance as they go about their everyday lives. This dispersal of surveillance is reminiscent of Foucault’s (1977) analyses of new forms of social control. The hyper-surveillance of ‘illegal’, ‘undocumented’ or ‘unauthorized’ im/migrants reproduces notions of membership by drawing a clear line between those who belong in the country (and are therefore protected by its laws) and those who do not.

3.3- Illegality as a conceptual framework of the state

De Genova (2002, 2004) states that “illegality” “is lived through a palpable sense of deportability- the possibility of deportation, which is to say, the possibility of being removed from the space of the nation-state” (2004:161). His work primarily refers to the ‘illegality’ that Mexican im/migrants face in the United States. Through his discussion, we are able to understand that this social process is intentionally designed to target specific groups of people that threaten the normative formation of a state’s social and political sphere. Although ‘illegality’ is a significant theoretical tool for understanding the marginalization of im/migrants, an exploration of Bauder’s (2013) analysis of ‘illegalization’ is necessary in order to gain a better understanding of the social processes that make people ‘illegal’. Bauder (2013) identifies three ways in which people can be illegalized: entering a country without authorization, having refugee claims rejected, and overstaying visiting visas and permits. Each of these categories refer to provisions in the immigration law whose violations can result in an im/migrant’s removal from the host country. By identifying ways in which people are ‘illegalized’ scholars can trace
the social, juridical, political, and institutional practices that result in a person’s “illegal” or “unauthorized” status. One of the major differences between De Genova’s (2002) “illegality” and Bauder’s “illegalization” is that whereas the former refers to the state of being “illegal”, the latter refers to the process of being made “illegal”. This is an important distinction because the idea of illegalization can help us understand the ways in which people are subjected to over-policing and surveillance by state and non-state agents as they line up to access social welfare, visit health care practitioners, travel to their jobs, apply for government documents, etc. It is in the sphere of these mundane everyday practices and interactions that social inequalities such as those of race, class, gender, and citizenship status are produced and sustained.

One of the common challenges in the study of “illegality” is the diverse, and sometimes, divisive language surrounding im/migration. The term ‘illegal’ has been used by social scientists as well as by government agencies to refer to “unauthorized” and “clandestine” movement of people across borders (Cornelius 2001; Angelucci 2012; Baldwin-Edwards 2008). Scholars have also used the term ‘undocumented’ to replace the term ‘illegal’ (De Genova 2002; Eschbach et al. 1999; Vogt 2013; Chavez 2011). In his examination of Mexican im/migration in the United States, Plascencia (2009) states that labels such as “illegal” and “undocumented” are often considered to be discursively opposed. However, they both overlap in terms of their juridicopolitical context, an overlap that has been largely overlooked by many scholars. He argues that both labels carry taken-for-granted assumptions that operate to normalize im/migrant “illegality”, specifically that of Mexican-born im/migrants (2009:376). He observes that “illegal/undocumented im/migrant” is used synonymously with “Mexican im/migrant”; as a result, when scholars and law-makers talk about the “im/migration problem”, they refer to a “Mexico-centered” problem. In highlighting conceptual issues of these labels, Plascencia argues
that “the population of im/migrants who may have entered without formal authorization may constitute about half or less of those subject to removal” (2009:384). Therefore, strategies aimed at securing borders become ineffective at actually solving the problem of “illegal/undocumented” im/migration. Therefore, the uneven terms that have been consistently deployed to explain im/migration are equally harmful and do not sufficiently explain the systematic marginalization that im/migrants endure. In light of this indecisiveness and inconsistency in language, in this thesis I will argue that anthropology and other disciplines must consider the use of “illegalization” as a conceptual framework due to the powerful impact it can have in problematizing the political and juridical systems and social practices that illegalize im/migrants who enter the host country.

In the next section, I identify and explore some critical themes and ideas that arise from within the context of immigration hearings. This discussion is essential in grounding immigration hearings within the larger framework of sovereignty and citizenship.

3.4- Immigration Hearings

Aside from territorial borders, the state’s power and, an im/migrant’s marginality is highly visible in immigration hearings. These proceedings are avenues for the state to exercise its sovereign power by either granting or denying residency. The state can highlight an im/migrant’s incompatibility with the host nation. It is also an opportunity for the state to scrutinize an im/migrant’s morality and reasonableness and to use these as factors to support their detention and/or deportation. I begin by exploring the ways in which the language of the law, and by extension policies and practices construct certain people as “illegal”. Then, I discuss the significance of discretion in decision making at the individual and organizational level. I also
discuss the relevance of the idea of “deservingness” and the ways in which it has been commonly studied. Each theme is important in exploring and contextualizing immigration hearings and their impact on im/migrant “illegalization”.

**Law, Language, and Power**

The everyday use of legal language in courtrooms, policies, statutes, and judicial opinions must be explored in order to understand the manner in which the language of the law contributes to an im/migrant’s illegality. The linkages between discourse, language, and power can be observed in the interaction between the state’s counsel and the im/migrant, between the immigration officer and the immigration adjudicator, and between the immigration adjudicator and an interpreter. Conley and O’Barr (1998) point out the significance of these relationships by stating that “discourse as Foucault understands it must manifest itself at the micro level, as talk. It is only through talk, after all, that dominance can be expressed, reproduced and challenged” (1998:8). Through a linguistic analysis of rape trials and the re-victimization of women, they examine the ways in which legal power is reproduced in the courtroom. They point out that lawyers use cross-examination tactics such as: the management of silence, asking leading questions, management of the discussion topic, and direct challenges to the witness’ knowledge to achieve domination over a rape victim (1998:22-31). Each of these strategies are designed to control the answers provided by the witness. If a witness speaks out of turn, provides a lengthy answer, or fails to answer a question then, the cross-examining lawyer can comment critically on the credibility of the witness. These courtroom strategies or micro-discourses of rape trials re-victimize victims by reproducing power and domination over them. Conley and O’Barr claim that we can observe deep, structural inequalities through the intersection of law, language, and power. They argue that this focus can enable us to understand the paradoxes that exist within the
legal system which aspires to equality and justice, but produces a pervasive sense of inequality and marginalization (1998:2).

In his analysis of law and language, Richland (2013) suggests that “law is founded and enacted through language” that is present in foundational texts such as Supreme Court decisions and preamble to the constitutions as well as in more mundane moments which include legal motions, bureaucratic records, and administrative processes. Whereas Conley and O’Barr (1998) draw links between law, language, and power, the idea of jurisdiction plays a very significant- albeit metalinguistic- role in Richland’s analysis as it informs the scope within which courts and other institutional authorities operate and reproduces sovereign power. He uses the term “jurisdiction” to simultaneously mean “law’s speech” and “speaking of the law” to highlight the ways in which the law draws attention to its power and authority. At the same time, the term is also used to demarcate law’s territorial scope so that nature and authority of different laws (in different places) vary. This understanding of juris-diction provides an interesting approach in studying immigration hearings where legal actors often establish their juridical and institutional authority to oversee cases while at the same time dismissing others due to their lack of jurisdiction. This is visible in the Canadian immigration context where IRPA allows the Immigration and Refugee Board (IRB) to adjudicate hearings but limits them from providing discretionary relief which can revoke an im/migrant’s deportation order. In doing this, the law reinforces and reproduces sovereign power through language that is set out in the IRPA. This is also seen in the legal proceeding that occurs inside a courtroom as the state’s counsels and adjudicators are satisfied solely in an im/migrant’s admission of guilt.

Bhartia’s (2010) analysis of Sulaiman Oladokun’s immigration hearing and his subsequent deportation to Nigeria demonstrates the far-reaching and often marginalizing effects
of the state’s power on the bodies of im/migrants. Oladokun, an international student of New York Maritime College, was arrested by the Joint Terrorism Task Force (JTTF) in February 2003. This arrest, made without a warrant or explanation, was a result of his college’s report to the JTTF that he was exhibiting “suspicious behaviour”. Bhartia points out that a U.S Immigration and Naturalization Service (INS) report issued the day before his arrest outlined that the state did not have any evidence against him. However, the following day, he was arrested for “providing false certificates to the Maritime College” (2010:339). Her analysis of the case traces the ways in which fraudulent charges, US interpretations of African documents, changes in legal representation, and issues with paperwork contributed to the construction of Oladokun as “illegal”, and therefore, removable from the US.

Bhartia comments on the role of legislation and argues that by concerning itself with the entry, control and removal of im/migrants the state has “effectively [collapsed] the figure of the im/migrant with the “illegal”, the “criminal”, and the “terrorist” (2010:329). She draws similarities between the immigration hearing of Oladokun and Franz Kafka’s The Trial in order to point out the limitless power exercised by the ‘extra-juridical immigration bureaucracy’ and the lack of legal recourse by the defendant. Although Bhartia’s analysis presents an extreme characterization, there is something familiar in her assertion that

because the state holds the power to determine law in every instance, it admits to no mistakes and hears no appeal to its charges- there is no acquittal or defense for the accused, only conviction or a perpetual sidestepping of the conviction- what the painter in The Trial characterizes as “ostensible acquittal” or “indefinite postponement”. (2010:332)

Although there are safeguards in common law traditions that can prevent extreme, Kafkaesque experiences, they are not readily available to im/migrants in admissibility hearings and detention reviews. Im/migrants, even “legal” ones, exist in a” “different legal and juridical universe” where
they are declared inadmissible for simple violations of the immigration law and appeals (especially for accusations of criminality) are denied (Bhartia 2010:339).

Any anthropological study of immigration law must attempt to deconstruct the language used by policy makers to pursue the state’s goals, identify violations and issue penalties. It is through the language used to construct this legal framework that the state distinguishes between citizens and outsiders, creates policies that attempt to control these outsiders, and oppresses, both administratively and physically, those deemed “undesirable”. This marginalization occurs as im/migrants are, by law, excluded from enjoying the same freedoms that are afforded to Canadian citizens. It also occurs as im/migrants lose “legal” residency status for violating immigration and criminal laws. Additionally, it can also be observed in the ways in which accused im/migrants are belittled and humiliated by adjudicators and lawyers in immigration hearings. This injustice inflicted on im/migrants through everyday micro-interactions that occur in courtrooms exemplify the power and dominance of the law in the lives of marginalized individuals. Through the ways in which Canada immigration laws are framed and the ways in which these laws are practiced in legal settings, we can observe how im/migrants become illegalized.

*Decision Making and Discretion*

Decisions made at various stages in a host country’s immigration process have severe and long-lasting consequences to im/migrants. Im/migrants repeatedly find themselves at the mercy of im/migration authorities, who are themselves faced with the task of striking a balance between national security and humanitarian obligations to im/migrants and refugees. In order to strike this balance, im/migration adjudicators and other authorities use discretion within their decisions. Here, I define discretion in the legal context, as the ability of a person in power, to make
decisions (based on personal, moral judgement) that circumvent existing rules and guidelines. Scholars (Pratt 1999; Lipsky 2010) have addressed and debated the concept of discretion and its role in legal administration.

Despite these debates, there is a general consensus that a large degree of discretion by police and other forms of authority can undermine the rule of law, while strict adherence to the law can, in turn, decrease discretionary relief—this relationship has been referred to as the ‘donut analogy’ (Dworkin 1967; Kanstroom 1997; Pratt 1999). In his thesis, Dworkin points out that discretion can only be applied within the context of power- more specifically, the power or authority through which a person can make decisions (1967:32). He continues by stating that “discretion, like the hole in a [donut], does not exist except as an area left open by surrounding belt of restriction. It is therefore a relative concept” (1967:32). Dworkin (1967) uses the terms “weak” or “strong” to refer to the kind of discretion an agent or official possesses. Discretion in the “weak” sense means that a judge must sometimes use his or her judgement in order to make decisions when the law is vague. The “weak” sense also means that in some cases, the established rule is not applicable; therefore, the judge must exercise judgment in the decision making process. Discretion in the “strong” sense means that the judge is the highest (and final) authority and these decisions are generally not subject to appeals or reversals (1967:32).

Dworkin’s analogy of the donut provides a visual tool that can enable us to understand the relationship between discretion, law, and power that exists in the im/migration context. Canada’s immigration system consists of various social actors who are able to use “weak” or “strong” discretion in order to make decisions that can impact an im/migrant’s future in the country. For example, in his analysis of visa officer’s decisions making process in Canada, Satzewich points out that these officers as tasked with separating “genuine” claims from “non-genuine” claims as
they try to fit immigration rules to individual cases (2015:6-7). However, the complex rules, guidelines, and procedures they operate do not cover every possible scenarios and circumstances that they encounter. As a result, decisions to grant or deny visas to applicants based on discretionary process are informed by visa officers’ knowledge and experiences (Satzewich 2015:7). This can be seen as discretion in the “weak” sense. Contrastingly, discretion in the “strong sense” can be observed in the decision making process of IRB members and federal court judges whose decisions carry significant repercussions (and finality) for accused im/migrants. Heyman (1994) points out that varying definitions of discretion can mean that its “abuse” cannot be successfully curbed by appellate courts. He argues that one of the challenges in studying discretion is the lack of a meaningful standard by which to evaluate decision-makers’ exercise of discretion. He also goes on to state that many immigration statutes provide no guidelines on how much or little discretion can be used by adjudicators in interpreting the law. Therefore, the use of discretion by visa officers or immigration adjudicators become dependent on factors such as: type of government, im/migration policies enacted by that government, and common discourses surrounding immigration. For example, the recent (and arguably, short lived) introduction of travel ban by the Trump administration in the United States enabled border control officers to use broad discretionary power to deny visa applications and entry to the country. News coverage of this travel ban also highlighted the ways in which Canadian citizens were turned away from the US-Canada border because they did not possess proper paperwork or travel documents to enter into the United States (Banerjee 2017).

A discussion of decision making must also include an exploration of discretion at the individual-level and institutional-level. Through an individual-level perspective, we can examine

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6 In this context, “abuse” is also a problematic term. If one cannot define discretion properly, how can its “abuse” be observed and curtailed?
how a person’s biases, moral beliefs, and intentions play significant roles in his or her discretionary decisions. Police officers, judges, teachers, prison guards and other front-line workers are prime examples of people whose decision making is guided by their personal beliefs and intentions. Lipsky (2010) refers to these agents as street-level bureaucrats who are required to make immediate and personal decisions as they interact with the public. These everyday decisions, in Lipsky’s view, are more important than those made in Parliament. In her ethnographic research on police discretion in Oslo’s nightlife setting, Buvik (2016) argues that individual and attitudinal explanations are necessary in order to fully understand discretionary decision-making among police officers. She points out that some police officers under-enforce the laws concerning minor crimes such as public intoxication and nuisance in order to make themselves available to respond to more serious calls such as bar fights or other forms of violence. Furthermore, some police officers try to become more efficient during their patrol by resolving cases quickly and without making arrests; this way, they can avoid trips back to the station where they are expected to write and submit incident reports (2016:778). Buvik also reports that the behaviour and attitudes of individual police officers, such as their levels of seniority, stress, tempers, and coping styles, can also result in the unequal treatment of individuals who face similar situations.

Satzewich’s (2014, 2015) study of decision making by visa officers in spousal sponsorship cases can be useful in understanding the significance of institutional-level discretion in the immigration context. This type of discretion refers to the bureaucratic framework and limitations that affect the ways in which street-level bureaucrats or visa officers make decisions in individual cases. In this framework, “discretionary bias stems from the larger process of policy implementation and from the demands of the organizational culture” in which street-level
bureaucrats work (2015:38). He challenges standard views of im/migration that associate
discretion among visa officers with personal, or micro level, racism and other personal biases by
suggesting that meso-level factors such as quotas, processing times and other bureaucratic
standards play significant roles in decision making process. He also suggests that visa officers’
understanding of larger social, economic, and political inequalities affect their perceptions of
legal or fraudulent immigration applications (2014:1451). He argues that visa officers’ decisions
to accept or reject spousal sponsorship cases are framed by their understanding of broader social
and political factors that shape people’s im/migration decisions- legal or fraudulent. He uses the
relationship between a country’s socio-economic development and im/migration to point out that
visa officers assume the authenticity of a marriage claim if it involves individuals from
(economically) equal countries. However, marriages between individuals from (economically)
disparate countries are assumed to be ‘fake’ (2014:1462). The problem with such a view is that
‘real’ marriages between economically unequal countries may be subject to more intense
investigation and/or possible rejection by visa officers. Visa officers’ understanding of global
inequalities are influenced by their level of education and on-the-job training, information from
sources such as media, news articles, conversation with other officers, and interaction with
people they encounter every day.

In his study of primary airport inspectors at an international airport in the United States,
Gilboy (1991) explores the exercise of discretion through an “organizationally grounded
approach” and argues that decision making is shaped by the two factors: the task of primary
inspectors and the practical concerns of the port of entry. He points out that decision makers,
faced with constraints of time and resources, use various coping techniques in order to carry out
their tasks. Techniques such as focused data collection and categorization enable them to obtain
specific information from travelers which are valuable in confirming the validity of a claim. Additionally, inspectors would often assign travelers to various categories that would enable them to streamline the assessment process. For example, flights perceived as those containing an unusual concentration of travelers carrying fraudulent travel documents are described as “dirty flights” (Gilboy 1991:583). Contrastingly, “clean flights” refer to flights that do not contain travelers with any problems (Gilboy 1991:583). This use of categories can complicate an inspector’s line of questioning and assessment of a traveler. For instance, categories such as “clean”, “dirty”, “high-risk”, or “low risk” shape the nature of a traveler’s assessment by referring “suspicious” persons to more extensive and time-consuming evaluation. Travelers who are seen as “clean” or “low-risk”, on the other hand, are allowed to continue their travel. Both Gilboy (1991) and Buvik (2016) point out that officers obtain information from meetings and other forms of workplace interactions that enable them to develop notions about certain groups of people. Through their studies we can see the ways in which institutional and bureaucratic challenges and needs such as quota management, time and resource constraints, and backlog elimination affect the ways in which street-level agents make discretionary decisions.

