



Portuguese-Canadian National Congress

# MOVING TOWARDS VISIBILITY

Non-Status Immigrants and the Social Service Sector

A REPORT ON THE UNDOCUMENTED SUPPORT NETWORK PROJECT

**METCALF  
FOUNDATION**

**WORKING  
WOMEN**  
COMMUNITY CENTRE  
*Services for Immigrant Women and their Families*

  
**United Way  
of Greater Toronto**

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# Moving Towards Visibility: Non-status Immigrants and the Social Service Sector

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# I. Introduction

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*He falls from a roof at his worksite and is bed-bound for a month. He doesn't go to the hospital or receive any compensation to help support his family while not working.*

*They are taken from their elementary school classroom to bait their parents out of hiding.*

*Her boss notifies immigration authorities because she complained she hasn't been paid in two months. She's deported. Another woman is deported after going to the police to charge her abuser.*

*His toes are severed from an elevator accident and his first thought isn't to get medical attention but how much this is going to cost him.*

The above are circumstances heard directly from non-status people or from the frontline workers who serve them. More stories like these exist.

It is estimated 500,000 non-status people live in Canada today. There are many terms used to describe people with less than full status, including precarious status, undocumented, non-status, temporary status, etc. Each term describes different access to services and employment. We use the word “non-status” to highlight those with no access to services or legal work opportunities.

Non-status immigrants live, work and go to school in cities. They pay taxes, such as property and sales taxes, contribute to local communities and their labour props-up particular industries. Visit any construction site, restaurant kitchen or downtown office tower after hours when the cleaning crew springs to action, and odds are you'll be sharing space with non-status workers.

However, as working class immigrants, the majority don't qualify for permanent status due to Canada's exclusive immigration policies. Non-status immigrants are also unable to access key services. They can't access healthcare, education, police protection, ESL classes, food banks, shelters, and housing due to ID requirements or fears of being deported if their lack of status is revealed. Despite these obstacles, non-status people are increasingly making demands on services out of sheer need.

Access to essential services is not only a human right, but also a public health and safety issue for all Canadians - with or without status. How safe are any of us when one of us is sick and can't access healthcare? How safe are any of us when witnesses or victims of crime don't approach the police?

We envision a vibrant Toronto where inclusive federal-provincial immigration policies welcome and support the social, cultural and economic contributions of all migrants, including working class immigrants currently excluded from avenues for legal resident status. We also envision a Toronto where non-status immigrants are able to access the social safety nets they pay into through taxes without fears of deportation and detention.

The purpose of this report is to share information on the *Undocumented Support Network Project* and key resources from the initiative that aim to increase the capacity of agencies to better serve non-status immigrants. Our intended audience is the social service sector, particularly those who work with non-status immigrants in Toronto. Though many in the sector would find this report useful, we are targeting upper management to begin conversations in their organizations on how to better serve non-status immigrants using the resources provided.

While visibility is often dangerous for non-status people, we hope this report helps all of us in the sector, albeit in a small way, take steps to make visibility safer in Toronto.

## II. Undocumented Support Network (USN) Project

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### **PROJECT BACKGROUND**

The Portuguese Canadian National Congress is a non-profit organization that represents over 400,000 Canadians of Portuguese heritage. Created in 1993, the Portuguese Canadian National Congress addresses issues affecting Portuguese-Canadians through community-based project and its network of elected Directors, Delegates and local representatives from across the country.

Working Women Community Centre is a non-profit and charitable organization that provides immigrant women and their families with opportunities to improve the quality of their lives through self-development and community action. They provide a range of services that include: settlement, language and training, employment supports, health and wellness, public education and community development.

The Portuguese Canadian National Congress and Working Women Community Centre received funding from the George Cedric Metcalf Foundation to coordinate a 16 month initiative entitled the Undocumented Support Network (USN) Project from the period of September 1, 2007 to December 31, 2008.

The initiative aimed to help improve the capacity of community agencies and allies address the needs of and policy frameworks impacting undocumented migrants in Toronto by:

- a) increasing the collective capacity of a network of agencies, employers and allies to support undocumented families through services, community development and policy advocacy; and
- b) pursuing immigration policy reforms targeting all 3 levels of government.

## **PROJECT ACCOMPLISHMENTS**

Highlighted below are some of the key project activities that helped fulfill the project objectives.

