Toronto Police Services: Ethics and Practices that May Lead to Deportation

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1. Literature Review

1.1 Toronto as a Sanctuary City

Non-status individuals are those living in Canada who do not have permission from the Canadian state to reside here permanently. This status is not static, but rather can fluctuate as individuals navigate through the various immigration law system processes and applications. A sanctuary city aims to limit the “local enforcement of federal immigration law” (Hershkowitz et al., 2019). In 2013, Toronto City Council confirmed that the City of Toronto Act obliges the City to ensure all Torontonians should have access to the municipal services for which they are eligible “without fear of reprisal with respect to status” (Ibid; Toronto City Council, 2015). The Ontario government or the federal government of Canada have not yet taken official positions on sanctuary cities or municipal policies like Toronto’s.

Toronto’s Access T.O. policy1, applies to 21 municipal service areas and was developed in collaboration between City divisions and agencies (Ibid.). Initially, “Policing services” was listed as a municipal service that was accessible under the Access T.O. initiative (City Council Decision CD8.4, 2015). After receiving feedback from the community and advocacy groups that the Toronto Police Services (TPS) was not accessible to non-status individuals, it was clear that the TPS, an indispensable municipal service, needed to further clarify its accessibility (Toronto City Council, 2015). Through the Toronto Police Services Board2, City Council requested the TPS to do so in order to ensure the policy is implemented appropriately (City Council Decision DC8.4, 2015).

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2 For a comprehensive explanation of the Toronto Police Services Board and its duties, read Hershkowitz et al., Police and Non-Status Migrants in Ontario, Canada. *Ryerson Centre for Immigration and Settlement, 2019/3*, 7, 8.
Additionally, City Council revised the wording of Access T.O. to list “Emergency Services (911),” instead of “Policing services,” as one of Toronto’s accessible services (Ibid.). Access T.O., as a municipal policy, has no legal authority over the TPS or their policies—however, it can act as an impetus for political pressure for the TPS to alter its practices.

1.2 The Toronto Police Services’ Legal Authority to Share Information

The TPS has narrowly defined legal authority to share information identifying non-status residents with federal authorities, such as the Canadian Border Security Agency (CBSA). Police powers in Ontario are empowered by the Comprehensive Ontario Police Services Act, 2019 (PSA 2019); the Canadian Charter of Rights and Freedoms, 1982; and the common law. For the purpose of brevity, this literature review will not conduct an examination of each of these laws. The Immigration Legal Committee conducted such an examination and concluded that discretionary cooperation by local police with federal authorities contradicts the principles and purposes of these laws (2008). They found that in the existence of a warrant issued under the Immigration and Refugee Protection Act, 2001 (IRPA), cooperation is expressly mandated by federal immigration law (Ibid.). However, if this is not the case, Ontario’s local police cooperating with or reporting to the CBSA likely conflicts with “the Victims’ Bill of Rights, the Charter of Rights and Freedoms, the Ontario Human Rights Code, and international law” (Ibid.).

In February of 2007, the Toronto Police Services Board officially approved the TPS’s proposed Victims and Witnesses without Legal Status Policy, which obliges the TPS to refrain from enquiring into the immigration of victims and witnesses of crime, unless there are ‘bona fide reasons to do so’ (TPS, 2007). The “bona fide reasons” refer to:

- a victim or witness who may possibly require or may seek admission into the Provincial Witness Protection Program;
• a Crown Attorney is requesting information for disclosure purposes;
• the information is necessary to prove essential elements of an offence;
• investigations where the circumstances make it clear that it is essential to public or officer safety and security to ascertain the immigration status of a victim or witness (TPS, 2008).

The fourth context empowers officers with a broad degree of subjectivity and discretion. Moreover, the policy does not include a provision obliging the TPS to refrain from contacting the CBSA or other agencies once information is obtained. As a result of the omission of such a provision, “the decision of whether or not to treat information regarding victims and witnesses as confidential is…left to the individual officer’s discretion” (Deshman, 2009). Thus, the inclusion of discretionary powers within the Victims and Witnesses without Legal Status Policy results in a “Don’t Ask” protocol that may not be employed.

Furthermore, unlike a “Don’t Ask, Don’t Tell” policy, the TPS’ policy does not actually offer sanctuary to non-status individuals as TPS’ officers remain empowered to share the immigration status of victims and witnesses. Under a “Don’t Ask” policy, municipal service providers, along with applications to access municipal services, are forbidden from inquiring into immigration status. As defined by the Canadian Council for Refugees (2018), a “Don’t Ask, Don’t Tell” policy would additionally forbid municipal service providers from sharing the immigration status of clients with anyone should they become aware of such information. The inclusion of solely a ‘Don’t Ask’ clause, as aforementioned, results in TPS conduct that does not sufficiently satisfy their legal obligations (Immigration Legal Committee, 2008). It is strongly argued that the TPS has the legal ability to adopt a more robust “Don’t Ask, Don’t Tell” policy (Deshman, 2009; Moffette et al., 2015; Hershkowitz et al., 2019).³

³ For more information regarding the justification provided by TPS regarding the exclusion of a “Don’t Tell” provision, consult Abigail Deshamn’s (2009) To Service Some and Protect Fewer: The Toronto Police Service’s
The *PSA 2019* created a new position: the Inspector General of Policing (Bill 68). As delineated in the Bill, the duties of this individual include the monitoring and inspecting of police services and police chiefs to ensure that they comply with the Act (Ibid.). An annual report, to be filed by June 30 and published on the Internet, must address the activities of the Inspector General (Ibid.). Section 1 of *PSA 2019* states that, the “importance of respect for victims of crime and understanding of their needs” is a key principle which policing throughout Ontario must abide with. Framed correctly, the TPS’ violation of the *Victims and Witnesses without Legal Status Policy* might qualify for investigation under this principle. Therefore, recommending the Inspector to investigate the issue, and the resulting annual report including its results, might serve as a means of holding the TPS accountable to its obligations under the Act, and indirectly, to its obligations under the *Victims and Witnesses without Legal Status Policy*.

