

Access Without Fear Deputations

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My name is Brendan Jowett and I am deputing on behalf of Parkdale Community Legal Services (PCLS), a legal clinic which serves low-income residents of Toronto's Parkdale and Swansea neighbourhoods. I am an articling student at PCLS and will be called to the bar next month. I also have a Master's degree in immigration law. PCLS has been a member of the Solidarity City Network since it was formed in late 2012/early 2013.

Many of my clients and the clients of our clinic are people with precarious or no immigration status – failed refugee claimants who are terrified to return to their countries of origin, live-in caregivers forced to work under the table after becoming homeless when they are fired or their clients die, virtually life-long residents who lose their permanent resident status after an entanglement with the law – a wide variety of circumstances unique to every resident of this city who is “illegalized” by the *Immigration and Refugee Protection Act*.

It is our position that the CDRC should reject the Toronto Police Services report, and adopt the recommendations of Tings Chak and the Solidarity City Network. The report points to some theoretically positive steps that have been taken to improve undocumented residents' interactions with police – that victims and witnesses of crimes will not be asked their immigration status unless there is a *bona fide* reason to do so, and that officers are told that a lack of immigration status may make domestic abuse complainants vulnerable. As my colleagues have said, restricting protection to victims and witnesses of crimes is unduly narrow, while the definition of “*bona fide*” is unduly broad. Many deputants have raised the issue of carding, and while I recognize that carding *per se* is not a matter which is open to this committee to consider, the report makes no mention of whether people are being asked about immigration status when police do engage in carding practices – this is an issue which is perfectly open for the committee to consider. Here, however, I will discuss what we perceive to be the major deficiency of the TPS report, that being the concern that the TPS appears to have closed its mind to any consideration of a “don't tell”

component of its Access Without Fear policy. Regarding the critical piece of an Access Without Fear policy for police services – that information relating to immigration status not be passed on to immigration enforcement authorities – the report basically throws its hands up in the air and says “we have no choice, the legislation forces us to share information.” It is this assertion that I will address for the remainder of my time.

Firstly, I should point out that the Report provides no information on whether or when the TPS will pass information on to immigration authorities if it does come to light, even if it relates to the immigration status of a victim or a witness. To provide an example of the dangers that such information sharing can cause, an undocumented client of mine fell while stepping off of a TTC bus, hit his head on the sidewalk and was badly injured. Toronto Police were called to investigate and, when they learned that he had an outstanding immigration warrant, arrested him at the scene of the incident, brought him to the Toronto West Detention Centre themselves, and handed him over to CBSA. He was not taken to see the correct specialist for three months while in immigration detention, and has gone permanently blind as a result of his head injury.

Secondly, a number of my colleagues have addressed the TPS Report’s incorrect assertion that s. 5(1) of Ontario Regulation 265/98 compels officers to pass information on to immigration enforcement. My colleagues have pointed to the use of the language “may” rather than “shall”, which *permits* disclosure but does not *compel* it. I would like to point out that this authorization to disclose only arises if two necessary preconditions are met. First, a person must be investigated, charged or convicted. Second, the circumstances must be such that disclosure is required for certain reasons, such as protection of the public. So really, the rule is that disclosure is *not* permitted, unless those two preconditions are met. Even then, disclosure remains optional and not compulsory.

So the question, then, is under what circumstances TPS should be instructing its officers to disclose information to immigration enforcement. This question is not considered in the Report, and the report is not clear whether information will be shared about victims and

witnesses, or only those investigated, charged or convicted. This is because the Report incorrectly treats an exception as a rule. This crucial oversight is reason to reject the report.

We have an answer to the question of when TPS should be disclosing information to immigration enforcement. The circumstances in which a person's immigration status has any bearing on the ability of the TPS to administer the criminal law are few and far between. The circumstances in which disclosure of a person's immigration status is necessary for the protection of the public are also rare – if you subscribe to the belief that the criminal law effectively deals with crime, as a municipal police service would, then invoking immigration law is an unnecessary additional measure for public safety. Instead, it creates a climate of fear among undocumented community members, undermines any sense of trust in police services, and deters survivors of violence from seeking the assistance of police. Moreover, it undermines the city's commitment to provide access to services without fear. We therefore ask the CDRC to instruct Toronto Police Services that only in the narrowest of circumstances should information relating to immigration status ever be disclosed to immigration enforcement authorities.