‘Sanctuary Toronto’: Municipal Authority, Policing Cities, and Residents with Precarious Immigration Status

by

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A thesis submitted in conformity with the requirements for the degree of Master of Arts.
Department of Geography and Planning
University of Toronto

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ABSTRACT

On February 21, 2013, the City of Toronto became Canada’s first ‘sanctuary city.’ However, the City cannot claim to be a sanctuary city if the Toronto Police Service participates in immigration enforcement. This thesis examines the City’s jurisdiction and authority over the Police Service, and conversely, the legality of the Police Service’s practices of enforcing immigration status. Throughout this thesis, I point to an enduring tension between the City and the Police Service over their respective interpretations of jurisdiction and authority vis-à-vis non-status individuals. Drawing on academic literature, archival, policy, and legal materials, this thesis concludes that while the City’s jurisdiction and authority over the Police Service is limited, the Police Service’s legal arguments against sanctuary are inaccurate, and are thus insufficient reasons for refusing to comply with the City’s sanctuary policy.
ACKNOWLEDGEMENTS

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When I started making inquiries to potential supervisors, Ju Hui Judy Han replied with thoughtful questions about my original topic on how queer men of colour use mobile hook-up applications. Judy met with me months before I submitted my application to the program, and she advocated for my acceptance. Thank you to Judy for not only supporting me as I settled into the program, but also for helping me with my SSHRC proposal. From draft one to fifteen, Judy’s feedback undoubtedly made my proposal stronger.

I am indebted to Graham Hudson and Idil Atak at Ryerson University for having me as a Research Assistant on their projects about irregular migration and border security. The research
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This research was made possible thanks to the administrative and financial support from the Department of Geography and Planning, especially Jessica Finlayson, who was also the recipient of my many emails; the School of Graduate Studies, in particular the Estate of Joseph Bazylewicz for their graduate fellowship; and SSHRC, for awarding me the CGS-M and the Michael Smith Foreign Study Supplement, allowing me to spend a summer at UC Berkeley School of Law as a Visiting Researcher. I am grateful to Rosann Greenspan at Berkeley for facilitating this opportunity before and during my time there.

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<th>Description</th>
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<td>CBSA</td>
<td>Canada Border Services Agency</td>
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<tr>
<td>CDRC</td>
<td>Community Development and Recreation Committee</td>
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<tr>
<td>CIC</td>
<td>Citizenship and Immigration Canada</td>
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<tr>
<td>CIMS</td>
<td>Corporate Information Management Services</td>
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<tr>
<td>COTA</td>
<td><em>City of Toronto Act, 2006</em></td>
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<tr>
<td>DA</td>
<td>“Don’t Ask”</td>
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<tr>
<td>DADT</td>
<td>“Don’t Ask, Don’t Tell”</td>
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<tr>
<td>ERT</td>
<td>Education Rights Taskforce</td>
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<tr>
<td>GTA</td>
<td>Greater Toronto Area</td>
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<tr>
<td>GTHBA</td>
<td>Greater Toronto Homebuilders’ Association</td>
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<tr>
<td>ICE</td>
<td>Immigration and Customs Enforcement</td>
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<td>ILC</td>
<td>Immigration Legal Committee</td>
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<tr>
<td>IRPA</td>
<td><em>Immigration and Refugee Protection Act, 2001</em></td>
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<tr>
<td>MFIPPA</td>
<td><em>Municipal Freedom of Information and Protection of Privacy Act, 1990</em></td>
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<tr>
<td>NGO</td>
<td>Non-Governmental Organization</td>
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<td>PFC</td>
<td>Policy and Finance Committee</td>
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<td>PRRA</td>
<td>Pre-Removal Risk Assessment</td>
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<td>PSA</td>
<td><em>Police Services Act, 1990</em></td>
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<tr>
<td>RCMP</td>
<td>Royal Canadian Mounted Police</td>
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<td>SALCO</td>
<td>South Asian Legal Clinic of Ontario</td>
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<td>TAVIS</td>
<td>Toronto Anti-Violence Intervention Strategy</td>
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<td>TCDSB</td>
<td>Toronto Catholic District School Board</td>
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<tr>
<td>TDSB</td>
<td>Toronto District School Board</td>
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<tr>
<td>TPSB</td>
<td>Toronto Police Services Board</td>
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<td>TPS</td>
<td>Toronto Police Service</td>
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CHAPTER 1: INTRODUCTION

“We're not taking advantage of the system,” she says defensively. “Give me status and I'll work and pay taxes. We're not like some other people who abuse the system, who have two or three social insurance numbers, who work with one and collect employment insurance with the other. And besides, we're fuelling the economy by paying our bills and making purchases.

“I won't leave, this is my home,” she says defiantly. “I have nothing in Portugal. They'll have to come to my door armed and drag me away. I'd rather live in Canada illegally and underground, than live in Portugal legally without any secrets.”


1.1 INTRODUCTION: IS TORONTO A SANCTUARY CITY?

On February 21, 2013, Toronto City Council (“Council”) declared that it was a ‘sanctuary city’ for residents without formal immigration status. The term ‘sanctuary city’ in North America has no precise legal definition, but is colloquially used to describe cities that do not use their human or financial resources to help with federal immigration enforcement, and/or prohibit city staff from asking about immigration status when providing services. While the details surrounding Council’s declaration was initially unclear, what Council had essentially promised the upwards of 200,000 non-status individuals residing in the City of Toronto (the “City”) was that they could access municipal services such as paramedic services, libraries, and private market rental housing without fear of being exposed to federal immigration officials.


2 It should be noted that Toronto’s sanctuary city declaration was made prior to the election of United States President Donald Trump. This is important because while ongoing sanctuary city debates may be influenced by current events, this thesis is concerned with how Toronto became a sanctuary city, which was not a direct function of American geopolitics.

3 While the number of non-status individuals is difficult to measure with precision, it is estimated that between 200,000 to 500,000 non-status individuals reside in Canada. For more discussion on these numbers, see e.g. Graham Hudson et al, “(no) Access to: A Pilot Study on Sanctuary City Policy in Toronto, Canada” (2017) No. 2017/1 RCIS Working Paper, online: <http://www.ryerson.ca/content/dam/rcis/documents/RCIS%20Working%20Paper%202017_1GHudsonFinal%20.pdf> at 5.
In taking steps to prevent City staff from inquiring about immigration status, Council was also interpreting their authority in a way that challenged federal jurisdiction over immigration matters. Traditionally, Canadian cities have not been seen as influential players on immigration matters. Instead, the federal and provincial governments have been viewed as the gatekeepers of Canada’s immigration system: the federal government is responsible for creating and enforcing immigration legislation, whereas the provincial government plays a role in administering national policy. Under the Provincial Nominee Program for example, Ontario assesses economic migrants and nominates candidates to who they deem fit for permanent residency to the federal immigration department.

Despite this division of powers over immigration, the federal and provincial governments rely on municipalities to effect some of their immigration initiatives, such as delivering integration services to immigrants and refugees. For example, the municipal Toronto Newcomer Strategy is funded through federal monies, allowing the City to “improve newcomer settlement through shared leadership, stronger collaboration and a more seamless and well-coordinated service system.” In addition, municipalities already render a range of everyday services from recreation programs to emergency shelters, regardless of the immigration status of those served. The City’s control over service delivery thus makes their promises of being a sanctuary city, at least to some degree, a possibility.

While the City’s commitment to making most municipal services available to all Torontonians can and should be commended, the ‘sanctuary city’ identity has limitations when understood

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through its jurisdictional constraints. As Councillor Joe Mihevc recognized after Council made its sanctuary city declaration, it was a “historic moment” for Toronto, but it did not change the Toronto Police Service’s “legal obligation to report [immigration status] to Immigration Canada” in certain situations.⁹ Accordingly, the question that this thesis answers is whether or not the City can claim to be a sanctuary city without the compliance of the Toronto Police Service (the “Police Service”). This thesis analyzes the City’s legal jurisdiction and authority over the Police Service, and conversely, the legality of the Police Service’s practices of enforcing immigration status. What I point to throughout this thesis is an enduring tension between the City and the Police Service over their respective interpretations of jurisdiction and authority vis-à-vis non-status individuals.

To answer this question, I situate sanctuary cities and policing within a wide body of literature that includes political theory, citizenship studies, critical legal scholarship, and urban geography. By bringing the literature into conversation with one another, I identify a rich theoretical approach that challenges assumptions about what it means to be a sanctuary city in today’s political and legal climate, and I explain the methods relied upon to undertake this research project. Thereafter, I present the legislative history which saw Toronto become a sanctuary city, and then respond to the Police Service’s legal arguments that they believe requires them to police immigration status, thus placing them outside the reach of the City’s sanctuary policy. Overall, this thesis contributes to what I believe is an important analytical intervention fusing together critical theory, legal analysis, and geography in order to navigate the tensions between cities and local police in diverse urban environments.

1.2 RESEARCH OBJECTIVES

While the public reaction to Toronto becoming a sanctuary city was mixed, Toronto was arguably the most suited to become Canada’s first sanctuary city. According to the 2016 Census data, just over 50% of Torontonians identified as belonging to a visible minority group.¹⁰

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⁹ Nicholas Keung, “City declared a ‘sanctuary’: Historic move means non-status migrants can use key services without fear of deportation,” Toronto Star; Toronto, Ont (22 February 2013) A.1.

¹⁰ City of Toronto, 2016 Census: Housing, Immigration and Ethnocultural Diversity, Aboriginal peoples, 2016 Census Backgrounder Reports (Toronto, ON: City of Toronto, 2017) at 3.
Toronto is also home to a large immigrant population: 47% of Toronto residents were born outside of Canada, with almost 15% of those residents being recent immigrants to Toronto, the largest percentage of recent immigrants in any Canadian municipality. Diversity is promoted as a key feature of the city’s identity, so much so that since 1997, the city’s motto has been ‘Diversity, Our Strength.’ City Council’s sanctuary city declaration could thus be interpreted as another attempt to recognize the growing definition of what ‘diversity’ looks like in Toronto.

However, the road to what I call ‘Sanctuary Toronto’ – the discussions held within and across municipal agencies, the patchwork of sanctuary policies, and the ongoing challenges with ensuring non-status Torontonians can access services – traverses through a deeply troubling history of criminalizing immigration in Ontario and Toronto. Since the events of September 11, 2001, provincial and municipal politicians in Ontario have increasingly bemoaned the problem of ‘illegal’ immigration. Speaking just a few weeks after 9/11, then Ontario Premier Mike Harris suggested the provincial government needed to play a larger role in terrorism prevention, an area for which the federal government had traditionally been responsible for. He announced to the Legislature the appointments of one retired Royal Canadian Mounted Police (“RCMP”) commissioner and one retired Canadian Army general to advise the provincial government on terrorism, asserting that “their suggestions [would] lead to greater cooperation with other governments and law enforcement agencies, locally and globally.” Alarmingly, Harris also announced his intention to “establish a special police unit to assist federal officers in tracking down these criminal offenders and aggressively [seek] their deportation.” Although he did not identify who these ‘criminal offenders’ were, typically only individuals without Canadian citizenship can be deported. The most precarious are those individuals without formal

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11 Ibid at 4.
12 See e.g. Donya Ahmadi, “Is diversity our strength? An analysis of the facts and fancies of diversity in Toronto” (2018) 13 City, Culture and Society 64.
14 This thesis focuses on the jurisdictional challenges in the City of Toronto’s efforts to provide non-status individuals with access to municipal services. While this thesis does not focus on the problematic ways in which sanctuary city policies are implemented in the City of Toronto and elsewhere, it is also important to acknowledge the nuance and complexity to sanctuary city policies.
15 Mike Harris, Ontario Economy and Security, House Hansard (Ontario: Legislative Assembly, 2001).
16 Ibid.
immigration status, more commonly referred to in mainstream discourse (incorrectly) as ‘illegal immigrants’ or (pejoratively) as ‘undocumented immigrants.’\textsuperscript{17}

The response from opposition party leaders was mixed. Dalton McGuinty, the Leader of the Official Opposition of the day, responded that his party supported measures to deport those ‘criminal offenders’ and prevent them from living in Ontario, as long as it did not “resembl[e] a witch hunt aimed at all of our immigrants.”\textsuperscript{18} Then Ontario NDP leader Howard Hampton pressed Harris the next day in the Legislature to clarify his earlier comments about Ontario’s immigrants. Just one-week prior, Harris said it “would be wrong to scapegoat immigrants [in] Ontario…regardless of race, religion, background, or ethnic origin,” yet he also claimed there were “thousands of dangerous immigrants on the loose.”\textsuperscript{19} To Hampton, Harris’ use of ‘dangerous’ equated a lack of immigration status with terrorism. Harris disagreed, and deflected by stating that his government did not actually consider ‘illegal immigrants’ to be ‘immigrants’ because they were residing in Ontario ‘illegally.’\textsuperscript{20}

Statements made by provincial politicians could easily be passed off as heated political rhetoric that was contained within the province. Another explanation is that future policies and practices affecting non-status individuals in Ontario, and more broadly, Canada, were to some degree impacted by these politicians’ words.\textsuperscript{21} It was a preview of what ideas would shape the institutional responses in the immediate aftermath of 9/11, and how those ideas would sustain the notion that immigration status required more surveillance and regulation. Harris’ draconian desire to create a special unit never came to fruition, but the information we have today on systemic racism in the criminal justice system, as well as discriminatory carding practices by the Toronto Police Service against Black people and other people of colour, all but confirms that a

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\textsuperscript{19}Howard Hampton, \textit{Immigrants}, House Hansard (Ontario: Legislative Assembly, 2001).
\textsuperscript{21}See e.g. Janice Dickson, “Leitch Pledges to Deny Funding to ‘Sanctuary Cities,’” \textit{iPolitics} (10 March 2017), online: <http://ipolitics.ca/2017/03/10/leitch-pledges-to-deny-funding-to-sanctuary-cities/>.
\end{flushleft}
dedicated police unit with such a mandate would have disproportionately affected racialized communities. Indeed, the Police Service’s defunct Toronto Anti-Violence Intervention Strategy (“TAVIS”) unit was disbanded in 2017 due to their disproportionately high rate of carding.\textsuperscript{22}

Only two years later, Bob Runciman, the provincial Minister of Public Safety and Security at the time, declared that ‘illegal immigrants’ “should either be turned around and sent back from whence they came, or they should be incarcerated” until the government could confirm they pose no risk to “this continent.”\textsuperscript{23} The ideas espoused by Runciman around indefinite detention are easily located within the immigration apparatus. For example, an investigation into Canadian immigration detention practices by the \textit{Toronto Star} revealed that Ebrahim Toure has been detained for the last five years because he lacks immigration status. Despite not having been charged with or convicted of any crime, four-and-a-half of those years were spent in a maximum security penitentiary. Toure was only transferred to a less-restrictive immigration holding centre after an Ontario Superior Court judge ruled that his detention in a maximum-security jail while awaiting removal from Canada violated his section 12 rights from “cruel and unusual treatment” under the \textit{Canadian Charter of Rights and Freedoms}.\textsuperscript{24}

At a more local scale, similarly ignorant ideas around immigration status can be found in Toronto City Council debate archives. During one debate in 2015 about the prevalence of reporting immigration status in the City, Councillor Denzil Minnan-Wong implied in his questions to City staff that ‘illegal immigrants’ were burdening the City’s budget and straining City services. He also asked if it was fair to say that “not cooperating with other levels of government in terms of enforcement [l]eads to encouraging more illegal immigration into the country and into the city.”\textsuperscript{25} City staff delivered a professional rebuke of Minnan-Wong’s

\begin{itemize}
  \item City of Toronto, \textit{Video Archive – Toronto Police Service: Service Governance Pertaining to the Access to Police Services for Undocumented Torontonians} (Toronto, Canada: Council Chamber, City Hall, 2015).
\end{itemize}
comments, stating that non-status individuals make contributions to the city, they might not even be accessing any City services because they fear the possibility of being exposed, and there was no empirical evidence to support his claim that cooperation is causally related to ‘illegal immigration’ levels. However, the strongest critique of Minnan-Wong’s comments came from his colleague. Taking “great offence” at the use of ‘illegal,’ Councillor Jim Karygiannis charged that non-status individuals are not criminals, but are “people that are supposed to be here [and] trying to make a living.” Minnan-Wong retorted that the topic had “nothing to do with Council business,” but was drowned out by Karygiannis shouting “Damn right it has, damn right it has!”

The temptation to attribute these suggestions that immigration status ought to be further securitized, or that these political outbursts were circumstantial, excuses the institutional normalization of a fear of the ‘other’ and association of criminality with particular communities. Furthermore, it overlooks the fact that immigrants and racialized individuals have always had to justify their political, legal, and social value in Canada. The suggestions made by Harris and Minnan-Wong that only certain immigrants – those with immigration status formalized and maintained by the state – were considered ‘real’ immigrants sought to erase their livelihoods in Canada, and was an indication that institutional forces were comfortable with criminalizing immigrants because of their immigration status, even in spite of evidence that contradicts these mobilized and manufactured fears.

One research objective of this thesis is to trace what the systematic reconfiguration of immigration enforcement and policing of immigration status in urban spaces says about how the law is being used against vulnerable individuals. What the law does and does not say about who is and is not responsible for immigration enforcement – while considerably less complicated than it is made out to be by persons of authority – is perpetuated within a state structure that expects racialized and marginalized communities to be heavily policed. As a result, government institutions and actors have been afforded wide latitude to effectuate immigration laws and policies that disproportionately target these communities, and are thus often incongruous with

26 Ibid.
27 Ibid.
stated political objectives or competing policies in parallel jurisdictions. This thesis points out these incongruences and tries to better understand why they have been allowed to inform important decisions about policing immigration status.

Although the road to Sanctuary Toronto was chaotic, another research objective is to highlight how beneath all the chaos, deliberate but different choices were being made by the City and the Police Service which challenged particular notions of what it means to be a sanctuary city. For the City, they chose to understand the legal ambiguities to mean they could implement policies that prevented them from inquiring about and reporting immigration status. For the Police Service, they chose to interpret the legal ambiguities as grounds to reinforce their role in policing immigration status. So, while Sanctuary Toronto is not entirely disconnected from the kinds of discussions held in other political spheres, the City’s interpretation of itself as a sanctuary city indicates a genuine choice to address both the anxieties against and support for non-status individuals through the law. In summary, this thesis’ overarching interest is the tension between municipal authority and local policing with respect to how non-status individuals and their immigration status is disciplined in the city.

1.3 RESEARCH METHODS AND THEORETICAL FRAMEWORK

Despite living in a sanctuary city, non-status individuals in Toronto continue to report inconsistent treatment by both the City and the Police Service. Since the City has already completed several reviews of its sanctuary policy Access to City Services for Undocumented Torontonians (“Access T.O”) and has publicly committed to making improvements, this thesis is concerned with how the actions of the City and the Police Service interrelate and complicate Toronto’s ‘sanctuary city’ identity. As this research project is concerned primarily with the relationship between municipal authority and the policing of immigration status within a geographically defined area, I consider it to be a case study on legal governance and policy implementation. I designed research questions using Dan Gibton’s simple three-dimensional

approach to formulating research questions for policy case studies: identify the context, time, and place relevant to the stated research objectives. ‘Context’ refers to the issues and/or individuals that form the case study’s object of analysis. ‘Time’ refers to defining, for our purposes here, the years that the case study unfolds over. ‘Place’ refers to where the case study takes place. The parameters of this case study on Sanctuary Toronto are the legal governance structures and key policy makers (context) between 2001 and 2018 (time) in the City of Toronto (place).

Accordingly, this thesis attends to the Police Service’s legal argument that maintains their obligations to police immigration status, and works through the interjurisdictional and governance challenges between the City and the Police Service when both of these municipal actors exercise their authority within competing jurisdictional spheres. I pose the following questions to guide this research project: (1): Does the City have the necessary authority to ensure the Police Service complies with its sanctuary policy, even though the Police Service argues that they have legal requirements under federal and provincial statutes to enforce immigration status? (2): Given that the Police Service regularly enforces immigration status and is bound by different legal statutes, can the City reasonably expect the Police Service to comply with their municipal Access T.O. policy?

While the story of Sanctuary Toronto is messy, answering these research questions responds in a systematic way to a central issue Canadian cities face in trying to becoming sanctuary cities. To answer these research questions, I bring together different qualitative methods which include a textual and archival review, policy and legal document analysis, as well as examining grey literature and other data sources. In doing so, I aim to recognize the intellectual possibilities using a variety of methods can open up, especially within a rigorous theoretical framework that helps us answer these research questions. I will return to the aforementioned methods in detail shortly, after I briefly define key terms and contextualize the theoretical framework I have identified to be the most appropriate for this research project.

To analyze how the City and Police Service each interpret their jurisdiction and exercise their authority with respect to non-status individuals, this thesis draws from the critical legal geography literature’s framing of ‘jurisdiction’ and ‘authority.’ Both jurisdiction and authority are characteristically legal; they are a function of the laws (or the absence of laws) through which they are constituted. Where they differ is their conceptual broadening of the discussion about policing non-status individuals in urban spaces.

Writing about lawfare (“the use of law as a weapon of war”30), Katia Snukal and Emily Gilbert describe jurisdiction as “the different legal orders and scales of governance [that] can be understood as sorting and separating law’s applicability.”31 In recognizing that laws and governance intersect, Snukal and Gilbert encourage a spatial approach to jurisdiction, arguing that jurisdiction helps to trace an object of analysis’ “complex spatio-legal jurisdictions,” as well as “the ambiguous relationship” when multiple actors are present.32 By expanding jurisdiction from the legal to the spatial, Snukal and Gilbert provide an analytical framework that organizes how “decisions about which jurisdiction applies” in certain spaces.33 This in turn reveals the entanglements of jurisdiction, or the “where, who, what, and how of governance” when certain laws are mobilized.34 Similarly, this thesis applies the same spatio-legal definition of jurisdiction to identify how the City and Police Service mobilize laws over enforcing immigration status differently.

This explanation of jurisdiction, that it sorts and separates laws based on applicability, emphasizes jurisdiction as a structure. However, an awareness of how power circulates within a jurisdiction is also necessary: through the exercise of authority. By ‘authority,’ I mean the legal powers an actor has over certain spaces and/or the individuals in those spaces, and how that actor goes about applying their authority within their jurisdiction. When the City or the Police Service

32 Ibid.
33 Ibid.
34 Ibid.
exercise their authority, they do so within their prescribed jurisdiction (e.g. borders, boundaries, and spaces). Of course, interpreting jurisdiction and exercising authority is not as straightforward as I have just suggested. The responsibilities of different authorities when they operate within the same jurisdiction continuously overlaps, and cannot always be neatly distinguished. In Sanctuary Toronto, the City and the Police Service are each empowered through different statutes, yet they exercise their respective authority within the same jurisdiction. For non-status individuals, this complicated legal relationship is especially problematic, as the laws around policing immigration status are ambiguous. As a result, I have chosen to situate this thesis within the critical legal geography literature because it is most helpful in revealing the problems with the law and confronting those ambiguities.

Snukal and Gilbert also respond to Mariana Valverde’s call for critical legal geography scholars to consider “both the spatiality of the law and its temporality” by employing jurisdiction, or what Boaventura de Sousa Santos calls the ‘interlegality’ of intersecting legal orders.\textsuperscript{35} Hence, Valverde’s influential research on jurisdiction is an appropriate theoretical framework because it provides us not only with a concise language to speak about municipal authority and local policing, but also a vibrant theoretical framework to grapple with the themes that concerns this thesis. Grounded in Michel Foucault’s work on ‘governmentality’ – which I engage with more in the next chapter – Valverde offers three areas that must be addressed in all security projects: logic, technique, and scope. ‘Logic’ refers to the rationale and objectives of the project. ‘Technique’ refers to both the human and non-human techniques used to govern, and should be understood independent of logic and scope because while some logics may be more obviously connected to certain techniques, “the choice of logic does not absolutely determine which techniques will be used.”\textsuperscript{36} ‘Scope’ combines both scale and jurisdiction, whereby “the scale of the project and the jurisdiction(s), formal or informal, that it claims and/or by which it operates” is being closely observed in the research project.\textsuperscript{37} Although logic and technique have each been productive frameworks in previous research, Valverde suggests that the scope of security

\textsuperscript{35} Ibid.
\textsuperscript{37} Ibid.
projects need to be isolated because it pinpoints “the scale (both temporal and spatial) of security projects and the jurisdictional arrangements that organize security governance.”38 By ‘scale,’ I mean the geographic notions of scale: that they are different levels of analysis and action, whereby “a given phenomenon can only be represented on a given scale.”39 To focus on the realities of how municipal authority and policing powers converge at the urban scale, the “capacity to create those phenomena that maximise the conditions for the reproduction of power” can be more fully interrogated in this thesis.

Unlike most governmentality scholarship, scope moves away from only focusing on “the effects on human beings of different kinds of exercise of power,” and instead centres the value of analyzing governance, material processes, and jurisdiction.40 Concomitantly, the scholarship which is interested in legal mechanisms has largely been indifferent to the importance of analyzing jurisdiction. In arguing that the law has been viewed as a homogenous entity whose logic is confined to the Hobbesian notion of “sovereign control over subjects,” Valverde argues that jurisdiction’s ability to rearrange objects or reshape spaces has been neglected.41 This thesis works within this security framework of logic, technique, and scope, but places more weight on scope, in order to interrogate the “spatial, temporal, and jurisdictional scope” which underpins municipal authority and local policing vis-à-vis Sanctuary Toronto.42 I now turn to explain how, in conjunction with the definitions and theoretical framework illustrated above, the methods described below aided this research project.

