

Inadmissibility A34, A35 and A37

International Network, IRCC, RIRT (2023)

- A33 *Rules of interpretation*
- A34 Security
- A35 Human or international rights violations
- A36 Criminality
- A37 Organized criminality
- A38 Health grounds
- A39 Financial reasons
- A40 Misrepresentation
- A41 Non-compliance with Act
- A42 Inadmissible family member

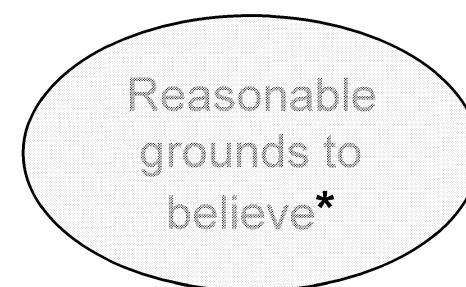
A33 *Rules of interpretation*

A34 Security

A35 Human or international rights violations

A36 Criminality

A37 Organized criminality



** unless otherwise provided*

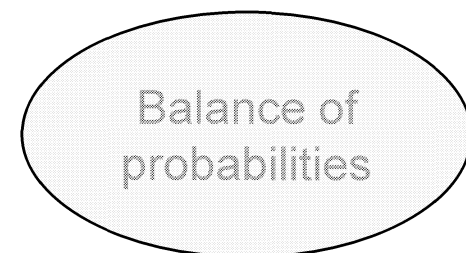
A38 Health grounds

A39 Financial reasons

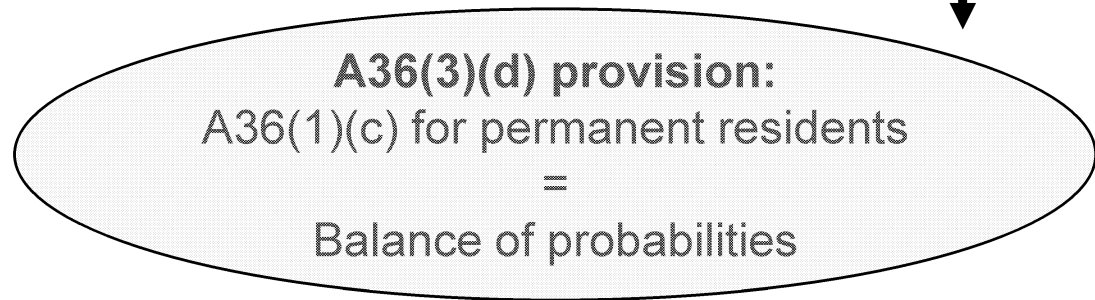
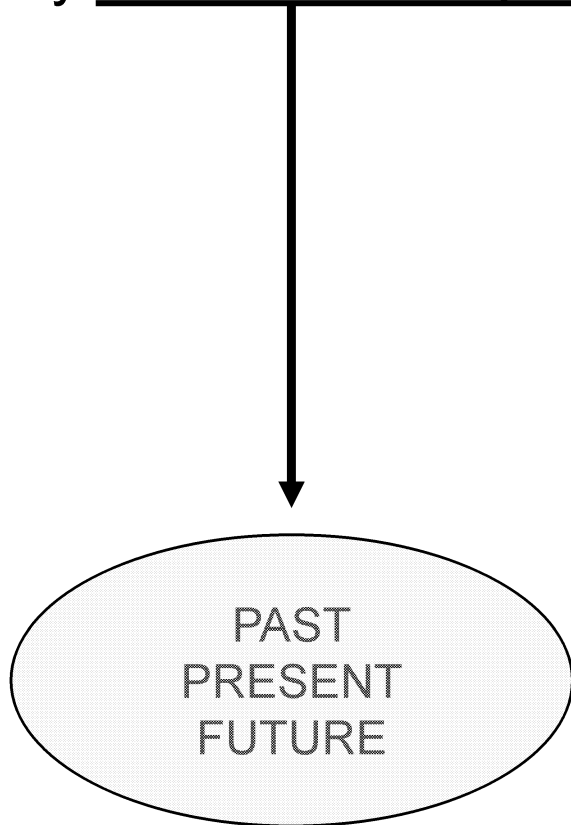
A40 Misrepresentation

A41 Non-compliance with Act

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A33 The facts that constitute inadmissibility under sections **34 to 37** include facts arising from omissions and, unless otherwise provided, include facts for which there are **reasonable grounds to believe** that they have occurred, are occurring or may occur.



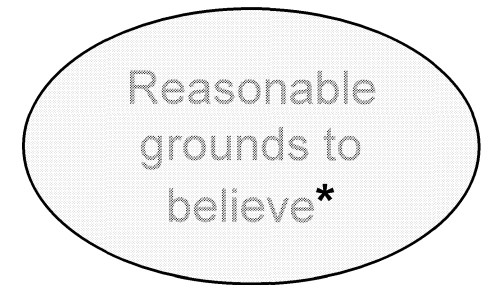
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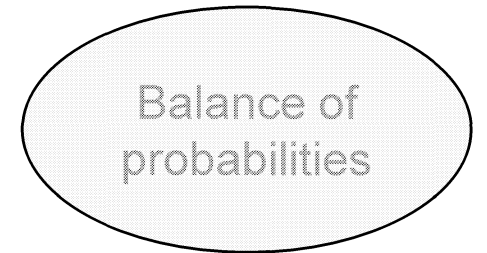
A38 Health grounds

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A11 (1) A foreign national must, before entering Canada, apply to an officer for a visa or for any other document required by the regulations. The visa or document may be issued if, following an examination, **the officer is satisfied that the foreign national is not inadmissible** and meets the requirements of this Act.

