



45 Sheppard Ave. East, Suite 106A, Toronto, ON M2N 5W9
 T 416-487-6371 F 416-487-6456
www.salc.on.ca

Via email to cdrc@toronto.ca

May 21, 2015

Carol Kaustinen
 10th floor, West Tower, City Hall
 100 Queen Street West
 Toronto, ON M5H 2N2

Dear Ms. Kaustinen:

Re: Deputation to the CDRC re CD 4.2: Toronto Police Service: Service Governance Pertaining to the Access to Police Services for Undocumented Torontonians

Below please find a copy of the written deputation made before the Community Development Recreation Committee (CDRC) at the Committee's meeting on May 21, 2015 on behalf of the South Asian Legal Clinic of Ontario (SALCO).

SALCO is a community legal clinic that provides legal services to low-income South Asians living in the GTA. We often work with individuals who have faced various forms of violence and terror as a result of targeting by police and immigration systems.

We are of the view that as a general principle it cannot accurately be said that Undocumented Torontonians have Access to Police Services without Fear of Immigration Detention and Deportation. There may be circumstances where Undocumented Torontonians have sought police assistance without fear and without consequent immigration detention or deportation, but in our experience, that is often more of an exception than the norm.

We wish to raise three legal and empirical points in response to the Service's claims:

- 1) The Service's policy on "Victims and Witnesses without Legal Status" also commonly known as the "Don't Ask" policy which mandates Officers not to ask immigration status except where there are "bona fide" reasons to do so, does not capture a multitude of police interactions. As a result, there is no compliance with the City of Toronto's "Access without Fear" policy for most Undocumented Torontonians. For example, the Service's own policy does not apply to the many residents of Toronto who are stopped on the streets or in public spaces and questioned or profiled on the basis of race, gender, gender identity or class and asked about their immigration status even where no crime

has been committed. It does not capture interactions where Officers ask a person about their family members' or others' immigration status and subsequently refer those persons to the Canada Border Services Agency (CBSA).

Furthermore there are also cases where perhaps an Officer has not asked an individual or their immigration status *per se*, but when they have learned of, or suspected a lack of status (for example through identity documents or information from others, such as a victim's abuser) have forwarded that person to CBSA custody. All of this undermines Access without Fear.

- 2) To the extent that the Service has outlined some of its Domestic Violence protocols with respect to Undocumented Torontonians, it has neglected to address the devastating impacts of *other policies*, such as Mandatory and Dual charging, that undermine true Access without Fear for many people, particularly Undocumented racialized women. Mandatory charging is a policy which requires Officers to lay criminal charges against an abusive partner in all cases of abuse where "reasonable grounds" exist. Many gender-violence advocates have noted that this policy has had adverse consequences on survivors seeking justice. One example is that it has also led to an increase in dual arrests, for example where a victim has acted in self-defense. Where a victim is undocumented or has precarious status this can result in immigration detention and deportation because then the "Don't Ask" policy ceases to apply; the "victim" becomes directly engaged in the criminal process as an accused person.

There are of course many reasons why people, particularly migrant women do not report violence to police, but in our experience one of them is because they fear their partner, often the sole income-earner in the family will be deported, or they will face greater retaliation including risk of deportation. Such realities undermine both the dignity of persons who have suffered physical and psychological trauma and the public policy objective of investigating crime.

- 3) Finally and importantly, the statement that the Service would be in contravention of *Ontario Regulation 265/98 Disclosure of Personal Information* if they do not share information about Undocumented Torontonians with the CBSA is legally inaccurate. The Service states: "if, during an investigation, a police officer discovers that an individual is under investigation for, is charged with, or is convicted or found guilty of an offence under the *Criminal Code*, the *Controlled Drugs and Substances Act* or any other

federal or provincial Act; subsection 5(1) of the Ontario Regulation 265/98 entitled *Disclosure of Personal Information*, made under the *Police Services Act* **compels** the officer to disclose personal information about the individual” to the CBSA. This is *not* a *misinterpretation* of the Regulation, it is a *misstatement* of the Regulation.

In actuality, subsection 5(1) reads as follows:

“A chief of police or his or her designate **may** disclose any personal information about an individual if the individual is under investigation of, is charged with or is convicted or found guilty of an offence under the *Criminal Code*, the *Controlled Drugs and Substances Act* or any other federal or provincial Act to...” [emphasis added]

This gives rise to two points: 1) the Regulation in fact gives the Chief *discretion* in sharing information – he *may*, not *must* disclose information and 2) the individual must be connected to an “offence” for which there can be consequences of findings of guilt. Infractions of immigration law, such as being without documentation are not the types of “offences” envisaged by the Regulation, as they are administrative and not criminal in nature. To be undocumented is not a crime under the law although Undocumented Torontonians are often materially criminalized in how they are viewed and treated, how they are denied critical services and protections and through immigration detention and deportation, often arising from police interaction.

It is our position that in order to comply with the City’s Access without Fear motion, the Service must exercise this discretion in a way that does not create further fear and risk of immigration detention or deportation, which means not sharing information with the CBSA unless legally required to do so. Further in the absence of evidence-based justifications for practices such as carding, or how “bona fide” reasons are *practically* employed, or accountability and transparency of the Service’s relationship and protocols with the CBSA, we are of the position that the Service cannot be said to be in compliance of the goals and aims of the Access without Fear policy. We request that the Committee adopt the recommendations put forth by No One is Illegal – Toronto.

Yours truly,

Karin Baqi
Barrister & Solicitor