Scholarship on the subject of discretion has often considered individual and institutional-level discretion perspectives as mutually exclusive and bounded. However, I suggest that each informs and shapes the other through discursive practices that reflect dominant ideas of nationalism and nation building. I argue that that both individual as well as institutional discretion are significant factors that can influence decision-making across various levels of the immigration system. By fusing individual and institutional perspectives of discretion, we can explore ways in which visa officers and other state actors mediate between micro-and macro level factors to differentiate between “deserving” and “undeserving” im/migrants. The actions of
visa officers, CBSA agents, minister’s counsels and members of the IRB can be better understood through a framework which emphasizes discretion as a form of governance that operates at institutional and individual levels, and operating together. IRB members often use discretion in their assessment of available evidence, their judgments regarding a person’s admissibility, and their reliance on past decisions. This use of discretion enables adjudicators to operate within the structural framework of Canada’s immigration system while maintaining their own discretion when hearing individual cases.

Discretionary practices also contribute to the ways in which ideas of “deservingness” are formed in immigration hearings. Adjudicators are given the power to consider certain types of immigrants as “deserving” and others as “undeserving” of their “legal” residency status in Canada. In following section, I provide a discussion about idea of “deservingness” and the ways in which this concept has been commonly used in literature.

**Im/migrant “deservingness”**

A rich, critical literature on “deservingness” within the context of im/migration has largely focused on newcomer access to healthcare (Horton 2004; Willen 2011; Willen et al 2011; Carney 2015). In light of various “refugee crises”, recent literature has also examined “deservingness” in the context of humanitarian aid (Ticktin 2006; Fassin 2007; Agier 2011; Holmes and Castaneda 2016). Various research that addresses the issue of “deservingness” agree that notions of “deserving” and “undeserving” are closely linked to ideas of victimization, law, and morality. Assessments of “deservingness” reveal underlying power hierarchies as evaluations of need are often made by service providers like NGOs and other institutions that have power over others to provide or not. Using a medical perspective, Willen (2012) points out that “deservingness”, in the context of health, is constructed through a dialectic between formal,
juridical arguments regarding entitlements on one hand and vernacular, moral arguments the other. Her ethnographic study of unauthorized im/migrants in Tel Aviv considers the complexity of “deservingness” from a bottom-up perspective by understanding the relationship between “juridical arguments about formal entitlements to health rights” and moral arguments about “deservingness” (2012:812). One of the most interesting aspects of her study is her focus on the ways in which people conceptualize their own relative “deservingness” of health care. She also argues that the idea of “deservingness” become crucial as it is implicit in the political process that guides policies and humanitarian discourse. She also points out that the ideological distinctions between deserving and undeserving is also significant in understanding the kinds of care people receive from aid agencies.

Willen, Mulligan, and Castaneda (2011) note that governments and their citizens display an ambivalence with regards to offering support or care for undocumented im/migrants because the state perceives them to be less deserving than legal im/migrants and citizens. This view is supported by the common justification that undocumented or “illegal” im/migrants are not party to the social contracts that link citizens to the larger society (Willen et al 2011). As a result, they are not “deserving” of health care and host countries are not morally or legally obligated to provide them with accessible health care (Willen et al 2011: 332). Similarly, Carney (2015) notes that moral assessments of welfare recipients and undocumented im/migrants as “strains on the system” has meant that undocumented im/migrants are repeatedly denied care, offered the least amount of care, or are stigmatized for seeking care (Carney 2015).

Coutin (2003) observes the way in which ideas of im/migrants’ “deservingness” is used to suspend or pause deportation proceedings in the US. She notes that these hearings assessed “deservingness” on the following criteria: length of residency in the US, criminal record, tax
payments, establishment in religious and social community, family ties, and English language skills. In addition to measuring “deservingness”, these factors were also used to determine the “Americanness” of an im/migrant. By observing the ways in which ideas of “deservingness” overlap with ideas of “Americanness”, Coutin’s research provides an interesting and highly relevant approach to studying the intersection of nationalism, morality, and “deservingness” in im/migration. This understanding of “deservingness” is deeply rooted in individual and society’s perceptions of morality and victimization. In the context of my study, these factors are crucial in making determinations regarding an im/migrant’s “deservingness” of humanitarian aid; they also contribute to the way in which an im/migrant is determined to be admissible or inadmissible to Canada.

Research on “deservingness” in immigration must also explore the ways in which this notion links to ideas of penalization and retribution. Focusing on penalization provides us with an important perspective in studying “deservingness”, as discussion about removals or deportations are constructed around the idea of penalty. This perspective can be compared to the idea of “just deserts” model of punishment, commonly used in criminology. The “just deserts” model argues that criminal sanctions or punishments must be proportional to the seriousness of the criminal offense (Singer 1979). Supported by many criminal justice scholars, this model emphasizes deterrence and incapacitation as its goals (Fogel 1975; Singer 1979). In addition to this, the “just deserts” model uses moral grounds to justify punishment (Sloan and Miller 1990: 21). This model is significant in understanding the ways in which im/migrants are penalized by Canada. As I will show in chapter 5, Canada’s immigration system is designed to doubly penalize im/migrants who violate laws- first, through the criminal sanctions; second, through removal orders. The linkages between “deservingness” and punishment can be observed very
well in im/migration hearings as adjudicators evaluate accused im/migrants’ criminal and im/migration records to make determinations regarding their admissibility.

This review of literature critically addressed five interrelated issues: (1) the relationship between state sovereignty and immigration laws; (2) the implications of juridical categories that differentiates between “legal” and “illegal” people; (3) the implications of conceptual terminology in studying immigration; (4) the role of language in maintaining power and dominance over marginalized population; and, (5) the significance of discretion and “deservingness” in the construction (and penalization) of “illegal” im/migrants in Canada. Taken together, these issues play vital roles in understanding the ways in which laws, administrative policies, everyday practices, and individual actors work together to reproduce and maintain im/migrant illegalization. In the next section, I provide a discussion of the theoretical framework of legal anthropology, within which I position my thesis.

3.5 – Theoretical Framework of Legal Anthropology

In recent decades, there has been an increasing need to closely study legal processes and their relationship to social, political, economic, and cultural aspects of the society. The creation (or amendments) of laws has serious implications for members of society, especially those who are higher at risk of violating these laws. With increasing transnational im/migration, and the perception that larger numbers will be deemed undesirable to the nation, host countries create new laws to restrict and remove such im/migrants. Therefore, studying the significance of im/migration laws, policies, and practices through the framework of legal anthropology is
essential in my thesis as it can complicate and contest the popular rhetoric using which Canada’s immigration system operates.

**Anthropology of Law: A Historical Overview**

Late 19\textsuperscript{th} and early 20\textsuperscript{th} century anthropologists studied law through a cross-cultural framework which commonly highlighted the differences between Western and non-Western law. Sir Henry Maine, often described as one of the forefathers of legal anthropology, took an evolutionist perspective in understanding laws of different societies. This evolutionist school believed that legal systems, like societies in general, passed through different stages of development and that each stage was characterized by increasing complexity (Goodale 2017). According to Maine, relationships in pre-modern societies were regulated by social norms based on people’s status. However, as societies grew and became more complex, norm-based social relationships could not be sustained properly (Goodale 2017:25). The development of legal mechanisms enabled people to act as autonomous agents who were not bound by status. They were now free to make agreements and contracts with other members of the society (Goodale 2017: 25). Similarly, Durkheim (1933) associated a society’s sanctioning patterns with degrees of social development and integration of its members. He argued that whereas primitive societies, in their simplistic nature, were based on “mechanical solidarity”, complex societies with more specialized divisions of labour constituted organic solidarity. Durkheim associated mechanical solidarity with oneness or likeness which, he argued, existed among primitive societies. In contrast, organic solidarity arose as a result of “complementarity between actors [who] were engaged in different pursuits” (1933: xvi). Although the evolutionist perspectives of legal anthropology have been heavily criticized, scholars such as Maine, and Durkheim set the stage for later developments in the field of legal anthropology.
Malinowski (1932) used ethnographic research among the Trobriand islanders to question the dominant evolutionist perspectives that were prevalent in anthropology’s study of law. His research shifted the lens of legal anthropology from a “normative analysis” to a “processual analysis”. Under normative paradigm of legal anthropology, “law consists of a number of explicit and written norms contained in texts and in most cases presented in codified form” (Rouland 1994:37). A processual approach, on the other hand, focuses on the processes involved in settling disputes. It allows for intercultural comparisons and opposes the idea of universality of law (Rouland 1994:37, 41). Malinowski’s research enabled him to understand that although the Trobriand society did not contain formal arrangements and centralized forms of government, it consisted of cohesive groups that had their own system of order (Rouland 1994). Malinowski’s contribution to legal anthropology is essential to understanding the relevance of cultural diversity in the law and law-like institutions. Whereas universal notions of law compared different societies and idealized the superiority of “Western” jurisprudence, Malinowski’s ethnographic research paved the way for a relativist understanding of law and society. This relativism is helpful in understanding that structures for dispute settlement existed in varying forms in different cultural contexts. Early works that supported notions of universality and diversity of societies and their legal systems paved way for one of the most significant debates in legal anthropology.

The “reasonable man”

In his study of the Barotse people of Northern Rhodesia (present-day Zambia), Gluckman (1955) claimed to have found the “Western” legal concept of “the reasonable” man in the Barotse judicial process. He argued that the figure of “the reasonable man” was used by judges in their consideration of evidence alongside the norms of the Barotse society in order to
assess the defendant’s culpability (1955:169). Through his research, Gluckman sought to analyze the way in which judges “assess evidence, what sources they draw on for their decisions, the logic of their arguments, and how they apply legal rules to the changing circumstances of social life” (Epstein 1973: 645). In his view, the idea of “reasonableness” was used as a yardstick to evaluate the extent by which a person’s behaviour deviate from social norms (Epstein 1973: 645).

Contrastingly, Bohannan (1957), drawing on his research with the Tiv people of Nigeria pointed out the legal structures and categories of different cultures were unique and could not be applied to other cultural contexts. He critiqued Gluckman for imposing “Western” categories on Barotse legal processes and materials (Conley and O’Barr 1998:99). One of his biggest criticisms of Gluckman’s analysis was the assignment of English concepts and terms to describe indigenous legal process. Bohannan claimed that the Tiv have ‘folk laws’, but do not have Western forms of ‘analytical law’; as a result, he could not differentiate between codified laws and social customs (Nader 2002: 26). The folk system focuses on local interpretations of social events whereas, the analytical system “construes data through the tools of the scientific methods developed by the anthropologist qua anthropologist to explain the material which he has gathered qua ethnographer” (Donovan 2008: 113). Bohannan pointed out that Gluckman studied the Lozi law and dispute resolution through an analytical system which prevented him from fully appreciating the existing folk system in its true perspective (Donovan 2008:113).

In contrast to Gluckman, Bohannan’s ethnography contains largely native language and terminology to describe laws and practices of the Tiv society. Through his research, Bohannan aimed to understand laws and legal structures using the language through which the Tiv understood and interacted with them. In a later comment on Gluckman’s comparative approach
he stated, “I was convinced in 1957, and I still am, that filling Tiv data into a model of Western jurisprudence is squeezing parakeets into pigeonholes, and not a way to go about ethnography” (Conley and O’Barr 2004:11). The absence of representation was another criticism that Bohannan had of Gluckman’s interpretation of the Barotse data. This debate brought up concerns of interpretation, representation, and commensurability—concerns with which anthropologists grapple today as they operate under international laws, treaties, and conventions. Bohannan’s analysis of folk systems is also useful in the present day context as we consider the relationship and interactions between international conventions and their local interpretations. Various levels of governments and agents interpret and implement these laws and conventions and apply them to their own cultural and societal contexts. The use of discretion by police officers and judges as they enforce laws or punish offenders can exemplify the significance of individual interpretation of legal systems. Bohannan’s folk model understanding of legal systems is compelling because it enables us to analyze the idea of the “reasonable man” more closely. For example, assessments of im/migrants’ credibility and “reasonableness” in immigration hearings are made using ethnocentric notions of reasonability which assume that there are certain moral and ethical principles inherent in a Canadian society. Immigration adjudicators judge im/migrants using these perceived standards and principles in order to make determinations regarding their admissibility to Canada.

**Legal Anthropology in the late 20th century: From Universality to Pluralism**

The Gluckman-Bohannan debate was a crucial turning point and, arguably, paradigm-shifting moment in the area of legal anthropology as many scholars recognized the need to study law as a product of shifting and contingent social processes. Contrary to the functionalist perspective, which understood law as a set of rules that served specific social functions,
processual approaches attempted to understand law through the context of social and cultural control, power, and resistance. Using this processual approach (foreshadowed by Malinowski in the 1920s), scholars studied the manner in which laws are created, maintained, and applied. Chief among these scholars was Nader who argued that even seemingly neutral laws reinforce existing status quo of the society (2002:98).

Studying legal anthropology within the context of power and domination is essential in understanding impact of legal policies and practices on social relations. Nader points out that “as anthropologists moved from the local arena into national and global spheres, where the social and physical distance between litigants was greater, disputing was increasingly recognized…as occurring between strangers of unequal power” (2002:33). This unequal power relation can mean that decisions made at national and international levels can implicate people in local areas in different countries. For instance, the emergence of powerful global institutions such as the European Union, North American Free Trade Agreement, World Bank and the International Monetary Fund have significantly complicated dispute resolution process at local levels. The advent of these institutions has produced an expansive of international mechanisms to manage and resolve disputes (Merry 2006:103). Through these mechanisms, disputes are no longer settled through informal arbitration process; instead there is a shift to “offshore litigation” as cases are mediated and resolved by private institutions and firms that are located in different parts of the world. At the local level, “increasing number of poor people are affected by a climate in which everything is for sale; body parts are [trafficked] from the south to the north; and social distinctions are increasingly the basis for life-and-death decisions-literally, in the case of the death penalty” (Nader 2002: xxv)
The shift from “law as rules” to “law as process” also paved way for the emergence of legal pluralism, a concept that attempts to synthesize tenets of universality and relativism. In his analysis of legal pluralism, Griffiths (1986) provides an explanation of the ways in which legal centralism has been understood. He argues that according to the legal centralist ideology, the law has been regarded as an exclusive, systematic, and unified hierarchical ordering or normative propositions, which can be looked at either from the top downwards as depending from a sovereign command or from the bottom upward as deriving their validity from every more general layers of norms until one reaches the ultimate norm(s) (Griffiths 1986:3) The problem with this view of the law is that it assumes that legal systems as “tidy, consistent, and organized ideal” when in reality, they are inconsistent, disorganized and unsystematic (Griffiths 1986:4). Griffiths argues that modern legal systems must be studied through a pluralist approach. The perspective of legal pluralism enables legal anthropology to consider the possibility of various complex legal systems without imposing standards of one over the other. In contrast to legal centrality, he views legal pluralism as

[a system] in which law and legal institutions are not all subsumable within one “system” but have their sources in the self-regulatory activities of all the multifarious social fields present, activities which may support, complement, ignore, or frustrate one another, so that the “law” which is actually effective on the “ground floor” of society is the result of enormously complex and usually in practice unpredictable patterns of competition, interaction, negotiation, isolationism, and the like. (Griffiths 1986:39). This can be observed in Merry’s (2006) research that focuses on the expansion of international law and the helpful role of anthropological theory in assisting social scientists, lawyers, and activist understand the how international law is produced and how it operates on-the-ground (100). Through a pluralist perspective, we can observe the manner in which international laws exist alongside and in many cases, above domestic laws. Merry states that both domestic and international laws inform and shape each other; thus, in practice, these legal systems are closely connected (2006:100). The pluralist perspective has also received criticisms for its inability consider the significance of power asymmetries that exists between certain types of legal systems. Starr and Collier (1989) point out that legal systems, like cultural traditions, are
constantly evolving. They argue that legal anthropology must move beyond terms such as “legal pluralism” or “dual legal system” because they carry “connotations of equality that misrepresent the asymmetrical power relations that inhere when multiple legal systems coexist” (Starr and Collier 1989:9). For instance, in countries that have indigenous and state or governmental legal systems, government agents and laypeople often consider the laws of the state as superior to native or indigenous ones. This can be seen in countries such as Canada, Australia, and the United States where federal laws often eclipse indigenous law. Although multiple systems of law are present in these countries, the power disparities between these systems reflect the larger sociopolitical and economic inequalities of these societies.

In addition to exploring law through a broad lens, legal anthropology also observes legal transformations and how these transformations have impacted the society. Within the context of this thesis, studying the transformation of immigration law and situating it with the larger politics of transnational migration is crucial for observing the numerous ways in which im/migrants have been framed and re-framed as “illegal”. As I explain in Chapter five, historically, changes in Canada’s immigration law have defined and categorized certain groups of im/migrants as “illegal”. Exploring these changes in the law can allow us to observe the strategies used by the state to prevent certain types of im/migrants from obtaining legal residency status; it can also help us to observe the ways in which legal residents are converted into “illegal im/migrants” when the state withdraws protection and deems them “inadmissible” (Wicker 2010). Studying the implications of changes in legal definition and the subsequent illegalization of immigration through the perspective of legal anthropology is crucial in analyzing the relationship between small-scale legal events (in immigration hearings) and larger global transformations (such as transnational migration).
Significance of Legal Anthropology in my Thesis

My research, like many late 20th century works on legal anthropology, takes a processual analysis to understand the ways in which im/migrants are illegalized in Canada. In doing this, I attempt to explore the ways in which ideas of power and domination are present within the law, legal institutions, and their agents. Moore (2001) argues that the perspective of law as a form of domination is useful in understanding the ways in which policies and legal practices reproduce social and economic inequality by serving the interests of the ‘elites’ in a capitalist society. Through this perspective, I draw attention to the intersections of class, race, citizenship status, and gender through which im/migrants’ experience ‘illegality’ and ‘illegalization’ in Canada. They are also useful in observing the ways in which legal protection is offered to certain social categories of people and those excluded from these categories are regulated and marginalized (Goodale 2017). Through the perspective of legal anthropology, I attempt to bring together ideas of state sovereignty, border security and the language of illegality and illegalization to contextualize Canada’s immigration hearings.