Standard of proof A11: Officer must be satisfied on balance of probabilities...

Based on the recent case of *Kumarasekaram*, I find that the Applicant is incorrect in arguing that there is no jurisprudence in support of rejecting an application on the basis of section 11(1). I am persuaded that an Officer can reject an application without a specific finding of inadmissibility, on the grounds that the failure of the Applicant to provide a complete picture of his background, that Officer cannot actually determine that the Applicant is “not inadmissible”. *Ramalingam v. Canada* 2011 FC 278

***However, for a refusal on a specific A34-35-37 ground:
must be satisfied on RGB***



A34 Security

A34(1) A permanent resident or a foreign national is inadmissible on **security grounds** for

- (a) **engaging** in an act of espionage that is against Canada or that is contrary to Canada's interests;
- (b) **engaging** in or instigating the subversion by force of any government;
- (b.1) **engaging** in an act of subversion against a democratic government, institution or process as they are understood in Canada;
- (c) **engaging** in terrorism;
- (d) **being** a danger to the security of Canada;
- (e) **engaging** in acts of violence that would or might endanger the lives or safety of persons in Canada; or
- (f) **being** a member of an organization that there are reasonable grounds to believe engages, has engaged or will engage in acts referred to in paragraph (a), (b), (b.1) or (c).

A34(1)(a)

A34 (1) A permanent resident or a foreign national is inadmissible on security grounds for
(a) engaging in an act of espionage that is against Canada or that is contrary to Canada's interests;

Engaging in:

the person did it. (James Bond but not Money Penny)

Espionage:

a method of information gathering by spying, by acting in a covert way or surreptitiously (ENF2/OP18 manual)

Espionage "against Canada":

means acts of espionage conducted by a foreign state or organization in Canada and/or abroad against any Canadian public or private entity on behalf of a foreign government. It can also include the activities of a foreign non-state organization against the Government of Canada. (ENF2/OP18)

Contrary to Canada's interests:

(fluid concept)

The use of Canadian territory for espionage; against Canada's allies that would adversely affect the safety, security or prosperity of Canada.

A34(1)(b) and A34(1)(b.1)

A34 (1) A permanent resident or a foreign national is inadmissible on security grounds for
(b) engaging in or instigating the subversion by force of any government

Subversion:

Najafi v Canada, 2014 FCA 462: “the act or process of overthrowing the government”.

Qu v Canada, 2001 FCA 399: “accomplishing change by illicit means or for improper purposes”

Al-Yamani v Canada, 2000, FCJ No 317: “two essential elements: a clandestine or deceptive element and, more importantly, an element of undermining from within.”

By force :

intending to overthrow government through "coercion or compulsion by violent means, coercion or compulsion by threats to use violent means, and...reasonably perceived potential for the use of coercion by violent means

Any government:

Any means any

A34 (1) A permanent resident or a foreign national is inadmissible on security grounds for

(b.1) engaging in an act of subversion against a democratic government, institution or process as they are understood in Canada;

democratic government, institution or process :

Interpreted broadly to include not only the political institutions of a state, but also any “structured group of individuals established in accordance with democratic principles who are engaged in lawful activities in Canada of a political, religious, social or economic nature

A34(1)(c)

A34 (1) A permanent resident or a foreign national is inadmissible on security grounds for
(c) engaging in terrorism;

Engaging = doing it

Terrorism?

Suresh v. Canada (Citizenship and Immigration), 2002 SCC 1

[...] “terrorism” [...] includes any act intended to cause death or bodily injury to a civilian or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its very nature or context, is to intimidate a population, or to compel a government or an international organization to do or abstain from doing any act.

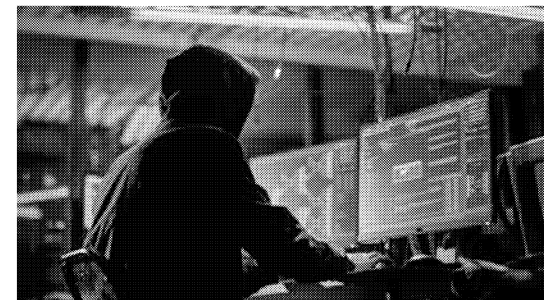
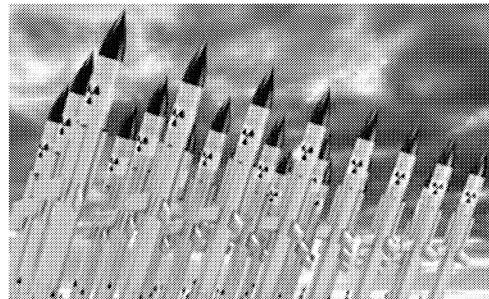
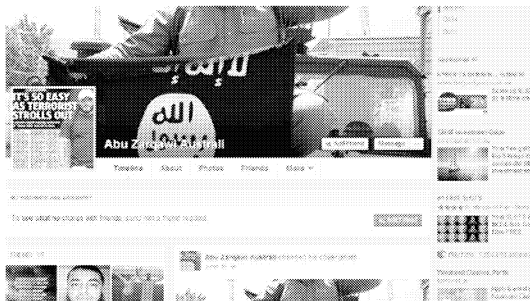
See also definition of “terrorist activity” under CCC section 83.01(1)