1.3.1 Textual and Archival Review

I began by canvassing archival texts available through the City of Toronto and Toronto Police Services Board’s (the “Police Board”) respective online meeting databases for any material which commented directly on Sanctuary Toronto. To exclude irrelevant material, keywords used to perform the search were ‘sanctuary,’ ‘immigration,’ and ‘undocumented,’ the latter being a

38 Ibid at 3.
40 Valverde, supra note 36 at 9 [emphasis in original].
41 Ibid at 10.
42 Ibid.
term the City used more frequently than contemporary terms such as ‘non-status individuals’ or individuals with ‘precarious immigration status.’ The search yielded material including meeting minutes from City Council, City Committees, and the Police Board; staff reports to City Council and Committees; Chief of Police and Board Chair reports to the Police Board; non-institutional submissions on Council and Police Board items; and correspondence across municipal agencies and between different orders of government. I catalogued the material in a spreadsheet with the material’s date, institution it was located from, type of material, title of the material, details about what the text was about, reference number attached to the text, and location of the file on this researcher’s computer. Figure 1.1 provides an example of this cataloguing system.

<table>
<thead>
<tr>
<th>2006</th>
<th>DATE (Y-M-D)</th>
<th>BODY</th>
<th>TYPE</th>
<th>TITLE</th>
<th>DETAILS</th>
<th>REF. #</th>
<th>LOCATION</th>
</tr>
</thead>
<tbody>
<tr>
<td>2006-11-28</td>
<td>TPSSB</td>
<td>Minutes / Report</td>
<td>“Board Advisory Panel on Community Safety – Update Report”</td>
<td>Report responds to the “Don’t Ask” issue; determine whether the Board should advocate for a standardized “Don’t Ask” policy to be adopted by all school boards in reference to the TPSSB’s policy of a DADT. Mr. John Gillin, Regional Director General, and Mr. Reg Williams, Director Greater Toronto Enforcement Centre, Canada Border Services Agency, were in attendance and made depositions. This is a copy of Mr. Gillin’s speaking notes.</td>
<td>P062</td>
<td>SR_200611_TPSSB_Chair_P062_CommunitySafety_UpdateDADT</td>
<td></td>
</tr>
<tr>
<td>2006-11-28</td>
<td>TPSSB</td>
<td>Submission</td>
<td>“Speaking Notes on CBSSA Deposition before the Toronto Police Services Board”</td>
<td>Letters from CCC and Minister of Public Safety with regards to the TPSSB’s DADT policy. Minutes also include all of depositions made about the implementation of the TPSS’s DADT policy.</td>
<td>P065</td>
<td>SUB_200611_TPSSB_P065_CSSA_SpeakingNotes</td>
<td></td>
</tr>
<tr>
<td>2006-11-27</td>
<td>TPSSB</td>
<td>Letter</td>
<td>“Imposition of the Toronto Police Services Board’s Don’t Ask, Don’t Tell Policy”</td>
<td>Received via email from Board.</td>
<td>P065</td>
<td>LTR_200611_TPSSB_P065_MPS-CC</td>
<td>C_ComplementationDADT-Policy</td>
</tr>
<tr>
<td>2006-09-10</td>
<td>TPSSB</td>
<td>Letter</td>
<td>“Response to Board’s Don’t Ask, Don’t Tell Policy”</td>
<td>Letters from CCC and Minister of Public Safety with regards to the TPSSB’s DADT policy. Written inter-clearance Board Chair to send follow-up letter to Minister seeking if DADT communicates the WPA.</td>
<td>P271</td>
<td>LTR_200609_TPSSB_P271_MPS-CC</td>
<td>BoardDADT-Policy</td>
</tr>
<tr>
<td>2006-09-10</td>
<td>TPSSB</td>
<td>Chief Report</td>
<td>“Examination Into Cost Recovery Opportunities for the Toronto Police Service”</td>
<td>Report from Chief Blair detailing the TP’s role in national security and intelligence, as well as cooperation with other municipal entities.</td>
<td>P252</td>
<td>SR_200609_TPSSB_CchBlair_P252_CostRecoveryMPSSEC</td>
<td></td>
</tr>
<tr>
<td>2006-07-27</td>
<td>Globe &amp; Mail</td>
<td>News Media</td>
<td>“Sanctuary Under Fire”</td>
<td>The federal government does not think much of the churches’ tradition of granting sanctuary to those they consider unfairly at risk of removal from Canada. However, particularly since only half a dozen people are currently receiving sanctuary across Canada, it is hard to see why Ottawa is pressing the issue.</td>
<td>none</td>
<td>NEWS_200607_GMag_SanctuaryUnderFire</td>
<td></td>
</tr>
</tbody>
</table>

Figure 1.1: Cataloguing System Used to File Primary Source Material

To analyze the archival text, I followed Udo Kuckartz’s approach to qualitative textual analysis. Figure 1.2 provides a flow chart of this approach.43 For this research project, the two most pertinent steps conducted from Kuckartz’s approach was an “initial work with the text” that included, to name a few, interpreting the text beside the research question, annotating and marking important parts of the text, as well as analyzing the argumentation used in the text, and building deductive categories based on the text’s themes.44 Guided by Kuckartz’s approach, I

44 Ibid at 15.
imported the archival material into NVivo and coded the material using broad categorical nodes. These nodes were divided into three key general categories: ‘institution,’ ‘tags,’ and ‘type.’ By further coding subcategories of nodes like the institution ‘City of Toronto’ or the tag ‘police,’ the material could be filtered so that common themes and patterns were more easily identifiable.

Figure 1.2: Kuckartz' General Process of Qualitative Text Analysis

Another component of the archival review method was observing online video recordings of Council, Committee, and Police Board meetings, as well as deputations made by concerned parties at Council and Committee meetings. Like the textual material, the same ‘initial work’ approach was applied to these online video recording to determine if the subject matter was relevant to this thesis’ research questions. Video recordings that were considered relevant were then transcribed so that Kuckartz’s approach could be used for categorization and analysis purposes (see Appendix A).

These textual and archival methods not only located key institutional actors embedded in the decision-making process, but also non-institutional actors such as lawyers and community activists who were equally instrumental in pushing for Toronto to become a sanctuary city. The
textual and archival review showed intersections and overlap in the material, and helped piece together the relationship between the City and the Police Service in Sanctuary Toronto. When utilized with the methods described below, the relationship between municipal authority and policing immigration status started to become clearer.

1.3.2 Policy and Legal Document Analysis

Material identified in the textual and archival review was also screened for their value as policy and legal documents. I relied on Amanda Coffey’s approach to document analysis, which underscores how texts are really “versions of reality, scripted according to various kinds of convention, with a particular purpose in mind.”45 As a result, Coffey encourages us to be reflexive in our treatment of documents, paying close attention to the inferences we draw from official documents such as staff reports and policies. With this in mind, Council, Committee, and Police Board policies were read not only beside their corresponding reports, but also the submissions made by non-institutional actors, transcriptions of meetings (when available), and secondary source material. This helped to contextualize what Coffey calls the “process of production and consumption” that underpins any piece of qualitative text.46 Coffey’s approach elucidated the mechanics behind the complex web of policies and legislation implicating Sanctuary Toronto, and allowed me to pinpoint the asymmetries between the City and Police Services’ policy and legal interpretations of what providing sanctuary looks like.

Moving from policy to legal analysis, I drew from Ian Dobinson and Francis Johns’ approach to non-doctrinal legal research, which this thesis engages most substantively in chapter four. Since I do not have formal legal training, I opted to follow the non-doctrinal legal research approach because it is inferential in nature. Although it includes one component of the doctrinal approach, – determining what the existing laws in the area of study is – the non-doctrinal approach’s main focus is on assessing a problem, evaluating related policies, and advocating for legal reform.47

46 Ibid at 6 [emphasis in original].
By staying within a non-doctrinal approach, I was able to comment in chapter three on the legislative history of Sanctuary Toronto and the socio-legal processes that informed the City and Police’s policies. I was then able to “to reach certain conclusions (or inferences) based on what [was] found” in the case law, legislation, and policies that I had identified during the textual and archival review in chapter four.\textsuperscript{48} As Dobinson and Johns note, this non-doctrinal approach shares many similarities to other qualitative methods, thus making it more practical for me to interpret legal documents with my existing academic skillset.

\textit{1.3.3 Grey Literature and Other Data Sources}

I compiled a diverse body of secondary source material or ‘grey literature’ to include as many perspectives that were related to the research objectives and questions, including case law and legislation; legal textbooks on immigration, constitutional, and municipal law; non-governmental organization (“NGO”) reports; local and national news media pieces; and data from freedom of information (“FOI”) requests. Supplementary to the policy and legal document analysis, interpreting case law and legislation was aided not only by legal textbooks, but relatively layperson reports like one about the legality of policing immigration status authored by the Immigration Legal Committee, an NGO made up of lawyers and legal academics. Another report from No One is Illegal - Toronto sent shockwaves through municipal institutions when data showed that the Police Service is the Canada Border Services Agency’s (the “CBSA”) highest referral source, and helped to concentrate what areas in the Sanctuary Toronto discussion needed more research on. Likewise, news media pieces, especially those from the \textit{Toronto Star}, provided this research project with important details about how politicians and community members were feeling about sanctuary city efforts.

The final area of grey literature that this research project drew from was FOI data. Alex Luscombe and Kevin Walby emphasize the growing use of freedom of information requests by scholars when studying political institutions and state governance.\textsuperscript{49} They highlight the friction between what officials convey to be an easy process for citizens accessing government

\textsuperscript{48} \textit{Ibid.}
information and the practical realities that submitting FOI requests requires creativity and specialized knowledge of political institutions. Figure 1.3 provides the ‘official account’ of most FOI processes juxtaposed with how it actually unfolds in practice.  

![Figure 1.3: Luscombe and Walby’s Graphic Juxtaposing the 'Official Account' and Actual Practice of FOI Requests](image)

While the academic literature on FOI requests has examined its utility as a research method, Luscombe and Walby also argue that less attention has been paid to how FOI requests are connected to “themes of state power and information.” To make this thematic connection, they provide three frameworks for theorizing about FOI data: the ‘live archive,’ the ‘limited and diversionary mechanisms,’ and ‘agnosticism’ towards the normative implications by focusing too much on the process itself. Figure 1.4 provides detailed components of these three frameworks.  

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50 Ibid at 380.


52 Ibid at 381.
In trying to access updated statistics on the Police Service’s current role in policing immigration status, I submitted two freedom of information requests to each of the City and Police Service. I discovered during the research process that when the City created its Access T.O. policy, they created a system where all requests by law enforcement agencies for a Torontonian’s personal information must be submitted in writing to the City’s Corporate Information Management Services (“CIMS”) for vetting. After CIMS vets the request, the City has the discretion to decide if the personal information should be shared with the requesting agency. As a result of identifying the existence of this process, I ascertained there to be a high chance that the City was tracking the number of requests received, and I thus submitted written FOI requests for this data, with full access being granted. However, of the two FOI requests submitted to the Police Service, only one has received a response. The pending request has been in queue since November 2017, whereas the request submitted in February 2018 has been granted partial access.

These experiences with submitting FOI requests that I outlined above aligns with what Luscombe and Walby describe in Figures 1.3 and 1.4. While this research project would have benefited from the Police Service’s data, finding creative workarounds when drafting requests, in order to anticipate bureaucratic hurdles, was not enough to mitigate the Police Service’s unresponsiveness via email and telephone. On the other hand, although the City was expedient and responsive, the numbers released in the first request did not match up with the numbers released in the second request. Consequently, I could not rely solely on the information obtained from these FOI requests, and still needed to employ a number of methods to substantiate the FOI data. I therefore included the FOI data sparingly throughout this research project, but I do not believe this was a pointless exercise. As Luscombe and Walby suggest, this experience can also

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**Table 1**

Summary of core differences by conceptualization of FOI, unit of analysis, key concepts, and normative ends.

<table>
<thead>
<tr>
<th>Framework</th>
<th>Freedom of information</th>
<th>Unit of analysis</th>
<th>Key concepts</th>
<th>Normative ends</th>
</tr>
</thead>
<tbody>
<tr>
<td>Live archive</td>
<td>Dynamic system of record production and retention</td>
<td>Bureaucratic decision-making, record production and retention practices and protocols, politics of government openness and accountability</td>
<td>Live archive, active texts, network, archive, memory, accountability, transparency</td>
<td>Accountability, transparency, open government, institutional memory</td>
</tr>
<tr>
<td>Obliteration</td>
<td>Veil of legitimacy for an illegitimate political system</td>
<td>Obliteration work, structures and mechanisms enabling state secrecy, practices of information control, strategies of impression management</td>
<td>Secrecy, deception, obfuscation, deflection, impression management, mystery</td>
<td>State power and legitimacy, maintenance of status quo, manufacturing consent</td>
</tr>
<tr>
<td>Actor-network</td>
<td>Contingent and continuously enacted network of actors and acts</td>
<td>Flattened relations of cooperation and contestation between people and (im)material things</td>
<td>Network, actor/actant, black box, translation, enrollment, obligatory passage point</td>
<td>Agnostic, emb unpredictable</td>
</tr>
</tbody>
</table>

**Figure 1.4: Luscombe and Walby’s Table with Detailed Components of their Three Frameworks to Conceptualizing FOI and State Power**

In trying to access updated statistics on the Police Service’s current role in policing immigration status, I submitted two freedom of information requests to each of the City and Police Service. I discovered during the research process that when the City created its Access T.O. policy, they created a system where all requests by law enforcement agencies for a Torontonian’s personal information must be submitted in writing to the City’s Corporate Information Management Services (“CIMS”) for vetting. After CIMS vets the request, the City has the discretion to decide if the personal information should be shared with the requesting agency. As a result of identifying the existence of this process, I ascertained there to be a high chance that the City was tracking the number of requests received, and I thus submitted written FOI requests for this data, with full access being granted. However, of the two FOI requests submitted to the Police Service, only one has received a response. The pending request has been in queue since November 2017, whereas the request submitted in February 2018 has been granted partial access.

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be understood to reflect how control over data and information reinforces state power, especially when it comes to security and policing.

1.4 BREAKDOWN OF CHAPTERS

In light of United States President Donald Trump’s repeated admonishment of sanctuary cities, a similar discussion has been taking place in Canada about the role of municipal governments should play in the immigration apparatus. Yet, the expectations of what Canadian sanctuary cities can actually do has been distorted by what is taking place in the United States, which has a profoundly different legal framework. In the United States, the literature has centred around the legal relationship between sanctuary cities and local police because American jurisprudence has consistently, albeit narrowly, upheld a locality’s right to not participate in the policing of immigration enforcement.53 For Canadian municipalities however, there is no explicit jurisprudence or legislation that comments on the legality of sanctuary cities or the role of local actors in immigration enforcement. As a result, the most commonly identifiable feature of Canadian sanctuary cities has been a commitment to ensure non-status individuals can access most city services without fear of being exposed to federal immigration officials.54

Indeed, when Toronto City Council declared in 2013 that the City was a sanctuary city, discussions had already taken place almost a decade earlier about how public school boards should ensure every student could access school services, or how the City could provide undocumented workers in the residential construction sector with mechanisms to report exploitative employers. In essence, the City knew that non-status individuals were living and working in Toronto, but were unable to cohesively identify all the sanctuary policies that were circulating around their jurisdiction. One reason for this is because the City does not have

54 For a detailed list of which City services require proof of immigration status, see e.g. City of Toronto, “Identification Requirements to Access City Services,” (23 February 2018), online: After You Arrive <https://www.toronto.ca/community-people/moving-to-toronto/after-you-arrive-checklist/identification-requirements-to-access-city-services/>. 
absolute control over one of its core municipal services: local policing.

The Toronto Police Service (the “Police Service”) is a complex institution. They are the primary law enforcement agency responsible for policing Toronto, but they derive their policing powers from the province through the Police Services Act, 1990 (the “PSA”), not the City. However, the City plays an indirect role in shaping the Police Service’s policies and practices. The PSA sets out the Police Service’s oversight body, the Toronto Police Services Board (the “Police Board”). Comprised of seven members, three of which are appointed by the province, three by the City, and one ex-officio seat reserved for the Mayor, the Police Board’s mandate is to “establish, after consultation with the Chief of Police (the “Chief”), overall objectives and priorities for the provision of police services.”

The Chief then administers the Police Board’s objectives and priorities, and is responsible for day-to-day police operations.

Further complicating matters is that the Police Service is obligated to enforce federal statutes like the Criminal Code, 1985 (the “Criminal Code”) and the Immigration and Refugee Protection Act, 2001 (the “IRPA”), as well as provincial statutes like the Municipal Freedom of Information and Protection of Privacy Act, 1990 (the “MFIPPA”). Distinguishing between the Police Service’s operational responsibilities and the Police Board’s policy-making functions, while also considering the different legislative functions and competing statutory obligations of all those involved, creates a tension between the City and the Police Service over what a sanctuary city looks like in practice. This translates into uncertainty as to whether the City has the power to fulfill its sanctuary city promises.

The rest of this thesis endeavours to satisfy the research objectives and answer the research questions outlined in Section 1.2. Chapter two organizes the relevant literature connected to municipal authority and policing, primarily through the lenses of political theory, citizenship studies, and critical legal geography. After building the theoretical foundation, the next chapter sets out the legislative history leading to Toronto’s sanctuary city declaration, and frames the intersecting ideas, practices, and policies that characterize Sanctuary Toronto today. This will

annotate more clearly the differing approaches by the City and the Police Service towards the “Don’t Ask” and “Don’t Tell” initiatives that served as the basis of the sanctuary city policy. Next, to understand the multiple interlegal and interjurisdictional entanglements that structures Sanctuary Toronto, chapter four situates municipal authority within the Canadian legal framework to provide a clear understanding of the limitations placed on municipalities. I then locate police powers in the intersecting web of federal and provincial legislation, and systematically break down each of the Police Service’s arguments against sanctuary that are predicated on these legislative interpretations. In the final chapter, I highlight how this thesis contributes to a growing body of literature which pays attention to the nuances of Canadian sanctuary cities, and I also comment in greater detail about what the limitations of this research project were. I conclude by offering some reflection as to what future research direction on policing immigration status in urban spaces might consider.
CHAPTER 2: LITERATURE REVIEW

2.1 POLITICAL THEORY AND CITIZENSHIP STUDIES

2.1.1 Governing the Citizen

The question of who is a citizen and what principles constitute citizenship has been, and continues to be, shaped by enduring criticisms of how citizenship is tied to the nation-state. Michel Foucault engages with early political theorists such as Niccolò Machiavelli and Guillaume de La Perrière to argue that the sixteenth century creation of ‘the art of government’ brought the economy into conversation with political practice. While ‘economy’ today is mostly spoken about in relation to market forces, Foucault highlights the genealogical nuances of ‘economy’ as a way of organizing the state beyond simply just the market. The sixteenth century obsession with the patriarchal family unit divided responsibilities and labour within the household, and as the head of household, the ‘good father’ was charged with “managing individuals, goods, and wealth within the family.” The purpose of a robust household economy in which all members knew their role was to drive the family’s shared prosperity and welfare. Political theorists and state actors subsequently attempted to extract the household economy structure and apply it at the broader state-level, hence, ‘the art of government’ as a politically conceived practice.

As Foucault points out though, the assumption that kinship bonds within a household could be imitated at the nation-state level simply through allegiance to the state – what we consider to be ‘citizenship’ – obscures the relationship between governance and sovereignty, where the two are not a tautology, but rather distinct entities. If governing is conceived as an act, – “to govern, then, means to govern things” – the question of who governs emerges. Within the household economy, the father governs; within the nation-state economy, the sovereign governs. The

57 Ibid.
58 Ibid at 94.
Machiavellian sovereign “occupies a position of externality and transcendence,” whereas according to Foucault, La Perrière’s sovereign is less concerned with who governs or how sovereignty is conferred, and instead about what ‘things’ are being governed.\textsuperscript{59} If the sovereign is no longer empowered absolutely through a transcendent authority, then the sovereign must govern by demanding “obedience to the law.”\textsuperscript{60} La Perrière’s form of governing, then, has a “finality of its own” because the art of government depends on obedience to a common good.\textsuperscript{61} In contrast, Foucault argues that the sovereign has no finality because its power is circular. By maintaining obedience through proper governing, sovereign authority becomes irrelevant since it does not need to be questioned; only if this obedience is undermined does sovereign power need to reassert itself. This distinction between governing and sovereignty which Foucault presents is not just a theoretical exercise – the art of government is a consolidation of power, a political reality which still grounds discursive understandings of citizenship today.

Iris Marion Young makes an interesting argument parallel to Foucault’s on economy and the art of government. Despite the state extending access to citizenship to people within liberal capitalist societies, Young argues that some people are unable to participate fully in the political sphere because the economy “is not sufficiently under the control of citizens.”\textsuperscript{62} Young supports this argument through a discussion of identity politics and citizenship, highlighting two different schools of political thought which inform our understandings of universal citizenship: ‘Civic humanism’ attached to thinkers like Machiavelli or Jean-Jacques Rousseau, and ‘individualist contract theory’ associated with thinkers like Thomas Hobbes or John Locke. While the two schools of thought differ in scale, (group and individual) Young suggests both rely on the ‘ideal of a common good’ to create a ‘homogenous citizenry.'\textsuperscript{63} This homogeneity is achieved by the state refusing to recognize differences within the citizenry. As a result, people who do not conform to the “moral, civilized, republican life” – a euphemism for someone who is not, white,

\textsuperscript{59} Ibid at 91.
\textsuperscript{60} Ibid at 95.
\textsuperscript{61} Ibid at 94.
\textsuperscript{63} Ibid at 253.
male, and upper-class – are intentionally excluded from the public realm according to these principles created by privileged groups within the state."\(^{64}\)

Young’s assertions are similar to Foucault’s in two important ways. The first, that the economy ‘is not sufficiently under the control of citizens,’ is consistent with Foucault’s arguments about the art of government. Foucault uses La Perrière’s claim ‘to govern, then, means to govern things’ to say that the art of government questions not who is governing, but who (and what) is being governed. While group and individual theories of citizenship are concerned with increasing civic engagement, Young concentrates on how the state governs some groups differently. Like Foucault, Young urges us to question the power that is concentrated in the sovereign. Civic humanist and individualist contract thinkers who prioritize the ‘common good’ actively conceal practices of exclusion that are inherent in both schools of thought. Second, Young also emphasizes why exclusion matters in citizenship, but she focuses more in her analysis on the “militarist norms of honor and homoerotic camaraderie” embedded within governing structures and citizenship practices than Foucault does.\(^{65}\) Young argues that as a result of patriarchal, racist, and exclusionary principles, the universality of citizenship only extends to those eligible to exist in the public realm. By this logic, Young disputes the notion that citizenship is inherently universal.\(^{66}\)

Another way to understand how the citizen is governed is by paying attention to what the state does. Engin Isin contributes to these critiques of nation-state citizenship by discerning between ‘acts’ and ‘actions.’ The ontological differences are important in this discussion because, as Isin suggests, “social and political thought…has been dominated by a concern with order rather than disruption.”\(^{67}\) In theorizing acts, Isin offers two reasons why ‘acts’ are a useful site of analysis:

Acts are ruptures or beginnings, but not impulsive and violent reactions to a scene. By theorizing acts, or attempting to constitute acts as an object of analysis, we must focus not only on rupture rather than order, but also on a **rupture that enables the actor** (that

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\(^{64}\) *Ibid* at 255.

\(^{65}\) *Ibid* at 253.


the act creates) to remain at the scene rather than fleeing it. If an act is understood against
habitus, practice, conduct, discipline and routine as ordered and ordering qualities of how
humans conduct themselves, we can then perhaps understand why the question of acts
would remain minor and fragmented within social and political thought and the social
sciences (emphasis added).68

Isin’s concern here – more about how a ‘scene’ is created, and not only about who is involved in
the scene – is an important contribution because it recalibrates the discussion on citizenship to
the political structures which maintain exclusion as a prerequisite of citizenship. Furthermore,
Isin argues that the literature focuses only on ‘actions’ and not also on ‘acts,’ thus depoliticizing
and normalizing citizenship as exclusionary. If only actions are isolated, the state’s actions and
not its existence becomes the object of analysis. This makes it harder to challenge the state as a
whole. Instead, Isin encourages us to focus on acts and actions to yield a richer mode of analysis.
These important contributions from Foucault on how the state governs (‘the art of government’),
from Young on the myths of liberal notions of universal citizenship, and from Isin on how
citizenship is enacted through acts and actions all coalesce around a central theme: the state
maintains its sovereignty by governing through forms of exclusionary citizenship practices.
Therefore, efforts to reimagine and rescale the very premise of citizenship away from the nation-
state will need to continue problematizing the nation-state structure itself through a critical,
historical, and spatial-temporal analysis. The next section comments on these modes of analyses
by detailing what techniques the nation-state has deployed in order to preserve certain ideas
around citizenship.

2.1.2 Techniques that Re-assert Nation-State Citizenship

Early theoretical interventions made in political theory and citizenship studies, while helpful in
thinking through how the state has traditionally consolidated power through exclusionary
citizenship practices, has not engaged succinctly with the histories of how citizens are produced
in contemporary spaces. This task has been taken up by scholars who are acutely aware that
reinforcing citizenship is often done at the expense of those who are not and likely will never be
considered a citizen. These genealogies have been and continue to be shaped by assuming the

68 Ibid at 27 [emphasis added].
state has an inherent right to define, exclude, and transform citizenship within its territorial boundaries. Deborah Cowen’s work on the production of social citizenship in post-war Canada argues that understanding the “entangled story of welfare and warfare” vaults us over the disciplinary hurdles which assume the nation-state as natural, exceptional, and impermeable.  