3.6- Conclusion

Modern legal systems are caught between local, national, and global politics and laws. Therefore policies generated at the local or national levels can have broader implications. Similarly, changes in international laws and policies also have implications for people at the local level. Multilateral treaties and agreements such as UN Convention on the Rights of Refugees heavily influence laws and policies at domestic and local levels as legal professionals interpret and implement these laws based on their own societal and cultural contexts. Therefore, im/migrants who cross borders are affected by domestic as well as international laws that define
and re-define them as “undesirable”, “criminal”, and “illegal”. This chapter brought together some important literature to discuss some key themes and ideas in the area of immigration. Understanding the relationship between sovereignty, law-making, and border control is essential in situating the experiences of im/migrants within Canadian context. It is also important because it enables us to observe the process by which sub-groups of im/migrants such as sponsored spouses, “over-stayers”, convicted im/migrants, and undocumented im/migrants experience illegalization in different ways.
Chapter 4- Research Methods

4.1- Ethnographic research in immigration hearings- An Introduction

On my first visit to the im/migrant detention holding centre in Toronto, the building’s structure amazed me. The large glass circular structure stood in stark contrast to the adjacent dark, brick-walled ‘residence’ that houses several immigration detainees. From my position on the ground, I could vaguely see a person, presumably a detainee, looking out through the bars of the window. For me, the transparency of the glass structure and the opaqueness of the adjoining building seemed to foreshadow my fieldwork experience and the degrees of transparency that I would encounter and experience at the immigration holding centre. Immigration hearings, to which I had access, were held in the glass structure, whereas detainees, to whom I had no access, were held in the adjoining brick-walled, multi-floored building that was guarded by Canada Border Services Agency (CBSA) officers. Hearings were also held in this brick-walled part of the building; however, only lawyers, immigration consultants, and bondspersons were allowed inside.

I chose to conduct my fieldwork at the Toronto Immigration Holding Centre (TIHC) in Etobicoke, Ontario because of its low security rating and its proximity for me, which allowed me to visit often. Further, unlike medium- and maximum-security detention centres, this detention centre holds ‘low-risk’ individuals and families. One of the defining features of the detention centre that I visited is that it is located near Pearson Airport in Toronto; individuals and families who were deemed inadmissible at the airport could be transported to the facility to await removal. My choice to conduct fieldwork on immigration hearings was also motivated by my belief that, unlike in the disciplines of sociology, criminology and migration studies, immigration hearings, and more specifically deportation hearings, have been underexplored in anthropology.
Anthropological research associated with immigration and deportation has explored the nuances of refugee adjudication processes (Kobelinsky 2015), investigated the presence of discretion in decision-making (Satzewich 2015) and identified legal measures that can result in a person’s indefinite detention (White 2012). Yet, even within these works, little connection is drawn to show the manner in which im/migrants subjected to immigration and deportation hearings are made ‘illegal’ through the administrative and political process they encounter at these hearings. Additionally, although there seems to be some interesting and important multidisciplinary work on this subject coming out of the United States (Coutin 2003; Silverman and Molnar 2016; Pope and Garrett 2012; Newstead and Frisso 2013; Heyman 1994; Ryo 2016), there is little work done on immigration hearings in Canada. Conducting ethnographic fieldwork to observe the manner in which laws, policies, practices, and ideologies converge in immigration hearings is important for understanding ways in which im/migrants become ‘illegalized’ in Canada. Therefore, by identifying practices that occur at immigration hearings in Canada, I hope to provide a unique research that is situated within the context of Canadian immigration politics.

In addition to observations at hearings, data was also obtained using informal conversations, semi-structured interviews, and archival research. Each of these methods were useful to understand the manner in which migrant ‘illegality’ is constructed and perpetuated by various actors in the immigration holding centre. Most of my data were obtained through observation. Interviews and informal consultations helped me understand these hearings through the experiences of immigration consultants, lawyers and adjudicating members. Archival research, although limited, was also useful in understanding the justification behind members’ decisions to continue a person’s detention or to issue a deportation order against a person. In the
following sections, I elaborate on each research method and discuss their strengths and limitations in this study.

4.2- Archives, legal documents, and organizational literature

Information from sources such as the Immigration and Refugee Protection Act (IRPA), archives of past cases and organizational literature outlining procedures and evidentiary standards for immigration hearings were very helpful in organizing the initial phase of this research. They were also significant, as lawyers and adjudicators frequently referred to precedent-setting cases and other regulations set out in these literature to support their arguments or other procedural matters. Therefore, archival research was helpful in navigating through some important issues that arose during the hearings that I observed.

Archived cases were obtained from CanLII, a legal information database which contains transcripts of federal and provincial level decisions. Currently, it holds over 37,000 decisions made by the Immigration and Refugee Board (IRB), most of which occurred after the year 2000. For my study, I read transcribed cases and decisions that were uploaded between January 2015 and April 2015. Through this activity, I identified the types of cases that were commonly heard by the IRB: breach of physical residency obligation\(^7\), violations of the Criminal Code of Canada\(^8\) and misrepresentation\(^9\) (in most cases, referring to a marriage of convenience). I created a chart

\(^7\) Section 28 of the Act states that “a permanent resident must comply with a residency obligation with respect to every five-year period”. According to this statute, a person holding a Permanent Resident (PR) status must be physically present in Canada for the respective five-year period. Exception to this applies if a person is accompanying a Canadian citizen outside Canada, is employed outside Canada for a Canadian business or public service, or is accompanying a permanent resident who works for a Canadian business or public service outside the country.

\(^8\) Section 36 (1) states that “a permanent resident or foreign national is inadmissible on grounds of serious criminality for having been convicted in Canada for a crime punishable by a maximum term of imprisonment of at least 10 years or of imprisonment of more than six months has been imposed”. Section 36 (2) of the Act pertains to serious criminality and states that “a foreign national is inadmissible on grounds of criminality for having been convicted in Canada of an offence punishable by way of an indictment”.

\(^9\) Section 40 of the Act states that “a permanent resident or a foreign national is inadmissible for misrepresentation for directly or indirectly misrepresenting or withholding material facts relating to a relevant matter that induces or could induce an error in the administration of the Act”. 
outlining the context of each of these archived cases as well as IRB members’ justifications in support of their decisions. I also noted the ways in which IRB members assessed a person’s credibility based on his or her narrative. Understanding the ways in which IRB members accepted or rejected a claim also enabled me to closely examine how matters of morality were framed and discussed in these hearings. I noticed that notions of credibility, morality and “deservingness” were commonly used by the Immigration Appeal Division (IAD) in their decision to either order a person’s removal or to stay (temporarily stop) his or her removal. These notions play significant roles in constructing various types of im/migrants as ‘undesired’ in Canada. For instance, a person’s lack of reliable and continuous employment or lack of social networks indicated to the member that the appellant was not well-established in Canada. As a negative factor, this lack of establishment in Canada can make him/her an ideal candidate for removal as he or she will not be cutting significant ties as a result of removal. On the other hand, if a person can show that s/he is established in Canada through her/his employment, community service, and social networks, then the IAD’s decision may be more favourable. It is also important to note that factors that could make a person favourable to the IAD work against her/him when s/he faces IRB members in a detention review or admissibility hearing. In the next chapter, I will make references to hearings held before the IRB as well as the IAD in order to highlight ways in which im/migrants are constructed to be ‘undesirable’.

Although archived cases were highly relevant in my study, they had two limitations: first, they only provided summaries of case proceedings and not direct transcripts of hearings; second, they largely consisted of appeal cases that were heard by the IAD. The first limitation was significant because it did not allow me to study the types of questions that accused im/migrants encountered and their answers to these questions. Obtaining this information would have been
useful in studying the ways in which these individuals were constructed to be lacking in credibility or unreasonable. The latter limitation was also significant because most appeals to the IAD were made on humanitarian and compassionate (H&C) grounds and provided room for discretion among the decision-makers. On the other hand, hearings conducted by the IRB, such as admissibility hearings and detention reviews, are, arguably, devoid of discretionary potential as members are required to abide by the guidelines set out in the Immigration and Refugee Protection Regulations and the IRPA in making their decisions. Despite this difference, both the IRB and the IAD make consistent judgments concerning a person’s credibility, reasonableness and “deservingness” for release.

A major limitation of my archival data gathering is that the uploaded transcriptions of hearings are frequently translated from French to English. Translation can alter the intent and meaning of original phrases used in members’ decisions. In order to manage this limitation, I largely relied on cases that were originally conducted in English. Another limitation of these archived decisions is that they tend to be summaries of proceedings rather than direct transcriptions. This means that the texts do not contain the questions and responses that occurred at the oral hearings. They merely contain the adjudicating members’ decisions and justifications. As a result, they do not contain the voices and narratives of im/migrants who face deportation from Canada. Therefore, I relied on this form of archival data less than my own fieldwork. Despite these limitations, this source provided valuable insights into some of the common justifications used by immigration members. It enabled me to look closely at the manner in which an im/migrant’s credibility (and by extension, their claim to permanent residency) is assessed by the minister’s representative as well as by IRB members. This was also an opportunity for me to critically analyze these justifications, as well as the way in which they
adhered to Canada’s position on im/migration. Ultimately, archival research set the stage for my fieldwork in the immigration holding centre in Toronto.

4.3- Observations

At the immigration holding centre in Toronto, I observed two kinds of cases - admissibility hearings and detention reviews. Generally, admissibility hearings occur when the minister believes a person has violated an IRPA provision and is, therefore, not eligible to remain in the country. In these hearings, the minister (represented by the minister’s counsel) must provide evidence to establish that the person concerned has violated the immigration law and must be removed from Canada. Some of the most common types of admissibility hearings that I observed during my visits to the holding centre were related to misrepresentation (in spousal sponsorship), criminality and overstaying a visit.

Detention reviews are monthly hearings that must be held for detained migrants as they await their removal from the Canada. A foreign national\textsuperscript{10} or permanent resident can be detained by the CBSA if there is a reasonable belief that the person is unlikely to appear for her/his removal; the person is a danger to the public; the person is not allowed to enter Canada for security reasons or for violating human or international rights; or the person’s identity cannot be sufficiently verified (Canada 2015). A person may be held in a moderate-security detention centre such as the TIHC, where families, unaccompanied minors and other detainees who do not have a ‘danger’ determination are held before removal. Detainees who are considered to be dangerous as a result of their past criminal behaviour are held in provincial correctional facilities. One such facility is the Central East Correctional Centre located in Lindsay, Ontario. This centre

\textsuperscript{10} According to Section 2 of the IRPA a foreign national is defined as a person who is not a citizen or a permanent resident of Canada, including stateless persons.
holds immigration detainees as well as people convicted of criminal offences and is considered a maximum-security holding centre. The Toronto East Correctional Centre has also received increased attention by scholars, activists and the media as it has been the site of the deaths of eight im/migrant detainees since 2000\textsuperscript{11}. Whereas many of these deaths resulted from suicide, the causes of the other deaths are unknown. This facility has also been the site of the im/migrant hunger strikes calling for an end to lengthy and indefinite detentions, release of detainees who have been in detention for more than ninety days, abolition of maximum-security holds for immigration detainees, and an overhaul of the immigration adjudication process (End Immigration Detention Network 2017)\textsuperscript{12}.

The first hearing a person encounters after their detention occurs within forty-eight hours\textsuperscript{13}. At this hearing, the member will hear submissions from the minister’s counsel and the detainee’s lawyer to determine whether the person must remain in detention or can be released. In this context, release simply means the person does not have to remain in detention before removal from Canada. The person may be released under certain terms and conditions, such as posting bond\textsuperscript{14}, regular reporting to CBSA, etc. On the other hand, if the IRB member orders the continued detention of the person, another hearing will be held within seven days. If the member rules for the continued detention of the person, then another hearing must be held at least once every thirty days until the person is successfully removed from Canada or tentatively released.

\begin{itemize}
  \item[	extsuperscript{11}] As I mentioned before, there have been fifteen deaths in Canada’s maximum security detention facilities. NOII reports that eight of these deaths occurred in an Ontario facility.
  \item[	extsuperscript{12}] In 2013, almost 191 migrants detained at the Lindsay Correctional Centre staged a hunger strike to call attention to prison conditions that immigration detainees endure.
  \item[	extsuperscript{13}] Or as soon as possible after the forty-eight hours.
  \item[	extsuperscript{14}] Equivalent to bail in the Criminal Justice System. A bond can be posted by a relative or friend of the person concerned. The bondsperson must be either a permanent resident or a citizen of Canada and must agree to monitor the detainee upon release from the holding centre.
\end{itemize}
until deportation. During each detention hearing, the member can order the detainee to be released or may order their continued detention.

My attendance at the TIHC was largely determined by the number of cases that were scheduled for a given day. As scheduled cases were subject to cancellations or postponements, I had to provide the scheduling manager with a twenty-four-hour notice of arrival. This arrangement also provided me with some indication of the kinds of cases that I would observe during my visit. Notifying the centre of my visit was also helpful because IRB members would be informed of my attendance in their hearing rooms. The members, in turn, would ask the person concerned and their lawyer whether they had any objections to my presence at the hearing. If there were no objections, I would be allowed to observe and take handwritten notes on the proceedings. If an im/migrant objected to my presence, the IRB member would ask me to leave the hearing room and wait for further instructions. Generally, the hearings would begin at 9:00 a.m. and would end before 4:00 p.m. During a typical visit, I would attend one to two hearings, depending on their availability and their duration. Detention reviews could last between thirty minutes and one hour. However, an admissibility hearing could last a whole day or continue for several days that were usually weeks or months apart. As a result, I would often attend the beginning, the middle or the end of an ongoing hearing during my visit. In addition to this, many admissibility hearings are closed to the public. This is done if the person concerned is a minor, has applied for refugee status or has applied for a Pre-Removal Risk Assessment (PRRA), to determine the risk of returning to an im/migrant’s original country. Therefore, attending detention reviews was easier and more time-efficient.

The cases that I would attend during my visits to the detention centre were picked at random based on their start times and the nature of the hearing (whether they were detention
reviews or admissibility hearings). This randomization of hearings allowed me to study the
typical cases that would appear in front of the IRB. It was also useful because it enabled me to
track the racial and gender make-up of im/migrants who were accused of violating the
immigration law. Of a total of twenty-one detention reviews that I attended, thirteen detainees
originated from Somalia, Nigeria, Jamaica and St. Vincent and the Grenadines. Six detainees
originated from Pakistan, Afghanistan, Honduras and Cuba; one detainee was from Russia. In
one case, the detainee’s country of origin was unclear. Of a total of eight admissibility hearings
that I attended, the nationality of two im/migrants was unclear. The other im/migrants originated
from countries such as Mexico, Afghanistan, Eritrea, Antigua and Bermuda, China, and India.
Out of these twenty-nine hearings, only two immigrants were women and both of them were
accused of misrepresenting themselves by participating in marriage fraud.

My observation of admissibility hearings and detention reviews were accompanied by
detailed handwritten notes and transcriptions of the proceedings. I noted questions asked by
members and minister’s counsels as well as responses to these questions by persons concerned.
My goal in doing this was to identify the ways in which a person’s narratives are used to
determine their credibility. It was also to pay close attention to the way in which IRB members
interact with and speak about a person concerned. Through my observations, I could fill the gaps
that my archival research presented. Because archived cases only highlight the summary of a
hearing and focus mainly on the decision and justification of the IRB member, there is no real
way to identify specific questions asked by minister’s counsels or members. My thirty-plus hours
of observation were also supplemented by seven brief, informal conversations with IRB
members, minister’s counsels and a representative from the Toronto Bail Program.15 I could only

15 I call them conversations because a formal interview could not be arranged with them. My repeated emails to the
IRB’s public relations staff were unanswered.
interact with them informally as I did not have permission from the IRB to formally interview them. Despite this limitation, these consultations were useful in understanding various perspectives, especially that of IRB members, who are often vilified for their role in a person’s lengthy detention or deportation.

### 4.4- Interviews

Besides archival research and observations, I conducted three semi-structured interviews with immigration consultants who represent clients at immigration hearings. My research would have benefitted from interviews from im/migrants themselves. This would have yielded in a better understanding of their perspectives, cultural contexts, and circumstances that led to their immigration violation. However, im/migrants are an extremely vulnerable group of people who hold precarious residency status in Canada. Therefore, interviewing them for the purpose of my MA study would have exposed them to a greater risk than they experience in their daily lives. Furthermore, my request for interviews with IRB members and the minister’s counsels was declined. Therefore, the issues and themes highlighted in the interviews represent only one perspective on Canada’s immigration policies and procedures. However, they bring up some significant matters that require a closer look in order to critically analyze the repercussions of migrant ‘illegalization’.