A34(1)(d)

A34(1) A permanent resident or a foreign national is inadmissible on security grounds for
 (d) being a danger to the security of Canada;

Suresh v. Canada (Citizenship and Immigration), 2002 SCC 1

[...] The term “danger to the security of Canada” in deportation legislation must be given a **fair, large and liberal interpretation** in accordance with international norms. A person constitutes a “danger to the security of Canada” if he or she poses a **serious threat** to the security of Canada, whether **direct or indirect**, bearing in mind the fact that the security of one country is often dependent on the security of other nations. The threat must be “serious”, grounded on objectively reasonable suspicion based on evidence, and involving substantial threatened harm.



s.16(1)(b)

A34(1)(e)

A34(1) A permanent resident or a foreign national is inadmissible on security grounds for
(e) engaging in acts of violence that would or might endanger the lives or safety of persons in Canada;

ENF 1 – examples of evidence for A34(1)(e)

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s.16(1)(b)

s.16(1)(c)

A34(1)(f)

A34(1) A permanent resident or a foreign national is inadmissible on **security grounds** for (f) being a **member** of an **organization** that there are reasonable grounds to believe engages, has engaged or will engage in acts referred to in paragraph (a), (b), (b.1) or (c):

Organization :

any partnership, corporation, association or other legal entity and any union or group of individuals associated in fact although not a legal entity

In an organization,

-
-
-
-

s.16(1)(b)

s.16(1)(c)

A34(1)(f)

A34(1) A permanent resident or a foreign national is inadmissible on **security grounds** for
(f) being a **member** of an **organization** that there are reasonable grounds to believe engages, has engaged or will engage in acts referred to in paragraph (a), (b), (b.1) or (c):

Being a member :

...for the application of A34(1)f for acts referred to in (c):

*{...} for being a **member** of an **organization** that there are reasonable grounds to believe engages, has engaged or will engage in acts referred to in paragraph (a), (b), (b.1) or (c)*

Public Safety Canada - Listed entities

Canadian Criminal Code 83.05:

Establishment of list

83.05 (1) The Governor in Council may, by regulation, establish a list on which the Governor in Council may place any entity if, on the recommendation of the Minister of Public Safety and Emergency Preparedness, the Governor in Council is satisfied that there are reasonable grounds to believe that

(a) the entity has knowingly carried out, attempted to carry out, participated in or facilitated a terrorist activity; or

(b) the entity has knowingly acted on behalf of, at the direction of or in association with an entity referred to in paragraph (a).

Counter-Terrorism

Countering-terrorism Strategy

Canada Centre for Community Engagement and Prevention of Violence

Justice for Victims of Terrorism

Kanishka Project

Listed Terrorist Entities

Remembrance

Passenger Protect Program

Security Certificates

Bias Sensitivity, Diversity and Identity in National Security

Information Sharing for National Security

Strategic Coordination Centre on Information Sharing

Connecting with Canadian Communities

Counter Proliferation

Safeguarding Science

Critical Infrastructure

Critical Infrastructure Gateway

Critical Infrastructure Partners

Canada-United States

Currently listed entities

This webpage has been prepared for reference only. Users should consult the Acts as passed by Parliament, which are published in the "Assented to" Acts service, Part III of the [Canada Gazette](#) and the annual Statutes of Canada. Users should also consult the regulations, as registered by the Clerk of the Privy Council and published in Part II of the [Canada Gazette](#), available in most public libraries.

Several of the listed entities are known under different names. As well, some spellings of names may differ. Click on the name for a description of the entity, all different names and spellings, and the date when the entity was added to the list.

[Currently listed entities in XML format](#)

- [Abdallah Azzam Brigades \(AAB\)](#)
- [Abu Nidal Organization \(ANO\)](#)
- [Abu Sayyaf Group \(ASG\)](#)
- [Al-Ashlar Brigades \(AAB\)](#)
- [Al-Murabitoun](#)
- [Al-Muwad'un Bil Dima](#)
- [Al Qaida](#)
- [Al Qaida in the Arabian Peninsula \(AQAP\)](#)
- [Al Qaida in the Indian Subcontinent \(AQIS\)](#)
- [Al Qaida in the Islamic Maghreb \(AQIM\)](#)
- [Al Shabaab](#)
- [Al-Ansa Martyrs' Brigade \(AAMB\)](#)
- [Al-Gama'a al-Islamiyya \(AGAI\)](#)
- [Ansar al-Islam \(AI\)](#)
- [Ansar Dine](#)
- [Armed Islamic Group \(GIA\)](#)
- [Asbat Al-Ansar \(AAA\) \(The League of Partisans\)](#)
- [Atomwaffen Division](#)
- [Aum Shinrikyo](#)
- [Blood & Honour \(B&H\)](#)
- [Babbar Khalsa International \(BKI\)](#)
- [Boko Haram](#)
- [Caucasus Emirate](#)
- [Combat 18 \(C18\)](#)
- [Ejército de Liberación Nacional \(ELN\)](#)
- [Euskadi Ta Askatasuna \(ETA\)](#)
- [Fatemiyoun Division \(FD\)](#)
- [Front de Libération du Macina](#)
- [Fuerzas Armadas Revolucionarias de Colombia \(FARC\)](#)
- [Gulbuddin Hekmatyar](#)
- [Gulbuddin Hekmatyar's Faction of the Hezb-e Islami, Hezb-e Islami Gulbuddin \(HIG\)](#)
- [Hamas \(Harakat Al-Muqawama Al-Islamiya\) \(Islamic Resistance Movement\)](#)
- [Haqqani Network](#)
- [Harakat al-Sabireen \(HaS\)](#)
- [Harakat ul-Mujahidin \(HuM\)](#)
- [HASAM \(Harakat Sawa'd Misr\)](#)
- [Hay'at Tahrir al-Sham](#)
- [Hizballah](#)