### **AGENCY PROTOCOL COLLECTION:**

A call-out was disseminated to social service organizations across the province requesting existing policies, protocols, and guidelines on working with non-status immigrants. The aim was to compile the information to share with the sector and to identify gaps in service provision for non-status immigrants. Agencies circulated the information to their members and the wider community via member list-serves, websites and newsletters. Few policies were collected, partly because not many formally exist, but many messages were received expressing interest in the final document.

### **SECTOR FORUM:**

*Moving Towards Visibility: A Forum on Creating Guidelines to Service Non-Status People in the Housing, Health, Settlement and Legal Sector* took place July 10, 2008 at St. Christopher House. The event was a partnership with St. Christopher House, Access to Services for Socially Marginalized Immigrants and Refugees Advisory Committee and Access Alliance Multicultural Health & Community Services. The meeting provided an opportunity for participants in the social service sector to share best practices and build knowledge to improve service delivery to non-status immigrants. Over 60 participants attended from various sectors and organizations across Toronto. The program included presentations by key organizations on the (policy) challenges of and advocacy gains in serving non-status immigrations. Speakers included: Giovanni Francisco Rico Bolanos, Legal Caseworker, FCJ Refugee Centre; Carolina Gajardo, Manager, COSTI North York Housing Help; Keith McNair, Executive Director, Davenport Perth Neighbourhood Centre; Axelle Janczur, Executive Director, Access Alliance Multicultural Health & Community Services. The session was facilitated by Armine Yalnizyan from the Canadian Centre for Policy Alternatives. The program also incorporated working group sessions where participants identified information gaps and what they would like to see in a policy template.



## **A POLICY TEMPLATE ON WORKING WITH NON-STATUS IMMIGRANTS FOR THE SOCIAL SERVICE SECTOR:**

The template is a guide and springboard for organizations with the capacity to implement guidelines in serving non-status immigrants. The *Access Not Fear: Non-Status Immigrants and City Services Preliminary Report* (2006) notes the lack of coherent and formal policies in serving non-status immigrants among social service organizations and the resulting challenges in accessing city services faced by both non-status immigrants and front line workers for their clients. Several activities went into developing the template's content including a provincial callout to submit guidelines, protocols or policies to establish what currently exists (see above); during the *Moving Towards Visibility Forum*, participants were asked in working group sessions to identify information gaps and what they would like to see in a template; and through interviews with key players from the housing, legal, settlement and health sectors. Drafts of the template were also reviewed at the OCASI Geneva Park Conference (October 2008) and at a feedback meeting.

## **FREQUENTLY ASKED LEGAL QUESTIONS BY ORGANIZATIONS SERVING NON-STATUS IMMIGRANTS:**

Legal issues were identified as one of the main information gaps in the social service sector. Karin Baqi, lawyer at the South Asian Legal Clinic of Ontario, and MacDonald Scott, paralegal at Carranza Barristers and Solicitors and member of the Immigration Legal Committee of No One is Illegal, agreed to create a FAQs document that addressed frontline workers and agencies' most common questions.

## **OCASI PROFESSIONAL DEVELOPMENT CONFERENCE WORKSHOP:**

Created and facilitated an interactive, three hour workshop at the 2008 OCASI Professional Development Conference on October 24, 2008 at Geneva Park. The aim of the workshop was to identify policy gaps in serving non-status immigrants and review a draft of the policy template and its applicability in service delivery. The workshop also addressed the process of the template's development to date, key findings, sector gaps and organizational concerns on issues of funding, legal obligations, etc.

## **BIBLIOGRAPHY ON NON-STATUS IN CANADA:**

A bibliography was compiled of over 80 articles, reports and resources addressing non-status issues in Canada. It is to be used by organizations, agencies and academics as a resource to identify gaps in Canadian literature, help find information needed for funding applications, etc.

## **ESTABLISHING A NETWORK:**

Starting in the fall of 2008, USN was one of the stakeholders involved in building *Status Now!: Campaign in Defense of Non-Status Immigrants* ([www.statusnow.org](http://www.statusnow.org)) by hosting planning and visioning meetings, garnering support from other organizations for the network and by participating in network actions like the campaign against Bill C-50's changes to the Immigration and Refugee Protection Act that comprised a rally and press conference on April 9, 2008.