Although I had repeatedly contacted organizations such as No One is Illegal (NOII) and End Immigration Detention Network (EIDN) with requests for meetings and interviews, I was unable to successfully recruit participants for my study. As a result, I attempted to recruit lawyers and immigration consultants whom I met during my visits to the detention centre. I often introduced myself to lawyers and consultants and briefly explained my research to them. I then
asked them for their business cards so I could contact them to set up an interview. The day after our initial meeting, I emailed these lawyers and attached an information letter explaining my study in greater detail. Once I received favourable responses from my contacts, I set up appointments with them for interviews.

As van den Hoonard points out, “the purpose of in-depth interviews is to allow people to explain their experiences, attitudes, feelings, and definitions of the situation in their own terms and ways that are meaningful to them” (2015:102). My interviews with experienced immigration consultants were designed to understand their experiences with defending im/migrants who are accused of violating Canada immigration laws. Each interview was conducted at the offices of immigration consultants. Before beginning the interviews, I explained the details of my study once again and provided a consent form for the participants. This form included information about the study, including matters such as the goals of the project, risks and benefits to the participant, and the participant’s right to withdraw from the study at any time. It also consisted of a ‘check-box’ section for the participant to consent to being audio-recorded. Finally, the consent form also consisted of a signature section for the participant. The participants were also informed that they could ask questions before, during and after the interviews had concluded. To manage consent and to ensure ongoing consent, I clearly identified my intentions and disclosed all relevant information to my participants. Doing this allowed me to build and maintain my rapport with them throughout the project.

Each interview lasted for approximately one hour. During this time, I asked between ten and twelve questions which were selected from a prepared interview guide that consisted of nearly thirty questions. However, I only asked approximately fifteen question from this guide. I also designed these questions to be flexible so that my participants could determine the direction
of the interview. This was an important step in my interview design as it enabled me use a variety of probes to elicit in-depth responses (van den Hoonaaard 2015). As this guide was initially designed for interviews with members of advocacy organizations such as NOII and EIDN, many questions were altered and new, more relevant questions were added to explore the experiences of immigration consultants and their clients. During these interviews, I also allowed my participants to expand or elaborate on their answers without any interruptions. This was a useful strategy as it yielded interesting digressions which would not have been possible had I strictly adhered to my prepared interview guide. Another useful interview strategy that I employed is the use of my own narrative. I would frequently use examples of my observations from immigration hearings to contextualize my interview questions. My familiarity with the situation that they encounter every day made them feel comfortable elaborating their answers and talking to me about their experiences in immigration hearings. This strategy also enabled me to build a positive rapport with my participants. Additionally, as each interview was voice-recorded, I immediately transcribed it to a password-protected computer and erased the original recording twenty-four hours after the interview was conducted. Furthermore, I removed all forms of identifying information in my transcribed interview to preserve the confidentiality of my informants. Finally, the transcribed interviews were coded for themes and cross-analyzed with my coded fieldwork notes.

4.5 - Ethical realities and methodological challenges

Identifying some of the risks of my study for my participants was an important activity in considering my positionality and my impact on my participants and field-site. Although my interview questions were prepared with sensitivity to my participants’ experiences in dealing
with detained and deported migrants, I anticipated that my study might cause some psychological distress to my participants. To manage this risk, I would assess my informants’ demeanor and mannerisms for indications of distress. Whenever I felt that my participant was feeling uncomfortable, I would change the subject by asking a different question that would change the direction of our conversation. Even though I was prepared for this issue, my participants did not seem uncomfortable during my sessions with them. Even when they spoke about their frustrations about the IRPA or immigration hearings in general, or provided information about a past case, they were comfortable in continuing the interviews.

On the other hand, my attendance and observation at the immigration holding centre were intrusive even though they were not designed as such. During these hearings, a detainee’s history of criminal activity or mental illnesses is often cited as the reason for their continued detention. In addition to this, I was also present when inmates cried openly, shouted in anger or recounted their defence, each of which could contribute to their vulnerability. Although observing immigration hearings provided me with an in-depth understanding of the processes and practices that occur inside the TIHC, I was also left with an ethical dilemma. My presence at these hearings, observing and recording one of the most vulnerable aspects of a person’s life, felt voyeuristic and intrusive. To manage the impact of my presence in the hearings room, I would often stop writing when a person described a painful event or experience. I did this for two reasons. Firstly, I wanted to provide the most vulnerable subjects of my observation with privacy that was often missing in these types of hearings. Secondly, excluding details such as the frequency of sexual intercourse between two people or the reasons for the breakdown of their marriage allowed me to honour their narratives without compromising their significance.
This process also enabled me to be very conscious of my positionality in these hearings. My presence as a privileged, university-educated observer easily highlighted the power imbalance that existed in the hearings room. Therefore, my reluctance to provide detail on painful events of a person’s life was, in a very small way, an attempt at changing this power dynamic. To minimize my effect, I would also attempt to interact with legal counsel who represented the person concerned. These interactions would enable me to discuss the case with the lawyer or consultant and, at the same time, show my support for the person concerned. Furthermore, my identity as an Indian woman also enabled me to get an insider perspective of narratives and experiences of accused individuals at immigration hearings. As a dark-skinned woman, I looked like many immigrants who appeared in front of an IRB member. As a result, I was regarded with little suspicion as I attended immigration hearings or approached lawyers who defended their clients at these hearings. Additionally, my ethnic identity and rudimentary knowledge of Hindi, an Indian language, allowed me to pinpoint moments in immigration proceedings when an immigrant’s narratives were being interpreted poorly.

One of the most significant challenges that I faced in doing my research was participant recruitment. Although my research would have benefitted from interviews with members of advocacy organizations, I could not find willing participants for my study. I was also in contact with two members of NOII and EIDN; however, because of scheduling difficulties, I could not set up interviews with them. I was also informed that NOII was undergoing an organizational restructuring which impacted my opportunity to work with them. Besides advocacy organizations, interviews with IRB members and minister’s counsels would have allowed me to gather interesting and very significant data. It would also have contributed to a more in-depth ethnographic account consisting of multiple perspectives. However, as my emails to their public
relations representatives went unanswered, I had to rely on notes obtained as a result of my informal conversations with members and minister’s counsels.

4.6 - Data Collection and Analysis

Throughout my fieldwork process, I maintained a notebook in which I wrote details about my daily visits to the detention centre. These included general observations I made around the centre; case transcriptions of hearings that I observed; notes from informal conversations with immigration member and lawyers; and interview notes. At the end of my visit, I transferred these notes to my computer. Doing this enabled me to revisit my day and reflect on my observations. This process was useful, as it also allowed me to think about new directions in my research as well as generate potential interview questions.

During the data analysis phase of my research, I transferred these notes to NVIVO, a qualitative data analysis software. Using this software, I coded the data from my notes and transcriptions of cases and interviews. This data organization tool enabled me to think about the themes that emerged throughout my research process. After noting these themes, I would conduct literature searches to ground these themes within my own research as well as the existing literature. I also created a chart to organize my participants (Table 1). I assigned pseudonyms to my interview participants as well as to the minister’s counsels and IRB members with whom I interacted frequently.
<table>
<thead>
<tr>
<th>Participant Pseudonym</th>
<th>Role in immigration</th>
<th>Interview</th>
<th>Informal Conversation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Anna Doe (White/Female)</td>
<td>Immigration Consultant</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>David Williams (White/Male)</td>
<td>Immigration Consultant</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Matthew Brown (White/Male)</td>
<td>Immigration Consultant</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Nicole Smith (White/Female)</td>
<td>IRB Member</td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>Alan Jones (White/Male)</td>
<td>IRB Member</td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>Trevor Harris (White/Male)</td>
<td>IRB Member</td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>Joseph Wilson (White/Male)</td>
<td>Minister’s Counsel</td>
<td></td>
<td>X</td>
</tr>
</tbody>
</table>

Table 1: Characteristics and Roles of Research Participants

4.7 - Conclusion

In this chapter, I have provided insight into my research design and the challenges that I faced in conducting my fieldwork. My choice in conducting research in the area of immigration hearings stemmed from my frustration with the limited literature that exists on this topic. Through my ethnographic research, I attempted to narrow the gaps in our understanding of immigration hearings and their role in contributing to migrant illegalization in Canada. I obtained archival data from past cases, grey literature and other legal documents and spent more than thirty hours observing immigration hearings at the TIHC. I also conducted three one-to-one, semi-structured interviews with immigration consultants. Although each of these methods had its own limitations, they provided me with a rich understanding of Canada’s immigration adjudication process. My interview questions focused on the consultants’ experiences with
representing im/migrants who face removal. I also paid close attention to the ways in which ideas of reasonableness and morality are used to assess a person’s credibility during immigration hearings. Interviews also allowed me to explore the social dynamics that occurred inside a hearings room and the way in which actors such as IRB members, minister’s counsels, and interpreters contribute to the ‘illegalization’ of im/migrants. Although I could not achieve data saturation due to insufficient participants, I identified many important themes and issues that provided me with an in-depth understanding of Canada’s deportation practices.
Chapter 5- Findings and Discussion

5.1- Introduction

This chapter will highlight several themes and ideas which emerged during my research and situate them within the context of immigration hearings. I begin by highlighting the role of IRB members, legal counsels and language interpreters to explain ways in which they contribute to im/migrant’s illegalization. Here, I also suggest that the illegalization experienced by im/migrants is a result of various socio-political and historically deep processes that are carried out by specialized agents. Next, I discuss four significant themes that emerged from my fieldwork and interviews: perceived morality of im/migrants, ideas of “deservingness”, assessments of credibility and perceived opposition of culture and reasonability. I situate these themes within individual narratives, case summaries and direct transcriptions of hearings. All these themes operate together to illegalize im/migrants at immigration hearings.

5.2- Social Actors

In chapter one, I provided contextual information on some of the structures and institutions that play key roles in administering and enforcing Canada’s immigration law. Legal institutions and processes cannot function without the presence of bureaucratic agents and other social actors that carry out their day-to-day operations. Therefore, a discussion of these actors is important, and necessary in order to properly understand the ways in which im/migrant illegalization is reproduced and sustained by bureaucratic institutions. By highlighting the role of bureaucratic actors, I attempt to show that im/migrants are not “illegal” simply because of their loss of status; they are constructed as “illegal” by institutions, actors and socio-political processes that operate simultaneously to marginalize im/migrants in Canada.
**Tribunal Members**

ID and IAD hearings are overseen by tribunal members of the IRB. The selection of board members, as public servants, is based on a strict combination of essential qualifications that focus on their level of education, years of experience with administrative tribunals, and knowledge of immigration and refugee matters (Canada 2017a). The IRB members who oversaw hearings that I observed were predominantly Caucasian male. However, I noticed racial diversity among the female members. Despite the differences between the makeup of male and female adjudicators, many IRB members informed me that they had worked in immigration for many years before they were promoted to the level of members.

As in a court, these members hear cases and make decisions regarding an im/migrant’s admissibility or detention. Members rely on an im/migrant’s credibility, their compliance with immigration laws and policies, and evidence such as testimonies, records and other documents to make their decisions. Unlike a court of law, the IRB is not bound by any strict evidentiary rules and simply assesses the credibility of the submitted evidence (Canada 2003). Documents and/or testimonies submitted as evidence are weighed in favour of or against the person concerned. Members use the standard of a “balance of probabilities” to guide their decision making.

In the last few years, IRB members have received much public scrutiny because of many high-profile cases where their decisions have been seen as unjust. Immigration consultants who represent their clients at various hearings also describe many IRB members as unfair or aggressive. David Williams, a consultant with 50 years’ experience in the area of immigration, described his experience with members in the following way.

*Members- some are fair. What am I gonna do? They...some are really good. Some are not. I did have a member which I felt...she was picking on me. Turns out...I talked to other people and they said that she’s just like that. And she sort of exercises her power in a way that’s sometimes demeaning or putting down counsels and you gotta deal with it.*
I’ve never filed a complaint or asked...in...many years ago one case, the member at the admissibility hearing just took over the questioning (Interview, August 2016). Matthew Brown, another immigration consultant with over 35 years’ experience, reflected on similar encounters with IRB members.

A lot of the time they make up their mind even before they come into the room and the biggest problem is...with it...you can have something like what we had at the appeal recently where the couple was married and because something that was alleged he had said...the sponsor...it had to be gospel. There was no evidence of it. We couldn’t find any evidence of it. The minister’s counsel would not specify where this evidence was but kept saying it was real. And luckily the wife said “well, his past is the past. I just know that he is with me and that we are committed to each other. But the past is the past”. So just because you dated somebody else or slept with somebody else, or whatever, doesn’t mean that you are the same person that you were five years ago. And they go out of their way because every so often they do get lied to that they become so jaded that they cannot see the light of day. They can’t see common sense. And they render decisions that are totally illogical (Interview August 2016).

IRB members also face many dilemmas when they encounter various types of migrants.

Members often mediate between their own biases and the provisions set out in immigration law in making decisions that have long-lasting implications for the person concerned. Members also mediate between perceptions of risk and public safety when making determinations concerning a person’s admissibility or continued detention. Alan Jones, an IRB member, asked: “What are you going to do with someone you are absolutely sure will commit a crime again, if released?”

These words emphasize the bleakly realist lens through which many IRB members view immigration cases.

Counsels

As in Canada’s court system, im/migrants have the right to retain legal counsel. However, unlike in the criminal justice system, the government does not have to appoint a counsel for the person concerned. Counsels may be immigration lawyers or they may be immigration consultants who represent im/migrants at various hearings. Despite this right to counsel, many im/migrants, especially those who face detention, are unable to hire or pay for legal
representation. From my observations, I found that absence of legal representation has severe consequences for the person concerned. Im/migrants without legal counsel experienced bullying, intimidation and condescension from Minister’s counsels and some IRB members. Legal counsels, on the other hand, provided support for persons concerned, explained procedures to their clients prior to the hearings, submitted alternatives to detention and upheld the (limited) rights of their clients by raising objections when members or Minister’s counsels asked questions that were unfair or speculative.

Minister’s counsel, on the other hand, represents the Minister of Citizenship and Immigration and is equivalent to a crown attorney in the criminal justice system. In an admissibility hearing against a permanent resident or a foreign national who had been authorized to enter Canada (i.e., visitors and labour migrants), the burden of proof (of inadmissibility) rests with the Minister’s counsel. The Minister must establish that the evidence against a person concerned is credible and trustworthy (IRB 2003: 3-1). Joseph Wilson, a Minister’s counsel and one of my informal consultants, often emphasized that whereas the criminal justice system is about rehabilitation, the immigration system is about deportation (Field notes. August 2016). In his view, any violation of criminal or immigration law must be treated severely as many immigrants make false claims to stay in Canada. This mindset is common among Minister’s counsels, who are often quick to point out that once an im/migrant violates Canada’s immigration law, nothing else matters (at least, for the ID). Describing illegality as simply a violation of the law precludes important discussions about the circumstances and severity of the offence. These circumstances are important in criminal proceedings, as the judge or jury consider mitigating factors before rendering a verdict. In an immigration hearing, however, these
circumstances are not considered and an im/migrant is doubly punished for their criminal behaviour.

**Language Interpreters**

Im/migrants and visitors who enter Canada originate from various parts of the world, each with its own language and dialects. Therefore, interpreters have been used in many areas of immigration, as well as other types of hearings. Interpreters are tasked with orally translating “all dialogue and, in some cases, short documents submitted before, during or after the proceedings” (IRB 2016). They have to interpret from the language of the im/migrant to English or French, and vice versa. Although interpreters operate as independent contractors, many individuals bring their own biases into hearings. Many of these interpreters may have been im/migrants or are first-generation Canadians; many others hold strong opinions about im/migrants, refugees and asylum seekers. During one of my visits to the detention centre, I overheard an interpreter’s phone conversation in the lobby, where I was waiting for a hearing. Throughout this conversation, he opined that im/migrants who cross borders “illegally” must be sent back; he was also critical of asylum seekers, many of whom he thought make false claims to remain in Canada. During my visits to the detention centre, I also observed many hearings in which interpreters draw their own conclusions regarding a person’s credibility or guilt. During a short recess during Christine’s admissibility hearing, I witnessed the interpreter telling the IRB member that “*she (Christine) is lying*” or “*I don’t believe her because her story doesn’t make sense*” (Hearing August 2016). The interpreter’s vocal assessment of Christine’s cases and her credibility severely undermined the legitimacy of her hearing. Although interpreters do not have formal authority to make assessments regarding cases, they are trusted more than accused im/migrants. As these interpreters have access to an im/migrant’s language, culture, and tone of
voice, they are considered to be the cultural authority in the hearing room. As a result, their opinions and assessments of im/migrants can come across as being credible.

Besides individual bias, the quality of interpretation can also affect the outcome of a hearing. During my fieldwork, I attended the case of Padmini, an Indian im/migrant who was sponsored by her Canadian husband (now, her second ex-husband). She was initially married in India to her previous husband, with whom she has three children. After her second divorce, she was encouraged by her children to remarry her first husband as they were both single. During the immigration hearing, Padmini was given a Hindi-Gujarati speaking interpreter. In her testimony, she stated that her children repeatedly told her to remarry her first husband. The word she used to describe her children’s insistence was “zabardasti” (जबरदस्ती), which means tremendous or strongly.\(^{16}\) However, in the translated version, the member and Minister’s counsel were informed that Padmini’s children “encouraged” her to remarry her first husband (Field notes August 2016). This misinterpretation, although quite minor, impacted the cultural significance of Padmini’s testimony. Although interpreters swear an oath before the hearing and promise to interpret faithfully and accurately, minor inaccuracies often go unnoticed during proceedings. Therefore, misunderstood phrases or incorrect translation can deeply impact the quality of an im/migrant’s testimony. This can have larger implications as it does not allow IRB members or Minister’s counsels to consider the rationale behind the actions of a person concerned.