Theorists like T.H. Marshall who assumed that contemporary social rights were an inevitable progression from traditional legal and political rights overlooked the spatial-temporal dimensions of citizenship. That is, the very foundation of legal and political rights created between the eighteenth and twentieth centuries was imagined for and based upon “the experiences of white, male, European worker-citizen.” By extension, the welfare state was assumed to be a product of the nation-state, created within the same boundaries that defined social, legal, and political rights.

Pushing back against both of these ideas, Cowen adds to the more nuanced bodies of literature that understood the welfare state to have organized and scaled political identity not simply as a derivative of the nation, but rather a “product of concerted social work.” After no “homogenous cultural tradition” could be easily identified in Canada, social citizenship and the welfare state were a means to coalesce political identity around the nation and what it meant to be a citizen. This manifested as a type of pan-Canadian national identity, and what emerged since has been a discourse of Canadian multiculturalism which emphasized broadening citizenship based on labour to and for the nation-state, not just on the basis of *jus sanguinis* (by blood) or *jus soli* (by birth). This re-scaling of citizenship within this new national imaginary of the welfare state “was therefore a political-geographic resolution to competing social and economic priorities of this period,” with an established goal of operationalizing post-war labour so that the nation could not just consolidate power, but also cultivate allegiance. However, as Cowen points out, the welfare state was also a project of disarming movements the state saw as a threat to unity and the

70 Ibid at 29.
71 Ibid at 28.
72 Ibid.
national identity. As the state endeavoured to universalize the citizen in post-war Canada, a synchronized erasure of differences based on what Young described as a reliance of ‘ideal of a common good’ to create a ‘homogenous citizenry’ took place.75

As interdisciplinary scholars continue to challenge nation-state citizenship, one emerging body of literature does problematize how the state reinforces its dominion over citizenship. This theorizing is particularly concerned with how the law is an exercise of power that maintains jurisdiction and authority over those being governed at different scales, including at international,76 national,77 local,78 and even extraterritorial scales.79 For example, Amrita Hari explains how “Canada maximizes its limited sovereignty” through a variety of economic and labour programs, aimed at generating a permanently temporary category of migrants that live and work in the state.80 These efforts are designed to systematically exclude migrants from ever reasonably obtaining permanent resident status or citizenship, and the rights that come with legal status. They join an increasing number of refugees that the state has designated as eligible for exclusion, as evidenced by the Canadian government’s political and legislative techniques.

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75 Young, supra note 62 at 253.
Similarly, Daiva Stasiulis and Darryl Ross discuss in their work on multiple citizenship how the failure of nation-states to protect citizens who require diplomatic protection has created a “form of transnational hyphenated citizenship.”\(^\text{81}\) Despite nation-states that champion the “liberal individualist human rights narrative,” racialized persons with dual citizenship – indeed, those without dual citizenship share similar experiences – are often securitized differently.\(^\text{82}\) Stasiulis and Ross argue that the variation in human rights norms across nation-states, configured within an ambiguous international legal framework, has created a space where nation-states are absolved of responsibility for their dual nationals. Here, the tensions between security, human rights, and the law again demonstrates why focusing solely on citizenship as being constituted through rights recognized by the nation-state does not account for the flexibility of citizenship. Just as Isin argues that focusing on the ‘act’ in tandem with fragmented ‘actions’ is crucial, Stasiulis and Ross point out that less frequent ‘projects’ like diplomatic protection are also useful tools for critiquing the nation-state. This is because similar to “large projects of exclusion…small projects at specific points of intersecting lines” reveal a multitude of actions which circulate back to how the state acts.\(^\text{83}\) In short, Stasiulis and Ross’ inquiry into multiple citizenship, although an issue which affects fewer people, reflect the ways in which the nation-state consolidates power through citizenship.

In the same vein, Audrey Macklin’s work on citizenship revocation techniques demonstrates how state authority can reconfigure the law to normalize its punitive application. Macklin traces how especially since 9/11, Canada has legislated more authority to revoke citizenship by conflating being worthy of holding citizenship with a disavowal of crime and terrorism: “[i]f those deemed threats to national security are not actually alien in law, then they must be alienated by law.”\(^\text{84}\) For Macklin, the use of criminality and ‘national security’ to justify citizenship revocation is an unreasonable exercise of authority because it suggests that “citizenship is an aggravating circumstance” for those convicted of such offences.\(^\text{85}\) However, Macklin rightfully underscores that citizenship revocation according to this justification is a

\(^{81}\) Stasiulis & Ross, supra note 79 at 333.
\(^{82}\) Ibid.
\(^{83}\) Ibid at 345.
\(^{84}\) Macklin, supra note 77 at 2.
\(^{85}\) Ibid at 30.
dangerous reinforcement of state authority through citizenship. Hari and Macklins’ work each illustrates how problematizing the nation-state must thus focus not just on its structure, but also the techniques the state draws from to reinforce their authority.86

While Hari and Macklin each outlined legal frameworks which preserve the state’s rights to exclude and revoke, some scholars contend that not only are these rights legitimate, but also necessary. Michael Blake supports the state’s right to exclude because migration “places the inhabitants of that territory under an obligation to extend legal protections to that immigrant’s basic rights,” which in turn “limits the freedom of the current inhabitants of that jurisdiction.”87 Although Blake concedes that this juridiscional theory of immigration should only be used in limited circumstances, it is troubling that he makes a deontic (rights instead of interests) argument for exclusion, which promotes the idea that “individuals have a right to avoid having to associate with those with whom they do not want to associate.”88 Christian Joppke similarly defends the state’s use of revocation for ‘terrorists’ because he argues they have “repudiated [citizenship] through their own action…[and] only a retributive or punitive rationale” would be compatible with the principles of citizenship.89 In arguing against Macklin, Joppke notes that Canadian citizenship still has what Shai Lavi describes is a feudal characteristic of a ‘duty of allegiance’ to the sovereign.90 When individuals in some common law countries like Canada perform an oath of allegiance to become naturalized citizens, Joppke suggests this oath should be considered a ‘constitutional bond’ between individuals, which holds them accountable to common political values. During the feudal days, treason was considered the breaking of that bond; today, Joppke argues terror replaces treason as the most extreme desecration of that bond. As a result, Joppke asserts that “only a punitive rationale…pays tribute to the constitutional importance of citizenship.”91

87 Michael Blake, “Immigration, Jurisdiction, and Exclusion” (2013) 41:2 Philosophy & Public Affairs 103 at 104.
88 Ibid at 106.
91 Joppke, supra note 89 at 735.
In each of Blake and Joppkes’ work though, their arguments rely on a small category of people to defend a general practice of exclusion or revocation. Moreover, implicit in their work is that these practices increase the value of citizenship. Although these practices might do that for some, what is most problematic is that, as Foucault puts forward in his theorizing of the ‘art of government,’ only if obedience (or allegiance) to the state is undermined does sovereign power need to reassert itself. Joppke’s invoking of ‘terror’ as grounds for this reassertion of power reduces the complexities of terrorism and other avenues for rehabilitation, and thus sustains an increasingly exclusionary form of citizenship. Neither Blake nor Joppke view the state as the problem, electing instead to problematize those who should be excluded from obtaining citizenship or those whose citizenship should be revoked. Perhaps Macklin’s work could be accused of a similar problem: that the conception of nation-state citizenship is unable to rectify either the impunity of states to revoke citizenship, or the incongruity of not being able to revoke citizenship in some instances. What distinguishes Macklin’s interventions though is the legal and geographic re-scaling of the nation-state’s power to revoke citizenship, which has since grown into a more refined body of academic theory which I discuss in the following section.

2.2 GEOGRAPHIES OF CITIZENSHIP, JURISDICITION, AND AUTHORITY

2.2.1 Critical Legal Geography: Spatiality and Scale

Early scholarship at the juncture of law and space – what we now consider to be ‘legal geography’ – did not explicitly value the “spatialization of law” in their inquiries. Until critical legal geographers started to contour the “reciprocal construction” between law and space, interdisciplinary approaches to the law were limited. Scholars like Gerald E. Frug, who reflected critically about the intersection of land use and local laws, or Boaventura de Sousa Santos, whose influential work on cartography and law revisited the existing scholarship in a new way, ushered in a mode of theorizing which bridged the writings of law and space. While

95 de Sousa Santos, supra note 39.
other disciplines had examined law and space as distinct entities, Alexandra Flynn underscores how “those interested in the intersections between law and geography suddenly found each other” largely because of these early interventions that recognized the utility of speaking about the relationality of law and space, and vice-versa.\textsuperscript{96} Since then, what has distinguished critical legal geography from other conceptual legal inquiries is its organization of law around space.

Critical legal geographers understands that although ‘law’ and ‘space’ are each complex bodies of literature that can be analyzed individually, it is more fruitful to study how the two are entangled. Accordingly, the ‘entanglement’ of law and space in the critical legal geography literature can be summarized in two ways. The first is that “law is already imbued with all sorts of interesting and complicated spatializations,” where attention is paid to how the law already defines the spaces we inhabit daily.\textsuperscript{97} By spatializing the law, issues like the American judiciary’s role in racially segregating neighbourhoods,\textsuperscript{98} or the ability of Canadian domestic workers to make human rights claims,\textsuperscript{99} can be better understood. The second is that “law, like geography, is a powerful ordering process, inextricable from the productions of identity and social relations.”\textsuperscript{100} This process of legalizing the space emphasizes that if we believe that the law is everywhere, – not just physically, but in our social processes as well – then the marriage of law and space is inevitable.

Spatializing the law and legalizing the space brings together contemporary issues surrounding how the law governs certain individuals in spaces. For example, Nicholas K. Blomley and Joel C. Bakan argue that when critical legal geography acknowledges the “local material contexts within which law is understood and contested, [it] can challenge the self-acclaimed rationality of the legal order.”\textsuperscript{101} The next step in working within the critical geography literature is to, as de Sousa Santos suggests, identify the ‘scale’ at which analysis and action takes place. This reveals

\textsuperscript{96} Alexandra Flynn, \textit{Re-Imagining Local Governance: The Landscape of “Local” in Toronto} (Dissertation, Osgoode Hall Law School of York University, 2017) [unpublished] at 19.


\textsuperscript{98} See e.g. David Delaney, \textit{Race, Place, and the Law, 1836-1948} (Austin, Tex: University of Texas Press, 1998).

\textsuperscript{99} See e.g. Nicholas Blomley & Geraldine Pratt, “Canada and the Political Geographies of Rights” (2001) 45:1 The Canadian Geographer 151.

\textsuperscript{100} Blomley, Delaney, & Ford, \textit{supra} note 97 at xviii.

\textsuperscript{101} Blomley & Bakan, \textit{supra} note 92 at 664.
the spaces where “the conditions for the reproduction of power” is often maximized.\footnote{de Sousa Santos, \textit{supra} note 39 at 284.} Building up from scale, Mariana Valverde’s work teases apart ‘jurisdiction’ as an overlapping dimension of scale that is “as much functional as it is spatial.”\footnote{Mariana Valverde, “Jurisdiction and Scale: Legal ‘Technicalities’ as Resources for Theory” (2009) 18:2 Social & Legal Studies 139 at 140.} For Valverde, looking at jurisdiction through a Foucauldian lens focuses on who is \textit{being} governed and not only who \textit{is} governing, allows power to be interrogated more clearly as the “various modes and rationalities of governance that coexist in every political-legal” space, or what de Sousa Santos calls ‘interlegality.’\footnote{\textit{Ibid} at 139.} Valverde posits that legal governance scholars have been slow to integrate spatiality into their critical theory, and as a result, have failed to see the utility of studying the distinctions between scales. For example, jurisdiction can distill the ‘what’ and ‘how’ of governance, helping us avoid the “cartographic notion of scale” that conflates ‘urban’ and ‘local’ scales, whereby the latter tends to trivialize problems and confine them to a ‘local’ area.\footnote{\textit{Ibid} at 148.} In other words, jurisdiction pushes the boundaries of scale because it recognizes the reach that jurisdiction has. By examining legal governance through jurisdiction, we can pay close attention to how urban space is a scale constituted through unique circumstances separate from local and even nation-state scales, which orients us towards how jurisdiction is deployed in urban spaces.\footnote{See e.g. John Lea & Kevin Stenson, “Security, Sovereignty, and Non-State Governance from Below Urban Governance and Legality from Below” (2007) 22:2 Canadian Journal of Law and Society 9; David Moffette, “Propositions Pour Une Sociologie Pragmatique Des Frontières: Multiples Acteurs, Pratiques Spatio-Temporelles Et Jeux De Juridictions” (2015) 59–60 Cahiers de recherche sociologique 61; James Sheptycki, “The Accountability of Transnational Policing Institutions: The Strange Case of Interpol Dossier: Policing and Security/Securite Et Police” (2004) 19 Can JL & Soc 107.}

\subsection*{2.2.2 Re-imagining Citizenship: Local and Urban Scales}

Like earlier political theory and citizenship studies that critiqued the powers that nation-states have over citizenship, Monica W. Varsanyi is critical of “social and political theory developed at a time in which the nation-state was uncritically assumed to be the container of society.”\footnote{Varsanyi, \textit{supra} note 78 at 230; See e.g. Rainer Bauböck, “Reinventing Urban Citizenship” (2003) 7:2 Citizenship Studies 139.} Building off of earlier critiques of nation-state citizenship, Varsanyi explores the growing role...
cities are playing vis-à-vis citizenship, and offers an alternative model of citizenship that is, in simple terms, based on residence rather than recognition. What is unique about Varsanyi’s work is the use of being without immigration status as a way to rescale citizenship. Just as Young suggests citizenship theory assumes most people in liberal capitalist societies have access to formal citizenship, Varsanyi argues that non-status individuals complicate this narrative because they do not enjoy such easy access, and that scholars often only consider migration processes and not ‘illegal’ migration in the rescaling of citizenship. Concomitantly, Varsanyi advances a reconceptualization of who the ‘citizen’ is: somebody not constituted by “the explicit consent of fellow citizens, but merely by presence and residence in a place.”

Varsanyi engages directly with how jus domicili – citizenship acquired through residence, as opposed to jus sanguinis (by blood) or jus soli (by birth) – is geographically complicated because of how citizenship is currently organized around nation-state membership, reinforced through ‘static’ immigration status. To move away from these organizations of citizenship, the scales through which citizenship can be re-imagined must be further examined.

Urban space is frequently mentioned within contemporary discussions on citizenship because of its spatial salience as an artery between transnational flows of capital and people. Cities are helpful in rescaling citizenship because it is where identity is constructed, contested, and “central to the daily practice of individuals as citizens.” Moreover, the concentration of residents with precarious immigration status in large urban centres is naturally refocusing the boundaries of citizenship towards this local scale. However, the literature on identity-based arguments for citizenship (cosmopolitan citizenship) is problematic because it does not challenge the broad discretionary powers nation-state have vis-à-vis citizenship. As Varsanyi notes, theories of cosmopolitan citizenship are grounded in the language of “international human rights legal regime, moral imperatives, or natural law…the global city serves primarily as the staging ground

108 Varsanyi, supra note 78 at 231.
109 Ibid at 234.
111 Varsanyi, supra note 78 at 235.
of a universal cosmopolitan citizenship, as opposed to a concrete place which influences the substance of this citizenship.” 112 Spatially, cosmopolitan citizenship aims to make citizenship based on common experience instead of place. If we read this assertion beside Young’s work though, it is clear that the recurring notion of ‘universality’ embedded within an international relations framework of citizenship continues to center the nation-state. Even with the gesture to ‘the global city,’ cosmopolitan citizenship favours global processes; ‘city’ thus exists only in relation to ‘global.’

Particularly salient in the discussion on urban citizenship has also been an engagement with the fluidity of (neoliberal) citizenship. 113 The narrow nation-state conceptualization of citizenship is complimented by a model of neoliberal citizenship. The tensions between federal immigration enforcement and local policing manifests most prominently in what Matthew B. Sparke calls the ‘neoliberal nexus’ of surveillance and policing techniques, mediated by social and economic practices of exclusion. 114 This disproportionately affects those with precarious immigration status, who generally reside in Canada’s major urban centres. 115 While no statistics reliably capture the number of non-status individuals in Canada, it has been estimated that between 200,000 to 400,000 live across the country, “with the majority of individuals likely living in Toronto.” 116 Working within the context of this fluidity, Rupaleem Bhuyan and Tracy Smith-Carrier press us to pay attention to the “production of illegality and exclusion in Canada’s immigration regime.” 117 The authors use Toronto as a case study to suggest that in Canada, the bureaucratic politics between different orders of government exacerbates “an uneven terrain of social rights” for those with precarious immigration status. 118 Furthermore, they argue that despite provinces and municipalities championing policies of inclusion, “national practices of market citizenship and the surveillance and policing of non-citizen subjects” overpowers

112 Ibid at 232.
115 Hudson et al, supra note 3.
116 Deshman, supra note 78 at 215.
117 Bhuyan & Smith-Carrier, supra note 5 at 204.
118 Ibid at 205.
provincial and municipal autonomy, and thus “reproduc[e] at the local level” precariousness.\textsuperscript{119} The practicality of these municipal policies must therefore be weighed against their effectiveness in both reimagining citizenship outside the container of the nation-state and providing meaningful protection for non-status individuals within their jurisdiction.

2.3 EMERGING SANCTUARY CITY LITERATURE

Scholars working at the interface of citizenship, immigration, and legal studies emphasize how the policing of immigration status in urban space further marginalizes those who do not enjoy the same rights and protections commonly attached to citizenship.\textsuperscript{120} Although the enforcement of immigration laws in both Canada and the United States is primarily a federal responsibility, there is enough ambiguity under the two countries’ current legal frameworks for local law enforcement to challenge immigration orders, and conversely, for cities to have policies and ordinances that exist in opposition to federal immigration policies.\textsuperscript{121} Federal immigration enforcement agencies rely on formal and informal relationships with local law enforcement because of the logistical impracticalities, and indeed jurisdictional issues, of conducting independent operations in municipalities. This is not to say that federal immigration enforcement agencies do not carry out raids. In Canada, immigration enforcement is the responsibility of the Canadian Border Services Agency (the “CBSA”), and in the United States, Immigration and Customs Enforcement (“ICE”), an agency under the Department of Homeland Security. Local law enforcement is responsible for the day-to-day policing of their jurisdictions, and the CBSA and ICE must conduct any operation with relevant actors within a jurisdiction, most commonly local police. As a result, political actors in the United States and Canada have questioned the legality of cities who refuse to participate in immigration enforcement, and have reaffirmed immigration enforcement powers to be broad and discretionary.\textsuperscript{122}

\textsuperscript{119} \textit{Ibid.}
\textsuperscript{120} See e.g. Bhuyan & Smith-Carrier, \textit{supra} note 5; Myer Siemiatycki, “Non-Citizen Voting Rights and Urban Citizenship in Toronto” (2015) 16:1 Journal of International Migration and Integration 81; Varsanyi, \textit{supra} note 78.
United States President Donald Trump’s public rebuke of the country’s more than 400 ‘sanctuary cities’ has reignited the debate within Canada around what role cities play for residents with precarious legal status. Jennifer Ridgley’s seminal work on immigration enforcement in American sanctuary cities traces how the Sanctuary Movement in the 1980s “began as a group of faith-based organizations…that provided housing, transportation, and legal assistance to asylum seekers who were trying to escape deportation.”123 Those who supported the sanctuary movement also saw themselves as pushing back against U.S. foreign policy, which they believed was responsible for the influx of asylum seekers during this period. Sanctuary cities were therefore perceived to be both a resistance against large-scale state deportation, as well as a response to reckless foreign policy decisions made abroad by, in this case, the United States. A. Naomi Paik’s more recent work urges us to understand the Trump administration’s targeting of sanctuary cities as nothing exceptional or new; the “deep histories of US racist and gendered exclusions” is rooted in decades of criminalizing individuals as “violators of the law and therefore deserving of discipline.”124 Policies like the Secure Communities program, implemented by the George W. Bush administration and continued by the Barrack Obama administration, sought to criminalize all non-status individuals by blurring the lines between federal immigration enforcement and local policing.125 While Paik paints a grim picture of the federal administration’s eagerness to continue instilling the ‘deportation terror,’ she is cautiously optimistic that sanctuary cities can help “combat this orchestrated insecurity of vulnerable persons” sweeping across the United States.126

When read beside Paik’s work, Lewis, Provine, Varsanyi, and Deckers’ quantitative analysis of police chiefs in American jurisdictions accentuates the “considerable variation in how localities

124 Paik, supra note 110 at 9.
126 Paik, supra note 110 at 13.
have responded to the opportunity to partake in enforcing federal immigration law.”127 The authors found that immigration enforcement policies by local police are not uniform because of how many different policy actors are involved in the decision-making process. In particular, the authors found that police practices in sanctuary cities are related to the strength of municipal sanctuary policies. Specifically, Lewis et al. discovered that political partisanship has a weak relationship with local policy-making on immigration enforcement. Cities with policies that discourage federal immigration enforcement means local police in these jurisdictions find themselves with the political capital to align with these policies, but only as permitted through the broad and discretionary powers conferred by federal statutes. Conversely, cities with policies that encourage local police to aggressively enforce immigration laws during routine encounters like traffic violations strengthen the use of broad and discretionary power. Lewis et al.’s work is useful when read beside Valverde’s work because it underscores that jurisdiction, irrespective of its geographic location, does matter: urban space is influential in the ongoing discussion about re-imagining citizenship, and concomitantly, immigration enforcement and policing.

Notwithstanding a radical shift in the legislative or judicial spheres, Valverde’s theories of jurisdiction vis-à-vis the local scale is also a good entry point into exploring the merits of sanctuary cities in Canada. Canada has a small but growing number of sanctuary cities: Vancouver, Toronto, and Hamilton already have comprehensive sanctuary city policies in place; Montréal recently designated itself a sanctuary city; and Ottawa and London are currently exploring the legal implications of adopting a sanctuary city policy.128 Although Canadian cities have managed to introduce sanctuary policies with considerably less federal contestation, their focus has largely been on how to deliver some city services without fear to non-status individuals. These efforts have often been criticized for being aspirational, since, as Goldring, Bernstein, and Bernhard emphasize:

[Municipal] agencies have distinct cultures and policy implementation practices set by their directors, although frontline workers may exercise discretion in implementation. These differences can translate into uneven experiences of access to services for people with precarious status and contributes to ongoing confusion about who is entitled to what, for service providers, seekers and users.\textsuperscript{129}

Similarly, Jean McDonald acknowledges that a Canadian sanctuary city “would not necessarily bar federal authorities from enforcing federal immigration laws – arresting, incarcerating and deporting those persons not deemed acceptable within the national body politic,” but resembling Paik, suggests that it can still “pose an important challenge to state definitions of migrant illegality.”\textsuperscript{130} Undoubtedly, sanctuary cities can play an important role in challenging the state’s illegalization of non-status individuals.\textsuperscript{131} Moving forward however, the literature must try and articulate what can be reasonably expected of Canadian sanctuary cities under the existing legal framework.

\section*{2.4 CONCLUSION: LOCATING THE TENSION BETWEEN MUNICIPAL AUTHORITY AND LOCAL POLICE}

Following the legal implications and expectations of Canadian sanctuary cities enumerated in this literature review, the specific tensions that apply to the City of Toronto warrants greater attention. The ‘interlegality’ of local governance referred to by de Sousa Santos and Valverde can be attributed to having multiple actors embedded in the decision-making process. Hudson, Atak, Manocchi, and Hannans’ research highlights some of the interlegal challenges that Toronto City Council has faced since it became a sanctuary city in 2013. Using qualitative research methods to examine legal and policy documents, as well as interviews with a variety of stakeholders, they found that “Council has been relatively inactive” in lobbying their provincial and federal counterparts “to shoulder their share of responsibility for more systematic legislative and policy change” with respect to immigration.\textsuperscript{132} Since the Toronto Police Service continues to

\begin{footnotesize}
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\item \textsuperscript{131} See e.g. Liette Gilbert, “Immigration as Local Politics: Re-Bordering Immigration and Multiculturalism Through Deterrence and Incapacitation” (2009) 33:1 International Journal of Urban and Regional Research 26.
\item \textsuperscript{132} Hudson et al, \textit{supra} note 3 at 3.
\end{itemize}
\end{footnotesize}
enforce immigration status, the City’s failure to demand greater intergovernmental cooperation is problematic because the immigration file is spread across intersecting and competing jurisdictions. If this bureaucratic hurdle is not overcome soon, Hudson et al. believe that as more Canadian cities become sanctuary cities, legislatures and/or the courts will need to confront what municipal, provincial, and federal authority is as it relates to immigration enforcement.

Toronto’s *Access T.O.* policy has undoubtedly inspired larger conversations in Canada about protecting non-status individuals within municipal boundaries. Nevertheless, the confluence of policies and practices among a variety of municipal actors has created a complicated patchwork of promises to city residents.\(^{133}\) And, in spite of most large Canadian municipalities having some form of a sanctuary policy in place, the reality is that local police agencies in these jurisdictions undermine sanctuary city policies by cooperating with federal immigration officials.\(^{134}\)

For example, the Toronto Police Service – an actor partially empowered through municipal authority – refuses to comply with the City of Toronto’s sanctuary city policy or broaden their existing “Don’t Ask” policy to a complete “Don’t Ask, Don’t Tell” policy.\(^{135}\) This is problematic because a report published by No One is Illegal - Toronto revealed that in 2014 and 2015, the Police Service accounted for 31% of all calls made by law enforcement agencies to the CBSA, more than any other law enforcement agency in Canada, including the federal RCMP.\(^{136}\) Although the Police Service has yet to respond to the FOI request I submitted for updated statistics, FOI data from the City illustrates growing efforts by the Police Service to access the personal information of Torontonians. Figure 2.1 represents the number of formal written requests the City has received from law enforcement agencies for a City of Toronto resident's personal information to aid a specific investigation which has grown annually since 2013.