The group originally formed in June 2007 to garner support for a motion introduced by MP Olivia Chow on behalf of the Standing Committee on Immigration to place an immediate moratorium on deportations of all non-status peoples and their families that ended up with a positive vote in parliament. However, with the dissolution of parliament, the motion was also swept away. Energies were then put into developing the network. The Lighthouse Community Centre is currently taking the lead on the network and recently hosted *We are Immigrants, Not Economic Units*, a community action meeting on the Temporary Foreign Worker Program and the Canadian Experience Class.

The network's three demands are moratoriums on deportations in Canada, regularization of all non-status people in Canada and reforming Canada's Immigration and Refugee System.

The aims of the network are to:

1. Build a cohesive network of municipal, provincial and national organizations composed of community groups, unions, immigrants, refugees, non-status peoples, agencies and service providers, academics and politicians who are working on the issues of regularization, service provision and advocacy for non-status individuals;

2. Launch an educational campaign including a website, campaign outreach material and a power point presentation which will serve as the basis for local community forums. The website will serve as an outreach tool as well as a data bank of collected information including research, campaign materials, educational resources and other media in multiple languages on the issue of non-status communities in Canada. The educational campaign will also address service provision to non-status immigrants;
3. Participate in municipal, provincial and federal lobbying efforts and campaigns pushing for a moratorium on deportations, regularization and access to services for non-status immigrants; and
4. Built capacity for non-status immigrants, youth, service providers and trade unionists advocating on the issue of regularization and service provision for non-status immigrants.

#### **PROVINCIAL NOMINEE PROGRAM:**

The Ontario Provincial Nominee Program (PNP) launched in 2007 as a one-year pilot project. It is employer driven, allows Ontario to nominate immigrants for permanent resident status based on labour shortages and applicants are fast tracked by Citizenship and Immigration Canada. A unique aspect of the program is that workers nominated for the PNP can be living in Canada (with a temporary status permit), do not have to leave the country to apply for status and are not dependent on an employer for their status. USN saw this as a narrow opening to begin discussing the potential to expand the industries participating in the program and regularization of migrants (including non-status immigrants who do not have temporary status) in Ontario who fill labour gaps in industries identified by the program. A meeting with a PNP representative of the Ministry of Citizenship and Immigration was held on November 29, 2007. The representative was open to community partnerships and input into the program. The PCNC and other community organizations were invited to provide input on program design and performance during the program's one-year review on June 6, 2008. Though the category of eligible migrants has not been expanded, the program has since removed industry restrictions.

## RECOMMENDATIONS

The following are three “big picture” recommendations to improve the lives of all Canadians - including non-status peoples.

- Federal and provincial governments need to change their exclusive immigration policies and regularize the status of non-status peoples currently in Canada. Non-status and temporary foreign workers are upholding particular industries. If they are good enough to work in Canada, they are good enough to stay in Canada.
- The social service sector needs to improve its collective capacity to serve and act as an advocate for non-status immigrants. Part of this process includes adopting policies and guidelines in working with non-status people. The template included in this report can help begin this process.
- The social service sector is under funded and overworked. Funding bodies need to support the work of the sector and align their funding with community needs based on input from social service workers. This includes acknowledging the service needs, demands and basic human rights of non-status immigrants.

### III. A Policy Template in Working with Non-Status Immigrants for the Social Service Sector

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The *Access Not Fear: Non-Status Immigrants and City Services Preliminary Report* (2006) notes the lack of coherent and articulated guidelines in serving non-status immigrants in the Toronto social service sectors and the challenges in accessing services faced by both non-status immigrants and front line workers for their clients.

This template aims to increase the capacity of social service organizations and front-line workers to better serve non-status immigrants by identifying policy gaps in the sector when working with this community.

Several activities went into developing the template's content including:

- c) a provincial callout for organizations to submit guidelines, protocols or policies in serving non-status immigrants to establish what exists;
- d) hosting the Moving Towards Visibility forum, where participants identified gaps in knowledge in serving non-status and what they would like to see in a template;
- e) interviews with key players from the housing, legal, settlement and health sectors; and
- f) distributing various drafts for feedback, including during a workshop at the OCASI Geneva Park Conference in October 2008.

We understand the realities of funding restrictions, lack of capacity and fear of attention from the Canadian Border Services Agency that keep the issue underground in the sector. However, as one participant said in the *Moving Towards Visibility* forum, this issue can no longer remain underground. The reality is that non-status immigrants are here and demanding basic human rights.