5.3- Perceived (Im) morality of Im/migrants

One of the significant themes that arose throughout this research is im/migrant morality. The idea of morality (or immorality) in relation to migrants has been essential to nation-building.

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\(^{16}\) My rudimentary knowledge of Hindi enabled me to spot the moment when the true intention of the person concerned was “lost in translation”. I consulted with several Hindi-speaking colleagues and friends, who confirmed my suspicion.
Canada’s strict adherence to its white, heteronormative and Euro-Canadian standards of Christian morality have often marginalized migrants who do not share the same values and principles. By constructing Chinese, Japanese, Indian, African, Latin American and Caribbean im/migrants as morally inferior to Euro-Canadians, the state could control these “Other” populations while simultaneously profiting from their labour (Bauder 2013). Through the state’s laws and policies, these im/migrants were systematically prevented from fully participating in the social, economic and political spheres of Canadian society. In this section, I argue that a comprehensive discussion of morality and law must situate the idea of morality within the racialized discourses through which immigration has been understood and explained. I provide a brief description of the ways in which Chinese im/migrants were illegalized in Canada through ideas of (im) morality.

A Brief History of Legal Exclusion of Racialized Im/migrants In Canada

My exploration of discrimination experienced by Chinese im/migrants in Canada is only one example of the impact of laws and policies that were created by the Government of Canada to regulate the entry and residence of racialized groups of people. Other notable examples of im/migrant discrimination include the 1908 “continuous voyage” regulation that targeted Indian im/migrants (Kazimi 2012) and the re-introduction of the War Measures Act (1941) targeted im/migrants and Canadians of Japanese origin. Each of these cases highlight the ways in which im/migrant exclusion is closely related to racialized ideas through which Canada has historically distinguished between its citizens and undesirable foreigners.

The Canadian government’s treatment of its Chinese im/migrants during the late 1800s and early 1900s is a prime example of the role of migrant (im) morality as a form of immigration and social control. Satzewich (1989) points out that the arrival of Chinese im/migrants to Canada
was prompted by persistent labour shortages, mainly in British Columbia, that threatened the economic and political viability of the Canadian nation-state. This, combined with the pressures of completing the first Canadian transcontinental railway, the Canadian Pacific Railroad (CPR), forced the Canadian government to allow large numbers of Chinese labour migrants into the country. Chinese im/migrants provided unskilled, low-cost labour for industries such as canning, mining and road construction (Satzewich 1989). These labour migrants, unlike “white” working-class Canadians, were bound to their employer or companies, to whom they were often indebted. In addition, sub-subsistence wages, debt burdens and head taxes forced migrants into indentured servitude for long periods of time. Even though Chinese labour migrants were subjected to harsh treatments and criticisms from the public, many contractors and employers characterized Chinese workers as “industrious, sober, economical and law-abiding” (Satzewich 1989:371). This view of migrants persisted until the end of the CPR’s construction in June 1885, after which opinions about them changed drastically. Following the construction of the CPR, Chinese labourers were perceived as morally “undesirable” to Canadian society.

In 1885, just after the CPR was completed, rising pressure from Euro-Canadian residents of British Columbia forced Prime Minister John A. MacDonald to introduce a commission to assess the value of Chinese im/migrants in Canada. This commission, headed by J.A. Chapleau and J.H. Gray, was designed to “enquire into and report on the whole subject of Chinese immigration…and obtain proof that the principle of restricting Chinese immigration is proper and in the interests of the Province and the Dominion” (Royal Commission 1885:1, ix). As part of its evidence-gathering process, the Commission invited members of the public and leaders of various trade boards to provide their opinion about Chinese immigration in British Columbia. Narratives presented to the commission identified the advantages of Chinese labour, which filled
the gap left by Canadians who took up employment in many European countries. Besides the cheap labour the Chinese migrants provided, they also worked in industries and geographical areas that were considered unsafe or unhealthy - jobs that were unattractive to “white” labourers.

Proponents of Chinese immigration used racially stereotypical narratives to point out that these labourers were efficient, docile and reliable, unaffected by diseases from which “white” labourers suffered, and without family or children to consider (Royal Commission 1885). Testimonies provided by employers and contractors repeatedly referred to the efficiency and docility of Chinese labourers in railroad construction and mining, and as domestic servants. Despite the positive note with which many contractors and employers described the migrants, many politicians and residents opposed the presence of Chinese migrants in the country. For example, one resident insisted the influence of Chinese domestic servants was a “wretched thing and [that] if a family has children it would be almost suicidal to permit the Chinese servants to associate with the children, or to have charge of them” (Royal Commission 1885:3). Besides this, many witnesses regarded Chinese communities with derision, claiming that people often participated in drunken debauchery, gambling and prostitution. They were also described as victims of opium use. The Royal Commission concluded by stating that despite their non-assimilable nature, Chinese immigration had helped Canada develop as a country. It also emphasized that the irritation and resentment that white labourers and residents felt about the Chinese people had more to do with their beliefs in racial superiority; this superiority “leads those to feel humiliation at working by the side of Chinamen” who often worked longer and harder than white labourers (Royal Commission 1885:cxxx). The report concluded by stating that legislation to restrict, rather than exclude, Chinese immigration would be more effective for the country’s development.
Despite this report, by the early 1900s, discourses of morality, interwoven through racist ideologies, resulted in moral panics surrounding Chinese im/migrants and their perceived influence on Canada. According to Stanley Cohen, moral panic occurs when “a condition, episode, person or group of persons emerges to become defined as a threat to societal values and interests” (2011:1). As a result of increasing head taxes and prohibitive laws, Chinese im/migrants to Canada were mainly male labourers who could not possibly afford to bring their families with them. Large pockets of bachelor communities therefore formed in many cities. The absence of Chinese women in these communities “exacerbated the sexual apprehensions” of white Canadians who saw Chinese men as threats to Canada’s puritanical values (Backhouse 1996:134). The moral panic surrounding Chinese men was sustained through Euro-Canadian attitudes of masculinity, morality and white supremacy, which simultaneously depicted im/migrant Chinese men as (sexually) aggressive and docile. They were considered superior to white men in the context of hard labour; however, due to their employment as domestic servants, they faced emasculation within the larger society, which considered them to be more “feminine” than white men. (Backhouse 1996). These conflicting stereotypes were often used to frame Chinese im/migrant men as untrustworthy and sexually deviant “others” who could not assimilate Canada’s religious and moral values. The panic surrounding Chinese im/migrants was also sustained by (and contributed to) various laws and policies that were designed to marginalize Canada’s existing Chinese population. In response to public pressure, the Canadian government passed the Chinese Immigration Act (commonly called the Exclusion Act) of 1923. Except for foreign students, merchants and diplomats, this legislation prohibited the entry of Chinese people to Canada. Additionally, the imposition of a $500 head tax made Chinese labour
less profitable for merchants and contractors who recruited them under debt bondage (Satzewich 1989).

The moral regulation of early Chinese im/migrants had severe implications, as laws and policies were designed to ostracize them from the larger Canadian population. The post-9/11 era has seen an aggressive resurgence of moral regulation as African and Middle Eastern men have been constructed as security threats (Chan 2005:161). In order protect itself from these threats, the government passed new policies that are designed to target racialized groups of people (Chan 2005:161). Another example of this moral regulation can also be observed in the ways in which sponsored spouses are currently subjected to strict residency conditions. Im/migrants’ failure to abide by these conditions can result in their removal from Canada.

*Moral Evaluation of Spousal Sponsorship in Canada*

The website for CIC contains valuable information related to various areas of immigration. Among the numerous options present within the website, warnings about marriages of convenience seem the most ominous17. This section is introduced by a cautionary video addressing the impact of marriage fraud, which briefly follows the narratives of three “victims” of this practice - two women and one man. Each of their stories follows the same narrative form: they met their foreign spouse, married and were later abandoned by their newly-immigrated spouse. Besides this video, the website also warns Canadians of the dangers associated with marrying foreign individuals. According to CIC,

Some people think marriage to a Canadian citizen will be their ticket to Canada…If you sponsor your spouse, you must give them financial support for three years even if the marriage or relationship fails…If your spouse uses social assistance, you’ll have to repay

17Commonly called “marriage fraud”, a marriage of convenience occurs when a foreign national marries a Canadian citizen or permanent resident primarily for the purpose of acquiring status under the IRPA (SC 2006:s6).
the money. Also, you can’t sponsor anyone else until you repay the debt” (Canada 2017c).

These cautionary narratives actively employ discourses of morality that depict im/migrants as an unassimilable threat to Canada's values while simultaneously portraying Canadians as naïve or gullible victims. By representing Canadians as the victims of marriage fraud, the Government of Canada reproduces the idea of the “queue-jumping” and “law-violating” foreigner. This discourse of morality presumes that (western) societies consist of a collective set of homogenous values and shared meanings which are threatened by transnational migrants, especially those from culturally distant origin countries (Morrice 2017:400). Under this perceived threat, immigration laws and policies overcompensate by adhering to dominant cultural and moral values more rigidly.

This bias against foreign im/migrants is heavily present in admissibility hearings where their decision to marry a Canadian citizen is challenged and undermined by the Minister’s counsels, as well as by tribunal members who oversee these hearings. The following excerpt shows an examination of Christine (a pseudonym), a sponsored im/migrant who was accused of participating in a marriage of convenience in the summer of 2016.

*Minister’s Counsel: How did you first meet your sponsor?*
*Person Concerned: At a gathering.*
*MC: What kind of gathering?*
*PC: Friends, family, dining event.*
*MC: Had you met him before this gathering?*
*PC: No.*
*MC: How old were you when you met him?*
*PC: Sixteen.*
*MC: How old was your sponsor?*
*PC: Thirty-one.*
*MC: Were you interested...romantically...when you met him the first time?*
*PC: Are you saying that I liked him?*
*MC: Yeah. Maybe more than a friend?*
*PC: More like a friend.*
*[…]*
*MC: How did your relationship develop?*
PC: Phone, e-mails, messages.
MC: When you met, he was 15 years older than you.
PC: Yes.
MC: Did you have friendships or other relationships with anyone else this much older than you?
PC: No.
MC: Why was he different from anyone else?
PC: Because he was truthful...treated me well. He is compassionate. There was no boundaries...we can still communicate...we have the same language.

[...]
MC: Is he wealthier than you?
PC: I don’t know.
MC: There a lot of money being transferred?
PC: Yes. For dowry.
MC: Is he financially stable?
PC: Yes.
MC: Did that attract you to him?
PC: No.
MC: When did you first have sex with your sponsor?
PC: After marriage.

This excerpt indicates a number of areas in which Christine’s presumed moral inferiority can be highlighted: the significant age gap between Christine and her husband, the presence of money transfers between the couple and how hastily her relationship developed. Through her line of questioning, the Minister’s counsel argued that these factors, taken together, characterized a marriage of convenience. By trivializing Christine’s marriage and subsequent sponsorship as fraud, neither the Minister’s counsel nor the IRB member seriously considered the possibility that her marriage was simply an arranged marriage or even a marriage that consisted of genuine love and affection. In addition to this, it is important to highlight that a substantial age gap and hastiness in marriage are not uncommon in Canada. There is no longer a taboo or strict morality applied when individual Canadians adopt such practices. However, in the context of Canada’s immigration law, these factors are flagged as potential markers of fraud. This disproportionate application of moral regulation invariably affects im/migrants who are perceived to be unassimilable by virtue of their “otherness”. I use the term “selective morality” to refer to this practice. This inconsistent application of moral standards by Canada’s immigration system
reproduces racialized and gendered discourses that highlight the moral inferiority of non-white migrants.

The selective morality through which im/migrants are assessed is problematic because it unfairly discriminates against non-white individuals who attempt to enter or stay in the country. As an example, I highlight the case of Reuben, a US citizen, who lost his PR status and was subsequently removed from Canada for failing to abide by his residency obligation (Strayer v. Canada 2015). The transcript of his hearing indicated that Reuben was a medical doctor who frequently came to Canada in order to “perform service as an Emergency Doctor in relatively remote Canadian hospitals, most usually, recently, a hospital in Dryden, northwestern Ontario” (Strayer v. Canada 2015). He also possessed a PR status in Canada which required him to remain in the country for at least 730 days in a five year period. However, as he was currently a practicing doctor at Mt. Sinai Hospital in New York City, he failed to meet his residency requirement in Canada. Throughout the IRB’s consideration of his case, they emphasized that his choice of career had caused him to abandon his residency obligation. Nowhere in the transcript of his hearing was his morality questioned. He was also held in high regard because of his profession. The IRB member stated the following

The panel wishes to add that it appreciates the appellant’s past and present contributions to Canadian society, by assisting in emergency rooms in smaller, rural towns, where it is not always easy to attract qualified physicians. The appellant truly has been making contributions to Canadian society. He could have chosen to do this in rural USA, but chose Canada because of a connection he feels with Canada. The Panel wishes him well, thanks him for flying in from New York for his hearing, and expresses the hope he takes whatever steps are necessary for him to be able to continue to do what he is doing, helping out smaller communities in Canada, which apparently affords him some satisfaction as well. (Strayer v. Canada)

The language using which Reuben was addressed is drastically different from the manner in which non-white, economically disadvantaged im/migrants experience. Reuben work in Canada is appreciated and celebrated whereas this appreciation is absent in the case of foreign workers
such as Carlos or Jose. Reuben was not chastised or humiliated for his non-compliance but, a non-white immigrant committing a similar offence is constructed to be immoral for attempting to bend the rules in order to expedite his or her citizenship process in Canada.

**Canada’s Anti-Marriage Fraud Campaign**

In the fall of 2010, CIC invited members of the public to participate in an online consultation designed to study people’s understanding of marriage fraud. This study consisted of two parts. The first was a backgrounder, which contained information such as the goals of the IRPA, the issue of marriage fraud and strategies used by other countries to combat this problem. This was followed by a questionnaire which required participants to respond to questions about their awareness of marriage fraud and their connection to this issue. Over a three-month period, the questionnaire generated 2,431 responses from members of the general public, as well as from self-identified stakeholders (Canada 2010). Of the 2,342 respondents from the general public, 37% specified that they had sponsored a spouse to Canada and 11% identified themselves as victims of marriage fraud (Canada 2010). Additionally, 77% of respondents indicated that marriage fraud is a serious or very serious threat to Canada’s immigration system and supported government intervention through deportations, conditional statuses and financial penalties to combat the problem (Canada 2010). Following this consultation, the federal government introduced an amendment to the IRPA that required sponsored spouses to cohabit with their sponsor in the same residence for two years before obtaining their permanent residency.\(^{18}\) The Canadian government’s introduction of this cohabitation requirement was designed to curb

\(^{18}\) This amendment was repealed in May 2017 as this thesis was being written.
marriages of convenience by providing im/migrant spouses with their permanent residence status only after the two-year period.

Amendments like the cohabitation requirement are premised upon the belief that im/migrant spouses abandon their Canadian sponsor after their arrival. Forcing sponsored spouses to live with their Canadian partner was a measure to deter fraudsters who lie and cheat to jump the queue. This measure aimed to “strengthen the integrity of [the] immigration system and prevent the victimization of innocent Canadians” (CIC 2012). By casting Canadians as the “innocent victims” and foreign im/migrants as the “perpetrators” of fraud, the Canadian government positions itself as the protector of Canada’s values and principles. In doing this, the government fails to consider the victimization of im/migrant spouses by their Canadian partners. By framing the discourse of sponsorship through narratives of Canadian victimization, the federal government also ignores the experiences of sponsored im/migrants who face abuse and other forms of violence at the hands of their Canadian spouse. Many im/migrant women are highly vulnerable, as they are made to feel indebted to their Canadian spouse (Gaucher 2014; Meerali 2009). Requiring sponsored im/migrants to live with their spouse to satisfy residency requirements puts them at risk for abuse and human rights violations if their spouse or relatives are abusive.

The use of moral narratives in spousal sponsorship ignores im/migrant spouses’ victimization by their Canadian partners. Amed’s experiences, as a Cuban national who was sponsored by his Canadian wife, provides an important example of such situations. Amed’s relationship with his Canadian spouse began in Cuba in June 2012, and they were married in October 2012. After their sponsorship application was approved, Amed became a conditional permanent resident of Canada in May 2013. The couple lived together in Canada for seventeen
days, after which his wife decided that she wanted to separate from him and asked him to leave their home. Because the sponsored spouse did not cohabit with his Canadian sponsor, he was referred to an admissibility hearing where he was declared inadmissible due to his failure to abide by the conditions of his sponsorship status (Chavez-Perdomo v Canada 2015). At his hearing, Amed testified that he was subjected to verbal, psychological and financial abuse by his wife after his arrival in Canada (Chavez-Perdomo v Canada 2015). He testified that his ex-wife was jealous and insecure. As a result, she constantly checked his cell phone messages and emails (Chavez-Perdomo v Canada 2015). He stated that “after his separation from his wife, he was also the victim of “blackmail” from his former mother-in-law” who wanted money from him in exchange for letters from the Immigration Department (Chavez-Perdomo v Canada 2015). In Amed’s case, the minister’s counsel dismissed allegations of abuse because he could not provide “clear evidence [that] abuse or a neglectful relationship” led to the breakdown of his marriage (Chavez-Perdomo v Canada 2015).

**Implications of Moral Regulation**

The presence of moral judgment in immigration hearings reproduces dominant nationalistic ideologies that are interwoven through ideas of morality, race, and gender. Canada’s immigration law, its regulations, policies and everyday practices operate together to cast an im/migrant as “illegal”. By classifying foreign nationals as morally inferior, the immigration law and its practitioners highlight the power inequalities and moral hierarchies between Canada and other countries from which migrants arrive. Morally-based laws such as spousal sponsorship also reproduce the power imbalance between Canadian sponsors, who have the law and government on their side, and im/migrant spouses, who are often disconnected from their family, friends and other support systems. Discourses and narratives used to justify these laws also fail to reflect
their real impact on im/migrants that are seen as threats to Canada’s social and political landscape.