The previous *Police Services Act, 1990*, did not include immigration within the enumerated areas under which police chiefs must “develop and maintain procedures on and processes for undertaking and managing” an investigation (O. Reg 3/99, s.12 (1)). Moreover, it appears that *PSA 2019* omitted these enumerated areas entirely. There are many classes of individuals without official or secure immigration status, whom are nonetheless legally permitted to remain in Canada (Deshman, 2009; Hershkowitz et al., 2019). By not including immigration as an enumerated area requiring specific and ongoing training and investigative methods, it is likely officers will not have the adequate knowledge regarding the complexities of these classes and the provisions within the *IRPA* when making arrests. Generally speaking, Ontario police forces understand themselves to be under obligation to act upon *IRPA* violations “on the reasonable and probable belief that a warrant exists” (Ibid.). If not properly trained in the application of “reasonable and probable belief

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that a warrant exists”, it is likely that racial and socio-economic profiling may establish TPS offices’ determinations to exercise their discretionary power outlined within the *Victims and Witnesses without Legal Status Policy* (Ibid.).

### 1.3 The Toronto Police Services’ Illegal and Unethical Practices

An empirical study conducted by Hershkowitz et al. (2019), investigated how municipal police officers in Ontario (both those guided by ‘Don’t Ask’ policies and those without) understand the influence of sanctuary policies on police operations. They found that many officers who participated in the study believed that they possess legal authority to report non-status migrants to federal authorities, despite the nonexistence of such an obligation. Furthermore, the study revealed a “common” practice of police officers reporting immigration information to federal authorities; the police officers interviewed in the study offered diverse explanations for this practice (Hershkowitz et al., 2019). Hershkowitz et al., concluded that the police officers’ understanding of their legal authority rested on a further understanding that municipal police and CBSA are “partners in the law-enforcement community,” and that municipal police are “bound by provincial law” to participate in the criminalization of migration (Ibid). Although the sample size of the study was quite small (eight police departments within different municipalities), by using purposive sampling to recruit police officers with *high rank*, the study reveals the potentialities for the existence of inaccurate directives that breach the legal mandates of provincial and common law. Importantly, Hershkowitz et al.’s study is the sole literature that explores the issue from the perspective and understanding of Ontario police officers themselves. Moreover, the findings of this study corroborate the assumptions made in the previous section: police officers are not appropriately trained on this issue.
In 2015, No One Is Illegal-Toronto and The Immigration Legal Committee of the Law Union of Ontario partnered with David Moffette and Karl Gardner to present on the TPS’ non-compliance with the Access T.O. initiative and its violations of “its own partial ‘Don’t Ask’ policy”. The data included in this report is the most recent quantitative evidence that demonstrates that the TPS is not complying with its ‘Don’t Ask’ policy. The evidence is a compilation of TPS and CBSA communication through the CBSA’s Warrant Response Centre during the period of November 4, 2014 to October 16, 2015. This data was obtained by David Moffette under the Access to Information Act with the CBSA; scanned copies of the information provided by the CBSA are included as an appendix in the report. Data illustrating their communications cannot be provided before November 4, 2014 due to a system change that the CBSA undertook. Regardless, the logging of calls and categorization of the subject of each call from police departments across Canada was revolutionary.

The Warrant Response System is a “24 hours a day, 7 days a week” hotline for law enforcement officers across Canada to utilize for immigration warrant queries. During the period of November 4, 2014 to June 28, 2015, the TPS was responsible for 31% (3278) of these calls (Moffette et al., 2015). To contextualize this data and highlight its significance, this is “more often than the [Royal Canadian Mounted Police], and more than the police services of Montreal, Quebec City, Calgary and Vancouver combined” (Ibid.). During the period of November 4, 2014 to October 16, 2015, 4254 of the TPS’ calls were coded as “status checks” by the CBSA, which refers “to actively [seeking] out information about someone’s immigration situation,” rather than to conduct a “database verification” (Ibid.).

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4 A “database verification” refers to a call made by local police officers for the purposes of verifying the validity of an existing immigration warrant present in the Canadian Police Information Centre system (Moffette et al., 2015).
As various series of actions can result in a lack of status, including over-staying a visa, many non-status individuals are not subject to deportation orders. Hence, the CBSA “relies on the on-going support of police agencies to assist in achieving its mandate” of identifying and locating individuals lacking status, as well as “others subject to deportation” (TPSB Meeting Minutes 2017: Hershkowitz et al., 2019). However, provincial, federal and common law do not oblige Ontario municipal police forces to engage in the level of cooperation indicated by this data (Immigration Legal Committee, 2008). CBSA’s definition of “status checks” illustrates that there was not a warrant issued under the IRPA for that individual, hence, there was no legal obligation for the TPS officers’ to make those 4254 calls (Moffette et al., 2015; Ibid.). Therefore, the definitional coding of the TPS’ calls demonstrates that the level of cooperation between TPS and CBSA is often simply common practice, rather than the performance of a legal obligation. In response to this data, Chief Mark Saunders provided TPS’ internal data to argue that only 674 calls were made to the CBSA, and that the CBSA mis-coded calls as “status checks” (TPSB Meeting Minutes 2018). In reference to the discrepancy in statistics between the enforcement agencies, the TPS claimed that the CBSA statistically tracks “subsequent calls regarding the same person” as separate calls to the hotline—this has not been verified by the CBSA (Ibid., Hershkowitz et al., 2019).