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134 See e.g. Deshman, *supra* note 78.


In releasing this data, the City confirmed that the majority of these law enforcement requests were submitted by the Police Service. While we do not know why the Police Service requested this personal information from the City, – in other words, if it was related to an immigration investigation – I argue that the data justifies further research because it indicates the Police Service is increasingly turning to the City to help them do their job. If the City had more jurisdiction over the Police Service, perhaps this would be less of a problem because municipal authority and powers would be more clearly delineated. What these numbers therefore draw attention to is the mismatch between what the City’s role is in managing their local police and the Police Service’s broad policing powers that seem to fall outside the scope of municipal authority. The following chapter maps out the most important institutional events culminating in Sanctuary Toronto, and starts to zero in on what the legislative history of Sanctuary Toronto and the laws which underpin these histories tells us about municipal jurisdiction and authority vis-à-vis the Police Service’s role in policing immigration status.

Figure 2.1: Number of Formal Written Requests for Information Received by the City of Toronto from the Toronto Police Service
CHAPTER 3: THE LEGISLATIVE HISTORY OF ‘SANCTUARY TORONTO’

3.1 INTRODUCTION

On April 27, 2006, Canada Border Services Agency (the “CBSA”) officers arrived at Dante Alighieri Academy, a Catholic public school in Toronto’s north end, to execute a removal order for the Lizano-Sossa siblings, Kimberly, 15 and Gerald, 14. Detained in a van outside the school were their grandparents, mother, and two-year-old sister, who had all been taken into custody by CBSA officers prior to their arrival at Dante Alighieri Academy. The only family member not taken into custody was the Lizano-Sossas siblings’ father, who was working at the time of the arrests. He went into hiding after hearing his family had been taken by CBSA officers to the Rexdale Immigration Holding Centre in Toronto to begin the removal process.137

The next day, CBSA officers conducted another raid in the city’s north end, this time at St. Jude’s Catholic School. CBSA officers used students Lisbeth Serdas, 7 and Hacel Serdas, 14 as bait to lure their parents – both non-status individuals – to the school so they could be taken into custody. Immigration officers threatened to take the Serdas sisters into custody unless their parents arrived at St. Jude’s within thirty minutes. Denia Araya complied with the CBSA’s demands, yet upon arrival, her daughters were still taken with her to an immigration detention centre.138 That same night however, CBSA unexpectedly released Araya and her daughters into the care of a friend, after federal officials in Ottawa made a call authorizing their immediate release. When asked for comment about the situation, CBSA spokesperson Anna Pape replied:

What took place was contrary to CBSA protocols and the family has been re-plied…We don’t want to create a situation where parents without status or facing removal keep their

137 Debra Black, “Rally for family set to be deported; Schoolmates come out in force for arrested teens,” Toronto Star (30 April 2006), online: <https://search-proquest-com.myaccess.library.utoronto.ca/docview/438954529?accountid=14771>.
kids out of school. We’re not in the business of using children to apprehend parents in violation of the Immigration Act.\textsuperscript{139}

Even though the CBSA acknowledged their officers had grossly overstepped their authority, these examples point to broader issues of how unpredictable policing immigration status is; it can be heightened, threatened, and disciplined in any space, in spite of existing laws and policies to prevent precisely these kinds of overreaching state powers. Combined with the discretionary nature of immigration enforcement, the efficacy of laws and policies that mitigate these practices can rightfully be questioned. Indeed, what the Lizanno-Sossa and Serdas families experienced reminded the public how cruel and arbitrary Canadian immigration laws could be, although it is not difficult to find similar stories today that describe the inherent unfairness entrenched in Canada’s immigration enforcement system. This arbitrariness is compounded by the jurisdictions that participate in immigration practices. In their case, it was the school boards.

This chapter pays close attention to the unpredictability and discretionary nature of immigration enforcement by arranging the history of Toronto’s formation as a ‘sanctuary city’ – what I refer to throughout as ‘Sanctuary Toronto’ – to emphasize two areas within the ongoing discussion on jurisdiction, authority, and immigration status. First, Sanctuary Toronto must be understood as having been intimately shaped by the bureaucratic barriers between the municipal, provincial, and federal orders of government. If we accept this idea that the City of Toronto was and still is not an entirely independent actor, then analyzing relevant laws, policies, and other institutional sources within their corresponding political and social contexts will help us see how local activists, politicians, and policy-makers mobilized to make Toronto a sanctuary city. Second, we must also consider the legal environment that Toronto’s patchwork of sanctuary policies were created in and continue to exist within. Although Toronto City Council, the two Toronto School Boards, and the Toronto Police Services Board all responded with their own policies, the lack of cohesion across these policies has rightfully been perceived as weak because they were constrained and entangled within such a complex legal system. Yet, as I demonstrate in this chapter, some actors found creative ways to ensure at least some sort of policy was in place to protect non-status individuals. However, these policies continue to operate independently from

\textsuperscript{139} \textit{Ibid.}
each other, making it even more difficult for non-status individuals to interact with and within the city.

This assemblage of policies created by various municipal actors – who have traditionally been viewed in Canada as having weak jurisdiction and authority – does not limit us to only exploring the vertical (federal, provincial, and municipal) entanglements of immigration enforcement, though. Instead, this chapter also looks horizontally within the municipal system, and by drawing attention to one of the most difficult actors within Sanctuary Toronto: the Toronto Police Service (the “Police Service”). This chapter shows the Police Service has a history of misinterpreting the legal statutes it derives its authority from, and that this continues to frustrate the City’s attempts to fully implement its Access T.O. policy. By pinpointing the Police Service within this complicated web of actors and laws, this chapter reveals how, with respect to the policing of immigration status, the Police Service has taken advantage of the City’s lack of exclusive jurisdiction over the Police Service and has benefited from the provincial and federal governments’ deference to the status quo. This interlegal and interjurisdictional confusion reveals how the law has not successfully compelled the Police Service to comply with the City’s policy, nor has it substantially helped non-status individuals feel safe in their city. Put simply, I argue the law has actually exacerbated precariousness: the law has been the problem, not the solution.

This chapter outlines what I have identified to be the most important institutional events culminating in contemporary Sanctuary Toronto, beginning with early changes to the provincial Education Act, 1990 (the “Education Act”) in 1993 and a proposal to regularize the immigration status of undocumented construction workers in 2002. These early legislative interventions helped create what Salina Abji argues was a post-nationalist “human rights frames…in mobilizing constituents and drawing mainstream attention to the plight of non-status people” within the Sanctuary Toronto movement.140 Thereafter, the decision-making process between 2005 and 2007 which led to the City of Toronto’s first sanctuary policies is presented. Since

these were first attempts at addressing the needs of non-status individuals, I then discuss how between 2007 and 2012, more progressive sanctuary policies were eventually pursued which not only prevents inquiring about immigration status (“Don’t Ask”) but also prohibits sharing information about immigration status with immigration officials (“Don’t Tell”). Finally, City Council’s declaration in 2013 that Toronto is a sanctuary city for non-status individuals, and the subsequent successes and snags since 2014 with ensuring all municipal actors conform to the City’s commitment to being a sanctuary city, is examined. This timeline is intended to not only annotate the City’s piecemeal approach to sanctuary, but also to illuminate the tension between how the City chose to interpret their municipal authority throughout the Sanctuary Toronto movement. A consistent problem this chapter points to is the boundaries of municipal authority, particularly the limitations cities encountered in challenging aggressive immigration enforcement techniques, uncooperative federal and provincial partners, and diverging interpretations around their ability to regulate the Police Service’s practice of policing immigration status.

3.2 THE ROAD TO ‘SANCTUARY TORONTO’ (2000 TO 2012)

3.2.1 1990s to 2000s: Immigration Status Shouldn’t Matter

In 1991, Canada partially ratified the United Nations’ Convention on the Rights of the Child, which foregrounded a variety of children’s rights issues including the use of child soldiers in armed conflict and the distribution of child pornography. Scholar Francisco Villegas suggests that this global Convention drew attention to children’s rights in other areas, allowing school advocates like the Ontario Education Rights Task Force (“ERT”) to make the treatment of non-status students in the Ontario education system an important issue. Comprised mostly of legal professionals and community advocates, the ERT successfully lobbied the provincial government to include a section in the Education Act that guaranteed every child has a legal right to receive an education. Prior to this, the eligibility of non-status students was dealt with on a case-by-case basis, an effect of Canada’s discretionary immigration system. Section (“s.”) 49.1 was added to the Education Act in 1993, and states explicitly that all youth, regardless of their

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own immigration status or their parent/guardian’s immigration status, have a legal right to attend school in Ontario:

A person who is otherwise entitled to be admitted to a school and who is less than eighteen years of age shall not be refused admission because the person or the person’s parent or guardian is unlawfully in Canada.  

On its surface, the Education Act appears to expressly guarantee every student the right to an education. However, corresponding sections in the Act makes s. 49.1 more ambiguous. For example, the ERT sought clarification of s. 49(7), which regulated school fee exemptions for certain students such as temporary residents under the federal Immigration and Refugee Protection Act, 2001 (the “IRPA”) or a person holding a valid study permit. According to Villegas, “some school officials interpreted existing policy in a way that required non-status students to apply for study permits in order to be enrolled.” For these students, needing to apply for a study permit could have exposed them to immigration officials, thus heightening their precariousness and placing them at risk for removal.

This confusion triggered a broad institutional response by both municipal and provincial authorities. The Toronto District School Board (the “TDSB”) and Toronto Catholic District School Board (the “TCDSB”) reiterated to their respective staff that all children in Ontario are legally entitled to attend school. The TDSB also clarified that ascertaining immigration status for eligibility was only necessary to determine if student fees needed to be collected, as required by the Education Act. In December 2004, the Ontario Ministry of Education issued a memorandum reminding all school boards that:

The admission criteria that are applied to a child who is, or whose parents are, unlawfully in Canada should be no different from the criteria applied to any other child seeking admission to a school under the jurisdiction of a school board…the fact that the child or

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142 Education Act, 1990, RSO c E2 [Education Act] [emphasis added].
143 Ibid.
the child’s parents are unlawfully in Canada should not be a barrier to the child’s admission (emphasis added).\textsuperscript{145}

The memorandum even confirmed with Citizenship and Immigration Canada (“CIC”) “that there was no federal legal requirement for boards to refer families without immigration status or documentation to a local CIC office” before children could be enrolled in school.\textsuperscript{146} The Ministry could not be more clear in its memorandum: provincial laws made immigration status immaterial to admission eligibility, immigration status was only relevant in determining if school fees applied, and school boards had no legal obligation to refer families to immigration officials.

Even though adding s. 49.1 to the \textit{Education Act} and clarifying s. 49(7) were hailed as improving access to education for non-status students, Villegas argues s. 49.1 continued to be applied inconsistently by some Toronto school officials when determining admission eligibility. Moreover, what the Lizanno-Sossa and Serdas siblings experienced highlights the \textit{Education Act}’s limitations. The \textit{Education Act} only guarantees the admission of non-status students; it does not prevent immigration enforcement from happening at schools. This limitation catalyzed the push for both school boards to create policies protecting non-status students while they attended school, which I explore in more detail later on in this chapter.

While the debates were taking place between school boards and the province, another local actor was challenging the applicability of federal immigration laws. In August 2002, the Greater Toronto Home Builders’ Association (the “GTHBA”) submitted a proposal to the federal government in August 2002 advocating they regularize the immigration status of undocumented workers in the residential construction sector.\textsuperscript{147} The proposal built off an earlier pilot project between the GTHBA and the federal government which provided temporary residence status for up to 500 construction so that they could work legally in the Greater Toronto Area (the “GTA”) for two years. The GTHBA’s proposal urged the federal government to issue temporary residence permits to undocumented workers for one-year – renewable and converted over time to

\textsuperscript{145} Ministry of Education, \textit{Clarification of Section 49.1 of the Education Act: Education of Persons Unlawfully in Canada} (2004) [emphasis added].
\textsuperscript{146} \textit{Ibid}.
\textsuperscript{147} Greater Toronto Home Builders’ Association, \textit{Homeownership: “A Place of Your Own”} (Toronto, Canada, 2002).
permanent residency – through an inland regularization system, as opposed to the typical application system through consulates or visa offices. The GTHBA argued against regularizing through the traditional visa process because applicants would have to apply through an American visa office. Before even entering the United States, undocumented workers would have to schedule an interview with consular officials in Toronto, which required proof of an applicant’s immigration status. The only other option would be for the application to be submitted through the applicant’s country of origin, which the GTHBA argued would not quickly address the labour shortage in the residential construction industry.

It is important to note that even though the GTHBA advocated for regularization, the proposal prioritized unlocking undocumented workers’ labour and economic potential, whereas a pathway to citizenship was framed in more uncertain terms as only a future possibility. The proposal stressed that a regularization system would not bypass existing applicants because it regularized undocumented workers already residing in Canada, nor would the federal government be “turning anybody into immigrants – only temporary workers.” As local lawyer and community activist Avvy Go pointed out in the *Toronto Star*, regularizing the immigration status of only some undocumented workers did nothing for other non-status individuals:

[A regularization program] only benefits a very small number of undocumented immigrants - those in the construction trade, where the powerful homebuilders' associations and sympathetic unions have lobbied for the regularization. The vast majority of non-status immigrants do not work in construction. They clean our toilets, look after our families and cook our food. They are non-unionized labourers working for small employers in various service industries, and are left out of the plan.

Like Go gestures towards, the language used to promote the regularization process relied upon highlighting benefits for other parties. For unions, this included turning their members into “full-fledged participants in the labour market;” for employers, this included “avoid[ing] penalties for hiring undocumented workers;” and for the government, this included removing “a portion of ‘illegals’ [f]rom their books” and making them into taxpayers. Promoting the benefits of

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149 *Avvy Go, “Partial amnesty is no solution: [ONT Edition],” Toronto Star; Toronto, Ont (22 November 2003) B06.
150 Greater Toronto Home Builders’ Association, *supra* note 147 at 10.
turning undocumented workers into taxpayers was not only problematic because it erased their existing contributions to taxes like the Goods and Services Tax, but also because the proposal did not demand a pathway to citizenship. Therefore, the proposal depended on undocumented workers’ labour and potential (greater) tax contributions, all the while allowing them to exist as permanently temporary residents without access to programs like pensions or social assistance that permanent residents or citizens can access. Perhaps this explains, at least in part, why Toronto City Council’s first foray into the conversation on precarious immigration status was about the issues undocumented construction workers in Toronto were experiencing.

### 3.2.2 2005 to 2007: Protection for Some Non-Status Individuals

![Figure 3.1: Key Events and Policies in the Development of Sanctuary Toronto Between 2005 to 2007](image)

Between 2005 to 2007, municipal agencies in the City of Toronto started to recognize that non-status individuals were enduring serious impediments in trying to access basic yet essential services. As a result, the possibility of providing some non-status individuals assurances that they could access these services became the focus during this time. Starting at City Council, in February 2005, then Mayor David Miller called upon an item supporting the efforts of undocumented workers in Toronto to be debated. The item illustrated the precariousness undocumented workers face:

> Toronto City Council recognizes there are thousands of hard working, tax paying immigrants in the City of Toronto who have no government documentation…there is a shortage of labour in the construction sector; and…many of these undocumented workers
in the City of Toronto who work in the construction sector have no health and safety protection.\textsuperscript{151}

The item’s resolutions asked that Council not only express its “support for the many thousands of undocumented workers currently living and working in the City of Toronto,” but also support the City’s Undocumented Workers Committee in their pursuit of reaching a “fair and equitable resolution” for undocumented workers.\textsuperscript{152} While these resolutions were both vague in detailing what outcomes needed to be achieved, a third, more actionable resolution directed “the City Clerk to write to the Federal Minister of Citizenship and Immigration expressing its desire to see the cases of undocumented workers be addressed in a timely, fair and equitable manner.”\textsuperscript{153}

The item was returned to the Policy and Finance Committee (“PFC”) for review, and the PFC ultimately recommended the City work with community partners and government to “regularize the situation of undocumented construction workers based on strict eligibility criteria,” and request the federal government implement “a deportation ‘moratorium’ for residents who have lived in Canada without incident for a number of years.”\textsuperscript{154} The PFC also proposed new measures like asking City staff to refuse licensing “contractors and organizations convicted of exploiting Undocumented Workers.”\textsuperscript{155} What was perhaps most important, though, was a new resolution allowing “complainants not be required to disclose their immigration status to the Fair Wage Office when filing a complaint against his/her employer.”\textsuperscript{156} Council considered and adopted the PFC’s recommendations, without amendment, in May 2005.\textsuperscript{157}

Council also requested City staff report to the Administration Committee on what policy and legal options the City had to adequately address the exploitation of undocumented workers in the

\textsuperscript{151} Toronto City Council, \textit{Support for the Efforts of the Undocumented Workers Committee}, Minutes of the Council of the City of Toronto Item 1.61, Motion I(2) (Toronto, ON: City of Toronto, 2005).
\textsuperscript{152} Ibid.
\textsuperscript{153} Ibid.
\textsuperscript{154} Policy and Finance Committee, \textit{Support for the Efforts of the Undocumented Workers Committee}, Committee Report Report 4, Clause 19a (Toronto, ON: City of Toronto, 2005).
\textsuperscript{155} Ibid.
\textsuperscript{156} Ibid.
\textsuperscript{157} Toronto City Council, \textit{Policy and Finance Committee Report 4, Deferred Clause 19a, headed “Support for the Efforts of the Undocumented Workers Committee,”} Minutes of a Special Meeting of the Council of the City of Toronto S5.9 (Toronto, ON: City of Toronto, 2005).
construction sector. In June 2005, City staff submitted a report which identified a relationship between the demand for “skilled and unskilled trades in the construction industry” and undocumented labour within the GTA. On the policy front, City staff argued that the common practice of some small businesses employing undocumented workers in short-term, casual placements heightened exploitation because employers could often “avoid paying statutory payroll deductions.”\(^{158}\) Although the City’s *Fair Wage Policy* already required employers to “pay a fair wage [in line with the going industry wage rate] and explain health and safety issues to workers,” underlying factors normalized exploitation.\(^{159}\) For example, City staff highlighted language barriers for those accessing services, as well as fears that complaining to the authorities would draw attention to their precarious immigration status, and perhaps lead to deportation. Moreover, City staff reaffirmed that the *Fair Wage Policy* did not “differentiate immigration status [and] complainants are not required to disclose their immigration status to the Fair Wage Office when filing a complaint.”\(^{160}\) Nevertheless, these two aforementioned factors – language barriers and fear of deportation – were arguably strong enough to render the *Fair Wage Policy* reactive rather than proactive because it depended on complaints being made before the City could take action against offending employers.

On the legal front, the City’s Legal Services Division advised on the legality of any City policy that would restrict licensing employers who had a history of exploiting undocumented workers. City lawyers suggested that the *Toronto Municipal Code* – a collection of Toronto by-laws categorized by subject – “may already allow the refusal to license or the revocation of a license” under certain conditions, and the Toronto Licensing Tribunal had discretionary authority to determine refusals and revocations.\(^{161}\) If the City wanted to implement a policy that restricted licensing such employers, Legal Services informed the Committee that this would require creating a by-law.

\(^{158}\) Administration Committee, *Council Resolution on Support for Undocumented Workers*, Committee Report Report 6, Clause 3b (Toronto: City of Toronto, 2005).

\(^{159}\) Ibid.

\(^{160}\) Toronto City Council, *Administration Committee Report 6, Clause 3b, headed “Council Resolution on Support for Undocumented Workers, ”* Minutes of the Council of the City of Toronto 10.52 (Toronto, ON: City of Toronto, 2005).

\(^{161}\) Administration Committee, *supra* note 158.
While Legal Services advised against a by-law mechanism for a number of reasons, overall, their advice failed to frame what the City’s authority to prevent the exploitation of undocumented workers in their jurisdiction was under the law. Legal Services began by pointing out that Council’s use of ‘exploitation’ was vague, making it difficult to advise on the legality of specific outcomes for undocumented workers as per Council’s direction. Consequently, Legal Services assumed Council meant exploitation with respect to employers convicted of an offence under provincial employment laws, but did not comment on whether or not the City had the authority to intervene. Second, while Legal Services recognized the City had powers under the provincial Municipal Act to refuse licensing employers from doing business with the City, they suggested a by-law would contravene section 14 of the same Act, which prohibits a by-law be in conflict with a provincial or federal law. Legal Services explicitly referenced the IRPA as such an example because the Act “makes it an offence for anyone to employ a foreign national without the requisite work authorization [and] failure to inquire about someone’s immigration status is deemed to be knowledge of the lack of authorization.”162 In other words, a by-law which would exclude an employer known to exploit undocumented workers from conducting business with the City could be construed as the City have knowingly disregarded an employer’s history of hiring but not exploiting undocumented. Since Council’s definition of ‘exploitation’ was vague, Legal Services was concerned that the combination of employing undocumented workers and failing to verify immigration status – even if done so indirectly through a contract with a third-party employer – could at best be interpreted as the City frustrating the purpose of federal law, and at worst, contravening federal law. Put more simply, the legal argument advanced by City lawyers was that a by-law effectively created a process where immigration status would become a requirement when awarding businesses a City contract, which could in turn make the City responsible for enforcing the IRPA by reporting knowledge of immigration violations revealed during the awarding process.

Legal Services recognized a third concern with a by-law mechanism, the actual application: “ascertaining what constitutes ‘exploiting undocumented workers’ for the purposes of obtaining

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162 Ibid.
a conviction” would be difficult. Since neither federal nor provincial legislation explicitly made it an offence to exploit undocumented workers, the City would not only have to determine if a company violated any provincial or federal laws, but also connect those violations to a specific undocumented worker. While Legal Services conceded ascertaining a company’s history of offences was relatively easy, they argued the latter would likely encounter privacy implications and, as highlighted by community stakeholders, the reality was that undocumented workers were unlikely to present themselves to City staff “to enforce his or her rights with respect to such a conviction.” Accordingly, City staff advised that the best way for the City to meaningfully address the exploitation of undocumented workers was to avoid a legally and jurisdictionally complex by-law mechanism, and instead, lobby the federal and provincial government to enact legislation. This direction to lobby their federal and provincial counterparts instead of advising the City on their legal jurisdiction and authority was a missed opportunity to provide the City with the instruments it needed to protect undocumented workers.

Taking City staff’s report under advisement, the Administration Committee still felt the City had to do more than just lobby other orders of government to protect undocumented workers within their jurisdiction. In other words, the Committee believed that in trying to better understand the experiences of undocumented workers in Toronto, Council would not be satisfied with waiting for the federal and provincial governments to act – they were eager to act immediately. The Committee appreciated that the solutions might be complex, but the City did have some authority to enact stronger protections against workplace abuse. The Committee’s submission to Council thus recommended authorizing City staff to amend the Fair Wage Policy, extending “disqualification provisions [from] the contractor or subcontractor found to be in non-compliance with the Policy…to any related companies owned or controlled by the same individuals.”

In October 2005, Council considered and amended the Committee’s recommendation by adding a request that the federal government normalize immigration status “before the next federal

163 Toronto City Council, supra note 160.
164 Administration Committee, supra note 158.
165 Ibid.
election [and] urgently bring forward a long-term resolution to this long standing issue.\textsuperscript{166} The amendments making changes to the \textit{Fair Wage Policy}, reaffirming support for undocumented workers, and lobbying the federal government to enact change was adopted 24-6. The efforts by Council to render immigration status irrelevant for workers when accessing a city service like the Fair Wage Office demonstrates how cities do in fact have tools at their disposal to remove some of the barriers non-status individuals face. Moreover, it illustrates the important role City staff play in translating political decisions into substantive policy. Unfortunately, Toronto City Council would not revisit improving access to city services for non-status individuals again until 2012, likely because the focus was on the Toronto Police Service and Toronto School Boards, who were responding to events which necessitated a discussion on immigration status within their own jurisdictions.

Unlike Council’s efforts to understand and utilize the full range of their authority to protect undocumented workers from further exploitation, the Toronto Police Service (“Police Service”) was mostly unsympathetic to similar scrutiny of their authority. In November 2004, the Police Service received a complaint alleging the Police Service had a “practice of inquiring [about] the immigration status of a person seeking police services.”\textsuperscript{167} Then Chief William Blair responded that based on his review, no changes to policy or practice was required.\textsuperscript{168} The complainant disagreed, and submitted a follow-up request for review. Blair responded and took issue with the complainant’s questions about what impacts immigration status had on an investigation, the legal requirements to report immigration status to federal immigration officials, and the feasibility of implementing a policy to protect victims and witnesses without immigration status. Blair’s response was both inflammatory in its portrayal of non-status individuals – Blair at one point writes that they “cannot be said to be a ‘law abiding’ member of society” and were “technically fugitives from justice” – and inaccurate in its interpretation of the Police Service’s empowering legal statutes, which perhaps paved the way for a broader institutional response.

\textsuperscript{166} Toronto City Council, \textit{supra} note 115.
\textsuperscript{168} \textit{Ibid.}
In August 2005, the Toronto Police Services Board (“Police Board”), the body responsible for setting the Chief’s policing objectives and priorities, reviewed the complainant’s appeal and the Chief’s response. The Police Board agreed with the Chief’s recommendation not to pursue further action with regards to the specific complaint, but disagreed that a policy regulating when police officers were required to report immigration status to the CBSA and ensuring equitable access to police services could not be implemented. The Police Board assembled a working group to review policies in American jurisdictions, consult with the original complainant, and solicit legal opinions about the legality of such a policy if implemented in Canada.