Through moral discourses, the Canadian government, as well as its immigration laws and policies, reaffirm notions of citizenship and sovereignty. In this way, im/migrants who do not fit the image of the ideal Canadian are illegalized and removed from the country. Through moral constructions, early Chinese im/migrants and today’s sponsored spouses are blamed for the state’s (and society’s) anxieties concerning globalization and the perceived loss of national sovereignty (Bauder 2013:4). In making moral assessments, the state attempts to reclaim its diminishing sovereignty by determining who stays in the country and who is deported (Villegas 2015:2358). Through this regulation, migrants are made vulnerable and exploitable, and are prevented from making any real claims of belonging. Declaring an im/migrant a “danger to the public” in an immigration hearing can have severe and long-lasting consequences as it can result in the person’s detention, which can be quite lengthy, especially if the person is a national of countries such as Somalia or Cuba. Both Somalia and Cuba are among many countries that refuse to repatriate its citizens. Somalia is also considered a “failed state” because of its lack of proper centralized government. As a result, obtaining travel documents, such as visas (and passports, can be challenging and time-consuming, which forces detained im/migrants to spend lengthy periods imprisoned in Canada’s detention facilities. Further, many airlines refuse to transport Somali detainees, especially those who have been declared to be a “danger to the public”, unless they sign a sworn statement, known as a “statutory declaration”, which states that
they will not attempt to seek asylum on their way to Somalia19. However, even with a signed statutory declaration, many airline companies are unwilling to carry Somali detainees.

5.4- Ideas of “Deservingness”

As I briefly stated in chapter three, ideas of “deservingness” have been used in debates over access to medical and welfare services in ways that define marginalized groups as unworthy of assistance. In recent years, this idea has also been entrenched in the work of humanitarian and non-governmental organizations (NGOs), which often provide aid to people who are victimized by political violence, climate-related disasters and diseases. Within these contexts, notions of “deservingness” have been closely associated with victimization. The victim is often seen as a “helpless” and “innocent” person who is unfairly subjected to these forms of harm. As a result, many aid organizations, such as the Red Cross and Medecins sans Frontieres, are quick to offer support.

Sentiments regarding a person’s “deservingness” are ubiquitous in immigration hearings. Im/migrants who provide sufficient evidence to show that they are well established in Canada are often given a second chance during appeal hearings. On the other hand, im/migrants who violate criminal and immigration laws and have a long history of criminal behaviour are treated as undeserving and, consequently, deported from Canada. In this section of the chapter, I present two ways in which “deservingness” can be understood within the context of migrant illegalization: humanitarianism and penalization. Closely related to ideas of morality, “deservingness” occupies a special role in immigration hearings where im/migrants are

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19 Somalis who are returned are typically flown from Toronto to Turkey, then to Kenya and, from there, on to Somalia’s capital, Mogadishu. CBSA agents accompany the deportees only for the first two parts of the trip. The only airline willing to transport the deportee for the last leg of the trip, from Kenya to Mogadishu, without an official escort is African Airlines, which requires a signed statutory declaration.
categorized as “bad” or “worse”. On appeal, the removal order given to “bad” im/migrants may be stayed or paused. However, “worse” im/migrants are penalized through removal orders.

This discussion will begin with a brief comparison of the ways in which Syrian and Somali im/migrants and refugees are constructed in immigration discourse. Then, I will provide examples from archived immigration cases to highlight ways in which the idea of “deservingness” is connected to beliefs about humanitarianism and penalization. Finally, I draw links between different types of removal orders and the types of offences that result in these forms of removals. By doing this, I attempt to show that a type of removal is directly linked to ideas of morality and “deservingness”.

Construction of Syrian and Somali Im/migrants in Canada

One of the defining features of Canada’s 2015 election campaign was Prime Minister Justin Trudeau’s promise to resettle 25,000 Syrian refugees. This promise was met with considerable support from the Canadian public, who saw this humanitarian act as a reflection of the country’s generosity and kindness. Today, as this promise has been fulfilled, many communities all over the country celebrate the achievements of Syrian students, entrepreneurs and families alike. Major newspapers and magazines feature stories of these migrants, who are perceived as “deserving” of Canada’s humanitarian aid. Described as a “national project”, this resettlement was sponsored by the federal government as well as private families across the provinces (Friesen 2017). Despite this support, opponents of this resettlement felt that federal funds could be better used to support the country’s struggling aboriginal communities and other economically disadvantaged groups. Furthermore, opponents also argued that Syrian refugees were not sufficiently screened for potential terrorist threats. Despite this fear, Syrian refugees are treated as members of various communities.
The humanitarian rhetoric through which the federal government justified the resettlement of Syrian im/migrants was missing during the late 1980s and early 1990s, as large waves of displaced Somalis im/migrants settled in various parts of Canada. Scholars point out that prior to the 1960s, immigration from African countries to Canada was limited or non-existent. However, the unstable political landscape, characterized by military coups and wars, resulted in the arrival and settlement of African (mostly Somali) migrants in cities such as Toronto and Ottawa. Somali refugees and im/migrants in Toronto experienced significant barriers, such as high unemployment and underemployment, high levels of poverty and extreme discrimination and marginalization (Danso 2001). These disadvantages, combined with inadequate access to decent housing, drew many im/migrants to economically depressed neighbourhoods. As refugees did not have access to welfare or subsidized housing until 1991, many also ended up “on the streets of Canadian cities vagrant and homeless” (Danso 2001:3). Inadequate access to housing, education and employment resulted in extreme difficulties that affected the lives of Somali youths and families in Canada. Besides these factors, intergenerational differences and differential experiences of these barriers strained relationships between parents and children (OCASI 2016:4). Further, the racialized and unfair treatment of black males by the Toronto police exacerbated the disconnection that Somali youths felt from their communities and the larger Canadian society.

The differing discourses through which Syrian and Somali im/migrants are constructed reveal certain truths about perceptions of “deservingness” in Canadian society. In her analysis of Salvadoran im/migrants’ experiences in US immigration hearings, Coutin (2003) states that ideas of victimization (and therefore an im/migrant’s “deservingness” of our help) are useful in exemplifying some im/migrants and refugees as “in need of fixing” (86). This way of thinking
enables us to envision certain types of im/migrants as having the potential for legalization and assimilation (Coutin 2003:87). The victimization faced by Syrian refugees and im/migrants is “fixable” by the federal government, religious groups and local communities, who eagerly provide housing, employment and other forms of support.

Viewing Syrian im/migrants as “non-black” victims of forces outside their control provides a beneficial rhetoric for the federal government as these im/migrants are made palatable to Canadian society. However, the same discourse of humanitarianism does not work well for black im/migrants and refugees, such as those from Somalia and other African and Caribbean countries, who are also victimized by political and civil unrest. During my visits to the immigration holding centre, I noted that in almost all detention hearings that I attended, the persons concerned were black im/migrants. These detainees were mostly from Somalia, Nigeria, Jamaica, and St. Vincent and the Grenadines. As I mentioned in the last section, im/migrants of Somali origin often faced lengthy detention because they were often not permitted to return to their home country. As a result, detainees are forced to remain in Canada’s detention facilities awaiting travel documents that may never arrive. During the detention review of James, a Somali im/migrant, his lawyer informed the IRB adjudicator that “the length of his detention is longer than his longest prison sentence” (Fieldnotes June 2016)20.

These im/migrants’ blackness prevents them from being considered fixable; instead, it is used to criminalize them and, later, deport them. Detention hearings, especially those pertaining to Somali or other black detainees, focus on their criminal history in order to declare them a danger to the public. As a result, they face lengthy detention in immigration holding centres or maximum-security provincial jails alongside criminal inmates.

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20James had been in immigration detention for three years and seven months.
Humanitarianism versus Penalization - Narratives of “deservingness”

During one of my earlier visits to the holding centre, I attended the detention review of Mohammed, an Afghani national. He was previously a permanent resident of Canada; however, his criminal history resulted in the loss of his PR status. Mohammed had been detained since November 2014 and was deemed a “danger to the public” and “unlikely to appear”. This determination had been upheld by previous IRB members who had conducted his monthly detention reviews. At his hearing, the Minister’s counsel pointed out that Mohammed had a rich history of criminal convictions and that his recent crimes included possession of a loaded firearm, assault of a police officer causing bodily harm and possession of controlled substances. Mohammed responded to the Minister’s statements by pointing out that he does not pose a danger to the public and that the criminal offences listed by the counsel occurred in 2008, after which he had not committed any more offence. In response to Mohammed, the member stated,

_I can’t assume that you have changed based on an absence of evidence. You haven’t submitted any evidence… I can’t alter your past, sir. It’s your behaviour. You have been in Canada for 16 years. You gave officers a wrong address; you have breaches of court order and failure to appear to hearings. You have not voluntarily departed after a deportation order was made. Whatever risk your pose, the public has to bear”_ (Field notes July 2013).

Mohammed was penalized by his loss of status and subsequent deportation order as a result of his criminal offences that violated major provisions of Canada’s immigration law. By attributing his “just desert” to his past misdeeds, the IRB member and Minister’s counsel were suggesting that his blameworthiness made him deserving of penalization and undeserving of humanitarian intervention. By repeatedly insisting that Mohammed’s detention was a consequence of his actions, the IRB member suggested that his penalization was proportional to his crimes.

It is important here to break down the punishment that Mohammed received and to critically evaluate whether this punishment is proportional to his crimes. Mohammed’s violation
of criminal laws in Canada would have resulted in his imprisonment or an equivalent sanction. This punishment by the Criminal Justice System can be seen as a proportional punishment for his crimes. However, as a result of his status, his offences also violated Canada’s immigration law. This violation contributed to his loss of “legal” status in Canada, a determination of inadmissibility by the IRB and his eight-month long detention. This additional period of incarceration for a crime for which he had already been punished represents the injustice that Mohammed and other im/migrants like him face. Furthermore, as a result of his loss of PR status and determination of “dangerousness”, he is also unable to appeal the IRB’s decision against him.

Another key area where ideas of “deservingness” and humanitarianism can be observed is in the IAD. Many appeals to the IAD are made on “humanitarian and compassionate grounds”, with im/migrants facing removal able to plead their case before a tribunal that possesses more discretion. In these cases, IAD members consider factors such as level of establishment in Canada, social and financial contribution to the society and familial ties to determine whether an im/migrant is deserving of IAD’s compassion. To emphasize this, I provide two examples of cases in which ideas of “deservingness” are used to offer or deny humanitarian relief.

Case 1- Sarabjit

Sarabjit, a 39-year old Indian national and permanent resident of Canada for 17 years, was criminally charged for multiple crimes, particularly assault causing bodily harm (Bassi v Canada 2015). His crimes resulted in imprisonment and, subsequently, a loss of his PR status. Upon appeal to the IAD, the tribunal noted Sarabjit’s commitment to abstinence from alcohol and his re-establishment with his family as favourable indicators of his rehabilitation. In addition to this, the panel pointed out that having him in Canada would “be in the best interests of [his]
two children, both of whom may be reasonably expected to benefit from the regular presence of their father”. The IAD considered factors such as

the seriousness of the offence of offences leading to the deportation order; the possibility of rehabilitation; the length of time the appellant has been in Canada and the degree to which [he] is established; the impact [his] removal from Canada would have on members of his family; family members in Canada and the dislocation to those members that deportation of the appellant would cause; the support available for the appellant not only within the family but also within the community; the degree of hardship that would be caused to the appellant by his return; the hardship the appellant would face in the country to which he would likely be removed (Bassi v Canada 2015).

Based on these factors, the IAD determined that, although the crimes for which Sarabjit had been convicted were severe, he had taken sufficient steps to deal with his alcohol dependency. As a result, his deportation order was conditionally stayed (or paused) for two years.

**Case 2- Jimmy**

Jimmy, a Chilean national, obtained his landed im/migrant status in 1993 (Aspe v Canada 2015). He arrived in Canada along with his mother under his father’s sponsorship. His pattern of criminal offences began soon thereafter. In 1997, he pled guilty to one count of robbery, one count of failure to comply with a condition of an undertaking or recognizance and one count of pointing a firearm. In 1998, he was given a suspended sentence and placed on probation for two years. Jimmy came to the attention of CIC in 2000 as a result of his criminal activities; CIC warned him of his possible loss of status and removal if he continued to commit more criminal offences. In 2006, Jimmy’s first child was born. However, due to the mother’s mental health challenges, the child was placed in foster care. Jimmy’s criminal activity resumed in 2008, and he was convicted of multiple crimes, many of which included non-compliance. In 2013, Jimmy’s second child (with a different woman) was born. He lived with the mother of his second child for three years, after which they ended their relationship; the couple agreed on joint custody of their child.
In determining Jimmy’s case, the IAD considered factors similar to those for Sarabjit. Whereas the presence of a child was favourable for Sarabjit, the IAD ruled that Jimmy’s dangerousness to the public was greater than the best interests of his children. The IAD noted that Jimmy

[d]oes not have much to show for the three decades that he spent in Canada. He never finished his third year of high school. There is little documentary evidence that the appellant worked in Canada. He has been receiving social assistance since 2008 with a hiatus of two months, according to his testimony (Aspe v Canada 2015).

The panel concluded by stating that

[Jimmy] is a risk to the safety and security of Canadians and that the possibility of his rehabilitation is remote given his repeated criminal behaviour, which continued even after he received a warning in 2009 and even after the deportation order was made in 2010. Furthermore, his chronic inability to respect simple conditions in court orders makes him a poor candidate for a stay of the removal order (Aspe v Canada 2015).

These two cases are important examples of the manner in which humanitarian consideration and penalization are closely linked to a person’s “deservingness”. Whereas Sarabjit was viewed as a person who made sincere attempts to rectify his behaviour, Jimmy was perceived as someone who was a strain on Canadian society and its values and its resources. Although neither Sarabjit nor Jimmy were black, they had to provide substantial evidence to show their “Canadianness” in order to convince the IRB adjudicators that they “deserved” to remain in Canada. Contrastingly, Mohammad’s affiliation to Afghanistan, a predominantly Muslim country contributed to the IRB’s perception of him as posing more danger to the Canadian public than Sarabjit or Jimmy21. Perceptions of “deservingness”, as exemplified by these cases, also show the deep connection it has to ideas of morality. If im/migrants are

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21 The religious affiliation of accused im/migrants was not highlighted in detention or admissibility hearings. However, the correlation between a person’s country of origin and the immigration system’s deeply-held assumptions associated with certain countries (like Somalia or Afghanistan) can contribute to the manner in which a person is constructed as being deserving or undeserving.
perceived to make moral reparations to society, then their chances of acquiring humanitarian consideration increase greatly. But im/migrants perceived as social liabilities, through their criminal behaviour or welfare dependency, are removed from Canada.

“Deservingness” through Types of Removals

Categorizing some im/migrants through a humanitarian lens and others through that of penalization can enable us to closely study the ways in which “deservingness” is constructed in immigration hearings. For this thesis, penalization refers to the detention and deportation of im/migrants who are found to be inadmissible to Canada. This penalization is best understood through the retributive model of “just deserts”, commonly used in criminology and criminal justice theories. The “just deserts” model of punishment commonly suggests that punishment must be proportional to the severity of the crime, and it must act as a form of deterrence to prevent re-offending. IRB members exemplify this principle when they order an im/migrant’s continued detention or removal from the country. Using information gathered from archived IAD cases and observations and consultations at immigration hearings, I argue there are moral undertones present in the relationship between an immigration (and criminal) offence and the type of removal order an im/migrant receives. There are three types of removal orders in Canada: deportation orders, exclusion orders and departure orders.

Deportation is the most severe removal order issued by an IRB member; it is issued for serious offences including violations of human or international rights (IRPA 35(1)); criminality (IRPA 36 (2)(b)(c)(d)), serious criminality (IRPA 36 (1) 36(1)(b)(c)) and organized criminality (IRPA 37(1); and misrepresentation (IRPA 40 (1)(d)). A deportation order can also be made against a person for violating subsection 52(1) of the IRPA which requires a foreign national to obtain authorization from an immigration officer before re-entering Canada after a removal order.
has been issued against the person. Unless CBSA has provided a written authorization, this order is considered a permanent ban. An exclusion order is less severe than a deportation order. However, an im/migrant who is subjected to an exclusion order must leave Canada and cannot re-enter the country for a period of one or two years. A person issued a departure order must leave Canada within thirty days. If an im/migrant fails to leave, the departure order immediately turns into a deportation order.

As public safety and national security are two important cornerstones of Canada’s immigration system, offences that threaten them are penalized severely. These offences are also considered immoral as they result in the loss of lives and diminish public trust. As a result, these offences are penalized by the use of deportation orders. Classifying some im/migrants as deserving of a deportation order allows the state to show that certain types of “criminals” or “undesired” im/migrants will not be tolerated in the country.