We also understand not every suggestion in the guideline makes sense for all organizations and sectors. This document is not meant to be prescriptive but descriptive. It is meant as a guide that points to discussions organizations serving non-status immigrants need to have to systematize practices and decisions often made on a daily, ad hoc basis when working with this population.

## **FINDINGS**

### **1. GENERAL ORGANIZATIONAL POLICY**

An organizational policy or position statement on serving non-status immigrants is a step toward:

- a) identifying the service needs of non-status people;
- b) clarifying which organizations serve non-status and creating accountability; and
- c) supporting the work of frontline staff faced with requests for help from non-status people on a daily basis.

For organizations that only get federal funding, an organizational policy to serve non-status immigrants may not be possible. It is for the majority of organizations in Toronto that receive mixed funding and already serve non-status immigrants.

Below are suggestions from interviewees and positions/policies that exist on what to include in an organizational policy:

- Avoid ambiguity. Many suggest being specific about serving non-status in your declaration and believe statements like *“We serve immigrants”* or *“We serve people living in Ontario”* are too vague. Instead, use: *“We serve all immigrants, regardless of immigration status”* or *“We serve all Toronto residents, regardless of immigration status.”* In some sectors, other terms might be used, like *“We serve all uninsured clients, including...”*
- Include a definition of the term you are using, whether it be non-status, undocumented, precarious immigration status, etc., and who that includes.
- For the health sector, if you serve uninsured clients and there are fees attached to your service, include this piece of information in your statement.
- Be clear about who is legally obligated to do what in relationship to non-insured clients. For example, a community health centre has this policy: *“We are not an enforcement agency. As such we are under no legal obligation to ensure the immigration status of a client with respect to programs and services. However, staffs are required to report cases of suspected health card fraud. For physicians, this is a statutory obligation.”*

- If you receive mixed funding, be specific in your policy that not all services are accessible if that is the case.
- Some policies include context of the issue: how people become non-status, the systemic roots of the issue in immigration policies, barriers the community faces, the practical and ethical reasons for serving this group and the organization's recommendations to resolve the issue.
- Integrate your policy in servicing non-status immigrants into your organization's equity policies. For example, the Local Health Integration Networks (LHINs), bodies that oversee local health services, are asking hospitals to create cultural competency and equity plans. The issue of serving non-status immigrants can be integrated into these documents.

## **2. SERVICE DELIVERY GUIDELINES**

Many believed a policy on serving non-status immigrants needs to be accompanied by guidelines on how to serve this community. The following lays-out information gaps identified by social service workers when serving non-status immigrants that can help in creating a guideline.

### **Board/Management**

- Does the organization have a guideline to follow if the Canadian Border Services Agency (CBSA) or local police contact you for information on a non-status client?
- In that guideline, is there a designated board member (with their contact info) or senior staff member to handle this situation?
- Does the organization have a designated legal representative with immigration knowledge in case any legal issue occurs?
- Does staff training include these legal matters and organizational protocols regarding serving non-status?

- Has a review occurred of all organizational policies/practices and their effect on the accessibility of non-status clients to services? E.g. The *Access Not Fear* Report notes experiences of clients walking out of an organization when they see the Citizenship and Immigration Canada (CIC) poster organizations are mandated to put up if they receive CIC funding. If you have this sign and are also funded by the city, can you also include a City of Toronto poster identifying what city services are accessible?  
([http://www.toronto.ca/immigration/acc\\_ser\\_imm.htm](http://www.toronto.ca/immigration/acc_ser_imm.htm))

## **Referrals and Privacy**

One of the biggest challenges many in the sector face are issues of privacy, including safe and effective referrals for non-status clients. One interviewee mentioned how the trust she works hard to establish is tainted by referrals to organizations where non-status clients meet resistance or long waiting lists. “You feel embarrassed and my client doesn’t trust me as much”, she said.

Privacy is a hot issue in the health sector and its move to computerized health services known as e-health systems. E-health allows the sharing of information between health care providers, e.g., general practitioners, specialists, pharmacists, etc. (<http://www.hc-sc.gc.ca/hcs-sss/ehealth-esante/index-eng.php>). Questions of confidentiality and what to include in a file become even more important in this context.

Instead of a systematized process, referrals for non-status clients are based on an individual caseworker’s contacts and knowledge of the issue and the number of favours they are owed in the sector. How can your organization systemize referrals so they are not based on individual caseworker’s networks?