In February 2006, then Police Board Chair Alok Mukherjee and the working group submitted their report to the Police Board for consideration. Based on their consultations, the working group agreed on two major points: that the immigration status of victims of and witnesses to crimes was “largely irrelevant” in police investigations, and that there needed to be “mechanisms to encourage victims and witnesses to come forward without fear of exposing their status.”\textsuperscript{169} The latter was particularly important because the working group noted it could help reduce the spate of gun violence impacting Toronto at the time. The working group subsequently addressed the outstanding issue of a police officer’s discretionary powers to not report an individual’s immigration status if they become aware of it during an interaction. Legal opinions submitted to the Police Board underscored that since immigration matters are dealt with in administrative and not criminal law, police officers “are not bound to enforce” immigration status.\textsuperscript{170} Furthermore, the IRPA only requires police officers enforce immigration status if they are specifically directed by an immigration official to execute a warrant. The working group concluded that “this would imply [there] is no automatic reporting of an individual’s immigration status.”\textsuperscript{171}

While the working group recognized there was no federal law which explicitly maintained that the Police Service has a positive duty to report immigration status to immigration officials, they agreed with the Chief’s view that police officers have general obligations under the provincial \textit{Police Services Act} (“PSA”) to “prevent crimes and other offences [and] ‘preserv[e] the Queen’s

\textsuperscript{169} Alok Mukherjee, \textit{Immigration Status: ‘Don’t Ask Don’t Tell’ Working Group}, Minutes of the Public Meeting P34/06 (Toronto, ON: Toronto Police Services Board, 2006).
\textsuperscript{170} \textit{Ibid.}
\textsuperscript{171} \textit{Ibid.}
peace.”” The language contained in the empowering provincial statute forced the working
group to acknowledge “there is a concern that the Police Board and Service could be open to
liability should a [Don’t Ask, Don’t Tell] policy be adopted, and asking the question and passing
on the information about a person’s immigration status might have prevented a crime.” Nevertheless, when read beside the IRPA, – and it should also be noted that the IRPA is a federal statute, and therefore overrides the PSA, a provincial statute – the PSA’s more ambiguous
language and this hypothetical were not compelling enough reasons for the Police Board not to implement some sort of policy. The working group recommended the Police Board direct the Chief to develop a policy ensuring equitable access to police services for some non-status individuals, and “request the federal Minister of Citizenship and Immigration Canada to stay orders of removal against individuals who are witnesses in criminal cases until court proceedings have concluded.” On May 18, 2006, the Police Board adopted the Victims and Witnesses without Legal Status policy to this effect, which has since been referred to informally as the Police Service’s “Don’t Ask” policy.

While the first recommendation exercised the Police Board’s authority to set policy, the second recommendation underscored the material constraints that municipal actors encounter when trying to effect change with regards to matters like immigration enforcement, especially when it intersects multiple jurisdictions. Shortly after it was passed, the “Don’t Ask” policy encountered various jurisdictional resistance from federal law enforcement agencies, and less so from the federal government of the day. Then federal Minister of Public Safety Stockwell Day sent his first letter to the Police Board in July 2006 about the feasibility of implementing a full “Don’t Ask, Don’t Tell” (“DADT”) policy. Day did not comment directly on the DADT policy, only underscoring the “strong relationship” between CBSA and the Police Service in enforcing the IRPA. What was most revealing in Day’s letter, however, was his confirmation that the CBSA

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172 Toronto Police Services Board, Victims and Witnesses Without Legal Status, Board Policies P140/06 (Toronto, ON: Toronto Police Services Board, 2006); Blair, supra note 167 at 86.
173 Mukherjee, supra note 169.
174 Toronto Police Services Board, supra note 172.
175 An email to the Toronto Police Services Board requesting a copy of the Chair’s correspondence which informed the Minister’s reply could not be met because the records were purged in accordance with the Board’s retention schedule.
176 Toronto Police Services Board, Response to Board’s “Don’t Ask, Don’t Tell” Policy, Minutes of the Public Meeting P271/06 (Toronto, ON: Toronto Police Services Board, 2006).
has discretionary power to “delay the removal of a witness for testimony at a court” if requested by a police agency.\textsuperscript{177} In November 2006, John Gillan, Director General for the CBSA’s GTA Region, also recognized this during his deputation to the Police Board:

> With respect to witnesses, the \textit{Immigration and Refugee Protection Act} recognizes the need to work closely with the criminal justice system and specifically requires consultation and approval from the Crown prior to removing a person who is under a Court ordered subpoena. There are already provisions in place to ensure that individuals material to a judicial proceeding in Canada will be allowed to remain in the country.\textsuperscript{178}

Although both Day and Gillan emphasized the CBSA has the discretion to ensure non-status individuals who participate in judicial proceeding as witnesses will not be removed while the proceedings are ongoing, it is unclear what happens to individuals afterwards. Similar to the Police Board’s aforementioned hypothetical about sharing immigration status and crime prevention, Gillan also argued that the “post-9/11 reality…[has] reinforced the need for fulsome and timely information sharing and co-operation between law enforcement agencies at all levels…failure to share information and coordinate our efforts can lead to undesirable and, perhaps, unforeseen and unfortunate consequences.”\textsuperscript{179} This type of fear mongering stands in stark contrast to research which supports the opposite.\textsuperscript{180}

In March 2007, Blair submitted his report to the Police Board describing efforts the Police Service had made to implement the Police Board’s policy. Before he outlined the Police Service’s progress though, and in stark contrast to his earlier reports, Blair began with the new claim that “The Toronto Police Service believes [police] services should be available to all members of the community.”\textsuperscript{181} Blair then turned to what he purported were ‘contrary views’ on the legal and practical feasibility of the Police Service’s role in policing immigration status and immigration enforcement. Blair cited ‘extensive research’ conducted with internal departments

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\textsuperscript{177} \textit{Ibid.}\textsuperscript{,}\textsuperscript{178} John Gillan, \textit{CBSA Deputation before the Toronto Police Services Board}, Submission P301/08 (Toronto, ON: Toronto Police Services Board, 2008) at 2.\textsuperscript{,}\textsuperscript{179} \textit{Ibid.}\textsuperscript{,}\textsuperscript{180} See e.g. Amada Armenta & Isabela Alvarez, “Policing Immigrants or Policing Immigration? Understanding Local Law Enforcement Participation in Immigration Control” (2017) 11:2 Sociology Compass e12453; Lewis et al, \textit{supra} note 127.\textsuperscript{,}\textsuperscript{181} William Blair, \textit{Victims of Crime and Witnesses to Crime Without Legal Status}, Minutes P112/07 (Toronto, ON: Toronto Police Services Board, 2007) at 147.
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and government agencies, such as the CBSA and the Ontario Ministry of the Attorney General, Ontario police agencies, stakeholders and groups (although it is unclear who was consulted), and internet research on American jurisdictions. Blair argued that the Police Service’s research on American police services with policies that address immigration status showed it was “unclear to date as to the effectiveness or any problems associated with the policies.”182 Blair re-emphasized that “even legal opinion [was] divided on police responsibilities” set out in empowering federal and provincial statutes, and that the Canadian and American systems which guide local policing of immigration status were distinct.183 In short, Blair believed that any policy limiting the Police Service’s involvement in immigration enforcement was not possible under Canadian law. Nevertheless, the Police Board diverged again with Blair’s position, and asked the Chair to consult more with the community and conduct a review, building off the working group’s earlier work on DADT policies in other jurisdictions as well as the Chief’s report, in order to “deal with the feasibility of including a ‘Don’t Tell’ component.”184 Disagreement between the Board and the Chair suggested a DADT policy might be possible, but as I demonstrate next, neither compelling legal advice nor community pressure was enough to convince the Board.

### 3.2.3 2007 to 2012: Moving Beyond More than Just “Don’t Ask”

![Figure 3.2: Key Events and Policies in the Development of Sanctuary Toronto Between 2007 and 2012](image)

182 Ibid.
183 Ibid.
184 Ibid at 149.
On the heels of municipal agencies starting to take responsibility for how non-status individuals were being treated within their jurisdiction, the period between 2007 and 2012 can be characterized by a push to move beyond not asking about immigration status. In contrast, this period saw new interpretations of what the law did and did not say about municipal authority and police powers vis-à-vis non-status individuals. Consequently, municipal agencies were being pushed to broaden their policies from simply preventing inquiries into immigration status (“Don’t Ask”) to also not reporting immigration status if discovered (“Don’t Tell”).

During the time Chair Mukherjee was conducting another review of whether or not the Police Board could implement a “Don’t Tell” component, the Immigration Legal Committee (the “ILC”), a joint project between academics from the University of Toronto’s law school, lawyers from the Law Union of Ontario, and community advocates with No One is Illegal-Toronto, was also researching if the Police Board had the legal authority to implement a full DADT policy. In May 2008, the ILC shared their report with the Police Board and Chief to help inform their decision. The ILC’s report argued what had already been noted previously by other lawyers: there are no laws that “require police to disclose immigration status to federal officials except when they are carrying out a warrant issued under the Immigration and Refugee Protection Act,” and that “disclosure of this information conflicts with police duties” described in various provincial, federal, and even international laws.\(^\text{185}\) Subsequently, the ILC recommended the Police Board extend its existing policy regulating police interactions with victims of and witnesses to crimes “to include all people police come into contact with.”\(^\text{186}\) In addition to the ILC’s report, the Police Board received 844 petitions urging them to add a “Don’t Tell” component to the existing “Don’t Ask” policy. The petitioners argued that one reason to broaden the policy was that victims of domestic violence were being ineffectively protected by the Police Board’s “Don’t Ask” policy because it was not being “uniformly enforced” by police officers.\(^\text{187}\) In November 2008, the Police Board received Mukherjee’s report determining the fate of a comprehensive DADT policy. After considering the ILC’s report, the hundreds of petitions

\(^{185}\) Immigration Legal Committee, *Police Services: Safe Access for All Legal Arguments for a Complete “Don’t Ask, Don’t Tell” Policy* (Toronto, ON, 2008).

\(^{186}\) Ibid.

\(^{187}\) Alok Mukherjee, *Don’t Ask, Don’t Tell Working Group – Victims and Witnesses Without Legal Status Policy*, Minutes of the Public Meeting P301/08 (Toronto, ON: Toronto Police Services Board, 2008).
received, and his own conversations with Chief Blair, Mukherjee ultimately recommended “the policy as it currently exists and as it has been implemented by the Chief is as far as we can go on this matter.”\textsuperscript{188} The Police Board accepted Mukherjee’s recommendation, terminated the working group’s mandate, and did not revisit the feasibility of a “Don’t Tell” component again until 2015.

The Police Board refused to further regulate the Police Service’s relationship with the CBSA. At the same time, the Toronto Catholic District School Board (“Catholic Board”) and the Toronto District School Board (“District Board”) worked to add a “Don’t Tell” component to their existing policies. Comparing the Catholic and District Boards’ policies, however, reveals that non-status students in Toronto could have completely different experiences with immigration officials simply because of the schools they attend. As discussed earlier in this chapter, s. 49.1 of the \textit{Education Act} requires school boards accept all students, regardless of their own immigration status or their parent/guardian’s immigration status. One major concern with s. 49.1, though, has been that it only addresses student admissibility – it does not explicitly regulate immigration enforcement on school grounds. In light of the CBSA’s operations at two of their schools and mounting community pressure, the Catholic Board spent most of 2007 reviewing their existing policies that dealt with law enforcement agencies. The Catholic Board first updated their policy \textit{S. 18 Apprehension or Arrest of Pupils} based on a report from their Director of Education, which stated that schools were under no obligation to disclose a student or their families’ immigration status, and it was “the strict practice of the Catholic Board not to provide any information about any student or their family to immigration officials unless legally obligated to do so.”\textsuperscript{189} Furthermore, the report included confirmation from the CBSA that immigration officials had been instructed not to enter schools “except in extraordinary circumstances.”\textsuperscript{190} These circumstances included a request made by a family member, legal guardian, or school official for family reunification, or “for reasons of national security or criminality.”\textsuperscript{191} For schools to accept

\textsuperscript{188} Alok Mukherjee, \textit{Don’t Ask, Don’t Tell Working Group – Victims and Witnesses Without Legal Status Policy}, Minutes of the Public Meeting P302/08 (Toronto, ON: Toronto Police Services Board, 2008).
\textsuperscript{189} Director of Education, \textit{Replacement of Policy S. 18 Apprehension or Arrest of Pupils in Respect to Immigration Officers and Children’s Aid Societies}, Staff Report to Human Resources, Program & Religious Affairs Committee (Toronto, ON: Toronto Catholic District School Board, 2006).
\textsuperscript{190} \textit{Ibid} at 18.
\textsuperscript{191} \textit{Ibid}.
the latter, the CBSA had to provide proof of approval from senior CBSA officials in Ottawa before they could enter schools or access student information.

The next policies the Catholic Board updated were *S. 15 Access to Pupils* and *V.P. 05 Police Investigation*. The former provided staff more guidance on when to consider granting access to students, whereas the latter regulated cooperating with police and immigration officers on school grounds. However, changes to neither *S. 15* nor *V.P. 05* attempted to prevent immigration enforcement from happening – the core tenet of “Don’t Tell.” Under *S. 15* for example, immigration officials continued to have access to and interview students, so long as the school’s principal ascertained that access did not conflict with other Catholic Board policies, and immigration officials could still apprehend a student if they produced “a legally valid authorized order.”192 *V.P. 05*, renamed *V.P. 05 Police and Immigration Investigations* also continued to require that staff “cooperate fully with the police and others carrying out their responsibilities as part of a law enforcement investigation or proceeding.”193 *V.P. 05* asked staff to refer to other policies such as *S.18* (apprehension), *S. 15* (pupil access), *S. 16* (pupil information), and the “Police/School Board” protocol – signed by the Toronto Police Service and all Toronto school boards – for more instructions on dealing with law enforcement agencies in general.

The refresh of outdated Catholic Board policies on access to students, student information, and law enforcement conduct was clearly confusing and, at times, even contradictory. For example, although staff reported that schools were not obligated to disclose or provide immigration officials information about a student’s immigration status, none of these key details from the report appeared in the final policies. In fact, the opposite seems to have occurred: the updates to *S. 15* (pupil access) and *S. 18* (apprehension) were focused on what staff should do *during* an interaction between police or immigration officers and a student, not *preventing* an interaction from occurring in the first place. In contrast to the Catholic Board’s policies, the District Board’s policy *P. 061 Students without Legal Immigration Status* took a proactive rather than reactive approach towards ensuring staff and schools did not participate in immigration enforcement.

192 Director of Education, *Revisions to S. 15 Access to Pupils*, Staff Report to Administrative and Corporate Services Committee (Toronto, ON: Toronto Catholic District School Board, 2007) at 37.
193 Director of Education, *Revision of V.P. 05 Police Investigation*, Staff Report to Administrative and Corporate Services Committee (Toronto, ON: Toronto Catholic District School Board, 2007).
Adopted on May 26, 2007, the District Board’s policy contains the most explicit “Don’t Tell” component amongst any of the institutions within the City of Toronto:

Schools will be instructed **not to provide information** about a student or his/her family to Immigration authorities, but rather to refer such requests to the Director of Education. Furthermore, the Director shall inform Immigration enforcement agents of the TDSB policy that **opposes access to students** while in school (emphasis added).

Additionally, the District Board provided further directives to ensure their policy was effective, including: (1) annual reminders to schools about s. 49.1 student admissibility; (2) training all staff responsible for admissions, (3) accepting alternative identify verification methods for enrolment, such as a lawyer or doctors’ letter; and (4) changing English as a Second Language forms, which requires verifying a student’s date of entry into Canada to determine funding eligibility. Yet, just like the City of Toronto’s own sanctuary policies discussed below, whether or not these policies have actually been effective in addressing what is likely a small fraction of immigration enforcement at schools has not been researched enough.

Nearly seven years after City Council first examined the conditions of undocumented workers in Toronto, the Community Development and Recreation Committee (the “CDRC”) undertook a sweeping review of the ongoing challenges non-status Torontonians faced. In February 2012, the CDRC directed City staff from the Social Development, Finance & Administration (the “SDFA”) division to research and report on the state of undocumented workers in Toronto and what role the federal government played in maintaining an immigration system which creates undocumented workers. The SDFA’s report, finalized in October 2012, portrayed the poor working conditions undocumented workers – whom generally work in the “agriculture, construction, hospitality, manufacturing industries or as domestic workers” – face, such as being “susceptible to situations where they are required to work for low wages, under poor and unsafe work conditions, and where they have no protection against unfair dismissal, abuse and/or

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195 Ibid.

196 Social Development, Finance & Administration, *Undocumented Workers in Toronto*, Staff Report to the Community Development and Recreation Committee AFS# 15467 (Toronto, ON: City of Toronto, 2012).
exploitation by their employers.” Moreover, the mental health challenges undocumented workers experience, such as anxiety, depression, and isolation, to name a few, is unsurprisingly high. Being unable to access federal and provincial programs such as Employment Insurance, Ontario Works, or the Ontario Disability Support Program further contributes to the constant precariousness undocumented workers face, both inside and outside their employment. Altogether, undocumented workers help Canada meet its labour demands, but neither the federal nor provincial governments were addressing how being without status negatively impacts many undocumented workers’ mental health.

Of course, none of this information was new. Previous academic research, as well as the City’s own research discussed earlier in this chapter, had already drawn attention to these concerns years before the SDFA’s report. What makes this report unique, though, was how much more forceful it was in recognizing that Canada’s immigration system, and by extension the federal government, is a “major factor in being undocumented.” Especially since 2006, the federal government had preferred to grant temporary residence visas to meet labour demands, instead of providing migrant workers a pathway to permanent residence or citizenship. As a result, non-status individuals in Canada are markedly different from those in the United States because they often enter with temporary status and become ‘irregularized’ by staying in Canada after their immigration status has expired. The report also suggested that, combined with a relatively high rate of refugee applications being denied by the Canadian government, the Canada-U.S. Safe Third Country Agreement (the “STCA”) “may have increased the number of people entering Canada from the US on other types of visas, and then staying in Canada and becoming undocumented workers.” While this claim was not supported by any empirical evidence, including this in the report acknowledged how Canada is complicit in rendering individuals as non-status, and points to the multitude of ways in which non-status individuals in Toronto could or have become irregularized. The report also underscored the ways in which the federal government was actively stymieing the success of migrants seeking pathways to permanent residency or citizenship. For example, the Pre-Removal Risk Assessment (the “PRRA”) process

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197 Ibid at 6.
198 Ibid at 3.
199 Ibid at 5.
which allows some individuals ordered removed from Canada to apply for review based on certain factors such as risk of persecution – historically had a low success rate\(^{200}\) (an average of 2% between 2007 and 2014) as well as numerous eligibility criterion that needed to be met.\(^{201}\) An alternative was to apply for permanent residency based on humanitarian or compassionate grounds, but the applicant still needed to overcome certain conditions, and this option had a similarly low success rate to the PRRA option. The report made it abundantly clear that for non-status individuals, and undocumented workers specifically, Canada’s immigration system was intentionally marginalizing them through agreements like the STCA or processes like the PRRA, with the goal of excluding them from ever attaining status or citizenship.

At the end of January 2013, the CDRC received the SDFA’s report, heard deputations from community members and stakeholders, and ultimately recommended that City Council take the following actions: (1) direct City staff to conduct an internal review, with community input, of all City of Toronto entities to identify opportunities for the City to improve the access of their services without fear (“Access without Fear”) for non-status individuals, including increased public education and training for staff; (2) write to the federal government and opposition parties encouraging them to create a regularization program for non-status individuals; and (3) request the provincial government use a social determinants of health framework to review how they administer their programs, such as health care and community housing, in order to allow access for non-status individuals.\(^{202}\) Although the SDFA’s report would form the basis of the City’s eventual Access without Fear policy, what was strikingly absent in the CDRC’s recommendations were any specific directives that would prevent City staff from cooperating with immigration officials. And, while the SDFA’s report was bold in its analysis, it failed to provide immediate measures for the CDRC to recommend and City Council to implement,


\(^{202}\) Community Recreation and Development Committee, *Undocumented Workers in Toronto*, Meeting Minutes CD18.5 (Toronto, ON: City of Toronto, 2013).
therefore mirroring many of the same issues the City encountered between 2005 and 2007 when it first studied the exploitation of undocumented workers in Toronto.

### 3.3 TURNING SANCTUARY INTO SUBSTANCE? (2013 TO 2014)

![Figure 3.3: Key Events and Policies in the Development of Sanctuary Toronto Between 2013 and 2014](image)

On February 21, 2013, Toronto City Council amended and adopted the CDRC’s recommendations, subsequently declaring that Toronto “re-affirm[ed] its commitment to ensuring access to services without fear to immigrants without full status or without full status documents.”

By adopting this item, the City of Toronto became Canada’s first ‘sanctuary city.’ However, a policy actually defining how the City would provide sanctuary to non-status individuals only came forward more than one year after Council declared itself a sanctuary city.

In May 2014, the CDRC received a second report from the SDFA identifying areas within (and outside) the City’s authority that could “address the service delivery needs of undocumented

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203 Toronto City Council, *Undocumented Workers in Toronto*, Minutes of the Council of the City of Toronto CD18.5 (Toronto, ON: City of Toronto, 2013).
This included services such as childcare (e.g. fee subsides), health (e.g. primary care clinics), housing (e.g. public housing), and recreation (e.g. facilities and general programs), to name a few. A working group comprised of different City institutions – including the Toronto Police Service – collaborated, consulted, and consolidated relevant information on improving access to services, reporting on areas such as City services and programs, staff training, public education, and federal/provincial responsibilities.

The report started by addressing some of the legal concerns a sanctuary policy would encounter with respect to when proof of immigration status was necessary, and when information about immigration status needed to be shared with other government agencies. Since the City of Toronto is a municipal corporation, as defined under s. 1 of the City’s empowering provincial statute, the City of Toronto Act, 2006 (the “COTA”) any by-law or policy enacted by Council applies to all inhabitants within Toronto.205 Under s. 10 of the COTA, the City can enact by-laws or policies which “differentiate in any way and on any basis,”206 but it must be done so “in a deliberate and transparent manner” and in accordance with federal and provincial human rights laws.207 Although the report mentioned these two sections of the COTA, the report did not directly interpret the enabling statute to argue whether or not the City had the legal authority to compel all City institutions to comply with its Access without Fear policy. Instead, the report only noted what the City’s jurisdiction was as it pertained directly to immigration enforcement:

As a municipality, it is not within the jurisdiction of the City of Toronto to monitor undocumented persons. In fact, the City should not request information regarding immigration status unless required to do so by another order of government (emphasis added).208

Despite not commenting in great detail about the COTA, the report did engage with its legal obligations under the provincial Municipal Freedom of Information and Protection of Privacy

204 Social Development, Finance & Administration, Access to City Services for Undocumented Torontonians, Staff Report to the Community Development and Recreation Committee 18943 (Toronto, ON: City of Toronto, 2014) at 1.
205 City of Toronto Act, 2006, SO C 11, Sched A [City of Toronto Act].
206 Ibid.
207 Social Development, Finance & Administration, supra note 204 at 4.
208 Social Development, Finance & Administration, supra note 204 [emphasis added].
Act, 1990 (the “MFIPPA”) to collect and disclose residents’ personal information, and interpreted this within the context of the City’s duties to disclose information about non-status individuals.

Under the MFIPPA, the City “cannot collect personal information unless legally authorized to do so by statute or by-law [and with] few exceptions, personal information must be collected directly from the individual.”\textsuperscript{209} The City must give advance notice, in writing, of who is collecting the information and how it will be used, and there are only two instances under the MFIPPA where sharing personal information is allowed: to aid a specific law enforcement investigation or because of statutory requirements. For the former, the City must receive a formal written request, and the request must be vetted by the City’s Corporate Information Management Services (“CIMS”). Thereafter, the City has the discretion to decide if they want to share a resident’s personal information with the requesting law enforcement agency. For the latter, the City must comply only “where the law requires disclosure upon a written request” from a government agency, such as when the Canada Revenue Agency requests information for tax audit purposes.\textsuperscript{210} Notwithstanding any statutory obligations, the discretionary decision-making power afforded to the City, as well as their robust review process, appears to suggest the City had some legal tools to regulate their own participation in immigration enforcement. Yet, the report actually underscored the limits of the City’s authority. For example, City by-law enforcement officers often work closely with federal and provincial law enforcement agencies, and if an officer “incidentally discover[s] immigration status information [they] may request assistance from the appropriate authority, such as the Toronto Police Service.”\textsuperscript{211} These two competing discretionary powers – one the City has in setting policy, the other a by-law enforcement officer has in carrying out their duties – further highlights the challenges of creating impactful sanctuary policies within a complex interjurisdictional system.

While many of the report’s measures did not proactively prevent cooperation between the City and immigration officials, the City found creative ways to focus on what was clearly within their

\textsuperscript{209} Ibid at 6.
\textsuperscript{210} Ibid.
\textsuperscript{211} Ibid at 7.
jurisdiction: the provision of services. Just like when the City first took action to remove some of the barriers facing non-status individuals when they amended the *Fair Wage Policy*, the willingness to think creatively underscores the City’s confidence that their municipal authority permitted them to become a sanctuary city. For example, the interpretation of the *MFIPPA* above was meant to clarify the only circumstances in which City staff had to ask about immigration status when providing services, thereby preventing information from being collected unless absolutely necessary. By providing City staff with these narrow set of conditions, the City had creatively added a “Don’t Tell” component to their sanctuary policy.

To be sure that City staff would not be placed in a position where they could directly aid immigration officials, the working group first reviewed what each City institutions’ level of identification requirements were for providing services, and found that out of 55 types of City services, residents had to prove their immigration status to access 12 of the services, including the “Basic Needs Allowance” for shelter residents, business licenses and permits, and public housing. Since all 12 services were connected to provincial or federal requirements, either by virtue of law or funding, the report re-emphasized that the City should focus on identifying services they had absolute control over because “for the most part, municipal services in Toronto do not require identification other than proof of residency, such as a utility bill.”