1.4 Experiences and Sites of Surveillance within Toronto

There are no reliable published statistics regarding the number of non-status persons living in Canada, let alone within Toronto. Estimates from the early 2000’s are in the range of 200,000 to 400,000 non-status individuals living across Canada, “with the majority of individuals likely living in Toronto and other large urban cities” (Deshman, 2009). A more recent mid-2010’s estimate is that there are likely 35,000 non-status individuals living in Ontario, most of whom would be centred in or around the southern-most cities of the province (Hershkowitz et al., 2019).
In 2015, Paloma E. Villegas used qualitative interviews with thirteen Mexican migrants with precarious status over the course of a year to investigate experiences and sites of surveillance within Toronto. Villegas (2015) wanted to explore how these realities “reinforce and maintain discourses of citizenship, legalization, and deportability” throughout individuals’ access to services, work opportunities and other layers of life. The report states that the TPS’ and the CBSA’s “commitment to collaboration and integration” is a key example of surveillance operating to perpetuate illegalization of these individuals (Villegas P., 2015). Furthermore, the existence of the TPS and the CBSA’s relationship means that participation in public spaces and leisure activities heightens these individuals’ “deportability”: any contact with the TPS can result in subsequent contact with the CBSA (Ibid.). Villegas’ work is the most recent qualitative study of the experiences of individuals with precarious immigration status, a perspective that is imperative to understanding whether Toronto is truly a sanctuary city. The data consists of one specific ethnicity’s individual experiences and cannot be generalized to constitute those of other racialized minorities without status. However, the fear and sites of surveillance they invoked, as well as the strategies to counteract surveillance, are not likely that different from those of other communities.

2. Purpose Statement

The purpose of this research is to produce qualitative evidence that can be used by non-governmental organizations in their advocacy work and claims in front of the Inspector General of Policing.

Existing research on this topic indicates that these illegal and unethical practices by the TPS exist, and that they will continue to until provincial or federal government introduces new law or more stringent and transparent policies. Unfortunately, the provincial and federal governments appear unwilling to take an official position on sanctuary cities, and thus, activism
that pressures the TPS to change their practices and policies seems to be the only avenue to spur change. The perspective of frontline service providers has not yet been researched since the adoption of the Access T.O. initiative. By focusing on this group, I wish to contribute new understanding and perspective to the field. Additionally, I hope that the data will have a humanizing impact on those within the TPS and government who are remaining idle in addressing this problem.

The term ‘service providers’ refers to organizations, businesses, or individuals whom offer services to others; in this context, it can encompass lawyers, health practitioners, shelter employees, social workers, etc. Those service providers whom directly deal with the customer or client are referred to as ‘frontline workers.’ Frontline workers are in a unique situation: they are both privy to the economic and political constraints placed on organizations, and to the lived experiences of the individuals their work effects. In essence, investigating the perspective of this highly involved groups helps to provide a more comprehensive understanding of this issue.

3. Research Question

From the perspective and experiences of service providers within Toronto, do representatives of Toronto Police Services practice in accordance with the ethos of a sanctuary city?

4. Methodology

4.1.1 Overall Framework

Ethnographic semi-formal qualitative interviews were conducted to collect data. The participants/interviewees were service providers within Toronto. The criteria for inclusion in the research was as follows:

- they are a service provider within Toronto
- had a client, whom identified as a non-status individual
• their client feared the TPS due to their immigration status
• them or their client had contact with the TPS with regards to immigration

The data collected was interviewees’ and clients’ experiences with the TPS within the context of immigration and interviewees’ perceptions of the TPS as a service within the sanctuary city of Toronto. Permission to access the data was obtained through “Informed Consent Forms.” Service providers across various sectors and fields within Toronto were contacted for recruitment purposes by email or telephone. In addition, the snowball technique was utilized to garner perspective interviewees. The snowball technique refers to the means by which existing research participants assist in the recruitment of future research participants from among their acquaintances, contacts or shared field of interest.

4.1.2 Data Collection Methods

Data was collected during ethnographic semi-formal interviews through hand-written notes. See Appendix for the interview questions utilized.

4.1.3 Data Analysis Process

The data of each individual interview was analyzed for broad themes and experiences. As such, each interview transcript was assessed for striking and overlapping themes, and such topics were extrapolated for further comparison. For example, many interviewees addressed a false sense of safety within Toronto with regards to accessing services. Afterwards, all interview transcripts were deconstructed and sectioned off by subject matter and thus, grouped for similar themes. These themes are presented as headers within the Content section of the paper.