Currently listed entities
(Public Safety Canada website)



A35 Human or International Rights Violations

A35(1)(c),(d) and (e)

A35 (1) A permanent resident or a foreign national is inadmissible on grounds of violating human or international rights for

(c) **being** a person, other than a permanent resident, whose entry into or stay in Canada is restricted pursuant to a decision, resolution or measure of an international organization of states or association of states, of which Canada is a member, that imposes sanctions on a country against which Canada has imposed or has agreed to impose sanctions in concert with that organization or association;

(d) **being** a person, other than a permanent resident, who is currently the subject of an order or regulation made under section 4 of the Special Economic Measures Act on the grounds that any of the circumstances described in paragraph 4(1.1)(c) or (d) of that Act has occurred; or

(e) **being** a person, other than a permanent resident, who is currently the subject of an order or regulation made under section 4 of the Justice for Victims of Corrupt Foreign Officials Act (Sergei Magnitsky Law).

A35(1)(c),(d) and (e) Example:

Justice Laws Website

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Special Economic Measures Act (S.C. 1992, c. 17)
 Full Document: [HTML](#) (Accessibility Buttons available) | [XML](#) [34 KB] | [PDF](#) [169 KB]
 ⓘ Act current to 2021-03-10 and last amended on 2017-10-19. [Previous Versions](#)
 Notes:

- See coming into force provision and notes, where applicable.
- Shaded provisions are not in force. [Help](#)

Search within this Act:

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Regulations made under this Act

- [Regulations Implementing the United Nations Resolutions and Imposing Special Economic Measures \(SOR/2011-51\)](#)
- [Special Economic Measures \(Belarus\) Permit Authorization Order \(SOR/2020-215\)](#)
- [Special Economic Measures \(Belarus\) Regulations \(SOR/2020-214\)](#)
- [Special Economic Measures \(Burma\) Permit Authorization Order \(SOR/2007-266\)](#)
- [Special Economic Measures \(Burma\) Regulations \(SOR/2007-265\)](#)
- [Special Economic Measures \(Democratic People's Republic of Korea\) Permit Authorization Order \(SOR/2011-165\)](#)
- [Special Economic Measures \(Democratic People's Republic of Korea\) Regulations \(SOR/2011-166\)](#)
- [Special Economic Measures \(Iran\) Permit Authorization Order \(SOR/2010-166\)](#)
- [Special Economic Measures \(Iran\) Regulations \(SOR/2010-165\)](#)
- [Special Economic Measures \(Nicaragua\) Permit Authorization Order \(SOR/2019-233\)](#)
- [Special Economic Measures \(Nicaragua\) Regulations \(SOR/2019-232\)](#)
- [Special Economic Measures \(Russia\) Permit Authorization Order \(SOR/2014-59\)](#)
- [Special Economic Measures \(Russia\) Regulations \(SOR/2014-58\)](#)
- [Special Economic Measures \(South Sudan\) Permit Authorization Order \(SOR/2014-22\)](#)
- [Special Economic Measures \(South Sudan\) Regulations \(SOR/2014-235\)](#)
- [Special Economic Measures \(Syria\) Permit Authorization Order \(SOR/2014-10\)](#)
- [Special Economic Measures \(Syria\) Regulations \(SOR/2011-114\)](#)
- [Special Economic Measures \(Ukraine\) Permit Authorization Order \(SOR/2014-61\)](#)
- [Special Economic Measures \(Ukraine\) Regulations \(SOR/2014-60\)](#)
- [Special Economic Measures \(Venezuela\) Permit Authorization Order \(SOR/2017-205\)](#)
- [Special Economic Measures \(Venezuela\) Regulations \(SOR/2017-204\)](#)
- [Special Economic Measures \(Zimbabwe\) Permit Authorization Order \(SOR/2008-249\)](#)
- [Special Economic Measures \(Zimbabwe\) Regulations \(SOR/2008-248\)](#)

Repealed regulations made under this Act

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Special Economic Measures (Venezuela) Regulations (SOR/2017-204)
 Full Document: [HTML](#) (Accessibility Buttons available) | [XML](#) [140 KB] | [PDF](#) [144 KB]
 ⓘ Regulations are current to 2021-03-10 and last amended on 2019-08-25. [Previous Versions](#)

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SCHEDULE

Section 2 and subsections 8(1) and (2)