The working group then reviewed what types of training staff needed to ensure non-status individuals could access services. An internal communications plan and training module aimed to inform staff of Council’s commitment to improving Access without Fear, clarify when proof of immigration status was required, and remind staff of the City’s information-sharing procedures. Once City staff had been adequately trained, and depending on budgetary allocation, a similar public education plan would promote to Torontonians the City’s efforts in implementing its Access without Fear policy. This plan included: (1) a multi-lingual poster, unique to each available service; (2) a list of services that specified when proof of immigration status was required; (3) a common identifier symbol so that non-status individuals could quickly recognize if a service was accessible; and (4) a dedicated 3-1-1 telephone option and website.

\[212\] *Ibid* at 8.
with all relevant Access without Fear information. Since all City institutions already had complaint services that were available to Torontonians, regardless of immigration status, the report recommended better staff training and refined public education plans to buttress the City’s earlier sanctuary policy efforts.

Finally, the working group addressed actions the federal and provincial governments’ could take to improve the situation of non-status individuals. Beyond lobbying the federal government to establish a regularization program for some non-status individuals (like undocumented workers) or allow for more individuals to enter Canada under the Provincial Nominee Program, no new actions the City could take were recommended. Similarly, letters sent by the City to the provincial government asking them to review their own policies which affect non-status individuals received no response. However, the report did mention two areas that, if addressed, could substantially help non-status individuals: making it easier to access child care subsidies and other social services which fall under the *Ontario Works Act, 1997*, such as employment or emergency assistance. Unfortunately, the City would quickly discover that although providing non-status individuals access to services without fear was a worthy cause, the one area beyond their authority was of even greater and immediate importance.

### 3.4 CONCLUSION: ZEROING IN ON THE TORONTO POLICE SERVICE

Following this report that saw a “Don’t Tell” component integrated into its sanctuary policy, the City turned its gaze towards the Police Service. Since then, efforts have been underway to understand two challenges that prevent the City from fulfilling its sanctuary city objectives. The first is whether or not the City has the legal authority to compel the Police Service to comply with its sanctuary policy. For example, Councillor Kristyn Wong-Tam spearheaded the CDRC’s initiatives to have “the Toronto Police Services Board [w]ork with the Chief of Police and review existing policies to ensure Police Services comply with Toronto’s Access without Fear directives” and report back to the City so they could take further action.\(^\text{213}\) This was a tacit acknowledgement by the City that a sanctuary policy focusing on access to city services without

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fear was not a sustainable solution for non-status individuals. In other words, the City could not continue calling itself a sanctuary city because their policy did not apply to police services within their jurisdiction. The second is why the Toronto Police Service continues to repudiate any sanctuary directives, which has raised questions about the complicated nature and ongoing challenges for Canadian sanctuary cities. Accordingly, I argue that the City’s attention towards the Police Service was a crucial turning point for Sanctuary Toronto. After finally implementing a “Don’t Ask” policy and then expanding it to a “Don’t Ask, Don’t Tell” one, we start to see the City interpret its municipal jurisdiction and authority beyond only the legality of its own sanctuary policy, and into its legal powers over the Police Service.

The next chapter situates the City and the Police Services’ conflicting interpretations by framing their legal powers within the Canadian legal framework. Consequently, the tension between what each actor thinks sanctuary can and should look like is brought into the open, and I explain whether or not the City can claim to be a sanctuary city without the Police Service’s cooperation. More importantly, the next chapter systematically breaks down the Police Service’s positions against adding a “Don’t Tell” component to their existing “Don’t Ask” policy, and provides a number of legal and policy options so that the promises the City made to its non-status residents when it assumed its sanctuary city identity can be fully realized.
4.1 HOW TO COMPEL THE TORONTO POLICE SERVICE

In June 2015, the Toronto Police Service’s policies and practices finally came to Toronto City Council. The first to speak on this item was Councillor Kristyn Wong-Tam, who asked City staff why the Police Service could not provide non-status Torontonians unrestricted access to police services. City staff noted that the Police Service interpreted their enabling legislation to require inquiring about and reporting immigration status. When asked about how this interpretation conflicts with the City’s sanctuary policy, City staff suggested the question should be directed to Police Board for comment. Nevertheless, City staff would try to seek clarification from the Police Service as to how they arrived at their legal interpretation, and how it would affect the City’s implementation of their own sanctuary policy.

Since the Police Service maintained they had legal obligations under certain provincial and federal legislation to disclose immigration status if discovered, Councillor Wong-Tam asked if the City was promoting police protection or services to non-status Torontonians. City staff responded in the affirmative, which prompted a discussion about Council not promoting ‘police services’ until the City received further clarification from the Police Service. So long as the Police Service continued to enforce immigration status, Councillor Wong-Tam stressed that it was unsafe for non-status Torontonians to access police services, especially in light of Toronto being a sanctuary city. City staff still advised that Council not stop promoting ‘police services’ – even temporarily – because the City could face legal repercussions: “the determination of what is ‘unsafe’ or what is ‘more unsafe’ is a challenging one, [and] I would advise Council to be careful of, in any way, advising Torontonians not to be utilizing Toronto Police Service when they are in need of protective services.”

214 City of Toronto, supra note 25.
This exchange captures some of the broader legal, jurisdictional, and practical challenges when a Canadian sanctuary city like Toronto has a policy that does not apply to its local police. While it is well within the powers of municipalities to restrict their own staff from inquiring about immigration status, police forces across the country believe they have legal powers to challenge municipalities that attempt to extend sanctuary policies to include policing. The complex system of statutes and policies emerging from all three orders of government (federal, provincial, and municipal) which delineate police powers and practices, and subsequently interpreted and applied within the Canadian legal framework, has only provided police forces with more room to circumvent municipal authority. By June 2015, the City realized they needed to better understand their legal relationship with the Police Service – and by extension, the scope of the City’s legal jurisdiction and authority over the Police Service – before they could purport to be a true sanctuary city.

Three years have passed since City Council considered this item, yet there have still been no effective solutions to address the Police Service’s lack of cooperation, nor any real urgency to staunch their practice of reporting immigration status. Councillors and City staff believe that because immigration is not an area within their jurisdiction, they have limited powers in directing the Police Service to stop participating in immigration enforcement. Yet, by virtue of declaring itself a sanctuary city, the City was exercising its powers to challenge this jurisdiction. By the same token, while the City has taken steps to refine their Access T.O. policy, they have largely shied away from understanding if they have the authority to compel the Police Service into complying with, at minimum, the spirit of Access T.O.

Regardless of what the City expected, the reality is that the Police Service continues to thwart the City’s efforts of being a true sanctuary city. This is a limitation municipalities encounter through no real fault of their own. However, the City should confront the interlegal and interjurisdictional challenges by focusing on what the Police Service is arguing, as well as what the City can do to regulate practices of policing immigration status. Much like how being the first sanctuary city in Canada was done so over time and with uncertainty, clamping down on the Police Service’s practice of immigration status will require the same determination. This chapter is one part of a larger strategy to prevent the ongoing policing of immigration status. By demonstrating that there
is both credible legal analyses which undercuts the Police Service’s legal arguments that they
cannot be compelled to conform to a sanctuary policy, as well as governance mechanisms for
municipalities to act immediately, this chapter tries to show that sanctuary cities can move from
aspiration to reality. Building off the existing work of legal scholars and advocates, this chapter
asks and answers the following questions: how has the Toronto Police Service successfully
evaded the City of Toronto’s efforts to regulate practices of policing immigration status within
its geographical boundaries, and what is the best way to limit this practice?

There are many approaches this chapter could engage with to understand what informs the Police
Service’s institutionalized resistance to sanctuary: their role in the national security imaginary,
especially since 9/11; their history of racial profiling through practices like carding; or, their
policing model which prioritizes the policing of communities and not policing for communities.
Instead, this chapter hopes to tackle what I argue most strongly underpins the Police Service’s
institutionalized resistance, namely that their legal interpretation of being obligated to inquire
about and report immigration status is correct. This chapter approaches this task by first distilling
how police powers and municipal authority are each framed within the Canadian legal system,
giving us a clearer picture of the legal relationship between the City and the Police Service. This
will hopefully clarify how to overcome the ‘messiness’ of the intersecting laws, policies, and
actors which characterizes sanctuary policies. Thereafter, some of the relevant jurisprudence on
municipal jurisdiction and authority will be discussed.

While this legal context is important, the primary goal of this chapter is to then systematically
break down each of the Police Service’s enduring and erroneous arguments against sanctuary
policies. Doing so does require an understanding that Canadian municipalities lack distinct
constitutional status, and that Canadian laws and jurisprudence have not provided municipalities
the same kind of framework on immigration enforcement that the United States has. However, to
analyze the legal geographies of Sanctuary Toronto, this chapter pays close attention to what the
City’s sanctuary objectives have been, and how the Police Service has maintained their
opposition to these objectives based on two positions: (1) they have a legal obligation or
‘positive duty’ to report immigration status if discovered; and (2) they do not have discretionary
powers to not participate in immigration enforcement; As this chapter shows, these positions are
not strong enough reasons for the Police Service not to adopt or comply with a “Don’t Ask, Don’t Tell” (“DADT”) sanctuary policy. Since there is no credible legal foundation for the Police Service to be actively policing immigration status, it could reasonably be inferred that the Police Service has some desire to continue interpreting these laws in a way that makes them a necessary part of the immigration enforcement apparatus. Therefore, I suggest that the Police Service believes, at least in part, that it is inherently wrong to be without immigration status.

Where it does become complicated moving forward is answering how to compel the Police Service, and who is ultimately responsible for ensuring the Police Service complies. To untangle this messiness, I return to the same research questions that this thesis aims to answer: (1) Does the City have the necessary authority to ensure the Police Service complies with its sanctuary policy, even though the Police Service argues that they have legal requirements under federal and provincial statutes to enforce immigration status?; and (2) Given that the Police Service regularly enforces immigration status and is bound by different legal statutes, can the City reasonably expect the Police Service to comply with their municipal Access T.O. policy?

Based on the information and analysis presented in this chapter, I argue that although Canadian municipalities have the authority to create sanctuary policies so that non-status residents can access some services without fear, they do not have the necessary authority to compel the police services within their jurisdiction to comply with those same sanctuary policies. Put differently, the complex interlegal and interjurisdictional system which empowers Canadian police forces ultimately renders municipal authority ineffective. Even so, I also argue that there are other ways for municipalities to mitigate immigration enforcement from taking place within their jurisdiction, such as pushing police boards to use their authority and set policies restricting police inquiries about immigration status, and preventing the Police Service from being allowed to misinterpret their enabling legislation without consequence. Only with a multidimensional approach that is not dependent solely on municipal authority to compel police services can Canadian sanctuary cities, like Toronto, purport to be a true sanctuary city.
4.2 FRAMING MUNICIPAL AUTHORITY AND POLICE POWERS IN CANADA

4.2.1 Distributing Governmental Power within a Federal State

Since there is no explicit case law or jurisprudence that comments on the legality of sanctuary cities in Canada, this section first needs to construct a basic outline of municipal authority. By drawing from legal theory and governance literature, this section illustrates both the structural limitations and the changing interpretations with respect to how municipal authority is perceived in Canada.

Leading constitutional scholar Peter W. Hogg provides an accessible resource for trying to understand how police powers and municipal authority could be framed within a federal state like Canada. In *Constitutional Law of Canada*, Hogg outlines how the distribution of governmental powers within a federal state distinguishes between a ‘central’ and ‘regional’ authority. Since both authorities have distinct, constitutionally-defined powers, they are ‘coordinate’ (or equal) to each other rather than one being ‘subordinate’ (or one being superior) to the other. This principle of ‘coordinate status’ (or equality) is seen through the Parliament of Canada, the central authority, and the Legislature of Ontario, the regional authority, both having powers that cannot be “taken away, altered or controlled” by the other authority.\(^{215}\) This remains true even though federal states are commonly known as having two or more ‘levels’ of government, where the central authority is ‘higher’ than the regional authority.\(^{216}\)

Hogg suggests that although a central authority is considered to be higher because its powers extend throughout and across the country, – in contrast to a regional authority, whose powers are regionally confined – and federal laws often prevail when there is an inconsistency between federal and provincial laws, the distribution of governmental powers described in the *Constitution Act, 1867* (the “*Constitution Act*”) affords regional authorities some constitutional equality. By extension, Hogg suggests that citizens in a federal state are subjected to two levels

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\(^{216}\) *Ibid* at 5–2.
of government “which are, to some degree at least, legally and politically independent from each other.”

While the Constitution Act ascribes equality between the federal and provincial levels of government, municipalities do not enjoy the same status. In fact, municipalities are only addressed in one section of the Constitution Act:

> In each Province the Legislature may exclusively make Laws in relation to Matters coming within the Classes of Subjects next hereinafter enumerated; that is to say, Municipal Institutions in the Province (emphasis added).

As per s. 92(8) of the Constitution Act, all Canadian municipalities then, like the City of Toronto, are under the exclusive jurisdiction of their respective province. Unlike the central and regional authorities, ‘local’ authorities can have their powers “taken away, altered, or controlled at any time” by their regional authority. They are considered to be subordinate, and are commonly referred to as ‘creatures of the province.’ Despite these circumstances, local authorities can still play an important legislative role. Due to the volume and scope of a regional authority’s legislative agenda, regional authorities cannot realistically effectuate legislation without delegating at least some powers to subordinate authorities:

> When a legislative scheme is established, the Parliament or the Legislature will usually enact the scheme in outline only, and will delegate to a subordinate body the power to make laws on matters of detail...Sometimes a power of law-making is delegated to...a municipality, or a school board...The body of law enacted by these subordinate bodies vastly exceeds in bulk the body of law enacted by the primary legislative bodies.

On the surface, delegation appears to be a practical way of enfranchising municipalities. However, questions around the legitimacy of the power to delegate arose since it was the British Imperial Parliament that delegated to Canadian legislative bodies, through the Constitution Act,

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217 Ibid at 5–4.
218 Constitution Act, 1867, 30 & 31 Victoria [Constitution Act].
219 Hogg, supra note 215 at 5–2.
their most basic powers. The argument was made that if all Canadian legislative bodies were themselves delegates, then they had no power to “further delegate (or sub-delegate) their powers.”\textsuperscript{222} Thankfully, the Judicial Committee of the Privy Council – the highest Canadian Court of Appeal at the time – rejected this argument of delegatus non potest delegare (delegates cannot further delegate) in 1883, holding in \textit{Hodge v. The Queen} that it was erroneous to regard distributed powers to the provincial Legislature as delegated powers.\textsuperscript{223} This reinforced the importance of provincial legislatures’ right to delegate, and subsequent jurisprudence even maintained that provincial legislatures have a right to make “sweeping delegations” if desired.\textsuperscript{224} Figure 4.1 provides an example of this delegation at play, with the intersecting federal, provincial, and municipal legislation or policies related to Sanctuary Toronto.

In summary, the \textit{Constitution Act} permits regional authorities to create legislation with broad language, and delegate the actual policy design and implementation to the local authorities within their region. Local authorities can then create their own ‘subordinate’ or ‘delegated’ legislation, such as municipal by-laws or local board policies. Thus, in the absence of distinct constitutional status for municipalities, the distribution of exclusive powers over municipalities to the provinces and the coexisting powers of delegation are supposed to address this insufficiency. Whether or not delegation is a sufficient mechanism to address the growing role municipalities are expected to play today on matters not prescribed by the \textit{Constitution Act} is what informs ongoing interpretations of the scope of municipal jurisdiction and authority. Furthermore, even if municipalities are given delegated powers, can they compel the police to act within their policies since the police would still be expected to enforce federal and provincial statutes? The following section takes a look at how municipalities have been afforded more powers and functions through legislation over the past thirty years not necessarily because provinces wanted to empower municipalities, but because of the growing expectations of municipalities.

\textsuperscript{222} \textit{Ibid} at 14–1.
\textsuperscript{223} \textit{Hodge v The Queen (Canada)}, [1883] 9 UKPC 59 (available on http://www.bailii.org/uk/cases/UKPC/1883/1883_59.html).
\textsuperscript{224} Hogg, \textit{supra} note 221 at 14–3.
4.2.2 Statutory and Theoretical Interpretations of Municipal Jurisdiction and Authority

The relationship between the provinces and their municipalities has long been affected by disagreements over the latter’s growing status and functions within the Canadian federal state. Scholar Joseph Garcea’s work explores how in the early 2000s, provinces responded to some of these disagreements by creating modern municipal statutory frameworks. Garcea suggests that the novel provisions described in modern municipal frameworks, including recognizing municipalities as an ‘order of government,’ delineating functions across different ‘spheres of jurisdiction,’ and increasing flexibility under ‘natural person powers,’ were mostly of “symbolic
value rather than substantive value.” 225 This symbolic value was mutually beneficial, since the provinces lost no real power and simultaneously appeared to be addressing municipal concerns, while the municipalities appeared to have gained new status and clearer powers. Rather than empowering municipalities though, Garcea argues that the novel provisions only appeased or confused municipalities – they were not a radical departure from traditional frameworks, nor were they as significant as the provinces and municipalities believed. For example, while some provinces did recognize in their modern frameworks that municipalities were an order of government, – in British Columbia, municipal governments are an “independent, responsible and accountable order of government” – municipalities were still subordinate to their provincial governments. 226 Their status as an order of government would only be recognized within the province by virtue of legislation and not through the Constitution Act, and their powers could, as Hogg might put it, be taken away, controlled, or altered by the province at any time.

Another novel provision that confused rather than clarified municipal authority was the approach to spheres of jurisdiction. Unlike traditional frameworks, more general language was intended to provide municipalities “with substantially more discretion to deal with their particular or unique local circumstances.” 227 However, two concerns persisted: that provinces would potentially be affording municipalities a delegated power that was too broad, which could in turn interfere with the province’s ability to act in the entire regional interest, and that not every municipality had the equal capacity to govern effectively under this approach. It is not hard to imagine policing to be such an example that a province would be concerned with delegating to municipalities. In essence, the new approach to spheres of jurisdiction actually magnified the tensions between growing expectations of municipal responsibilities and what actions taken by municipalities might still be considered ultra vires (beyond their powers) if the language was framed in such general terms.

The final novel provision dealt with the nature and scope of municipal authority. Natural person powers have a legal foundation in case law, and enables municipal governments to “perform

226 Local Government Act, 2015, RSBC C 1 [Local Government Act].
227 Garcea, supra note 225 at 4.
governance, management and administrative activities that fall within the general scope of their jurisdictional authority without the need for expressed or explicit legislative authority regarding either precisely what to do or precisely how to do it.”

Even so, extending natural person powers to municipalities was not intended to enhance their status or their jurisdictional authority; it was an attempt to reduce the province’s unnecessary involvement in relatively mundane municipal affairs. Moreover, the natural person powers provision encountered the same problems as the other novel provisions did, primarily that none of these provisions had constitutional standing, nor did it appear as if the traditional judicial approach that limited municipal authority qua provincial or federal powers would be abandoned.

Overall, the novel provisions outlined above were acknowledgements that municipalities play a growing function in the federation not envisioned by the Constitution Act. However, as it has been made clear in proposed changes to the COTA recently announced by Premier Doug Ford, municipal authority should be interpreted with caution because they are created and managed by the province. While these provincial-municipal efforts could then easily be characterized as nothing more than just an exercise in semantics, Ron Levi and Mariana Valverde highlight legitimate socio-legal concerns with “contemporary efforts by courts and legislatures to reconsider the scope of cities’ authority in governing urban affairs.” In the absence of Canadian jurisprudence that comments explicitly on the connections between policing immigration status and municipal authority, Levi and Valverde’s legal and theoretical analysis focuses our attention on key municipal jurisprudence to understand why “the doctrine of prescribed powers [is] the main block standing in the way of municipal autonomy.”

Despite delegation being an important tool of municipal authority, it does not remedy the fact that each and every municipal power must be statutorily conferred by the province. Throughout the twentieth century, Canadian jurisprudence has gone back and forth between a restrictive

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228 Ibid at 6.
231 Ibid at 418.
interpretation of municipal authority and an enlightened understanding of the democratic function of local governments. In 1993, the Supreme Court of Canada granted leave for appeal in two cases: *R. v. Sharma* and *R. v. Greenbaum.* At issue was whether a street vendor charged with contravening a municipal by-law that required obtaining a license to sell goods on Toronto’s sidewalks was *ultra vires.* The City of Toronto successfully argued in the District Court and Court of Appeal that the *Municipal Act, 1990* delegated authority over sidewalk use to the Municipality of Metropolitan Authority, who then delegated that power to the City of Toronto. The Supreme Court disagreed with the two lower court’s decisions, setting aside both respondents’ charges and entering acquittals instead.

Since both cases dealt with similar subject matter, the Supreme Court agreed to delay releasing reasons in the first appeal (*Sharma*) until the second appeal (*Greenbaum*) was heard. As a result, both decisions echo similar sentiments over restricting municipal authority. What is most notable was when Justice Iacobucci, in delivering the Supreme Court’s unanimous decision in *Greenbaum,* gave legal credibility to the expression ‘creatures of the province’ by stating that:

> Municipalities are entirely the creatures of provincial statutes and can therefore exercise only those powers which are explicitly conferred on them by provincial statute. A court should look to the purpose and wording of the provincial enabling legislation when deciding whether or not a municipality has been empowered to pass a certain by-law. The by-laws themselves are to be read to fit within the parameters of the empowering provincial statute where they are susceptible to more than one interpretation. Courts must be vigilant, however, in ensuring that municipalities do not impinge upon the civil or common law rights of citizens in passing ultra vires by-laws (emphasis added).

In arriving at this decision, Justice Iacobucci cited an American doctrine known as ‘Dillon’s rule,’ which reinforces that idea that municipal powers are “merely delegates of a proper (state or provincial) government.” By explicitly using ‘Dillon’s rule’ in his decision, Justice Iacobucci established the doctrine of prescribed powers when interpreting *ultra vires* by-laws. The ramifications for Canadian municipalities after *Greenbaum* were important insofar as their

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234 Ibid [emphasis added].
235 Levi & Valverde, supra note 230 at 418.
already limited authority was further restricted, and consequently, they would receive little recourse from the judicial system. For example, permission needed to be obtained from the province before making decisions on simple matters such as where to erect traffic lights.

Of course, the precedents set by Sharma and Greenbaum had more important consequences beyond the placement of traffic lights. In 1997, the Borough of East York challenged the constitutionality of Toronto’s amalgamation under the City of Toronto Act, 1997. The Ontario Superior Court held in East York v. Ontario (Attorney General) that s. 92(8) of the Constitution gave the provincial government the authority to restructure Toronto without consulting municipalities, and reiterated general propositions maintaining the subordinate roles of municipalities: their lack of constitutional status, their existence only as a function of provincial legislation, – “subject to abolition or repeal” – and their limited exercise of powers not explicitly conferred by statute.236 As Levi and Valverde note, while East York was more of a limitation on the provincial legislature’s abilities to delegate powers to municipalities, the Courts were relying on the traditionally narrow interpretation of municipal authority.237 The Ontario Court of Appeal upheld the lower court’s decision in East York in a brief decision of their own, and the Supreme Court dismissed an application by the appellants for leave to appeal.

Fortunately for municipalities, in 2001, the Supreme Court began to shift their narrow interpretation of municipal authority.238 Coinciding with the flurry of modern municipal frameworks created between 1994 and 2001, Levi and Valverde argue that the Supreme Court decisions in Spraytech v. Hudson was central in undermining “the old theory that municipalities are mere creatures of the province” rendered in Greenbaum.239 In Spraytech, the Supreme Court held that a by-law passed by the Town of Hudson, Quebec that regulated the use of some pesticides within their jurisdiction was neither inoperative nor ultra vires.240 This case indicated

236 East York (Borough) v Ontario (Attorney General, [1997] 34 ON SC 789.
237 Levi & Valverde, supra note 230 at 422.
239 Levi & Valverde, supra note 230 at 423.
240 114957 Canada Ltée (Spray-Tech, Société d’arrosage) v Hudson (Ville), [2001] 2 SCR 241.
a turning point because the Supreme Court, in contrast to *Greenbaum*, considered the by-law’s substance not in relation to the definition of ‘pesticides’ per se, but rather its operability within the ambit of Quebec’s modern municipal framework. The Supreme Court focused on two areas in their decision: the first paid close attention to “general welfare powers conferred by provisions in enabling legislation,” while the second focused on how to interpret delegated and implied municipal powers.\textsuperscript{241} However, proponents of greater municipal autonomy have been more interested in one part of the majority opinion delivered by Justice L’Hereux-Dubé:

The case arises in an era in which matters of governance are often examined through the lens of the **principle of subsidiarity**. This is the proposition that **law-making and implementation are often best achieved at a level of government** that is not only effective, but also closest to the citizens affected and thus most responsive to their needs, to local distinctiveness, and to population diversity.\textsuperscript{242}

Unlike Justice Iacobucci’s use of Dillon’s rule in *Greenbaum*, this principle of subsidiarity used by Justice L’Hereux-Dubé in *Spraytech* is “not a justiciable legal doctrine but rather a political principle.”\textsuperscript{243} The significance, then, was to indicate the Supreme Court’s evolved interpretation of municipal authority from one of narrow, subordinate status, to a more flexible, permissive understanding born out of provincial-municipal frameworks. For the City of Toronto though, their enabling statute, the *COTA*, has not been particularly helpful in clearly defining the scope of their jurisdiction and authority. Big cities like Toronto have argued that they are distinct forms of municipalities, and should therefore be afforded more powers to better serve their constituents. While the provincial government of the day chose not recognize the City as an ‘order of government’ in their modern municipal statutory framework like British Columbia did, they ascribed some more detail as to what governance function the City should perform:

The City of Toronto exists for the purpose of providing **good government** with respect to matters within its jurisdiction, and the city council is a democratically elected government which is **responsible and accountable** (emphasis added).\textsuperscript{244}

\textsuperscript{241} (*Ibid*).
\textsuperscript{242} (*Ibid*) [hereinafter *Spraytech* v. Hudson] [emphasis added].
\textsuperscript{243} Levi & Valverde, *supra* note 230 at 424.
\textsuperscript{244} *City of Toronto Act, supra* note 205.
Due to the general language employed in the COTA, the City has been wary to exercise its delegated powers in a way which would obviously overreach its subordinate status. As a result, Canadian jurisprudence has been unable to test the limits of these powers conferred through enabling statute. And, as if she was predicting the Supreme Court would eventually have to consider the City’s growing role in the federation, – notwithstanding a government capable of cobbling together a constitutional amendment – Justice Beverly McLachlin (as she was known then), in delivering the dissenting opinion, wrote that “courts should be reluctant to interfere with the decisions of municipal councils…only where a municipality's exercise of its powers is clearly ultra vires, or where council has run afoul of one of the other accepted limits on municipal power.” McLachlin’s words neatly summarizes the co-dependent relationship between province and municipality in ensuring fundamental democratic principles, regardless of the legal minutia, is respected. When considered beside the growing number of sanctuary cities in Canada and the growing practice of local police playing a role in the immigration enforcement apparatus, how to balance the ‘decisions of municipal councils’ (i.e. sanctuary policies) within the legal framework is at the forefront of discussions moving forward. The next section systematically breaks down the Police Service’s arguments against sanctuary in order to dismantle the institutional opposition which goes against Toronto City Council’s decision to be a sanctuary city.