5. Content

5.1.1 Interviewees
<table>
<thead>
<tr>
<th>Interviewee</th>
<th>Service Provided</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>A lawyer at a legal hotline center</td>
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<tr>
<td>2</td>
<td>A volunteer at an advocacy and support group</td>
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<tr>
<td>3</td>
<td>A manager of a non-profit public corporation providing legal assistance</td>
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<tr>
<td>4</td>
<td>A lawyer at a non-profit public corporation providing legal assistance</td>
</tr>
<tr>
<td>5</td>
<td>A community legal worker at a non-profit public corporation providing legal assistance</td>
</tr>
<tr>
<td>6</td>
<td>A lawyer at a non-profit public corporation providing legal assistance</td>
</tr>
<tr>
<td>7</td>
<td>Executive director of a non-governmental organization providing support, rights and language training, and a 24-hour hotline for non-status individuals</td>
</tr>
<tr>
<td>8</td>
<td>Manager of legal operations and community organizing at a legal clinic</td>
</tr>
<tr>
<td>9</td>
<td>Manager of housing and shelters at an organization providing supportive housing and shelter within Toronto</td>
</tr>
<tr>
<td>10</td>
<td>Director of strategic solutions at a non-governmental organization providing a 24/7 information and referral hotline to community and social services within Toronto</td>
</tr>
</tbody>
</table>

5.1.2 *False Sense of Safety within Toronto*
70% of interviewees invoked a disparity between what the municipal government states to be the policy/practice of sanctuary cities and the reality of government, and TPS procedures and practices. Interviewee 2 described that the continuous use of “Sanctuary City” to describe Toronto can be dangerous as it results in a public perception that services are accessible when they often might not be. Although on paper Toronto’s services appear accessible, due to a lack of adequate training, many service providers are not aware of their responsibilities and obligations (interviewee 2). Interviewee 7 framed it another way: she stated that service providers in Toronto need to be properly trained so as to understand their lack of obligation to contact the TPS and the CBSA. On the other hand, the administration of some services includes varying degrees of employee discretion, such as police services. For such services, a consistent and transparent application of the Access T.O policy is required; alternatively, more government and service provider transparency regarding their actual procedures and practices needs to be made public (interviewee 8).

As described by interviewee 4, Toronto needs to be fully established as a sanctuary city as the current mainstream (mis)understanding provides people with a false sense of safety when seeking services. For example, a client of hers contacted the TPS to report an incident of violence and did not think that the TPS officer would then pursue her (the client) regarding her citizenship status (interviewee 4). Interviewee 5 mentioned that services will be truly accessible when the TPS properly implements a “Don’t Ask, Don’t Tell” policy. A number of interviewee 6’s clients have experienced this disparity when accessing health services. In one case, he was with his client when an ambulance was called to treat his client’s panic attack. The TPS officer who was present outright asked interviewee 6 if his client had status. Interviewee 1 expressed that as a result of racial profiling, some of her clients have experienced TPS officers stopping them for minuscule and
arbitrary reasoning in order to ask for identification; in these cases, CBSA was subsequently contacted. As a result of this disconnect, clients of interviewee 8’s legal clinic often enter the legal process with a specific understanding of what they think will happen based on what municipal government has stated (interviewee 8). This makes it difficult to explain to clients the diverse processes that may occur in reality stemming from police officer discretion (Ibid.).

It is important to note that the unpredictable everyday practices and procedures of the TPS when acquainted with a non-status individual are not always unfavourable. Recently, interviewee 8 has found that the attitudes of TPS police officers have been more empathetic in their treatment and response to clients who have precarious status and are victims of domestic abuse seeking protection. Although, she emphasized that officers still do not follow the “Don’t Ask” policy consistently (interviewee 8). Interviewee 8 was in contact with a TPS police officer on an issue unrelated to immigration, and the officer warned her that he could see that the client in question had an immigration warrant out for them; interviewee 8 promptly ended the phone call. A client of interviewee 1 whom was experiencing domestic abuse contacted the police to apprehend the perpetrator of the violence; the police officer who responded to the call did not contact the CBSA “due to sympathy”. A personal friend of interviewee 7 is a police officer who is committed to the cause: he will not enquire into the immigration status of any of the individuals he comes across and ensures that his peers involved in the investigation are aware that they do not need to ask or tell either.

5.1.3 Misinformation

As a result of the “stark difference” between what is said on paper and in the media regarding Toronto as a sanctuary city versus what happens in practice, there is a lot of misinformation provided to non-status individuals and the wider public (interviewee 5). This
misinformation can take the form of bad legal advice from lawyers and general misconceptions of which services are truly accessible (Ibid.). One such misconception is the accessibility of health services. Contrary to the commonly held belief that health services are a separate sphere of service than that of police services’, interviewee 6 has heard of instances of hospital staff contacting the CBSA and TPS officers asking for ID while accompanying an individual in an ambulance en route to the hospital.

A way to combat misinformation is to spread correct information. Interviewee 3 proudly stated that they have various materials, including pamphlets and posters, that share basic information and rights awareness tailored towards non-status/status-seeking individuals. Interviewee 7 emphasized the crucial necessity for the development of informational materials and workshops delineating what can happen so that information is practical and suitable for the reality of police discretion. Although, as non-status individuals are often racialized, oftentimes they are unable to exercise their rights even when they know them (interviewee 7). Due to a lack of economic resources, individuals often have no choice but to self-represent themselves throughout criminal and immigration disputes (interviewee 8). Interviewee 8’s legal clinic has created information toolkits for individuals explaining the various legal processes and actions available to respond to this reality. Additionally, the legal clinic conducts “public legal education” workshops, regarding general knowledge of the law or requested topics, for employees and clients at shelters and settlement agencies (interviewee 8).