Persons

- 1 Nicolás MADURO MOROS
- 2 Tibisay LUCENA RAMÍREZ
- 3 Elías José JAUA MILANO
- 4 Tareck Zaidan EL AÍSSAMI MADDAH
- 5 Tarek Williams SAAB HALABI
- 6 Néstor Luis REVEROL TORRES
- 7 Roy Antonio María CHADERTON MATOS
- 8 María Iris VARELA RANGEL
- 9 Pedro Miguel CARREÑO ESCOBAR
- 10 Diosdado CABELLO RONDÓN
- 11 Susana Virginia BARREIROS RODRÍGUEZ
- 12 Freddy Alirio BERNAL ROSALES
- 13 Delcy Eloína RODRÍGUEZ GÓMEZ
- 14 Tania D'AMELIO CARDIET
- 15 Aristóbulo ISTÚRIZ ALMEIDA
- 16 Jorge Jesús RODRÍGUEZ GÓMEZ
- 17 Francisco José AMELIACH ORTA
- 18 Carlos Alfredo PÉREZ AMPUEDA
- 19 Sergio José RIVERO MARCANO
- 20 Jesús Rafael SUÁREZ CHOURIO
- 21 Carmen Teresa MELÉNDEZ RIVAS
- 22 Bladimir Humberto LUGO ARMAS
- 23 Gustavo Enrique GONZÁLEZ LÓPEZ
- 24 Elvis Eduardo HIDROBO AMOROSO
- 25 Ramnigio CEBALLOS ICHASO
- 26 Antonio José BENAVIDES TORRES

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A35(2) Clarification

A35 (2) For greater certainty, despite section 33, a person who ceases being the subject of an order or regulation referred to in paragraph (1)(d) or (e) is no longer inadmissible under that paragraph.

A35 Human or International Rights Violations

A35(1)(c),(d) and (e)

A35 (1) A permanent resident or a foreign national is inadmissible on grounds of violating human or international rights for

(c) being a person, other than a permanent resident, whose entry into or stay in Canada is restricted pursuant to a decision, resolution or measure of an international organization of states or association of states, of which Canada is a member, that imposes sanctions on a country against which Canada has imposed or has agreed to impose sanctions in concert with that organization or association;

(c.1) having engaged in conduct that would, in the opinion of the Minister, constitute an offence under section 240.1 of the Criminal Code;

CCC 240.1
Trafficking in
Human Organs?
Awaiting instructions.

(d) being a person, other than a permanent resident, who is currently the subject of an order or regulation made under section 4 of the Special Economic Measures Act on the grounds that any of the circumstances described in paragraph 4(1.1)(c) or (d) of that Act has occurred; or

(e) being a person, other than a permanent resident, who is currently the subject of an order or regulation made under section 4 of the Justice for Victims of Corrupt Foreign Officials Act (Sergei Magnitsky Law).

A35(1)(a)

A35 (1) A permanent resident or a foreign national is inadmissible on grounds of **violating human or international rights** for

(a) committing an act outside Canada that constitutes an offence referred to in sections 4 to 7 of the *Crimes Against Humanity and War Crimes Act*;

A35(1)(a)

Committing?

Mode of commission/liability for the crimes

Rome Statute of the International Criminal Court

Individual criminal responsibility (Article 25)

- Commits such a crime (25(3)(a)) (direct/essential contribution)
- Orders, solicits or induces the commission of such a crime (25(3)(b)) (essential contribution)
- Aids, abets or otherwise assists in its commission (25(3)(c)) (substantial contribution)
- In any other way contributes to the commission - complicity (25(3)(d)) (significant, knowing and voluntary contribution)
- Responsibility of commanders and other superiors (28)

A35(1)(a) Contribution-Based Complicity - *Ezokola*

OB 551-A – Supreme Court of Canada decision affecting the application of exclusion clause 1F(a) of the Refugee Convention, and the application of paragraph 35(1)(a) of the Immigration and Refugee Protection Act (IRPA)

Contribution-based test to assess complicity:

Overarching test: reasonable grounds to believe that a person **voluntarily** made a **knowing** and **significant contribution** to the crimes or criminal purpose of a group involved in international crimes.

Factors used to apply the test:

- the size and nature of the organization;
- the part of the organization with which the individual was most directly concerned;
- the individual's duties and activities within the organization;
- the individual's position or rank in the organization;
- the length of time the individual was in the organization, particularly after acquiring knowledge of the group's crime or criminal purpose; and
- the method by which the individual was recruited and the individual's opportunity to leave the organization.

Ezokola v. Canada (Citizenship and Immigration), 2013 SCC 40

See *Niyungeko v. Canada* IMM-1469-18 : Incorrect legal test applied

A35(1)(a)

Committing WHAT exactly?

Genocide, etc., committed outside Canada

6 (1) Every person who, either before or after the coming into force of this section, commits outside Canada

- (a) genocide,
- (b) a crime against humanity, or
- (c) a war crime,

is guilty of an indictable offence and may be prosecuted for that offence in accordance with section 8.

A35(1)(a)

Genocide?

CAHWCA: genocide means an act or omission committed with intent to destroy, in whole or in part, an identifiable group of persons, as such, that at the time and in the place of its commission, constitutes genocide according to customary international law or conventional international law or by virtue of its being criminal according to the general principles of law recognized by the community of nations, whether or not it constitutes a contravention of the law in force at the time and in the place of its commission.

Rome Statute, Article 6

Genocide

For the purpose of this Statute, "genocide" means any of the following acts committed with **intent to destroy**, in whole or in part, a national, ethnical, racial or religious group, as such:

- (a) Killing members of the group;
- (b) Causing serious bodily or mental harm to members of the group;
- (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- (d) Imposing measures intended to prevent births within the group;
- (e) Forcibly transferring children of the group to another group.