According to section 36(1) of the IRPA, a permanent resident or foreign national is inadmissible to Canada if they have been convicted (in Canada or another country) of an offence punishable by a maximum of ten years’ imprisonment or for which a term of imprisonment of more than six months is imposed. Some criminal offences for which a sentence of ten years’ imprisonment may be imposed are dangerous driving causing bodily harm (CCC s.249 (3)); assault causing bodily harm or with a weapon (CCC s. 267); arson for fraudulent purposes (CCC s. 435(1)); and sexual assault (CCC s. 271). These crimes are considered to be most harmful to the society and, therefore, foreign nationals or permanent residents who commit them are declared to be “dangerous” and are issued deportation orders. Further, permanent residents determined to be inadmissible for “serious criminality” are also barred from appealing their

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22 A person who has been issued a departure order can re-enter Canada once the issues that contributed to his or her removal have been resolved.
removal order. Besides this, offences related to misrepresentation are also viewed as serious and dishonest. As a result, im/migrants who submit fraudulent documents or fail to disclose relevant information on immigration authorities are also subjected to deportation orders.\(^\text{23}\) When asked about misrepresentation during an interview session, Anna Doe, an immigration consultant stated

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\text{it really goes down to “can we believe this person”? They (the IRB) don’t like to be lied to. I find this in admissibility hearings too. If you lie about one thing...you could have been lying about other things. You could be lying about your identity; you could be lying about your work experience, your family; how you got your money...everything. They just...if they don’t believe you...and this goes towards someone testifying too. If they ask you a question a different way and if they don’t believe you, then you are not credible. Like I’ve had Minister’s counsel come to me and say “you know, your client is lying about everything. We don’t believe them”. And I say “okay. Well, thank you for your opinion”. There are very, very harsh on that (Interview October, 2016).}
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The degree of harm that these criminal or immigration offences can cause is seen to justify penalization through deportation; that is, deportation is seen as appropriate and proportional (“just deserts”) by IRB members. One IRB member recalled a case in which “one guy forced another guy to eat ground-up glass that ended up killing him. He was later seen by the dead guy’s wife in the streets of Toronto” (Alan Jones. Consultation. July, 2016). The IRB member continued to emphasize that in cases like this one, he is happy to issue a deportation order. IRB members, as well as immigration consultants, emphatically state that “criminal” im/migrants deserve to be punished through detentions and deportations. This is because values of safety and security are of paramount importance to Canada’s immigration system, and violators of these values are considered to be deeply immoral. As a result, detention and deportations are seen as appropriate and proportional punishments for these types of criminal and immigration violations.

\(^{23}\) This is particularly true for allegations of “marriage of convenience”.
Exclusion orders, although less severe, can also have a significant impact on im/migrants who are removed from the country. These im/migrants are usually prohibited from entering Canada for one or two years. An exclusion order is issued if a foreign national or permanent resident fails to appear for their admissibility hearing or any other forms of examination (IRPR 228 (1)), fails to establish that they hold a visa or other appropriate documents, overstays their visit, is found to be inadmissible on health grounds, etc (Canada 2017a). I argue that these types of offences can be categorized as “non-compliance”. Compliance is essential to operating the immigration system. Avoiding detention or removal requires a migrant to comply with the conditions of their visit. The example of José, a Honduran labour im/migrant, illustrates this point.

José, a citizen of Honduras, arrived in Canada as a labour im/migrant in September 2014 (Field notes July 2016). His visa was valid until September 2015; however, he was reported to be absent without leave (AWOL) by the Foreign Agricultural Resources Office in September 2015. They believed that José had not returned to Honduras and that he was overstaying in Canada. As a result, an investigation commenced and a warrant for his arrest was issued. In July 2016, he came to the attention of CBSA officers after he and his friends had an altercation with a park warden. Later, José was arrested by Ontario Provincial Police (OPP) and transferred into the custody of CBSA. During his detention review, he explained that he had overstay in Canada in order to make more money so he could support his daughter in Honduras, who has a brain tumour. At the end of his hearing, the member issued an exclusion order against him. José’s misdeeds were overstaying his visa and non-compliance. Therefore, he was subjected to an exclusion order.
A departure order is issued for all other types of offences that are not included in deportation or exclusion orders. This type of removal order is used for many, less serious, non-compliance offences, such as residency obligation (IRPR 228(2) and failed refugee claims (IRPR 228(3). These types of minor offences do not carry any significant threats to national security or public safety. Departure orders largely apply for administrative faux pas. As a result, these removal orders do not prohibit im/migrants from returning to Canada once they have been removed.

A thorough analysis of im/migrants’ “deservingness” of certain types of removal order can enable us to observe the moral sentiments that are used to construct different types of crimes. Ideas of “deservingness” can be dangerous because they enable the state to differentiate between im/migrants who are allowed to return and possibly become members of Canadian society and im/migrants who are “undesirable” and therefore deserving of penalization. Closer attention to the language used to construct im/migrants’ “deservingness” can be helpful in complicating presumptions of illegality. IRB members often see themselves as guardians of the IRPA, tasked with the responsibility of weighing an im/migrant’s rights and freedoms against public safety and national security.

5.5- Credibility

Credibility is one of the most important assessment tools used by IRB members and Minister’s counsels to evaluate the legitimacy of an im/migrant’s narrative in an immigration hearing. This form of assessment is used by immigration courts in im/migrant-receiving countries such as Australia and the United States in order to differentiate between “acceptable” and “unacceptable” im/migrants. In Canadian admissibility hearings and detention reviews, a
person’s credibility is evaluated by assessing the totality of all submitted evidence and considering whether the narratives presented by the im/migrant seem plausible. However, this process is highly subjective and unreliable as decisions about credibility are based upon adjudicators’ impressions of the accused party (Coffey 2003). In addition, factors such as the demeanour of im/migrants, their choice of words and inconsistencies in their testimony can have a determinative impact on their credibility. Coffey’s (2003) analysis of credibility in Australia’s Refugee Review Tribunal illustrates that “credibility assessments, irrespective of the availability of independent evidence, strongly influence [immigration] outcomes” (379). Sweeney (2009) makes a similar note in his exploration of asylum claims in the United Kingdom. He argues that

credibility assessments are usually understood to involve checking for three things: internal consistency, external consistency (congruence with known facts) and plausibility. However, this does not tell us how internally consistent, how externally consistent or how plausible the applicant’s story would need to be in order to be ‘credible’ (701). To highlight this, I refer to the detention review of Omar, a Nigerian im/migrant, who was

arrested in July 2016 following a routine traffic stop by police.

**Omar’s Case (Detention Review)**

Omar was being detained because he was deemed “unlikely to appear” as he had gone “underground” for a long period of time before he was arrested by CBSA officers. The Minister’s counsel informed the IRB member that Omar, a citizen of Nigeria, was admitted to Canada in September 2012 through an improperly obtained visitor visa. Once in the country, he made a refugee claim and was referred to the RPD for a hearing. However, his claim was denied, and he was determined to be inadmissible to Canada. As a result, a departure order was issued against him. Around the time of his inadmissibility (which was three years after his initial claim), he was in a relationship that resulted in the birth of his daughter. Following this, he made multiple “deferral of removal” requests which were all denied. He also failed to appear for his
removal; according to the Minister’s counsel, Omar went “underground” during this period of time. He was arrested in 2016 on a routine traffic stop by local police. Following his arrest, Omar informed CBSA officers that he had a nine-month-old child and that he would be dead if he returned to Nigeria. He also added that his lawyer is fighting his deportation due to his tuberculosis (TB) diagnosis and that he has mental health challenges such as depression. During the detention review, the Minister’s counsel pointed out that Omar’s TB has been cleared and that he has been undergoing medical assistance and psychological counselling. She also argued that he cannot be removed from Canada immediately because his Nigerian passport had expired; therefore, he has to be detained in a holding centre until new travel documents can be issued for him.

Throughout the detention review, the Minister’s counsel and IRB member found Omar’s answers to be vague or unclear. As a result, the member reprimanded him every time he found discrepancies within Omar’s responses. The following excerpt shows Omar’s examination by the member and Minister’s counsel.

Minister’s counsel: Did you find out the status of your case at the Federal Court? When did your lawyer say everything was okay?
Person concerned: The day after he filed it.
MC: What does that mean?
PC: That everything is resolved.
Member: That is vague. What does that mean? Did you not ask him if you still had to leave on the 22nd?
PC: I took his word. I called him many times and left him voicemails but I got no responses.
MC: When did you call him to leave messages?
PC: January, February and March
[...]
MC: Did your wife tell you that CBSA attended your home? That they came?
PC: I called the number that the officer left. There was no answer. So, I left a message.
MC: Did you only call one time?
PC: Yes
[...]
MC: How do you feel about going back to Nigeria?
PC: [answer was unclear to me]
M: If your risk assessment is negative, you must return to Nigeria. Do you understand that?
PC: [becomes distressed]
M: We’ll give him some time. Tell me when you’re okay.
PC: Okay.
M: Why did you call the CBSA officer only one time?
PC: I thought everything was okay.
M: Sir, let’s try that again. Because I don’t believe you for one second. You didn’t call him because you knew you would have to go to the airport.
PC: Yes. I was worried for my kid.
M: I believe that answer. At least it was an honest one.
M: Sir, what is your daughter’s date of birth?
PC: [answer]
M: Your refugee claim was refused three months prior. Did you know that?
PC: Yes.
[...]
M: After your refugee claim was refused, it was clear to you that your days in Canada were numbered. By November this was a certainty. You said that your lawyer said everything was okay. I am going to take you at face value. In February, when CBSA came to your home, it was crystal clear to you that your days were numbered. You made a choice to stay in Canada as a fugitive. If the place was at the airport tomorrow, would you leave?
PC: Yes.
M: No, you will not voluntarily leave.
PC: No, sir.
M: This is my decision. This is not a conversation. The fact that you applied for a deferral evidences that you won’t leave the country. Your ties also make you unlikely to appear for removal. You also chose to live as a fugitive. Your statement to the CBSA is inconsistent with the timeline and your behaviour. The purpose of this hearing is to assess your past behaviour to assess your future behaviour. IRPA is a law in this country and you took drastic steps to remain in this country.

Omar’s overstaying was perceived as his unwillingness to leave the country even though he repeatedly told the IRB member that he would leave Canada. Furthermore, the birth of his daughter (after he had already gone underground) was also seen as a factor that weighed against him. His inability to clearly answer the IRB member’s and Minister’s counsel’s questions was also used to determine his lack of credibility.

**Implications of Credibility as an Assessment Tool**

Credibility, as a theme, emerged numerous times during my observations and interviews.

In the eyes of a few IRB members, a person’s lack of credibility meant that he or she was “lying”. This was particularly salient in Christine’s case, in which the IRB member told me and
the language interpreter “she’s lying” because there were many inconsistencies in her testimony. This view of credibility does not accommodate im/migrants who are unable to provide a clear timeline of events or recollect traumatic or deeply personal episodes in their lives. Consequently, tribunal members draw conclusions regarding a person’s credibility based on these discrepancies.

Another significant issue with the idea of credibility in an administrative or quasi-judicial hearing is that it focuses only on the person concerned and his or her actions. It does not consider the validity or reliability of the evidence (in Christine’s case, her ex-husband’s letter to IRCC) presented by the accuser who is, in most cases, the Minister or CBSA. David Williams, an immigration consultant, expressed his frustration by stating

The problem is...and I’m not accusing every minister’s counsel of lying or maybe this person got it from the wrong source, whatever. But the fact is they don’t have to present things to satisfy the member. I do. I can’t just make a statement. Some of these detention reviews are not fair and also the reasons for the detention are not necessarily documented and I can’t always get the reasons prior to the detention review. I may get it at the detention review but I don’t always get it prior to that. So there is an unfairness. I understand that part of the reason is that they want to expedite these detention reviews and not spend a lot of time (Interview August, 2016).

It is not uncommon for a Minister’s counsel to rely on past submissions and evidence presented at an individual’s previous hearing. All my interview participants indicated that they resented Canada’s adjudication system, which allows IRB members to take evidence presented by Minister’s counsels at face value but demands im/migrants and their lawyers disclose documentary, testimonial and other forms of evidence to establish credibility. This was seen as an unfair and unjust process, especially by the many clients who serve lengthy detention periods.

In addition to these issues, im/migrants’ credibility is also constructed around their fear of returning to their home countries. Like Omar, many im/migrants facing detention reviews point out that they are fearful of returning to their home countries. Therefore, any appeals, applications for deferrals or submissions of Pre-Removal Risk Assessments (PRRA) contribute to an
im/migrant’s lack of credibility. The PRRA can be seen as a Hail Mary pass or a last-ditch opportunity for people to seek protection in Canada by describing the potential risks they believe they would face if they are removed to their home country (Canada 2017a). If approved, the applicant may remain in Canada; however, if their application is refused, they face removal. Despite the presence of this option, immigration tribunals and Minister’s counsels often associate a PRRA application with an impediment to a person’s removal. A person who has submitted a PRRA is seen as unwilling to be removed and therefore any statement to the contrary is perceived by the member as a person’s lack of credibility.

5.6- Reasonableness and Cultural Practices

Notions of credibility and reasonableness operate together in immigration hearings as immigration adjudicators and counsels evaluate a person concerned. These assessments differentiate between “acceptable” and “unacceptable” narratives and testimonies in order to determine the admissibility of an im/migrant. The reasonableness of a person concerned is assessed based on the person’s actions and decision-making process in a particular context. For example, signing a document without reading the content, signing a blank form or failing to hire a lawyer for divorce proceedings is considered to be “unreasonable”. David Williams pointed out that

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\text{Sometimes people making application for PR or for citizenship or for other things sign documents that an official asked them to sign. It could be their counsel; it could be a spouse. It could be anybody. For example: people get divorced and in order to expedite divorces, the easiest thing to say is that they are separated. The easiest grounds is to say that we have been separated for at least a year. So somebody prepares a document saying “you sign this, you get your divorce faster”. Later on, immigration will use that to say that they were separated even before the person came to Canada and this leads to the allegation which is often supported by the minister’s counsel at the ID hearings when they say that “you signed that you were separated even before you came to Canada, so, obviously, this is a marriage of convenience”\ (Interview. August 2016).}
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The perceived unreasonableness of an im/migrant can play a significant role in constructing their credibility. Im/migrants who provide logical, cohesive and plausible stories are seen as more deserving of the state’s compassion. On the other hand, narratives that are vague, illogical or implausible are regarded as “irrational”. This can be seen with Carlos, a citizen of Antigua and Bermuda who overstayed his visa without authorization (Field notes. July 2016). He, along with many other alleged “over-stayers”, was arrested by CBSA officers during a raid at a Holiday Inn hotel. During his hearing, the Minister’s counsel pressed him on his reasons for overstaying and the reasons for his actions. As the hearing progressed, Carlos explained that he had arrived in Canada as a labour migrant to work on a farm. He stated that his employer had promised him forty hours a week. However, he was not given these hours; therefore, he felt that his employer had lied to him. As a result of this, Carlos left his job and began to work “under the table” by doing simple tasks for his friends and senior citizens of his church. During the summation of her evidence, the Minister’s counsel called Carlos’ credibility into question by arguing that, despite requiring fewer hours, his job at the farm paid him more money. Therefore, he was earning less money “under the table”. The Minister’s counsel noted that the absence of reasonableness in Carlos’ decision making contributed to his lack of credibility and his eventual inadmissibility.

In her analysis of asylum cases in the United States, McKinnon argues that the judges’ perception of an im/migrant’s credibility and rationality means that a person “should be able to remember simple facts about their life, such as dates, and be coherent and consistent in citing the facts each time they speak” (2009:213). However, minor discrepancies in testimony are used to “contradict the assumed rationality attributed to [asylum claimants]” (2009:213). Credibility
evaluation through notions of reasonableness focus more attention on narrative coherence than
the content of im/migrants’ narratives.

**Reasonableness and Culture-Based Differences in Narratives**

As mentioned above, Padmini was accused of participating in a marriage of convenience
because she had separated from her Canadian spouse and remarried her first husband. However,
when she was asked to justify her reasoning, she insisted that being a female divorcée in India
carried an extreme stigma. As a result, her children forced her to reconcile with her first husband.

At the end of the hearing, the Minister’s counsel stated that Padmini’s behaviour “is absurd and
unreasonable” (Field notes. August 2016). In response, her legal counsel stated that her case “is
not black and white. Calling it absurd and unreasonable is hardly a proper way to address her
history and her context. The cultural and social context is necessary to see more about the case
here” (Field notes. August 2016). Perceived notions of “unreasonability” cannot effectively
assess defendants whose everyday lives and rationales for decisions are informed by their own
cultural contexts. Calling these decisions “absurd” and “unreasonable” reproduces racialized and
ethnocentric biases that stem from a general lack of understanding of other cultural contexts.

An appreciation of cultural perspectives can enable judges and Minister’s counsels to
assess the reasonableness of im/migrants’ decisions within the context in which they were made.

Sensitivity to cultural practices and stigma can make significant differences in immigration
hearings as accused im/migrants explain their circumstances and rationales for decision making.

Relying solely on Canadian values and standards to cast an im/migrant as irrational and
unreasonable does not acknowledge the relevance of culture-based experiences and actions. A
culturally-informed analysis of her testimony would show that the stigma associated with being a
female divorcée is highly prevalent in many parts of India, Padmini’s homeland. Therefore,
when Padmini claimed that she felt pressured to remarry her first husband she was not being irrational or unreasonable. She was simply explaining her circumstances through her own social and cultural context. By setting aside cultural explanations in favour of “rational” ones, IRB members and Minister’s counsels equate cultural explanations for behaviour with irrationality.

Furthermore, the idea of culture has also been used by IRB members to challenge claims made by im/migrants. During my interview session with David Williams, he stated that

_Sometimes they play it both ways. Sometimes culture is in their favour and sometimes it’s against them. In other words, why would you marry someone who was previously married? That’s contrary to your culture. You know, because the families wouldn’t have arranged a marriage for somebody who was already married. So they use that against the person. And at other times they say “well you only knew this person for two days and you got married”. So, sometimes they play the culture card both ways and that’s part of the game_ (Interview. August 2016).