5.1.4 The Intersection Between Criminal and Immigration Law

Interviewee 7 made it clear that lawyers and service providers are often not properly trained to address and respond to the unique and complex intersection between criminal and immigration law. Consequently, in her experience, clients describe a “mess” of service providers and lawyers
pointing to the other as none have the expertise to handle the situation (interviewee 7). Interviewee 1 explained that the intersection between criminal and immigration law is “cumbersome” even for lawyers as there are complex rules and no easy trajectory to follow. As a result, she advises her clients with precarious or no status involved in a criminal law dispute to receive advice from a lawyer specializing in immigration law regarding the implications of a criminal trial on their citizenship applications and status. Working proactively with this reality, interviewee 8’s legal clinic immediately assigns clients both a criminal and immigration lawyer. The immigration lawyer will act “on standby” to intervene once police realize the client’s status or when the client is presented with deportation (interviewee 8).

5.1.5 Legal Aid Ontario Needs More Funding

Access to Legal Aid Ontario needs to be expanded either by further or fully funding the service (interviewee 3). As described by interviewee 1, working within the legal framework to obtain citizenship or other forms of status entails various processes that are both lengthy and extremely expensive to undertake. Many services that are necessary to the process of obtaining citizenship or status are not covered by Legal Aid Ontario (interviewee 7). Additionally, lawyers do not have much incentive to work on these files as they involve “a lot of work for little pay,” and emotional burnout is common (interviewee 1). If an individual whom cannot afford legal counsel is held in detention, there will not be anyone who can advocate on their behalf—worse, they will not know the alternative processes available to them (interviewee 1). In the cases that interviewee 8’s legal clinic comes across, the non-status victims often do not have access to financial resources, however, the perpetrator of the domestic violence does, resulting in an unfair advantage as they can hire lawyers (interviewee 8).

5.1.6 Organizations Working Together
Although legal counsel is very important, interviewee 7 stressed that “lawyers only know so much.” Non-governmental organizations need to empower these communities so that they can learn from each other: they have the knowledge and the practical strategies for survival (interviewee 7). Part of empowering these communities entails organizations working together to share their knowledge and resources (Ibid.).

Due to a lack of adequate funding, interviewee 8’s legal clinic has had to become creative in its efforts to support non-status clients (interviewee 8). This has included the creation of a database available to clients of various services and service providers that are truly accessible and whom are allies (Ibid.). Furthermore, they have created their own system of network-sharing with various organizations and agencies across Toronto, Ontario and Canada (Ibid.). Beyond this system, the legal clinic hosts forums where they invite agencies and service providers from across Canada to share tips and knowledge (Ibid.).

To be included in the database of interviewee 10’s hotline, the service provider must be a non-profit (although exceptions can be made for private sector service providers), and they must be serving basic services for the meeting of basic needs (interviewee 10). Affordability, along with a priority of vulnerable people, is central to their inclusion policy (Ibid.). The organization utilizes a business intelligence tool that enables the tracking of anonymized callers’ needs, the reason for the call, and un-met needs (Ibid.). Interviewee 10 elaborated that un-met needs can stem from a number of reasons, including the caller failing to fulfill eligibility requirements, long wait times for the service, programs closing, and more. These reasons explain why hotline staff were unable to provide a referral to a community or social service (Ibid.). This business intelligence tool enables the organization to harness un-met needs and make recommendations to government and other service providers, while also providing empirical data to spur action.
Interviewee 9’s shelters provide clients with the opportunity to receive on-site services and workshops from professionals experienced with settlement (interviewee 9). This has included a presentation by an immigration specialist, Legal Aid Ontario employees offering legal advice, life-skill workers, and others (Ibid.). At one of their shelters, the local TPS division has had a very positive reaction to the influx of clients in the process of refugee claims seeking shelter; the division spearheaded a program in which police officers share coffee with clients and converse informally (Ibid.).

5.1.7 Status-seeking Individuals in the Traditional Shelter System

As the information of whom is within the traditional shelter system is confidential, there is limited ability to speak on the topic of status-seekers or non-status individuals entering the traditional shelter system (interviewee 9). Within interviewee 9’s shelters, the number of individuals whom they know to be non-status has increased (Ibid.). In their experiences of TPS officers responding to calls at their shelters, the officers usually do not enquire into the citizenship status of the clients (Ibid.). Instead, they focus specifically on the reason for the call (Ibid.). Applicants are required to prove Canadian citizenship in order to receive subsidized housing; to utilize a traditional shelter, however, proof of citizenship is not required (Ibid.). The inability of this group to access subsidized housing makes them further vulnerable with respect to rental disputes as landlords have the ability to weaponize a tenants’ lack of citizenship status (interviewee 1).

6. Ethical Components

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5 Information regarding whom is within the shelter system is accessible only in a medical crisis or with a police warrant.
There was a low risk level for the research project, along with low group vulnerability. Additionally, a low probability or magnitude of possible harms implied by participation in the research was found. Moreover, there were no physical, psychological or emotional risks identified to be associated with participation in the research. As interviews were only an hour long, the extent of experiencing any harm, although none were identified, was also minimal. During design of the research, the group was identified as lacking vulnerabilities; participation in the research was unlikely to exacerbate this lack of vulnerability. Any social risks that may have arisen were completely avoided by ensuring anonymity and confidentiality.