Crime against humanity?

Crimes against humanity – Rome Statute, Article 7

1. {...}"crime against humanity" means any of the following acts when committed as part of a **widespread or systematic attack** directed against any civilian population, with knowledge of the attack:

(a) Murder;

(b) Extermination;

(c) Enslavement;

(d) Deportation or forcible transfer of population;

(e) Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;

(f) Torture;

(g) Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity;

(h) Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender {...}

(i) Enforced disappearance of persons;

(j) The crime of apartheid;

(k) Other inhumane acts {...}

Widespread?

- Massive, frequent, large scale action
- Carried out collectively
- Considerable seriousness
- Directed against a multiplicity of victims

Systematic?

- Thoroughly organized and follows a regular pattern
- Carried out pursuant to a policy or plan
- Number of victims not determinative
- Improbability of random occurrence

War crime?

In the context of war? international armed conflict or non-international armed conflict (*post 1990*)
(Does not therefore apply to situations of internal disturbances and tensions such as riots, isolated and sporadic acts of violence or acts of a similar nature.)

Article 8 of the Rome Statute: many different crimes...

- torture,
- attacks against the civilian population,
- killing a fighter who laid down his arms,
- improper use of the United Nations flag,
- intentionally directing attacks against buildings dedicated to religion, ...
- subjecting people to medical or scientific experiments,
- use poison or poisoned weapons
- intentionally directing attacks against personnel, installations, material, units or vehicles involved in a peacekeeping mission
- [...]

A35(1)(a) – in summary...

Human or international rights violations

A35 (1) A permanent resident or a foreign national is inadmissible on grounds of violating human or international rights for

(a) committing an act outside Canada that constitutes an **offence** referred to in sections 4 to 7 of the Crimes Against Humanity and War Crimes Act;

Rome Statute of the International Criminal Court

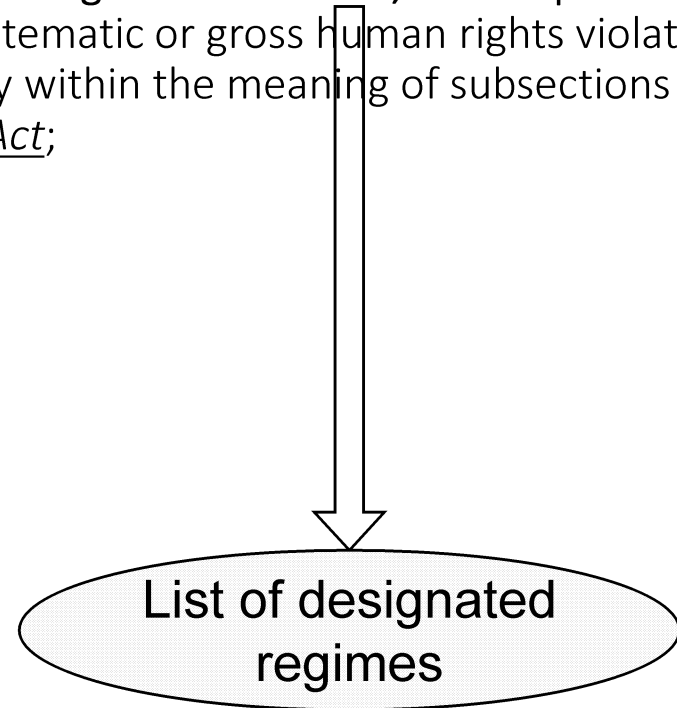
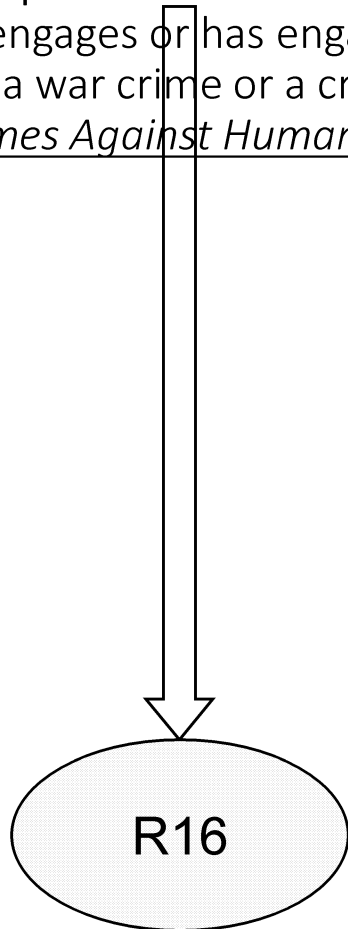
s.25 Individual criminal responsibility
s. 28 Resp. of commanders / superiors
s.31+33 Defences against liability

- Genocide
- Crime against humanity
- War crime

A35(1)(b)

A35 (1) A permanent resident or a foreign national is inadmissible on grounds of **violating human or international rights** for

- (b) being a **prescribed senior official in the service of a government that, in the opinion of the Minister, engages or has engaged in terrorism, systematic or gross human rights violations, or genocide, a war crime or a crime against humanity within the meaning of subsections 6(3) to (5) of the Crimes Against Humanity and War Crimes Act**;



ENF 18 - 9.2 Designated regimes pursuant to Section A35(1)(b)