Using “the culture card both ways” enables adjudicators to cherry-pick cultural ideas and practices that they deem appropriate to include in hearings. This cherry-picking is highly problematic because it allows IRB members to entertain certain cultural explanations only insofar as they support their perspectives. By doing this, they fail to understand nuances that exist within different societies and assume that cultural practices are homogenous within a particular society. Therefore, Padmini’s remarriage to her first husband was suspicious to the Minister’s counsel and the tribunal because it fell outside the adjudicator’s understanding of acceptable Indian cultural practices.

In their current state, immigration law and its practices do not consider the plurality of cultural traditions and the ways in which people’s behaviour and practices are shaped by them. During my interview with Anna Doe, an immigration consultant, she emphasized the significance of cultural considerations in immigration hearings. She stated that

_So many things are going on the courtroom, especially when we are dealing with the IRB, who are dealing with different cultures on a general basis. But I do find that there are
still so often misconstrued conceptions of what a witness is trying to say or what an appellant is trying to say because they are expressing themselves very differently. There are guidelines...for instance, there are specific gender guidelines and I don’t think there are cultural guidelines per se but there are some federal court decisions that say that you have to consider the culture, especially in humanitarian cases (October 2016).

In his analysis of immigration hearings using video conferencing, Federman (2006) suggest that an im/migrant’s testimony, along with non-verbal cues such as hand gestures, level of eye contact, silences and postures, vary from culture to culture and are subject to unconscious misinterpretation by people who are unfamiliar with “the communicative socializations of another culture” (Federman 2006:437). These misinterpretations between immigration adjudicators as well as accused im/migrants can result in negative determinations of the latter’s credibility. Although IRB members and Minister’s counsels are not expected to understand the nuances of various cultures, they must be able to understand that testimonies and narratives presented by accused im/migrants are dependent on their cultural contexts. However, when these explanations are considered to be irrational or lacking in credibility, immigration members and counsels commit a huge disservice against im/migrants.

5.7- Conclusion

In this chapter, I have attempted to bring together some significant themes and ideas that I encountered in my ethnographic research. These interrelated themes, such as morality, credibility, deservingness and discretion, play crucial roles in the construction of an im/migrant as “illegal”. Moral evaluations allow the state to classify some im/migrants as “desirable” and others as “undesirable”. By using the example of Chinese im/migration in Canada, I highlighted the ways in which the language of (im) morality was heavily used to control and exclude these im/migrants from the social and political spheres of Canada. Today, im/migrants from Somalia and other similar countries are perceived by immigration authorities as “unassimilable criminals”
who take advantage of Canada’s generosity. Therefore, these im/migrants and their applications are strictly scrutinized. In immigration hearings, this strict scrutiny can lead to findings of inadmissibility if testimonies and narratives of im/migrants are perceived as irrational or lacking in credibility. These assessments, in turn, allow immigration adjudicators to make decisions regarding im/migrants’ deservingness of assistance, humanitarian aid or penalization. The ideas and themes presented in this chapter enable us to think about the ways in which citizenship status, like race, class and gender, is a socially constructed dimension. The presence or loss of this status is contingent upon a myriad of socio-political and juridical processes that are rooted in larger notions of sovereignty, nation-building and transnational movement.

This chapter also highlighted the ways in which ideas such as deservingness and penalization are highly entrench in immigration hearings as CBSA officers and IRB members evaluate the genuineness of im/migrants’ narratives and claims. Studying these ideas in unison can enable us to understand the retributive tendency of Canada’s immigration system, in which im/migrants who violate laws are subjected to lengthy periods of detention and removal. An exploration of immigration penalties can also enable us to observe the moral justifications used by immigration authorities in their decisions. Throughout this chapter, I have also drawn upon various cases (from my observations as well as from archived files) to highlight the ways in which these themes operate in admissibility hearings and detention reviews. In addition to ideas of morality, deservingness, discretion and credibility, I have also discussed the role of social actors in the illegalization of im/migrants. Each of these actors, such as IRB members, legal counsels and language interpreters, reinforce these ideas through their every role and interaction in immigration hearings. Each actor operates under their own belief systems and biases, and these factors can result in serious consequences for im/migrants who expect a fair trial. These
biases can have a lasting impact on the lives of accused im/migrants such as Padmini and Christine, who are cast as immoral or suspect.

In addition to these themes, I have discussed the ways in which reasonableness and culture are perceived to be opposing ideas in immigration hearings. Culturally-based narratives provided by accused im/migrants are seen as irrational and unreasonable by Minister’s counsels and IRB members. Furthermore, adjudicators assume homogeneity in the cultural practices of individual societies; this assumption makes individual testimonies that conflict with this worldview irrational and lacking in credibility. Actors such as counsels and interpreters occupy powerful positions in the context of immigration hearings, as their assessments and interpretations contribute to the ways in which an IRB member perceives im/migrants who appear before them. Miscommunications and misinterpretations can also result in the IRB member perceiving the im/migrant negatively. This negative perception can have significant ramifications for the accused person, who faces the threat of removal from Canada.
Chapter 6: Conclusion

In September 2016, Alvin Brown, a Jamaican im/migrant and long-time resident of Canada, filed an application to the Federal Court questioning the constitutionality of his five-year detention. Whereas Brown’s lawyers and humanitarian organizations have criticized Canada’s practice of imposing lengthy detention, lawyers for the federal government argue that these detentions are necessary to protect the public from detainees who are declared a danger to the public or are unlikely to present themselves for removal (Kennedy 2017). Brown was detained in a maximum-security detention facility because he was deemed to be a danger to the public as a result of his multiple drug- and weapons-related convictions. His detention in Canada lasted for five years, after which he was deported to Jamaica. The federal government stated that Brown’s lengthy detention was a result of his own failure to cooperate with the CBSA to obtain proper travel documents that would allow for his safe removal from Canada.

Within the scope of Canada’s immigration system, Brown’s case does not stand alone. Immigrants who are deemed to be a danger to the public or unlikely to appear for removal are placed in detention centres where they are cut off from access to proper legal counsel or are unable to obtain information regarding the status of their cases. This thesis set out to explore the ways in which im/migrants are illegalized in Canada and how immigration hearings contribute to this process of illegalization. Throughout this thesis, I have identified complex ideas, concepts and processes that operate together to construct an im/migrant as “illegal”. In my literature review, I elaborated on ideas of sovereignty, citizenship, border control and legal language that set the context within which immigration hearings are held. In the subsequent chapters, I used excerpts from individual hearings, in-depth interviews with immigration consultants and archived immigration cases to draw attention to the ways in which these notions operate...
alongside ideas of (im)morality, deservingness, credibility, discretion and reasonableness to produce im/migrant illegalization. Illegalization, then, is the production of socio-political and juridical conditions and discourses that reinforce certain bounded ideas of citizenship and sovereignty. However, increasing arrival and settlement of (documented and undocumented) im/migrants and refugees challenge these deeply held notions. As a result, we see increasing policing, surveillance and enforcement strategies at external territorial borders and internal spaces by immigration authorities, institutions and private individuals. In recent years, the hyper-surveillance of im/migrants has gained momentum as conservative laws, policies and agendas are designed to target individuals who are perceived to be “illegally” residing in the country.

This thesis is the product of three months’ fieldwork at an immigration holding centre where I attended numerous detention reviews and admissibility hearings. Each of these types of hearings constructed accused im/migrants as “illegal” differently. In admissibility hearings, im/migrants are perceived as irrational, unreasonable and disrespectful violators of Canada’s laws. They are also seen as lacking in morality and credibility. By stripping im/migrants of their humanity, the Minister’s counsels and IRB members point out that accused individuals are undeserving of Canada’s humanitarianism. They are thus declared to be inadmissible, thereby losing their “legal” residency status and any rights and freedoms that this status provided. In a detention review, the accused im/migrant’s lack of credibility is reiterated, and their legal violations are highlighted. Here, the Minister’s counsels and IRB members blame the im/migrant for their own detention and potential deportation. In doing this, they highlight the im/migrant’s lack of moral principles and argue that this contributes to their deservingness of penalization.

Through an analysis of laws, policies and practices, we can track the ways in which legal and juridical changes re-define and re-categorize im/migrants, thus making them more
susceptible to inadmissibility and deportation. Situating this thesis within the framework of legal anthropology is also useful in understanding the ways in which the micro-interactions that occur in an immigration hearing are reflective of larger dimensions of state power and sovereignty. Through this framework, we can observe that laws and legal structures are not neutral; they do not provide an impartial arena in which people can meet and resolve disputes (Starr and Collier 1989: 7). Instead, they reinforce power asymmetries that subordinate and oppress certain groups of people while allowing political elites to create and pass new and increasingly repressive laws. The theoretical framework of legal anthropology is crucial in understanding the relationships between international law, transnational agreements, conventions and treaties, and how they influence the immigration law and deportation practices of individual countries.

In this ethnographic research, I have attempted to draw attention to the real experiences of im/migrants who were accused of violating criminal and immigration laws in Canada. Therefore, including their voices and narratives was important to show the very real way in which they were dehumanized, humiliated and illegalized in immigration hearings. However, these excerpts, while significant from the perspective of im/migrants and their legal representatives, do not fully capture the turbulent reality of the politics of immigration administration in Canada. This thesis would have benefitted greatly from more input from IRB members who adjudicate hearings. This perspective can be essential in understanding the challenges and constraints under which they operate. It can also be useful in obtaining a more balanced understanding of immigration adjudication in Canada.

Research surrounding immigration and deportation has oftentimes seemed disparate in that it either focuses on the phenomenon of crossing borders or on the process of removing a person from a country. By identifying admissibility hearings and detention reviews as important
steps along the way, I attempted to describe the process through which im/migrants lose their legal residency status and end up being removed from Canada. In this way, we can obtain a broader picture of the politics of transnational migration and understand its significance in the construction of illegalization at the local level.

During the last few years, the debate surrounding individual rights and freedoms, international conventions and national security has been growing. Along with this, instances of violence motivated by nationalistic and, more frequently, xenophobic attitudes have been reported by law enforcement as well as news outlets. In the light of increased occurrences of violence, anti-im/migrant propaganda and political rhetoric that equates open borders with decreased national security, we must look towards the law and legal practices that have allowed various forms of hierarchical relationships to reproduce. Of course, the law is hardly the sole culprit, as it is written, passed and enacted by social structures and actors that are designed to perpetuate existing unequal and racialized processes that marginalize specific groups of people.
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APPENDIX A: A Visual Breakdown of Immigration Hearings

Image 1: Admissibility process in Canada (Immigration and Refugee Board, 2006)

Image 2: Detention Review process in Canada
APPENDIX B

Interview Guide:

1. How long have you worked in the area of immigration?
2. What is your role as an immigration lawyer/consultant?
3. Can you tell me a little about the kinds of people your program (or you) assists?
4. How would you define ‘illegal’ immigrants?
   a. What does “illegal” mean to you within the context of immigration?
5. What does it mean to be undocumented in Canada?
   a. In your experiences, how are undocumented migrants policed and controlled in Canada?
6. Can you tell me a little bit about barriers that prevent you from assisting undocumented migrants or migrants without status?
7. What is your reaction to advocacy organizations who carry the slogan “no one is illegal”?
8. Can you tell me a little bit about your experiences with immigrants who have undergone detention hearings or admissibility hearings?
9. Have you attended these hearings?
   a. Can you tell me a little about some of the challenges you or your client face at these hearings?
10. What is your opinion of the kinds of “offences” that can make a person “inadmissible” to Canada?
11. The IRB uses terms such as “credibility” or “in a balance of probabilities” in order to make its assessments? What is your opinion of such phrases when it comes to detention and admissibility hearings?
12. How does your organization coach detainees or potential detainees before their hearing?

13. In your opinion, what constitutes a potential alternative to detention especially for those who are awaiting deportation as a result of criminal activity?

14. What does criminality or a criminal conviction mean for someone who is detained?
   a. Even in terms of serious offences, I notice that there is a range with regards to the severity of the crime. What is your opinion of the criminality or serious criminality determination?

15. How does detention become indefinite? What are some of the processes that result in an indefinite detention?

16. How many clients have you represented at immigration hearings? How many have been released? What have been the common circumstances favoring release?

17. What is your opinion of the “alternative to detention”?

18. I understand that the Toronto Bail Program can be an alternative to detention. What is your opinion of this program?

19. In your experience, how have members generally treated detainees during detention reviews?

20. How do people end up facing an admissibility hearing? Can you break down the process for me please?

21. Many IRB members are under the opinion that activists organizations, the press, and private individuals have passed on specific agendas and lies that have inculpated/blamed IRB members for long term detention. How do you feel about this opinion?
APPENDIX C

Documenting Legal Exclusion: An Exploration of Detention Hearings and the Penalization of “Illegal” Migrants

Information Letter and Consent Form

You are invited to participate in a thesis-based research project that explores ways in which existing ideas of citizenship shape the experiences and lives of undocumented or ‘illegal’ migrants. This letter is designed to provide you with all the information you require in order for you to make an informed decision about participating in this study.

The Purpose of the Research

My research will draw attention to the manner in which detention and admissibility hearings are shaped by existing ideas of what it means to be ‘legally’ acceptable in Canada. I argue that migrants, especially asylum seekers, refugees and other undocumented people, are automatically considered illegal until proven otherwise. I also intend to understand ways in which detention hearings and decisions to detain or deport a migrant are closely related to notions of ‘citizenship’.

The Research Team

Principal Investigator: Dr. Belinda Leach, Department of Sociology and Anthropology, University of Guelph bleach@uoguelph.ca, 519-824-4120 ext. 52699

Student Researcher: Merin Valiyaparambil- Master’s Student, Department of Sociology and Anthropology, University of Guelph, mvaliyap@uoguelph.ca, 905-598-4838

The Interview Session and Your Role

If you choose to participate in this study, we will meet at a public place of your choosing. During the interview session, we will discuss your experiences working with an advocacy organization that provides assistance or services for vulnerable groups of people. The interview will last for approximately 1 hour. Over the course of our discussion, I will take hand-written notes. I would also like to audio record this interview, however, if this makes you uncomfortable, I will not record our session. The interview will consist of several open-ended questions. You have the right to skip any question that makes you uncomfortable. Your decision to participate or not participate will not affect your relationship with your organization.

Potential Risks and Discomforts

This research project will not put you in any more risk than that you encounter in your daily life. Some questions, although not designed as such, may make you uncomfortable. This project will not involve any sensitive or incriminating questions that could place you at risk of harm. Just as I had mentioned earlier, if you wish to skip any questions, you may do so. You can also withdraw from this study at any time.

Potential Benefits to Participants and/or to Society

This research and the interview sessions will provide you with an opportunity to have your experiences and voices heard. You are essential in shaping the context and analysis of this research study. As front-line workers, you provide services directly to undocumented migrants, detainees as well as other groups of people with marginal identities. Therefore, this research will enable me to situate your voices within the field of anthropological work. This can lead to short or long-term strategies that can potentially benefit your advocacy work within your organizations. I will also share summaries of my research findings and with your organization so
that new avenues for advocacy work can be identified. These summaries will not contain any raw data that was obtained during the research process. If you are interested in obtaining a summary of the research findings, please contact me.

This research will also be useful for a larger discussion surrounding Canada’s immigration system and its treatment of people who are considered undesirable to the country’s social and political fabric. It will also allow for alternate definitions and understanding of “illegal” in reference to migrants. It can also contribute to social policies and strategies that specifically addresses the needs of Canada’s recognized and unrecognized migrant population.

**Payment for Participation**

Although you will not get direct payment, you will receive a $10.00 Tim Hortons’ gift card as a form of gratitude for your participation.

**Confidentiality**

Every effort will be made to ensure the confidentiality of information you provide. This includes any identifying information such as your name, age or affiliation to any organizations. A pseudonym will be used to identify you in my thesis data as well as any report of findings. All audio recordings of interviews will deleted promptly after transcription. Additionally, recordings will be stored in an encrypted device that can only be accessed by me. Only I will have access to the data over the duration of the research project. Also, the data obtained from you will be stored in an encrypted, password protected computer. Please remember that at that all signed consent forms and identifying information will be confidentially destroyed at the end of the project in June 2017. In addition, your identity will not be disclosed in any published studies.

**Participation and Withdrawal**

Participation in this study is voluntary. You may refuse to participate, refuse to answer any questions or withdraw from the study without any penalty. If you decide to withdraw from the study, you can request to have your data withdrawn. However, you cannot withdraw after the interview is complete, as I am not linking names to the data.

**Research Results**

The results of the study will be included in my thesis paper in order to complete my Master’s degree in Anthropology. The study findings may also be published in separate papers, journals, or presented at a conference. Verbatim quotes from interview sessions maybe used in these research papers or other published works. These statements and quotes will not carry any information that can identify you.

**How can my research contribute to your organization and any related movements?**

One of the most relevant attributes of my research study is its challenges to standard definitions and notions of ‘illegal’ within the context of immigration. Addressing ways in which people become administratively ‘illegal’ can be useful in understanding the severe impact of this social process. Due to their status, ‘illegal’ migrants become socially and legally alienated and cast into spaces, such as detention centers, where they face extreme neglect and abjection, and in some cases, death. Highlighting these factors can be significant in organizing social movements and presenting cases to the federal government for significant changes to be made to our current immigration system. I believe that this is a major step for demanding social justice.

☐ I am providing my consent for audio recording this interview.
Signature of Participant ________________________________
Witness ________________________________
Date

This project has been reviewed by the University of Guelph Research Ethics Board for compliance with federal guidelines for research involving human participants. If you have any questions regarding your rights and welfare as a research participant in this study (REB #16MY026), please contact:
Director, Research Ethics; University of Guelph; reb@uoguelph.ca; 519-824-4120 ext. 56606.
You do not waive any legal rights by agreeing to take part in this study.