7. Discussion

This data supports the findings of existing literature investigating the TPS’ failure to abide by their “Don’t Ask” policy (Deshman, 2009; McDonald, 2012; Moffette et al., 2015; Villegas P., 2015; Hershkowitz et al. 2019). The existence and reference to the TPS’ Victims and Witnesses without Legal Status Policy allows Toronto to falsely present itself as a sanctuary city; it is clear from the data that there are officers willing to violate the policy. Unfortunately, it appears that PSA 2019 has had the effect of further widening the scope of police discretion for Ontario police officers with respect to the criminalization of immigration.

The experience interviewee 1 invoked of her client’s being stopped for low-level offences as a result of racial profiling supports the findings of many other studies (Wortley and Owusu-Bempah, 2011; Gau and Brunson, 2010; Anderson, 1999). Racial discrimination has a long and well documented history of operating within Canada’s criminal justice system (Ibid.). Racial profiling refers to police stopping, questioning or searching individuals because of “their racial characteristics, not because of their individual behaviour or their actions” (Ibid.). Analogously, the final bona fide reason allowing an officer to enquire into the immigration status of a victim or
witness within the TPS’ *Victims and Witnesses without Legal Status Policy* supports negative and racist stereotypes of ‘dangerous’ and ‘criminal’ ‘(im)migrants’ (McDonald, 2012). As indicated by the data, many interviewees described the TPS as employing inconsistent practices and procedures as a result of these discretionary powers. Negative police experiences, as delineated in the media and by fellow community members, are internalized by community members; when the institution is seen “as uncaring, unpredictable, and themselves an intermittent source of intimidation and violence, people turn to other sources of safety” (Gau and Brunson, 2015). Moreover, holding the TPS accountable for their misconduct and persistently poor job performance within this context is difficult as non-status individuals might not have the social and economic ability to lodge legal complaints. Furthermore, those individuals that may attempt legal redress might not be taken seriously as a result of their racialization and criminalization.

A community polarized in its confidence and trust in the police as an institution of social control is problematic for various reasons (Sunshine and Tyler, 2003). Most obviously, a lack of public support “inhibits the police from fulfilling their regulatory role in society” (Ibid.). A community that does not trust the police is one that is unwilling to cooperate with police activities, which is alarming as police “rely on the ‘consent, assistance and cooperation of the public’ in order to operate effectively” (Stafford, 2014; Wortley and Owusu-Bempah, 2009; Ibid.). In response to research illustrating this reality throughout the 1980-1990’s, many police departments adopted community-oriented policing practices with a focus on community outreach (Sunshine and Tyler, 2003). Research has shown that satisfactory and unsatisfactory contact with the police strongly influences that individual’s trust and confidence in the institution (Stafford, 2014). Interviewee 9’s example of the local TPS division’s ‘coffee with the cops’ is community outreach in practice. Such programs are invaluable opportunities to build trust in the institution among the non-status
community. More importantly, such programs enable police officers to gain perspective and empathy, which might positively influence their decisions to exercise discretionary powers. Currently, victims and witnesses of crimes are too fearful to assist or seek police protection, which results in perpetrators of those crimes to carry on with impunity. The implementation of an exhaustive ‘Don’t Ask, Don’t Tell’ policy is the only way the TPS will be able to operate effectively: “Until Torontonians have access to a full [Don’t Ask, Don’t Tell] policy, police officers will not have the cooperation of Toronto’s diverse cultural communities, and these communities will be unable to access police without fear” (Immigration Legal Committee, 2008). Lamentably, precarious status is just one of many reasons Torontonians may fear police.

The data also supports existing research illustrating the heightened inaccessibility of the TPS for non-status victims of domestic abuse and gender-based violence (Abji, 2018; Bhuyan, 2013; McDonald, 2012). Consequently, the data reaffirms the existence of a strong causal connection between the nature of the relationship between the police, the public and the welfare of community residents (Sunshine and Tyler, 2003). To analyze “how the politics of post-nationalism are informing feminist understanding of and responses to gender-based violence,” Salina Abji interviewed thirty feminist advocates (2018). One interviewee, a counsellor, invoked how women’s fears of deportation undermined their access to police services: “You can’t really say ‘call the police’ because it’s not even safe to call the police!” (Abji, 2018). Unfortunately, the experiences of the clients of interviewees 4 and 8 showcase that the TPS continue to pose as a barrier to seeking justice for survivors of violence. Women living with precarious status in Canada are “known to experience an increased risk of…fear of calling the police, fear of losing their children, and risk of detention and deportation when seeking professional support” (Bhuyan, 2013). Advocacy work focused on the TPS and the TPSB began largely as a result of “a noticeably
and alarming common practice’’ of officers ‘‘detaining women who came forward to report sexual or domestic abuse and reporting them to immigration enforcement’’ (McDonald, 2012). Based on the data of this research project, survivors of violence continue to be subjected to further vulnerability at the hands of the TPS.

Given the legal training of many of the interviewees, I was surprised by the groups’ lack of fixation on the TPS needing to adopt a ‘‘Don’t Tell’’ clause. This may indicate that in response to, and to counterbalance, a lack of action from government, service providers are turning their focus towards empowering the non-status community directly through legal literacy and support. Framed this way, it is comprehensible that interviewees would emphasize the need for more economic resources allocated to Legal Aid Ontario. The finding that many lawyers and service providers are not sufficiently trained on the intersection between criminal and immigration law is worrisome. Obtaining personalized legal advice is expensive. Inadequate training forces individuals to have to obtain personalized legal advice from several sources, which can result in cost becoming an utter obstruction to access. This is perhaps another motivation for service providers to focus towards empowering the non-status community through legal literacy. In relation, due to the lack of governmental attention TPS’ practices garner with regards to Toronto’s sanctuary city stance, the level of collaboration conducted between service providers supporting the non-status community was expected.