- Create an internal database of agency referrals and, if possible, the client’s experiences with them.
- Use and ensure all staff know about the Community Social Planning Council-Toronto’s Community Services Resource Guide for Non-Status Immigrants.  
(<http://www.socialplanningtoronto.org>)
- Create a standard process or script when contacting agencies or service workers you are not familiar with. The process should outline if staff should mention status (based on whether the organization adopts a *Don’t Ask, Don’t Tell Policy* - see next section), when a referral may need to know the client’s status and when they don’t need to know.



- Frontline workers are very innovative in getting services for their clients. Systematize some of these informal practices. E.g. When services require ID to ensure the client is in their catchment area, some frontline workers call the organization ahead of time and/or offer their business card for their client to present as proof they live in the area. Many non-status, for obvious reasons, are weary of providing their address to access services.
- Many agencies have a general privacy policy that clients sign. Does the policy include information of when the organization may be legally obligated to breach privacy policies? Is the policy available in different languages?

### **Intake**

What to ask during intake is a controversial and complex topic that depends on the services offered and funding body requirements.

- Can your organization adopt a *Don't Ask, Don't Tell (DADT)* policy? (<http://toronto.nooneisillegal.org/dadt>) *Don't Ask* prohibit city workers from asking about someone's immigration status and *Don't Tell* from sharing that information. Some interviewees felt they needed to ask about status to do their job properly and to keep track of the service needs of this group. All agreed the main spirit of the policy is access without fear. If not a *DADT*, what type of policies around privacy can be adopted to ensure access without fear and penalty?
- If you need to identify status, how can it be done within an anti-oppression framework? When should status be asked and when shouldn't it be asked in your organization? If you take the route of needing to ask status, make sure to outline why and in what circumstances.
- Do intake forms need to identify a client's status? Do you need to take the client's address also?
- Does intake or (pre)intake occur in a private setting? In some organizations with mixed funding, (pre)intake occurs in the waiting room by front desk staff to determine who the non-status client can see.

## **Files and Filing**

Questions of what to document during intake and what to keep in a client's files are important to organizationally address. Some funding bodies can access your files and the Canadian Border Services Agency can subpoena your files. This is rare but is a possibility.

- Should your organization keep files on non-status clients?; Why, why not? Most organizations that adopt a DADT policy don't keep any documentation of a client's status, some keep a file but only include service orientated comments, and others only keep the bare bones and give their clients the majority of their documents.
- If you keep files, do you safely store them? Some organizations with mixed funding keep their files separately in locked cabinets. One cabinet is for federal funded clients, etc. Others colour code their files based on the funder so they are not mixed with federal funded clients.

## **Implementation and Accountability**

Policies are useless without implementation and accountability mechanisms.

- Are board members, staff, volunteers (and doctors in the case of health services) sensitized to and trained annually on serving non-status clients and the organization's guidelines?
- Is there a system in place (or within Human Resources) where new additions to the organization are aware of the organization's guidelines on the issue?
- Are accountability mechanisms in place? If so, what do they look like?
- If you work with non-status immigrants, does your organization work on outreaching to non-status clients so they are aware of the services that are accessible to them? How is this done?

## IV. Frequently Asked Legal Questions by Organizations Serving Non-Status Immigrants

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*‘This document is a bit scary and it’s a lot like cough medicine. It tastes bad but it’s good for you’.* This analogy is not meant to belittle the issue but to point out that it is important to know your rights as organizations taking practical and ethical stands in serving non-status immigrants.

Serving non-status immigrants is a practical and ethical issue. It is practical for non-status immigrants to have access to city services when considering community health and safety. It is ethical from a human rights perspective. It is also ethical because non-status immigrants contribute to the system and are in a situation created by ineffective immigration policies.

The following Q & A section is intended to provide summary responses to legal questions frequently asked by front-line workers at social service agencies serving non-status/undocumented people.

**It is for information purposes only and does not constitute legal advice. You should consult a lawyer if a particular situation arises and you need more information on how to proceed.**

This document was created because:

- Immigration and refugee law is a complex area of administrative law.
- There is a lot of misinformation in the sector.
- Legal issues were identified as one of the main policy and information gaps in the sector when working with non-status immigrants.

This document was created by lawyers at the South Asian Legal Clinic of Ontario (SALCO) and immigration paralegal MacDonald Scott at Carranza Barristers and Solicitors and the Immigration Legal Committee of No One Is Illegal.

