

November 23<sup>rd</sup>, 2015

*By email to [cdrc@toronto.ca](mailto:cdrc@toronto.ca)*

Community Development and Recreation Committee

City of Toronto

Dear Committee Members,

**RE: November 25<sup>th</sup>, 2015 Committee Meeting, Item CD 8.4 Access to City Services for Undocumented Torontonians: Progress of the Access T.O. Initiative**

I am writing on behalf of the Immigration Legal Committee – a joint committee of the Law Union of Ontario (a progressive organization of Lawyers, Law Students and Legal Workers) and No One Is Illegal (a migrant justice organization) to provide our legal observations regarding this item. I am the senior immigration consultant at Carranza LLP, a multiethnic law firm in North York, I am a member of the Canadian Association of Refugee Lawyers, and a member of the Refugee Lawyer Association.

It is clear from the Toronto Police Service's (TPS) policy on "Victims and Witnesses without Legal Status" (the "TPS Policy") as borne out by the statistical evidence obtained by Dr. Moffette (as reported in the report "Often Asking, Always Telling") and as per our statistics (attached) and as per the anecdotal evidence (as reported in Dr. Moffette's report) and as reported in my own experience, that the Toronto Police Service (TPS) must not be included in the services listed in the City of Toronto's materials on their "Don't Ask Don't Tell" policy until substantial change occurs in TPS's policy.

Juan Carranza  
Kevin Doan\*  
Kelley Campbell  
Aliza Karoly  
Moirra Gracey  
Anu Bakshi  
Geoffroy Pavillet  
Kiran Qureshi  
Maria Capulong  
Jane M. Le  
Rolando Aguilera

\* Certified by The Law Society as  
a Specialist in Civil Litigation

*The evidence:*

1. The report “Often Asking, Always Telling” in a clear way sets forward empirical evidence showing that the TPS Policy puts Torontonians at risk for no legal purpose. However, statistics outside that report along with anecdotal evidence in this deputation also supports this proposition;
2. Recent statistics obtained by our committee show that 2608 calls were made by the TPS in 2015 to check the status of people they came into contact with, this being 84% of the calls. The TPS can easily check whether a person they come in contact with has an outstanding warrant by contacting the 24 hour hotline at the Canada Police Information Centre. So presumably what these statistics show (and they do concur with Dr. Moffette’s research) is that the TPS is calling Canada Border Services Agency (CBSA) on fishing expeditions – expeditions to determine whether a person that they have come in contact with (possibly a suspect, but also very possibly a victim or witness of a crime) is without immigration status. This shows that the TPS Policy, weak to begin with, is not being followed;
3. I have on numerous occasions in my own work come across clients entrapped by the TPS Policy. One client (who incidentally is black, which is of interest given the recent concerns on the TPS “carding” policy) was caught smoking on a TTC platform. Though he was not charged, the TPS called CBSA for a status check, and hence transferred him to CBSA custody for removal. He is now in Canada after 6 years, a separation from his family which has hence led to a breakdown of his relationship with his spouse and related impact on their children. Another client was arrested based primarily on the basis of his race (which was similar to a resident drug dealer known to the TPS), he was also beaten. On investigation the TPS realized they had arrested the wrong person. However, they called CBSA and realized he was without status. Before he could seek any recourse for the wrongful arrest and subsequent assault, he was removed; and

4. I often must advise my female clients that reporting their abusive spouses may result in TPS taking action against them. This occurs in conjunction with the TPS's other policy "Mandatory and Dual Charging" resulting in the unwillingness of many women to report domestic or other gender related violence as they may themselves become the object of CBSA enforcement. This issue is well covered in the South Asian Clinic of Ontario (SALCO) Deputation of May 21<sup>st</sup>, 2015 (appended to this document).

### ***Legal Issues:***

As covered in the SALCO deputation of May 21<sup>st</sup>. 2015, the TPS has misrepresented the wording of *Ontario Regulation 265/98 Disclosure of Personal Information* section 5 (1) which states clearly:

5. (1) 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* (Canada), the *Controlled Drugs and Substances Act* (Canada) or any other federal or provincial Act to

- (a) any police force in Canada;
- (b) any correctional or parole authority in Canada; or
- (c) any person or agency engaged in the protection of the public, the administration of justice or the enforcement of or compliance with any federal or provincial Act, regulation or government program. O. Reg. 265/98, s. 5 (1).

(2) Subsection (1) applies if the individual is under investigation of, is charged with or is convicted or found guilty of an offence under the *Criminal Code* (Canada), the *Controlled Drugs and Substances Act* (Canada) or any other federal or provincial Act and if the circumstances are such that disclosure is required for the protection of the public, the administration of justice or the enforcement of or compliance with any federal or provincial Act, regulation or government program. O. Reg. 265/98, s. 5 (2).

It is unclear why the disclosure of a person's individual information is required where they are (as per the previous anecdotal information): smoking on a TTC platform; simply resembling on a racial level a person of interest to the TPS, or attempting to procure protection from domestic or gender related violence and how this disclosure is required for the protection of the public and administration of justice (in fact it often interferes with the administration of justice). As to "compliance with any federal or provincial Act, regulation or government

program” it is to be noted that absent a warrant, Section 142 of the *Immigration and Refugee Protection Act* does not require a non-CBSA Peace Officer to involve themselves in immigration enforcement (again a warrant’s existence is easily verified on CPIC without recourse to a contact with CBSA).

2608 calls were made to CBSA by TPS this year alone. Were these women fleeing violence? Were they Black Torontonians racially profiled by an Officer? We don’t know, TPS won’t tell us. However, until a policy is actually produced by the TPS that alleviates these problems, and until the communities of migrants in our city makes it clear that the TPS can provide them with effective protection without immigration consequences, the TPS **must** be removed from the list of services non-status migrants can access without fear in this city.

Yours truly,

Macdonald Scott, B.A., I.P. (Hons)  
RCIC

Carranza LLP Barristers and Solicitors

**Inquiries by Toronto Police Service:**

Year	Number of inquiries by TPS
Nov 4, 2014 - Dec 31, 2014	757

Total inquiries by TPS: 3,759

*Data prior to November 2014:*

Due to system limitations, the WRC is unable to provide data for the Toronto Police Service prior to the launch of the new NBOC log in November 2014. The decommissioned system (CATS) prior to the new log creation, only allows for the broad categories of Law Enforcement, CBSA Inland Offices, and Other Inquiries)

#6: The requestor asks for communication that outlines the relationship between TPS and CBSA for 2006 - 2015 regarding immigration enforcement – so for this, we have provided why the call was made.

**Call reason (note 2014 commences in Nov)**

	2014	2015
Status check	667	2608
Warrant Inquiry	44	134
PDP Inquiry	22	64
Database verification	43	57
Photo Request	11	24
Fingerprints Request	0	1
Follow-up Call	14	77
Special Event	0	0
Other	48	115