Additionally, this data adds evidence to, and supports, prior research exploring the inconsistencies of Toronto’s Access T.O. policy. Given the level of involvement of this group, I expected that most interviewees would comment on the discrepancy between the message that Toronto is a sanctuary city offered by municipal government and service providers, and the actual practices of the TPS. As invoked by interviewees, this is a result of the discretionary powers that
police officers hold. However, based on the consistent documentation since its implementation that Access T.O. misrepresents the accessibility of Toronto’s Services, I hoped that advancements would have been achieved (Hudson et al., 2017; Bhuyan, 2013; Villegas F., 2013; Villegas P., 2013). In 2017, Hudson et al. conducted a year-long assessment of the accessibility of various services within Toronto and concluded that Toronto’s Access T.O. policy was not working in practice. Their study found four key obstacles to proper implementation: the “difficulty in transforming core institutional values, the lack of training for staff, the multiplicity of actors & agencies involved, and the resistance of law enforcement agencies” (Moffette and Ridgely, 2018; Hudson et al., 2017). Unfortunately, based on the data indicating that interviewees continue to find discrepancies in the practices of other service providers within Toronto other than the TPS, Access T.O. remains a misleading policy. This points to a systemic issue resulting from the municipal government’s failure to provide information and resources to organizations, such that service providers are inadequately trained regarding their obligations under the Access T.O. framework.

7.1 Limitations

There are a number of limitations to ethnographic research. The first is that the process of interviewing is time-consuming and contingent on the availability of busy individuals. This reality is further exacerbated by the divisive subject matter of the research, which likely made acquiring interviewees more difficult. On that note, a potential weakness of this research is that the service providers constituting the data are predominantly within the legal field. Consequently, as most interviewees were very familiar with the law, the research project could not sufficiently explore the topic of individual organizations’ employee training regarding serving non-status clients. In the recruitment process, individuals of various service sectors were contacted, however for various reasons including lack of interest and conflicting schedules, interviews were not conducted.
Presumably, had there been less homogenization within the interviewees, there would be less homogenization within the data. Similarly, the use of ethnographic semi-formal interviews requires a labor-intensive analysis process in order to properly assess the data. My own experiences and knowledge had the potential to influence observations and conclusions, as there is no way to analyze this data mathematically.

7.2 Impacts and Recommendations

This research was conducted in partnership with the Rights of Non-Status Women’s Network. Accordingly, it will be available to the Network, and other non-governmental organizations, to use in their advocacy work and internally for educational purposes. However, as the data illustrated the copious and intersectional sites where improvement is necessary, it is clear that this research will benefit other organizations and agencies in their advocacy work as well. Furthermore, the research can be used internally within organizations as an educational tool. For example, it is my hope that this data (and other related research) is incorporated into the training curriculum of various service providers, including the TPS. It is evident that too many service sectors are still not as cognizant as they should be with regards to non-status and status-seeking individuals, and the impact their work has on this group. Advocacy is key to ensuring that Toronto succeeds in becoming a sanctuary city and its service providers are held accountable in the fulfilment of their obligations. A politics of solidarity will be required to efficaciously confront the reality of Toronto not being a sanctuary city.

The most common recommendation proposed during interviews, and the most obvious after analyzing the data, is the need for clarity with respect to common-practice policies and procedures of various services, especially the TPS. Toronto should not identify as a sanctuary city

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6 Please see section 4.1.3. Data Analysis Process to be reminded of my methods.
if its police services are not consistently and reliably accessible to the non-status community. The seriousness of this reality is exacerbated when one realizes that, as a result of a lack of infrastructure in Toronto, the TPS is the sole organization or agency to call on during an emergency or an incident; leaving this service inaccessible results in real harms (interviewee 2). Closely connected to this, several interviewees proposed the narrowing of the discretionary powers of police within the *Ontario Police Services Act, 2019*. The benefit of doing so is twofold. Firstly, it will enable the services provided by police officers in general to be more consistent and reliable. Secondly, specification of police officers’ obligations, let alone the narrowing of their discretionary power, might encourage the TPS to adopt a “Don’t Tell” policy. The implementation and proper practice of such a policy would be extremely advantageous; it would result in the direct improvement of police and non-status individuals’ interactions, as well as provide an avenue for holding the TPS’ actions accountable.

More achievable temporary measures focus on bolstering the effectiveness of legal tools available to non-status individuals and improving their legal literacy. Indisputably, service providers should be more properly trained to deal with the intersection between criminal and immigration law. This study is not the first to invoke “misconceptions about the relationship between criminal law and immigration law” among service providers. Hershkowitz et al.’s empirical study argued that this misconception, among other beliefs, was the basis for municipal police officers’ conviction that they hold the legal authority to report non-status migrants to federal authorities. The procurement of legal services is expensive and, due to the rarity of an individual possessing expertise in both criminal and immigration law, many are left no other option but to employ several service providers to assist them. Ergo, as a result of limited economic resources, individuals self-represent themselves throughout these processes. If individuals cannot receive
personalized legal advice, at the least, they can be offered basic general information so that they do not embark on this journey blind (interviewee 1). Legal literacy materials and toolkits focusing on the intersection between criminal and immigration law should be created and provided to various service providers such that they can be distributed among the communities that need them most. Analogously, once services and municipal government clarify their common-practice policies and procedures, legal literacy materials should be created for non-status and status-seeking individuals that outline their rights to access these services, the eligibility requirements and other necessary information.