## Frequently Asked Questions Summary

- Q1. What are the main laws relating to immigration in Canada?
  - Q2. Who is defined as a “non-citizen”?
  - Q3. What is the role of the Canadian Border Services Agency (CBSA) in immigration law?
  - Q4. What is the role of the municipal police in immigration law?
  - Q5. What types of warrants are there?
  - Q6. What is an immigration warrant? How are they obtained? Who enforces them?
  - Q7. What is a criminal arrest warrant? How are they obtained? Who enforces them?
  - Q8. What are search warrants? How are they obtained? Who enforces them?
  - Q9. What are the legal obligations of social service agencies to the CBSA or municipal police without a warrant?
  - Q10. What are the legal obligations of social service agencies to the CBSA or municipal police with a warrant?
  - Q11. How can an agency authenticate a warrant? What do they look like?
  - Q12. What are summons and subpoenas?
  - Q13. What do summons and subpoenas look like?
  - Q14. What are our legal obligations when served with a summons or subpoena?
  - Q15. Why would an agency receive a summons or subpoena?
  - Q16. Do summons/subpoenas override a Client-Service Provider Confidentiality Agreement?
  - Q17. What are the legal obligations of a caseworker involved in a client’s immigration claim?
  - Q18. If a caseworker is asked by their client to find out their status, immigration claim status, or if there is a removal order out for a client, what legal information should she/he know before proceeding?
- Next Steps: How can your organization prepare itself?

## Frequently Asked Questions And Answers

Q1. What are the main laws relating to immigration in Canada?

In Canada, immigration and refugee law is primarily governed by federal statute, namely the *Immigration and Refugee Protection Act (IRPA)* and its associated *Regulations (IRPRRegs)*. The *IRPA* is an administrative (i.e. non-criminal) statute that regulates the entry, admission and removal of non-citizens to and from Canada.

Q2. Who is defined as a “non-citizen”?

Non-citizens include permanent residents (i.e. landed immigrants); protected persons and Convention refugees (i.e. individuals who have been recognized as such by the Immigration and Refugee Board [IRB]); refugee claimants; temporary residents (i.e. individuals on valid work, student or visitors visas); and foreign nationals without status.

Q3. What is the role of the Canadian Border Services Agency (CBSA) in immigration law?

Implementing the *IRPA* is the responsibility of Citizenship and Immigration Canada (CIC) and the CBSA. Since 2003, the CBSA’s primary role is to enforce the arrest, detention and removal provisions of non-citizens under the *IRPA* and limited *Criminal Code* provisions, and to determine whether a foreign national is “admissible” to Canada.

The CBSA has broad enforcement powers under the *IRPA* and its associated *Regulations*.

The CBSA and its officers do not have the authority to enforce infractions/violations of any other legislation. Under the detention provisions, they can’t detain citizens.

#### Q4. What is the role of the municipal police in immigration law?

Police are responsible to enforce various statutes primarily geared towards crime control and the maintenance of public order. The police are statutorily directed to enforce the *Criminal Code*, the *Controlled Drugs and Substances Act* and the *Highway Traffic Act*, among other laws.

In the absence of an immigration warrant, the police are not tasked to enforce the *IRPA*. The *IRPA* itself says that the police enforce warrants or written orders issued under it for the arrest, detention or removal of non-citizens from Canada “*when so directed* by an [immigration] officer”.

Given the complexity of immigration law, the police are ill-placed to properly enforce the *IRPA*. There are many categories of non-status people who are lawfully entitled to remain in Canada (e.g. persons not yet subject to enforceable removal orders, persons who have been granted a stay of removal, etc.). For this reason, the primary responsibility for immigration enforcement falls to the CBSA. It is also contrary to the public interest for police to enforce the *IRPA*. For example, the risk of immigration detention and removal prevents non-status victims and witnesses of crime from coming forward to the police.

The Toronto Police Services Board announced in December 2008 that they are not including the *Don't Tell* component of the *Don't Ask* policy they adopted in 2006.

Nevertheless, there are other ways status is disclosed and police have been known to turn non-citizens over to the CBSA, even where no crime has been committed and where no immigration warrant is in place. There have been instances where non-status women seeking police assistance in cases of sexual and domestic assault were handed over to the CBSA. While police protection should be a right to all people, this is something for front-line workers to keep in mind when assisting persons without status.