- Designated June 16, 1993, extended on August 15, 1997: the Bosnian Serb regime between March 27, 1992 and October 10, 1996.
- Designated October 12, 1993: the Siad Barré regime in Somalia between 1969 and 1991.
- Designated April 8, 1994: the former military governments in Haiti between 1971 and 1986, and between 1991 and 1994, except the period August to December 1993.
- Designated October 21, 1994: the former Marxist regimes of Afghanistan between 1978 and 1992.
- Designated September 3, 1996, amended September 9, 2004: the governments of Ahmed Hassan Al-Bakr and Saddam Hussein in power in Iraq between 1968 and May 22, 2003.
- Designated April 27, 1998: the Government of Rwanda under President Habyarimana between October 1990 and April 1994, as well as the interim government in power between April 1994 and July 18, 1994.
- Designated June 30, 1999, amended March 14, 2001: the governments of the Federal Republic of Yugoslavia and the Republic of Serbia (Milosevic) between February 28, 1998, and October 7, 2000.
- Designated March 14, 2001, amended September 9, 2004: the Taliban regime in Afghanistan between September 27, 1996 and December 22, 2001.
- Designated November 21, 2003: the Government of Ethiopia under Mengistu Haile Mariam between September 12, 1974 and May 21, 1991.

...On 15 November 2022, the Minister of Public Safety designated the Iranian regime, from 15 November 2019 onwards, including senior members of the Islamic Revolutionary Guards Corps (IRGC)

A35(1)(b) Prescribed Senior Officials

Application of paragraph 35(1)(b) of the Act

R16 For the purposes of paragraph **35(1)(b)** of the Act, a **prescribed senior official** is a person who, by virtue of the position they hold or held, is or was able to exert significant influence on the exercise of government power or is or was able to benefit from their position, and includes

- (a) heads of state or government;
- (b) members of the cabinet or governing council;
- (c) **senior** advisors to persons described in paragraph (a) or (b);
- (d) **senior** members of the public service;
- (e) **senior** members of the military and of the intelligence and internal security services;
- (f) ambassadors and **senior** diplomatic officials; and
- (g) members of the judiciary.

*What about a person not described in R16 (a) to (g) who is or was able to exercise significant influence on the actions or policies of the regime or was able to benefit from the position?

A35(1)(b) Prescribed Senior Officials

R16(e) example

Example: top 50% in an army:



A37 Organized Criminality

A37 (1) A permanent resident or a foreign national is inadmissible on grounds of **organized criminality** for

(a) **being** a member of an organization that is believed on reasonable grounds to be or to have been engaged in activity that is part of a pattern of criminal activity planned and organized by a number of persons acting in concert in furtherance of the commission of an offence punishable under an Act of Parliament by way of indictment, or in furtherance of the commission of an offence outside Canada that, if committed in Canada, would constitute such an offence, or **engaging** in activity that is part of such a pattern; or

(b) **engaging**, in the context of transnational crime, in activities such as people smuggling, trafficking in persons or laundering of money or other proceeds **of crime**.

A37(1)(a)

A37 (1) A permanent resident or a foreign national is inadmissible on grounds of **organized criminality** for

(a) **being a member of an organization** that is believed on reasonable grounds to be or to have been engaged in activity that is part of a pattern of criminal activity planned and organized by a number of persons acting in concert in furtherance of the commission of an offence punishable under an Act of Parliament by way of indictment, or in furtherance of the commission of an offence outside Canada that, if committed in Canada, would constitute such an offence,...

s.16(1)(b)

Case study

Reasonable grounds to believe member of MS-13?

Federal Court decision - Pacheco v. Canada (Citizenship and Immigration)

A37(1)(a)/(b)

A37 (1) A permanent resident or a foreign national is inadmissible on grounds of **organized criminality** for

(a) ..., or **engaging in activity** that is part of such a pattern; or

A37(1)(a)/(b)

A37(1) A permanent resident or a foreign national is inadmissible on grounds of **organized criminality** for

(a) ..., or **engaging in activity** that is part of such a pattern; or

(b) **engaging, in the context of transnational* crime, in activities** such as people smuggling, trafficking in persons or laundering of money or other proceeds of crime.

***Transnational** (*UN Convention Against Transnational Organized Crimes*):

- a) committed in more than one State;
- b) committed in one State but a substantial part of its preparation, planning, direction or control takes place in another State;
- c) committed in one State but involves an organized criminal group that engages in criminal activities in more than one State; or
- d) committed in one State but has substantial effects in another State.

Application

A37 (2) Paragraph **(1)(a)** does not lead to a determination of inadmissibility by reason only of the fact that the permanent resident or foreign national entered Canada with the assistance of a person who is involved in organized criminal activity.

What about the application of **A37(1)(b)** ?

B010 v. Canada (Citizenship and Immigration), 2015 SCC 58

[...] s. 37(1) (b) applies only to people who act to further illegal entry of asylum-seekers in order to obtain, directly or indirectly, a **financial or other material benefit in the context of transnational organized crime**. I conclude that a migrant who aids in his own illegal entry or the illegal entry of other refugees or asylum-seekers in their collective flight to safety is not inadmissible under s. 37(1) (b).

B010 : <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/15647/index.do>

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Application of paragraph 37(1)(b) of the IRPA following the decision of the Supreme Court of Canada in *B010* as it relates to people smuggling

Prior to B010, inadmissibility under paragraph 37(1)(b) covered all acts of assistance to human smuggling and did not include the element of a benefit.