4.3 THE (IL)LEGALITY OF POLICING IMMIGRATION STATUS

Compared to the City of Toronto’s limited and subordinate authority explained in the preceding section, the Toronto Police Service has powers that are nested within the province and the municipality that makes it a unique institution. Nowhere is this more apparent than in how the Police Service understands its powers with respect to policing immigration status (see Appendix B). In November 2004, this issue became an institutional conundrum when a complaint alleged that the Police Service had a practice during regular interactions with Torontonians of asking about and reporting immigration status. Chief William Blair reported that “the Toronto Police

245 Shell Canada Products Ltd v Vancouver (City), [1994] 1 SCR 231.
Services Rules and Procedures do not direct police officers to check and report the immigration status of victims, witnesses or those calling the police for assistance.” As discussed in the preceding chapter though, the Police Service has actively resisted efforts by community members and their oversight body, the Toronto Police Services Board (“Police Board”), to limit their role in policing immigration status. Between 2004 and 2008, the Police Service outlined some situations in which police officers could not inquire about immigration status, but rejected calls from community members to extend the Police Board’s Victims and Witnesses without Legal Status policy to cover all individuals with whom the Police Service interacts with. The Police Board’s continued unwillingness since 2008 to implement a “Don’t Ask, Don’t Tell” policy has allowed the Police Service to continue policing immigration status without consequence.

This begs the question then: how has the Toronto Police Service successfully evaded the City of Toronto’s efforts to regulate practices of policing immigration status within its geographical boundaries? At its core, the Police Service’s positions against sanctuary are based on inaccurate legal interpretations of their obligations to participate in all facets of immigration enforcement, such as inquiring about, confirming, disclosing, and investigating immigration violations. This is in spite of existing legal analysis to the contrary submitted by advocates such as the Immigration Legal Committee (“ILC”) or the South Asian Legal Clinic of Ontario (“SALCO”). The Police Service explains how they are unable to expand their existing “Don’t Ask” policy to include a “Don’t Tell” component, thus permitting them to continue policing immigration status. Their positions can be summarized in two ways: (1) they have a legal obligation or ‘positive duty’ to report immigration status if discovered; and (2) they have no discretionary powers to not participate in immigration enforcement.

As I have also demonstrated by way of analyzing the City’s legal relationship with the Police Service, the City does not have the necessary authority to compel the Police Service to comply with its municipal sanctuary city policy. This continues to be the primary limitation towards ensuring Toronto is truly a sanctuary city. However, by still declaring itself a sanctuary city, the

247 Blair, supra note 167.
248 Toronto Police Services Board, supra note 172.
City has actively chosen to recognize that they are under no legal obligation to play a role in immigration enforcement. Instead of taking the normative approach as to why the Police Service ought to stop policing immigration status, I want to suggest that the Police Service’s blatant disregard of sanctuary city efforts and credible legal analysis highlights how they have actively chosen to interpret those same laws in a way that makes them essential to the immigration enforcement apparatus. In the following sections, I outline the Police Service’s rationales for each of these positions, and then bring together theories and literature which undermine the premise of these positions. It is the tension between these choices, I argue, which makes the systematic dissection of why this is still happening worth asking. This inevitably leads us to why the Police Service is so adamant in protecting their positions against sanctuary, which I consider in this chapter’s conclusion.

### 4.3.1 A Duty to Report

As early as August 2005, former Chief William Blair began making the Police Service’s most tenuous position against a sanctuary policy: that the Police Service has a positive duty under federal and provincial law to report immigration violations. According to Blair, several provincial and federal Acts support this position. Yet, none of the sections cited by Blair explicitly mentions a duty for police officers to inquire about or report immigration violations. Moreover, by not providing a detailed explanation of the sections cited – he simply bolded parts of the Acts which he believed justifies a positive duty to report – the Police Service’s position remains ambiguous and taken to be correct until proven otherwise. Beginning with the *Police Services Act, 1990* (the “PSA”), Blair references both the Act and its Regulations to imply a broad common law duty to inquire and report exists under s. 42(1), the duties of a police officer in Ontario:

(a) preserving the peace;
(b) preventing crimes and other offences and providing assistance and encouragement to other persons in their prevention;
(c) assisting victims of crime;
(d) apprehending criminals and other offenders and others who may lawfully be taken into custody;
(e) laying charges and participating in prosecutions;
(f) executing warrants that are to be executed by police officers and performing related duties;
(g) performing the lawful duties that the chief of police assigns;
(h) in the case of a municipal police force and in the case of an agreement under section 10 (agreement for provision of police services by O.P.P. [Ontario Provincial Police]), enforcing municipal by-laws;
(i) completing the prescribed training.249

Even a cursory read of s.42(1) makes it obvious that no explicit duty is placed on the Police Service to inquire about or report immigration status. Accordingly, the ILC’s report dissects the bolded parts in Blair’s report that support this position. First, to dutifully preserve the peace per s. 42(1)(a), jurisprudence suggests that not reporting immigration status to federal officials would not constitute an interference with the common law duty of police officers “to protect the public from criminal activity.”250 If there is no obligation to report, then there should be no duty to inquire in the first place. Second, to prevent crimes and other offences from taking place per s. 42(1)(b), case law requires that the word ‘offence’ be interpreted “through its statutory context.”251 In other words, unless the offence is related to an authority explicitly delegated to police through provincial or federal statute, it is not the responsibility of the police officer to enforce that offence.

As the ILC points out, “[p]olice do not have a duty to enforce all laws” because it is, quite simply, impossible.252 Enforcing complex statutes and regulations would require specialized training for police officers, something most legislation recognizes when it assigns specific enforcement duties to appropriately trained bodies.253 If the Ontario Legislature had intended to “impose a duty on police to prevent or assist in preventing a wider range of offences,” they would have used their statutory authority to confer such powers in the PSA.254 Since they did not, it can be argued that they did not intend police officers to play a role in federal immigration enforcement. Therefore, the ILC contend that using common law duties to imply the Police Service has a positive duty to report immigration status is inaccurate. This remains true even though s. 42(3) of the PSA explicitly confers police officers “the powers and duties ascribed to a

250 Immigration Legal Committee, supra note 185 at 3.
251 Ibid at 13.
252 Ibid at 3.
253 Ibid at 13.
254 Ibid at 14.
constable at common law,” because the Supreme Court circumscribed common law duties to be those “statutorily codified” in the PSA, which does not mention immigration violations. This statutory interpretation of delegated powers is a common theme absent in most of the Police Service’s interpretation, which I engage with again at different parts throughout this chapter.

Blair disagreed with this interpretation of common law powers, countering that PSA Ontario Regulation (O. Reg.) 268/10 – previously O. Reg. 123/98, though the language remains the same – still imposes a legal obligation on police officers to inquire about and report immigration status. O. Reg 268/10 describes a ‘neglect of duty’ misconduct offence to have been committed if a police officer:

(v) fails, when knowing where an offender is to be found, to report him or her or to make due exertions for bringing the offender to justice,
(vi) fails to report a matter that it is his or her duty to report,
(vii) fails to report anything that he or she knows concerning a criminal or other charge, or fails to disclose any evidence that he or she, or any person within his or her knowledge, can give for or against any prisoner or defendant [...]

To Blair, this was proof that his officers must report immigration status because withholding information would constitute misconduct, a position similarly maintained by current Chief Mark Saunders. However, neither s. 42(1) of the PSA nor the emphasis placed on reporting in O.Reg 268/10 imposes such a duty when interpreted alongside general police powers under the federal Criminal Code, 1985 (the “Criminal Code”) or the Immigration and Refugee Protection Act, 2001 (the “IRPA”). This type of contextual interpretation is necessary since the Police Service has limited statutory obligations to enforce immigration violations.

Generally, police officers are expected to prioritize the enforcement of criminal matters because it is an area in which they are properly trained. Although ss. 495 to 497 of the Criminal Code grants police officers powers to arrest and detention without warrant, they are still given clear

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255 *Ibid* at 15.
direction to use their powers of arrest and detention for indictable and criminal offences, and not for other matters like minor summary offences. Limitations are placed on the exercise of this power to recognize that police officers are also expected to enforce provincial offences, and in the case of municipal police officers like the Police Service, municipal by-law infractions. Since non-criminal matters often fall outside the scope of police powers unless explicitly conferred by statute, the expectations of which laws police officers are reasonably expected to enforce is quite narrow. The IRPA is such an example.

Although the IRPA does delegate some enforcement responsibilities to peace officers, the responsibilities of peace officers should be interpreted proportional to what the enforcement purposes are, as enumerated in the corresponding section. Since 2017, the Police Service – and most recently the Vancouver Police Department – has invoked their legal authority to police immigration status as being derived from s. 55(2)(a) of the IRPA:

An officer may, without a warrant, arrest and detain a foreign national, other than a protected person, who the officer has reasonable grounds to believe is inadmissible and is a danger to the public or is unlikely to appear for examination, an admissibility hearing, removal from Canada, or at a proceeding that could lead to the making of a removal order by the Minister under subsection 44(2) (emphasis added).

Of immediate concern here is the definition of ‘officer.’ The federal Minister of Public Safety and Emergency Preparedness, who is responsible for the enforcement of the IPRA, did designate an ‘officer’ under s. 55(2)(a) to include “Peace Officers as defined in the Criminal Code.” This would appear to bolster the Police Service’s position that federal legislation creates a duty to report. However, two points discredit such a broad interpretation of s. 55(2)(a). First,

258 Criminal Code, supra note 257.
260 Immigration and Refugee Protection Act, supra note 257 [emphasis added].
determining inadmissibility is not a responsibility assigned to peace officers under the IRPA. The Minister’s designation instrument lists many more capable officers at the CBSA who determine inadmissibility, and are thus expected to enforce s. 55(2). If police officers are not qualified to enforce s. 55(2)(a), then they could not be in contravention of any duty to report described in O. Reg. 268/10. The inverse also holds true: the PSA does not require police officers to enforce this section of the IRPA. Second, the definition of ‘peace officer’ under the Criminal Code is so expansive that, in the absence of stronger language in either the IRPA or the PSA, there is no reasonable expectation that police officers are qualified to enforce immigration violations. While police officers are defined as ‘peace officers’ under the Criminal Code, the definition also includes mayors, prison wardens, and pilots. It is therefore reasonable to infer that the inclusion of ‘peace officer’ in the Minister’s designation instrument was intended to provide the power to arrest and detain, without warrant, in rare circumstances, and not based on a statutory duty to report or an assumption that police officers are more qualified to enforce immigration laws.

A similar section was cited by Chief Mark Saunders in his report submitted to the Police Board in March 2017. This time, s. 82.2 of the IRPA specifically states that ‘peace officers’ could arrest and detain an individual:

82.2 (1) A peace officer may arrest and detain a person released under section 82 or 82.1 if the officer has reasonable grounds to believe that the person has contravened or is about to contravene any condition applicable to their release.

82.2 (2) The peace officer shall bring the person before a judge within 48 hours after the detention begins.

What the Chief fails to explicitly mention is that s. 82.2(1) is a later step in the arrest and detention process, and cannot be interpreted independent of corresponding sections. Under s. 81, the Minister has the authority to issue a warrant for the arrest and detention of an individual

262 To appreciate some of the complexities with determining inadmissibility, see e.g. Joseph Rikhof, “Update on Exclusion and Inadmissibility Jurisprudence: New Developments Since the Decisions of the Supreme Court of Canada in Ezokola and Febles” (2017) Canadian Association of Refugees and Forced Migration Studies 1.
263 Criminal Code, supra note 257.
264 Immigration and Refugee Protection Act, supra note 257 [emphasis added].
265 Ibid [emphasis added].
under certain circumstances. Thereafter, s. 82(1) states that a judge “shall commence a review of the reasons for the person’s continued detention within 48 hours after the detention begins.”\textsuperscript{266} Only then does s. 82.2(1) become applicable to, in this case, police officers, stating that they “may arrest and detain” an individual for contravening any condition – or if an individual is about to contravene any condition – that has been previously set by a judge during the initial review of detention.\textsuperscript{267} Therefore, crucial nuance which contextualizes these sections is conveniently absent from the Chief’s interpretation, and also overlooks the fact that these sections give peace officers the discretionary powers – ‘may arrest and detain’ – to participate in enforcing the \textit{IRPA}.

\subsection*{4.3.2 No Discretionary Powers}

The Police Service’s maintains that they have a positive duty to report immigration status if discovered. As I have shown above, this is incorrect. Similarly, the Police Service’s position that they do not have discretionary powers to not disclose immigration status once discovered is also incorrect. In this section, I argue that not only is there no duty to report, but police officers are conferred broad powers – both by statute and policy – to not participate in immigration enforcement.

The Police Board first recognized that discretion exists in February 2006, when Board Chair Alok Mukherjee and his working group issued their report on the feasibility of implementing a sanctuary policy:

\begin{quote}
[I]mmigration matters are\textbf{ matters of civil law} which police officers\textbf{ are not bound to enforce}. Police officers are\textbf{ only bound to act on the execution of a warrant} or written order under the\textbf{ [IRPA]} if explicitly directed by an Immigration Officer. This would imply that there is no automatic reporting of an individual’s immigration status (emphasis added).\textsuperscript{268}
\end{quote}

\begin{flushright}
\textsuperscript{266} I\textit{bid}.
\textsuperscript{267} I\textit{bid}.
\textsuperscript{268} Toronto Police Services Board, \textit{supra} note 172 [emphasis added].
\end{flushright}
Mukherjee rightfully points out that immigration violations are matters of civil or administrative law, not criminal law. This distinction is important because the Police Service’s primary mandate is to enforce criminal and not administrative infractions. While they may be directed to enforce some administrative infractions, police officers are not reasonably expected to enforce every non-criminal law of the land. As I have also already demonstrated earlier, the expectations of police officers to enforce non-criminal offences is quite narrow. Consequently, the Police Service’s assertion that they have legal obligations under the IRPA beyond just executing warrants is unlikely.

The powers of preserving the peace assigned to police officers also should not be interpreted broadly, since they are constrained by jurisprudence which does not consider enforcing immigration violations to be analogous to preserving the peace. Therefore, while police officers are expected to enforce sections of criminal statutes in the Criminal Code or the Controlled Drugs and Substances Act, 1996, enforcing other federal or provincial statutes which are administrative in nature are done so within strict parameters. Blair disagreed with the utility of this distinction, and argued that the common law duties under s. 42(1) of the PSA was sufficient rationale for why police officers had no discretion to make this type of distinction. The Police Board ultimately disregarded the legal analyses it solicited on this issue, accepted the Chief’s argument, and only passed the current “Don’t Ask” policy instead of a full “Don’t Ask, Don’t Tell” policy.

While the Police Board recognized early on that interpretations about police responsibilities under Canadian immigration laws were not absolute, they failed to pay enough attention to the statutory construction of other sections in the IRPA and provincial legislation which seriously undermined the Police Service’s refusal to implement a full “Don’t Ask, Don’t Tell” policy. The Police Board’s deferral to the Police Service’s position was noted briefly in their reports, but the Police Service was not asked to provide the Police Board with adequate explanation as to why their legal interpretation had greater standing. As a result, two of the Police Service’s interpretations underpinning their position with respect to discretionary powers to disclose continues to inform discussions. The first was a more technical interpretation of sections in the IRPA with how police officers are authorized to arrest and detain individuals for immigration
violations. The second was how the Police Service interpreted that authorization and supplemented it with broad duties described under the provincial Municipal Freedom of Information and Protection of Privacy Act, 1990 (the “MFIPPA”) and the Disclosure of Personal Information Regulation (O. Reg. 265/98) under the PSA.

Like others have argued though, the Police Service’s two interpretations must be read properly and in their entirety. This means that sections cannot simply be extracted from their statute and interpreted by itself, and they must also be interpreted against other federal and provincial statutes. When this happens, what becomes clear is that the wording of the text gives both the Chief and the Police Board discretionary powers to not disclose immigration status. What follows is a deeper analysis of certain sections that have not been sufficiently covered by existing legal analysis in order to show that no greater standing should be afforded to the Police Service’s position that limitations are placed on discretionary powers.

This issue continues to be a live debate amongst the Police Service. The first interpretation which has consumed discussions at the Police Board since March 2017 is how the IRPA delegates enforcement responsibilities to police officers by way of executing warrants. According to Chief Mark Saunders’ report submitted to the Police Board, ss. 142 and 143 the IRPA “governs when police officers are legally obliged to act, as peace officers.”

269 However, Saunders was evasive in his analysis. No substantial commentary was provided on these sections, nor did he address the fact that none of the sections directly implicates or inhibits discretionary powers to disclose immigration status:

142 Every peace officer and every person in immediate charge or control of an immigrant station shall, when so directed by an officer, execute any warrant or written order issued under this Act for the arrest, detention or removal from Canada of any permanent resident or foreign national (emphasis added).

143 A warrant issued or an order to detain made under this Act is, notwithstanding any other law, sufficient authority to the person to whom it is addressed or who may receive

\[269\] Mark Saunders, Response to City Council Motions – Access to City Services for Undocumented Torontonians, Minutes P57/17 (Toronto, ON: Toronto Police Services Board, 2017) at 8.

\[270\] Immigration and Refugee Protection Act, supra note 257 [emphasis added].
and execute it to arrest and detain the person with respect to whom the warrant or order was issued or made (emphasis added).271

Here, I argue that Saunders is confusing a sufficient authorization under the IRPA to arrest and detain with a legal requirement to do so. His interpretation does not accurately state that the IRPA only requires police officers to play a role in immigration enforcement insofar as they have been directed to execute a warrant. Since the Minister only delegated the powers to direct an officer to execute a warrant under s. 142 to CBSA officials, s. 143 can only be interpreted beside s. 142 as providing that peace officer confirmation, after being directed by a CBSA officer, that the warrant they have been directed to execute has ‘sufficient authority.’ In other words, this is the only situation in which police officers do not have discretion to refuse executing a warrant issued pursuant to the IRPA. If this is the case, then the inverse is also true. Police officers’ participation in immigration enforcement is limited to executing a warrant ‘when directed by an [CBSA] officer’ to do so. The authority described in s. 143 should not be confused, as the Chief did in his report, with a police officer’s discretionary power or ‘authority’ provided under s. 142 to “apprehend the person” for which the warrant is issued.272

Although s. 142 of the IRPA is the only explicit statute which limits the Police Service’s discretionary power, Chiefs Blair and Saunders have maintained that the MFIPPA and the provincial Disclosure of Personal Information Regulation (O. Reg. 265/98) made under the PSA removes their police officers discretion to disclose. Responding to Toronto City Council’s request for information about whether the Police Service would align their policy with the City’s Access without Fear directives, Blair stated that s. 5(1) of O. Reg. 265/98 “compels the officer to disclose any personal information about the individual” to relevant law enforcement agencies (emphasis added).273 His report to the Police Board included what agencies the Regulation allows information to be shared with:

- (a) any police force in Canada;
- (b) any correctional or parole authority in Canada; or

271 Ibid [emphasis added].
272 Saunders, supra note 269 at 5.
(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.274

However, after Blair’s report had been issued, the South Asian Legal Clinic of Ontario (the “SALCO”) deputed to the City that Blair had not simply misinterpreted the Regulation, but he had misstated it. The text in s. 5(1) that Blair conveniently omitted in his report does in fact create discretion to disclose:

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 […] (emphasis added).275

The SALCO therefore argued that first, the word ‘may’ (not ‘must’) in the Regulation affords the Chief discretion in deciding when to disclose. If the Legislature wanted to make disclosure mandatory, they would have likely used ‘must.’276 Since they did not, discretion is conferred. That being said, the SALCO’s second argument is that s. 5(1) attaches strict conditions under which the Chief can lawfully exercise his discretion. If s. 5(1) did not stipulate the conditions under which disclosure is allowed, then the Chief would have broad discretion to decide for himself when he and his officers could disclose immigration status.

These strict conditions therefore depend upon the definition of ‘investigation’ and ‘offence’ enumerated in s. 5(1). The ILC argued years before Blair’s report that given no authority exists under the IRPA for police officers “to engage in investigations of IRPA offences, it is not clear that a police officer’s suspicion that a person may have legal status to remain in Canada falls within the [PSA’s] meaning of an ‘investigation.’”277 The Adequacy and Effectiveness of Police

274 William Blair, Service Governance Pertaining to the Access to Police Services for Undocumented Torontonians, Minutes P30/15 (Toronto, ON: Toronto Police Services Board, 2015).
276 William South Asian Legal Clinic of Ontario, Deputation to the CDRC re CD 4.2: Toronto Police Service: Service Governance Pertaining to the Access to Police Services for Undocumented Torontonians, Meeting Minutes CD4.2.8 (Toronto, ON: City of Toronto, 2015) at 3.
277 Immigration Legal Committee, supra note 185 at 16.
Services Regulation (O. Reg. 3/99)\textsuperscript{278} made under the PSA also makes it “particularly unlikely” that the provincial legislature envisaged police officers should investigate immigration violations because it is not mentioned in the Regulation’s exhaustive list of investigations.\textsuperscript{279} And as I highlighted earlier, case law requires that the word ‘offence’ be interpreted with respect to specific authorities delegated by statute. Fortunately, s. 5(1) of O. Reg 265/98 does just that. Since being without proper immigration status is a matter of administrative not criminal law, it would not fall under the type of offences envisaged by s. 5(1) that an individual would be charged with, convicted of, or found guilty of. The inclusion of two criminal statutes (the Criminal Code and the CDSA) thus supports this counter-argument.

The final point which undermines this position that no discretion exists is that the Police Board’s “Don’t Ask” policy actually regulates an exercise of discretion. With the “Don’t Ask” policy, a number of “bona fide law enforcement reasons” were created to provide the Police Service clear guidelines as to when they could inquire about and disclose immigration status. These bona fide reasons include:

- 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.\textsuperscript{280}

The bona fide reasons above should not be interpreted as situating police officers within the immigration enforcement system. Since police officers are instructed by the Police Board’s “Don’t Ask” policy to not ask victims of and witnesses to a crime about their immigration status, these bona fide reasons are complimentary. They ensure victims or witnesses are not treated as the subjects of an investigation simply because they are interacting with the police. Put differently, just because an individual requires police services, there cannot be a parallel

\textsuperscript{279} Immigration Legal Committee, supra note 185 at 16.
\textsuperscript{280} Blair, supra note 181.
assumption that the individual is something other than a victim of or witness to a crime and thus warrants a status check. Discretion here is therefore acknowledged but regulated.

4.4 CONCLUSION: PREVENTING THE POLICING OF IMMIGRATION STATUS

The legal theory and analysis in this chapter is undoubtedly a departure from political theory and human geography. But by organizing the work in this chapter beside the political theory discussed in chapter two and the history and geography explored in chapter three, the framing of municipal powers within the legal and judicial spheres opens up new intellectual possibilities to understand why the Police Service is allowed to perpetuate inaccurate legal arguments against sanctuary. Throughout this chapter, I underscored the limitations of municipal authority. For Toronto, the consequences of these constraints are more pronounced because the City made the conscious decision to interpret ambiguous laws in a way that allowed them to declare Toronto a sanctuary city. In contrast, the Police Service took those same laws and declared themselves to operate outside the sanctuary city they police.

Even though the City has the authority – or at least sufficient legal ambiguity to assert authority – to create sanctuary policies so that non-status residents can access some services without fear, they do not have the necessary authority to compel the police services within their jurisdiction to comply with those same sanctuary policies. Since the City and the Police Services’ powers are both enabled by separate provincial legislation, the City is no more powerful on paper than Toronto Police Services. However, as I showed in the legislative history of Sanctuary Toronto, the Police Board has the statutory authority to set the Police Service’s priorities and objectives. The City is well represented on the Police Board, and can shape police practices in this institutional forum. How the City chooses to spend its political capital is ultimately for City Council to decide, but as the interplay between City Council, City Committees, and the Police Board examined in this thesis revealed, the system is a bureaucratic headache. Even if the political will exists,— which Councillors Kristyn Wong-Tam and Joe Mihevc have displayed with gusto – there is no guarantee that the Police Service will acquiesce, not to say communicate with
elected City Councillors. It is this complex interlegal and interjurisdictional system which emboldens the Police but renders municipal authority moot, leaving non-status individuals waiting for a real sanctuary city to finally emerge.