8. Ideas for Future Research Projects

8.1.1 The Subjectivity of Enforcement Work

As aforementioned, Toronto lacks the infrastructure to call on another agency or organization other than the TPS during a conflict (interviewee 2). The discretionary powers bestowed upon police officers’ results in subjective police work. It would be quite beneficial if an empirical study was able to explore the criterium utilized by individual officers when deciding whether or not to pursue an individual regarding their immigration status. Often, in the cases that interviewee 8’s legal clinic comes across, both the perpetrator of the violence and the victim, a woman seeking help, do not have status, but the TPS will not bother with the immigration status of the male. According to interviewee 8, this suggests a gender-based application of the TPS’ legal mandate. If the basis for police officer sympathy in this context could be determined, it would enrich existing research and be invaluable to police academies and forces’ training curriculum.

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7 This statement recognizes that some shared experiences may be binary and neglect to address the needs and experiences of the LGBTQ2S+ community.
CBSA officers experience similar levels of discretion in their work. As such, it would be of value to research whether CBSA accelerates the Removal from Canada process of non-status individuals once municipal and provincial police officers act on immigration warrants.

8.1.2 Comprehensive Ontario Police Services Act, 2019

Ontario’s newly enacted *Police Services Act, 2019* appears to significantly alter the discretionary powers of police officers. The effects of *PSA 2019* on police practices in this context should be investigated thoroughly. Empirical data of this nature would enable advocacy work to be better informed in their understanding of the legal environment, and therefore, improve their calls to action. Additionally, such research may have the effect of spurring a governmental response regarding the normative role of municipal police forces within the federal enforcement community.

8.1.3 *How does criminality affect the obtaining of status?*

In Canada, there are several routes towards obtaining status. As several interviewees alluded towards, the process of obtaining status can be affected by an applicant’s embroilment with criminal law. It would be quite interesting, and insightful, if empirical research could be conducted to investigate the influence that criminality or involvement in a criminal procedure has on status-seeking applications and processes. Furthermore, such data would be constructive for lawyers and service providers whose clients find themselves at this intersection in the legal system.

9. **Conclusion**

The verification that the TPS is practicing in accordance with its legal mandate is necessary as police play an integral role in the accomplishment of Toronto as a sanctuary city. As indicated by the data, the TPS does not consistently abide to its *Victims and Witnesses without Legal Status*
Policy. What can be deduced from this is that the TPS is not reliably accessible, and therefore, the TPS is not practicing in accordance with the ethos of a sanctuary city. From that, it can be deduced that Toronto is not a sanctuary city in practice. This is reaffirmed by the interviewees’ various tactics and strategies to creatively support this group. It is clear that more training needs to be undertaken in order for service providers across the city to better understand the duties and responsibilities required of them within a sanctuary city.
References


Bill 68, Comprehensive Ontario Police Services Act, 2019, S.O. 2019


Immigration Legal Committee (November 2008). Police services: safe access for all. Legal arguments for a complete “Don’t Ask, Don’t Tell” policy, a report by the Immigration Legal Committee, presented to the Toronto Police Services Board (pp. 1-55).


O. Reg 3/99: Adequacy and Effectiveness of Police Services


Villegas, Francisco. 2013. “Getting to ‘Don’t Ask Don’t Tell’ at the Toronto District School Board: Mapping the Competing Discourses of Rights and Membership.” In *Negotiating


Appendix

Interview Questions

Introductory Questions:
What is your role in this organization?
How long have you worked here?
What is the role of your organization in serving non-status migrants?

Contact between the service provider & police:
Have you ever had contact with police over a client’s citizenship status?
Have you ever had to contact police on behalf of a client? How did you address (or not address) your client’s lack of status?

Organization’s training on this issue:
Were you given special training on how to serve non-status clients?
Were you made aware of whether the organization you work for has any legal obligations if police or CBSA ask about the citizenship status of a client?
Is there any formal training in place to ensure that staff are aware of this (lack of) obligation?
Were you formally trained on how to interact with police?
Is there any formal training on how to inform clients of their rights when interacting with police?

Contact between client & police:
What are the most common issues/situations you/your organization become aware of, with regards to Toronto Police Services, deportation, and Canada Border Security Agency? Is there formal training in place that speak directly on this topic?
Do clients ever express concerns over contact with police?
Have you heard of particular neighbourhoods or types of places where people get checked?
Have any of your clients ever told you about being stopped by police and asked about immigration status?
Do you know of times your clients have needed to approach police for help? Were the police sensitive to the needs of the clients on those occasions?
Have clients had positive interactions with police?
What advice do you give to clients if they ask what they should do when approached by police?

Does your organization advise people on methods of action to avoid citizenship checks?

Reflection & Future Outlook:

What are the difficulties that you and your industry experience in dealing with this issue and supporting individuals who are affected?

From the perspective of your field, what is of the utmost priority to rectify this issue?

In your opinion, what have been some of the triumphs made in this area?