The SCC decision has changed the legal test under paragraph 37(1)(b). Based on B010, the following elements are now required for the Minister to establish reasonable grounds to believe that individuals have engaged in people smuggling in the context of transnational crime under paragraph 37(1)(b):

- Procuring or furthering illegal entry;
- Obtaining a financial or material benefit (new) ; and
- Transnational crime means transnational organized crime (new)

(see also OB644-Application of paragraph 37(1)(b) of the IRPA as it relates to money laundering)

Remedies for A34/A35/A37 Inadmissibilities

The following IRPA remedies can be used to overcome inadmissibilities:

For temporary resident applicants:

- Temporary Resident Permit (TRP/NI-TRP)
- Public Policy Temporary Resident Visa (PPTRV)

For permanent resident applicants:

- Ministerial Relief (MR)

A42.1

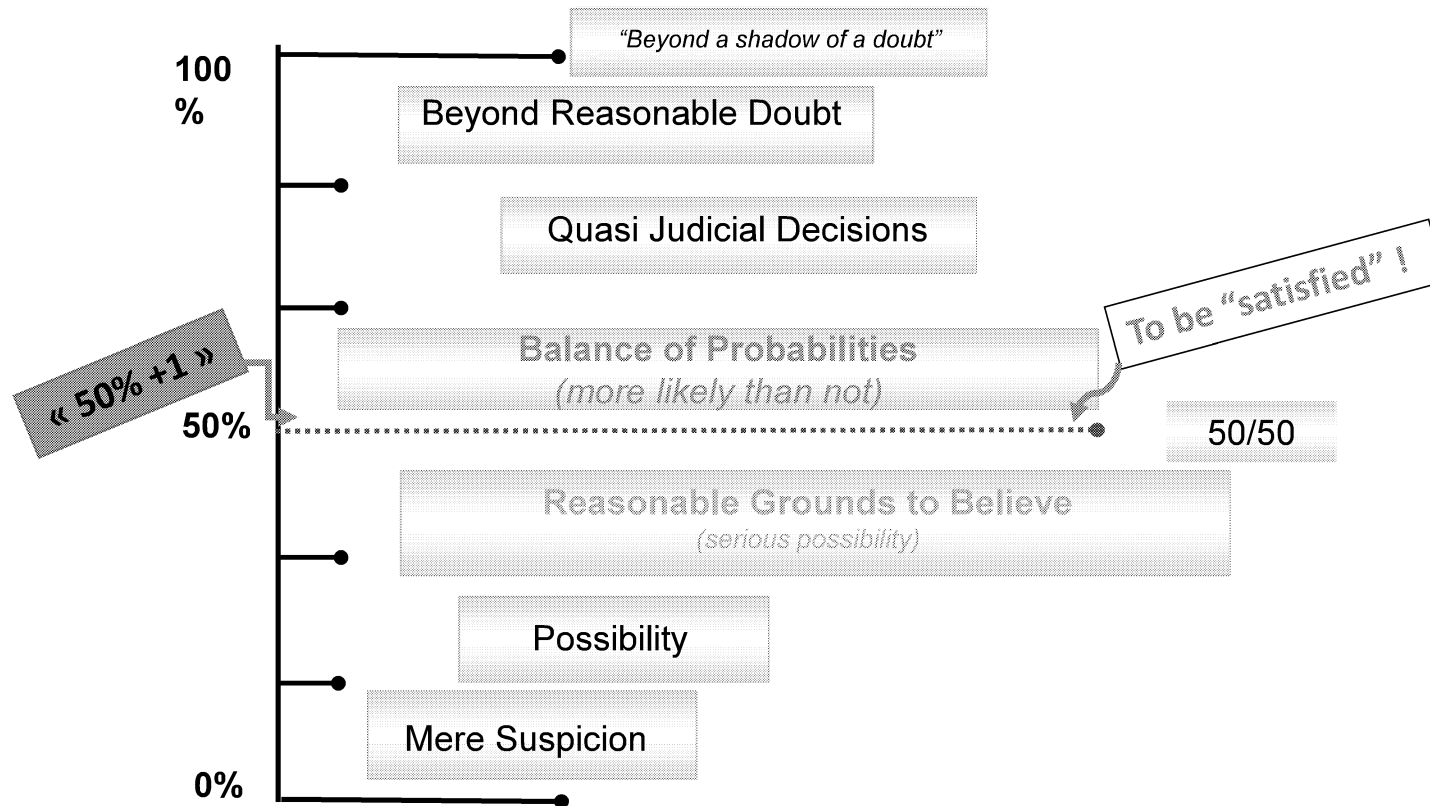
(1) The Minister may, **on application by a foreign national**, declare that the matters referred to in section 34, paragraphs 35(1)(b) and (c) and subsection 37(1) do not constitute inadmissibility in respect of the foreign national if they satisfy the Minister that it is not contrary to the national interest.

(2) The Minister may, **on the Minister's own initiative**, declare that the matters referred to in section 34, paragraphs 35(1)(b) and (c) and subsection 37(1) do not constitute inadmissibility in respect of a foreign national if the Minister is satisfied that it is not contrary to the national interest.

Thank you!

Questions?

Standard of Proof continuum



Continuum du niveau de preuve