If we consider the findings discussed in this chapter beside both de Sousa Santos’ theorizing on ‘interlegality’ and Valverde’s work on jurisdiction and scale, it is clear that for the Police Service, the law is a space in which “the conditions for the reproduction of power” is being maximized.\(^{281}\) The counter-arguments I presented in Section 4.3 helped to explain what this power looks like, and how the law is being used to sustain these powers. Although the Police Service has powers conferred through concurrent and overlapping jurisdiction, the scale through which their powers are being operationalized most prominently is within the urban scale. By also interrogating the Police Service’s jurisdiction according to Valverde’s approach to jurisdiction, – who is being governed and not only who is governing – this chapter situated the policing of immigration status within the spatial tension between how the City and the Police Service govern non-status individuals differently.\(^{282}\)

\(^{281}\) de Sousa Santos, supra note 39 at 284.
\(^{282}\) Valverde, supra note 103 at 139.
CHAPTER 5: CONCLUSION

“We have to understand that we have an immigration system that is flawed, that is not responding to the economic needs of our country, that we have people that come in here for economic reasons. We’re not a federal government, and that is not for us to decide immigration policy in here. And the same way it’s not for us to decide immigration policy, once these people are here – and some of them, a lot of them are our neighbours – and they’re all around our city, believe me, that we need to make sure we have good communities. These people are here….let’s do our jobs, which is protect the citizens of Toronto. And the citizens of Toronto is everybody that lives in this city.”

– Councillor Ana Bailão, Community and Recreation Development Committee Meeting, November 25, 2015.

5.1 RESEARCH CONTRIBUTIONS

During the early days of my research, I recall Councillor Ana Bailão’s animated statement above having played an important role in formulating the direction of this thesis. In getting into the crux of the writing though, I had almost forgotten about it because it was transcribed and filed away. At the time, I remember thinking that if immigration policy is strictly a federal responsibility, then I should be researching immigration enforcement practices by the CBSA in Toronto. Yet if Councillor Bailão acknowledged the City had no real influence over immigration policy, then what did she mean when she urged Councillors to ‘protect the citizens of Toronto?’ Was there something standing in the way of Toronto fulfilling its sanctuary city promises to non-status individuals that the City had control over? I was also curious about the framing of Torontonians as ‘citizens of Toronto.’ Was Councillor Bailão’s synonymous use of ‘citizens’ and ‘residents’ stemming from an understanding that being a sanctuary city made the citizen/resident binary unimportant? Suddenly, what was more interesting to me was not the federal efforts to enforce immigration status in Toronto, but the urban scale through which immigration status is policed. What I inferred from Councillor Bailão’s statement was that two years since Toronto

became a sanctuary city, there was a disconnect between what was expected of the City and what the City had or had not done.

Although the object of analysis (enforcing immigration status in Toronto) remained unchanged, I felt this research project had to be refined in order to answer some basic questions I had about what being a Canadian sanctuary city meant. The more I researched the history of Toronto becoming a sanctuary city, the more I recognized the City’s focus was not on preventing immigration status from being enforced, but was on making sure non-status individuals could access most city services without fear. Similarly, other Canadian sanctuary cities – the two at the time, Hamilton and Vancouver – were also focused exclusively on removing barriers to accessing municipal services. Up until that point, I had been under the impression that like the United States, Canadian sanctuary cities had the authority to prevent local police in their jurisdiction from participating in immigration enforcement. And while some media pieces written after Toronto’s declaration did mention that their policy would not include the Toronto Police Service, there seemed to be less interest in why police services could remain outside the ambit of sanctuary city policies.

In the face of increasingly hostile attitudes towards immigration, this thesis contributes to a growing body of literature that sees municipalities as key players in (re)shaping an exclusionary immigration system. The question I ultimately stitched together for this thesis was whether or not the City could claim to be a sanctuary city if they could not guarantee the Police Service is aligned with their sanctuary objectives. To answer this, I started from the ‘local’ scale: does the City have any legal jurisdiction or authority over the Police Service, and conversely, what is the scope and legality of police powers to enforce immigration status in Toronto? What I gestured towards throughout this thesis is an enduring tension between the City and the Police Service over their respective interpretations of jurisdiction and authority vis-à-vis non-status individuals.

Chapter two began by bringing together the literature on how immigration is constructed against citizenship, and pointed to how the nation-state maintains its powers over excluding individuals from its territory. For example, during the post-war period, consolidating citizenship required universal principles about what it meant to be a ‘citizen.’ To stretch citizenship beyond traditional allegiances rooted in *jus sanguinis* (by blood) or *jus soli* (by birth), ‘contribution’ was
identified as a mutually beneficial way to fortify state power. One way this was achieved was through the welfare state, and consequently, new initiatives that celebrated labour to and for the state created a homogenous national identity. These ideas which centred labour, contribution, and the welfare state were deeply rooted in ideas of what citizenship should be.

Drilling down deeper into the post-war efforts to consolidate citizenship, another feature of the new national imaginary that the literature highlighted was citizenship as an ongoing exercise of power. In addition to the welfare state, understanding state techniques like economic and labour programs designed to attract skilled immigrants, or the state’s right to revoke citizenship, opened up new spaces for theorizing power. In juxtaposing the critical scholarship on these enactments of power with the literature supporting the state’s right to exclude, I drew attention to the messiness which characterizes nation-state citizenship. This helped to convey why power also needed to be examined using other theories, and chapter two pointed to how citizenship is reimagined within this body of critical legal geography literature. Organizing the literature review around the geographies of citizenship, jurisdiction, and authority tethered this thesis to what de Sousa Santos calls ‘interlegality.’ Building from there, an important theoretical intervention was interrogating the scales at which citizenship circulates. By theorizing a citizenship regime that was based not on allegiance to the state but on place of residence, the notion of what ‘contribution’ means in contemporary spaces was imagined at ‘local’ or ‘urban’ scales.

Chapter three then presented key events that set in motion Toronto’s chance to become a sanctuary city. These discussions across municipal agencies, the patchwork of sanctuary policies, and the ongoing challenges facing sanctuary cities culminated in what I called ‘Sanctuary Toronto’ throughout this thesis. The overall purpose of this chapter was to illustrate how years before Toronto became a sanctuary city, the City was haphazardly creating policies that were responding to a specific issue. For example, City Council might not have paid attention to the plight of undocumented workers in 2005 if there had not been a labour shortage affecting Toronto’s residential construction sector. Similarly, the Toronto school boards’ policies likely would not have been passed if the Lizanno-Sossa and Serdas siblings had not been arrested by the CBSA at their Catholic public schools in 2006. With each event that made its way onto the
City’s radar, it became untenable for the City not to respond to the challenges non-status individuals were facing within their jurisdiction.

While the City slowly grappled with how to respond, a parallel discussion was taking place at the Toronto Police Services Board. Unlike the City’s more open approach to creating better policies with respect to non-status individuals, the Police Service was vehemently opposed to the Police Board’s explorations into limiting the Police Service’s role in enforcing immigration status. The period from 2004 to 2008 saw the Chief and the Board often disagreeing with one another about the feasibility of “Don’t Ask, Don’t Tell” policies. In 2006, a compromise was reached when the Police Board, against the Chief’s wishes, passed a partial “Don’t Ask” policy that protected victims to and witnesses of a crime who did not have immigration status. Between 2006 and 2008, although the Police Board explored the actual legality of broadening the “Don’t Ask” policy to include a “Don’t Tell” component by soliciting multiple legal opinions, they ultimately capitulated to the Chief’s opposition. What chapter three revealed was that the Police Board had credible legal opinion which supported a DADT policy – such as the Immigration and Legal Committee’s crucial report – but for some reason, the Police Service’s feeble legal interpretations was ultimately given more weight. What still needed to be discerned was what these legal interpretations were, and why they were so impactful. Configuring these events in chapter three thus crystalized how the Police Service’s legal interpretations was a worthy object of analysis.

Questions about what can be reasonably expected of Canadian sanctuary cities has also led to questions about the role local police have been playing in enforcing immigration status. In chapter four, the central issue was the interlegal and interjurisdictional tensions between the City and the Police Services’ choices to interpret its authority differently with respect to what a sanctuary city should look like. To meaningfully analyze what ‘authority’ was, I framed municipal authority and police powers within the Canadian legal framework, highlighting how limited municipal authority is because they lack distinct status under the Constitution Act. Then, I described how provinces throughout the 1990s and early 2000s were recognizing the growing role municipalities were expected to play by creating modern municipal frameworks like the City of Toronto Act. The purpose was to show a changing approach both by the legislatures and the
courts in interpreting municipal authority. Even with these advances though, municipalities would remain in the interlegal and interjurisdictional abyss without stronger delegated powers or constitutional status. For the Police Service, this proved to be a useful cover to maintain their positions against sanctuary policies. The second half of chapter four undertook a legal analysis to argue that in spite of an ambiguous legal framework or weak municipal authority over the police, the Police Service’s arguments were fundamentally incorrect. I concluded by reiterating that this was an active choice by the Police Service to misinterpret their statutory obligations, in contrast to the City deliberately choosing to interpret their statutory authority in a way that helps non-status individuals. Owing to constraints in the length and scope of this thesis, I closed by referencing without significant detail the ways in which the Police Service could be compelled to comply with the City’s sanctuary objectives. I will now provide more depth about what compelling the Police Service could look like, and will also address some of the research limitations this thesis encountered that might also be beneficial for future research.

5.2 RESEARCH LIMITATIONS AND FUTURE RESEARCH DIRECTIONS

In general, some of the factors that limited this research project included time, difficulties accessing government data, selected research focus, and types of data used to support this thesis’ contributions. To sift through the volume of information that was available on Sanctuary Toronto efficiently, I very early on had to decide on a reasonable scope for this research project. The primary limitation of this thesis is that it worked almost exclusively within the critical legal geography domain, choosing to analyze policy documents, legislation, and academic material. I did not approach the research questions from the perspective of community members, activists, and most importantly, non-status individuals themselves. While news media pieces which included some of these perspectives were interspersed in the chapters, or reports from community advocates like No One Is Illegal - Toronto and the Immigration Legal Committee were cited, undoubtedly, the decision not to approach the research objectives and questions from the ground up narrows the arguments I have made in this thesis.²⁸⁴

Two factors informed my decision to use textual analysis to understand the legal and jurisdictional tensions between municipal authority and policing. First, recruiting and interviewing non-status individuals to participate in interviews would have been difficult by virtue of non-status individuals relying on discretion. I also received significant pushback from municipal and police departments in accessing documents, including the need to submit FOI requests, which led to concerns about accessing a sufficient number of participants from these sectors. Second, I believed that if I wanted to undercut the Police Service’s arguments in not adopting sanctuary policies, textual analysis was a more effective research methodology; I could approach my research project without asking non-status individuals to potentially risk their safety; and could understand and challenge Police Service legal arguments. The literature review endeavoured to bring forward the critical scholarship which did include the voices of non-status individuals and grassroots activists, and the legislative history of Sanctuary Toronto also highlighted the pivotal role they played in Toronto becoming a sanctuary city. Concomitantly, I was focused on trying to provide another piece of the puzzle that could help those most affected and those mobilizing on the ground.

Another limitation was the difficulties in accessing data from the Police Service, described in chapter one, about their current role in enforcing immigration status. Although the data maybe would have strengthened my arguments, again, I was more concerned with pointing out the Police Service’s inaccurate legal interpretations. Even if the data demonstrated the Police Service’s role has increased over the years, I believe it would not encourage the Police Service to suddenly change their legal interpretations. Therefore, I see one possible area for future research to consider is how to increase oversight of the Police Service. This can be achieved by augmenting the engagement of councillors who serve on the Police Board. Four of the seven seats are for City representatives: the Chair is appointed by City Council, the Mayor is an ex-officio member, and the remaining two are City Councillors. If the City is serious about fulfilling its sanctuary city promises, then it should wield its power more often, and should ensure the engagement of all City representatives on the Police Board. Former Police Board member, Councillor Shelley Carroll, was responsible for pushing the Police Service throughout 2017 to provide updated statistics on how many status checks the Police Service was conducting. Without her advocacy, the Police Service would have remained quiet about their relationship
with the CBSA. Future research could delve more deeply into the ways in which municipal actors can challenge the leadership of the Police Service to understand its legal obligations such that sanctuary policies are adopted.

This research project has bridged the bodies of literature related to citizenship, authority, and jurisdiction; provided a detailed account of the legislative history leading up to Sanctuary Toronto; and engaged with the legal geographies of municipal authority and local policing. It is this author’s hope that this thesis contributed to re-scaling, re-imagining, and realizing the potential that cities have to offer a burgeoning area of study with respect to policing cities and residents with precarious immigration status.
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APPENDICES

APPENDIX A: CITY COUNCIL MEETING TRANSCRIPT FOR JUNE 12, 2015

CD4.2 Toronto Police Service: Service Governance Pertaining to the Access to Police Services for Undocumented Torontonians

F. NUNZIATA: [0:26:00] Okay Councillor Wong-Tam, questions?

K. WONG-TAM: [...] What are some of the services that the residents of this City can access?

C. BRILLINGER: Essentially all services that are not governed by provincial or federal legislation requiring that we establish status for service receipt.

K. WONG-TAM: And is it correct that your department has undertaken to produce some postcards, some promotional materials, to inform all residents of this City that they have access to these City services, without obstacles?

C. BRILLINGER: Through the speaker, yes we have, as well as producing materials to ensure that City staff are aware of their obligations to provide services to undocumented Torontonians.

K. WONG-TAM: And the reason to promote this service? And the reason to promote this policy? Why did you do that?

C. BRILLINGER: The policy position is based on language in the City of Toronto Act that indicates the City is an incorporation of its inhabitants, it does not delineate by citizenship, therefore, we have a responsibility to serve all residents of Toronto.

K. WONG-TAM: Thank you very much. And the Council decision and report that was adopted in 2013, was that report forwarded to the Toronto Police Service at Council’s request?

C. BRILLINGER: It was, it was one of Council’s recommendations.

K. WONG-TAM: And before us are minutes of the Toronto Police Service meeting, where Police Chief Bill Blair is reporting back to us what his findings were, is that correct?

C. BRILLINGER: The report back was to Police Services Board, not to Council. It was the decision of the Board to forward that report for information to Community Development and Recreation Committee.

K. WONG-TAM: Okay, thank you for clarifying. And contained in that report, does it list some reasons why the Toronto Police may not be able to provide unrestricted access to services to residents?
C. BRILLINGER: Yes, that report refers to legislation governing Toronto Police Service and the interpretation of that legislation in this regards.

K. WONG-TAM: And the interpretation of that legislation, will that contravene our intentions of our policy?

C. BRILLINGER: That is, I think, a question for Toronto Police Services Board. There was further direction from Committee to myself to work with Police Services Board to clarify, and I will be undertaking to fulfill that direction.

K. WONG-TAM: And in the meantime, while we’re waiting for clarification, the promotional material that was produced by the City to announce the services that are available to undocumented residents…it also includes police protection and police services, is that correct? Listed as a service?

C. BRILLINGER: It does include Toronto Police Service.

K. WONG-TAM: And, is it advisable to Council at this time, and to yourself, to perhaps temporarily remove that listing of the service until we get further clarification?

C. BRILLINGER: I would not advise removal of that service, even on a temporary basis at this time.

K. WONG-TAM: And why is that? Because we heard a number of deputants come out during Community Development and Recreation who were suggesting that it was unsafe for people to go to the Toronto Police if Toronto Police may be compelled to report undocumented residents to the Canadian Border Services.

C. BRILLINGER: The umm…it is a difficult question and a difficult situation. The determination of what is ‘unsafe’ or what is ‘more unsafe’ is a challenging one. I would advise Council to be careful of, in any way, advising Torontonians not to be utilizing Toronto Police Service when they are in need of protective services.

F. NUNZIATA: Okay thank you, that was your last question. Councillor McConnell, questions?

P. McCONNELL: Yes, thank you very much. I was actually on the Police Services Board when this debate happened, in fact I think I was the chair. So we have, in a sense, a “Don’t Ask, Don’t Tell,” but one of the questions of the police is the “Don’t Ask.” So, for example, my concern about removing them – I’m asking Chris – is that if we encourage women who are in danger not to call, on the basis of their status, then we will have negatively impacted those victims. Is that correct?

C. BRILLINGER: I think that is a potential concern that Council should be aware of.

P. McCONNELL: Would it not be better for us to, and are you willing to really dig into these statistics, because I cannot believe that they don’t know how many people they’ve handed over. Wouldn’t that be a better direction?
C. BRILLINGER: Through the Speaker, yes Councillor – yes Deputy Mayor – I will be engaging with Toronto Police Service on these questions.

F. NUNZIATA: [0:39:00] Deputy Mayor Minnan-Wong.

D. MINNAN-WONG: Yes, through you Madame Chair to Mr. Brillinger, how much does illegal immigration cost the city every year?

C. BRILLINGER: I have no way of estimating that kind of figure.

D. MINNAN-WONG: But there are significant costs associated with all the services and supports that are provided to illegal immigrants, yes?

C. BRILLINGER: There would be costs. What those costs are against the productive contribution of those individuals are I have no way of estimating, we have no way of clearly or accurately estimating numbers, for obvious reasons, so those numbers …

D. MINNAN-WONG: Sorry, for obvious reasons?

C. BRILLINGER: Well, undocumented people are by nature difficult to enumerate.

D. MINNAN-WONG: But they do use a significant amount of social services, a disproportionate likely?

C. BRILLINGER: I have no way of commenting on that. There would be arguments equally that they are less likely to use services for fear that their status will be discovered and acted upon.

D. MINNAN-WONG: Yes.

C. BRILLINGER: So we really have no fact base, I have no fact base on which to respond.

D. MINNAN-WONG: And not cooperating with other levels of government in terms of enforcement, that leads to encouraging more illegal immigration into the country and into the city, is that no fair to say?

C. BRILLINGER: Again, I have no empirical data to render an opinion on that. We have not done that kind of research in American jurisdictions which have very clear municipal direction to not engage with their national border services, but I have no idea if that’s resulted in an influx of undocumented peoples to those jurisdictions.

D. MINNAN-WONG: But have you done any work on the contributions that…you said on the, I think you used to the term, on illegal immigrants, the ‘contributions’ they’ve made. Have you done any research on that?
C. BRILLINGER: No again, we have no way of quantifying. My point was that yes there will be costs associated with these individuals, but equally there is contribution associated, we just don’t have the quantum, we can’t estimate the quantum of those values.

D. MINNAN-WONG: Yes, and by not having better cooperation and information-sharing in terms of illegal immigrants, we would actually be assisting in law enforcement, we would actually be hurting the law enforcement process. Yes?

C. BRILLINGER: Clearly interagency relations between security services are critical element of that area, it’s not my area, so I can’t comment on the implications.

D. MINNAN-WONG: Thank you.

J. KARYGIANNIS: [0:54:00] Madame Chair, you might rule me out of order, so if you want to rule me out of order, rule me out of order right now. However, I’m going to take great offence…

F. NUNZIATA: – I can’t rule you out or order unless you speak.

J. KARYGIANNIS: To some of our colleagues calling people in this city ‘illegal immigrants.’ I’m going to take great offence to people that are supposed to be here, trying to make a living, if they’re undocumented, we turn around in this Council and say that they’re illegal immigrants. And then we go high and up in the stands, we’re not down here. Calling somebody an illegal immigrant and saying “you don’t deserve the services that the rest of us gets”…

D. MINNAN-WONG: – point or order, Madame Chair.

J. KARYGIANNIS: I said Madame order [sic.], you might want to take me, rule me out of order…

D. MINNAN-WONG: – This has nothing to do with Council business, Madame Speaker.

J. KARYGIANNIS: Damn right it has! Damn right it has, when we allow people –
## APPENDIX B: TABLE OF MATERIAL RELATED TO THE TORONTO POLICE SERVICE’S “DON’T ASK” POLICY DEVELOPMENT

<table>
<thead>
<tr>
<th>TITLE</th>
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  • Board working group created to explore feasibility of a DADT policy |
| “Immigration Status: "Don't Ask Don't Tell" Working Group” (#P34/06) | Report    | February 15, 2006 | Alok Mukherjee, Chair, Toronto Police Services Board | • Report recommends the Board direct the Chief to develop a partial DA policy |
| “Victims and Witnesses Without Legal Status Policy” (#P140/06)      | Report    | May 18, 2006   | Alok Mukherjee, Chair, Toronto Police Services Board | • Report explaining how the DA policy was drafted |
| Victims and Witnesses Without Legal Status Policy (#P140/06)        | Policy    | May 18, 2006   | Toronto Police Services Board                | • Board passes DA policy preventing victims of and witnesses to a crime from having their immigration status inquired about, unless there are bona fide reasons to do so |
| “Response to Board's ‘Don't Ask, Don't Tell’ Policy” (#P271/06)   | Submission | August 10, 2006 | Stockwell Day, Minister of Public Safety      | • Letter responds to Chair’s letter asking if DADT contravenes the *IRPA* |
| “CBSA and the Don’t Ask, Don’t Tell Policy” (#P355/06)             | Submission | November 27, 2006 | Peter Rosenthal and Jackie Esmonde, Roach, Schwartz & Associates | • In addition to their deputation, lawyers Jackie Esmonde and Peter Rosenthal provided the Chair’s working group a legal analysis of implementing DADT in Canada  
  • Received copy of submission via email from Board staff |
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<tbody>
<tr>
<td>“Speaking Notes on CBSA Deputation before the Toronto Police Services Board” (#P355/06)</td>
<td>Submission</td>
<td>November 28, 2006</td>
<td>John Gillan and Reg Williams, Canada Border Services Agency</td>
<td>Speaking notes from seniors CBSA GTA office staff against Board implementing DADT</td>
</tr>
<tr>
<td>“Victims of Crime and Witnesses to Crime Without Legal Status” (#P112/07)</td>
<td>Report</td>
<td>March 22, 2007</td>
<td>William Blair, Chief, Toronto Police Service</td>
<td>Update from Chief outlining the steps the Service has taken to implement the DA policy</td>
</tr>
<tr>
<td>“Police Services: Safe Access for All: Legal Arguments for a Complete ‘Don’t Ask, Don’t Tell’ Policy”</td>
<td>Submission</td>
<td>May 21, 2008</td>
<td>Immigration Legal Committee</td>
<td>NGO report detailing the legality of DADT in Canada, submitted to the Board to help the Chief and the Chair reach a decision</td>
</tr>
<tr>
<td>“Don't Ask, Don't Tell Working Group – Victims and Witnesses without Legal Status Policy” (#P301/08)</td>
<td>Report</td>
<td>November 20, 2008</td>
<td>Alok Mukherjee, Chair, Toronto Police Services Board</td>
<td>Chair reports receipt of 844 petitions calling for a DADT because existing DA policy not being uniformly enforced</td>
</tr>
<tr>
<td>“Don't Ask, Don't Tell Working Group – Victims and Witnesses without Legal Status Policy” (#P302/08)</td>
<td>Report</td>
<td>November 20, 2008</td>
<td>Alok Mukherjee, Chair, Toronto Police Services Board</td>
<td>Chair reports receipt of ILC submission, but agrees with the Chief that no new information about the legality of DADT, and concludes that DADT is not feasible</td>
</tr>
<tr>
<td>“Toronto Police Service: Service Governance Pertaining to the Access to Police Services for Undocumented Torontonians” (#P30/15)</td>
<td>Report</td>
<td>March 12, 2015</td>
<td>William Blair, Chief, Toronto Police Service</td>
<td>In response to Board request on November 14, 2014, Chief reports on how the Police Service conforms with City’s AWF directives</td>
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<tr>
<td>“Access to Police Services for Undocumented Torontonians” (#P234/15)</td>
<td>Report</td>
<td>September 17, 2015</td>
<td>William Blair, Chief, Toronto Police Service</td>
<td>Chief responds to City Council’s additional request for more information from June 2014 (CD4.2)</td>
</tr>
<tr>
<td>“Access to Police Services for Undocumented Torontonians”</td>
<td>Letter</td>
<td>October 2, 2015</td>
<td>Andy Pringle, Chair, Toronto Police Services Board</td>
<td>Sent to City Council from the Chair attaching the preceding Chief’s report</td>
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<td>&quot;City Council Motions – Access to City Services for Undocumented Torontonians&quot;</td>
<td>Letter</td>
<td>February 24, 2016</td>
<td>Peter Wallace, City Manager, City of Toronto</td>
<td>· Sent to Police Board from City Manager about Council’s motions for more information</td>
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</tbody>
</table>
· Transcribed video archive of Staff Superintendent Mario Di Tommaso and Inspector Peter Callaghan who responded to questions with respect to Chief report |                                                                                                                                                                                                 |
| Access to City Services for Undocumented Torontonians – Supplementary Report" (#P137/17) | Report     | June 15, 2017      | Mark Saunders, Chief, Toronto Police Service  | · Chief responds with specific additional measures the Police Service intends to take on this issue and outlines the limits imposed by the law                                                                                                                                 |
| “Review of Inquires Made to the Canada Border Services Agency” (#P182/17)      | Report     | August 24, 2017    | Mark Saunders, Chief, Toronto Police Service  | · Follow-up report by Chief on the steps being taken by members of the Police Service to investigate the annual data of immigration status checks and justification for such calls |