There appears to be no definitive decision made in Canada on this issue. While there is no statutory authority for the police to enforce immigration law in the absence of an immigration warrant issued by a CBSA officer, the point has yet to be litigated in the courts.

Q5. What types of warrants are there?

There are several types of warrants. The ones relevant to social service agencies working with non-status people are immigration warrants, criminal arrest warrants and search warrants.

Q6. What is an immigration warrant? How are they obtained? Who enforces them?

Immigration warrants are issued by a CBSA officer. CBSA officers have very wide discretion under the *IRPA* to issue warrants for arrest if they have “reasonable grounds to believe” that:

- An individual is inadmissible to Canada and a danger to the public.
- An individual will unlikely show up at an examination, hearing or removal.
- Or if a CBSA officer is not satisfied that the person’s identity has been established.

CBSA officers can arrest foreign nationals suspected of non-compliance with the *IRPA* with or without a warrant. However, individuals who are permanent residents or protected persons (Convention refugees) can only be arrested for immigration purposes where there is a warrant. CBSA only has authority to issue warrants for immigration purposes and does not have the power to detain citizens.

Immigration warrants are routinely issued against non-citizens for reasons that have nothing to do with public safety. Failure to appear at an appointment with the CBSA can result in an immigration warrant. Many clients do not provide CBSA/CIC with their updated address. One of the consequences is that they may not receive correspondence from CBSA/CIC asking them to appear for an appointment or examination. Clients who don’t want to provide their address to CBSA/CIC should at least provide a reliable mailing address and speak to a lawyer or licensed immigration consultant about their situation.

The CBSA operates its own Immigration Warrant Response Centre. All immigration warrants are posted to the Canadian Police Information Centre (CPIC). CPIC is a Canada-wide computerized information system that houses warrants for various law enforcement agencies (e.g. the RCMP, provincial and municipal police). During random stops and searches at traffic lights for example, often non-status persons are brought to police attention through a CPIC search and turned over to the CBSA.

Q7. What is a criminal arrest warrant? How are they obtained? Who enforces them?

A criminal arrest warrant is a court-issued document that authorizes the police to arrest a person suspected of a crime. Police officers can only arrest individuals without a warrant in limited circumstances defined in the *Criminal Code* (for example, where the individual is in the course of committing a crime or if the officer has reasonable grounds to believe that they have or are about to commit a crime).

For a police officer to obtain a criminal arrest warrant, she must appear before a judge or Justice of the Peace and make the case (through a written “Information”) of reasonable grounds that the person for whom the warrant is sought is suspected of a criminal offense. When a warrant is issued, any police officer can arrest the person identified in the warrant.

Q8. What are search warrants? How are they obtained? Who enforces them?

Search warrants are court-issued documents that authorize the police to search a particular premise to carry out an investigation. They are obtained in a similar way to criminal arrest warrants. A police officer must make the case to a judge or Justice of the Peace that the search is necessary. They must prove, for example, there are reasonable grounds to believe evidence relating to the crime is located in the premises to be searched. The search warrant lays out how the search is to be executed. It indicates the place, times and manner in which the search can be carried out.

The police cannot arbitrarily conduct a search of an agency. The search also becomes illegal if the police do not following the details of the search warrant. Similarly, unless consent is given by a person authorized to allow entry into the premises (for instance if an agency allows the police to conduct a search), a warrantless search is still illegal. Though, in emergency circumstances, there can be exceptions.

The CBSA cannot obtain a search warrant and has no authority to search an agency’s premises.



Q9. What are the legal obligations of social service agencies to the CBSA or municipal police without a warrant?

Without a warrant, the agency is under no obligation to speak to the CBSA or the police and should politely decline to do so. It is advisable that all agencies ensure staff know their rights and that all agencies develop policies on how to respond to the CBSA or police. These policies may involve directing them to the agency's counsel, executive director or another person that the agency authorizes to handle CBSA/police inquiries.

Q10. What are the legal obligations of social service agencies to the CBSA or municipal police with a warrant?

Agencies are legally obliged not to interfere with the execution of a warrant. If the CBSA or police appear with a warrant (for example an immigration warrant, a criminal arrest warrant or a search warrant), agency staff who interfere with its execution risk being charged with obstruction of justice.

However, only the police have the authority to lay any charges.

The CBSA is only responsible for immigration enforcement and does not have the authority to detain citizens. If agency staff interferes with the CBSA's execution of an immigration warrant, the CBSA may call the police for assistance.

What defines "interference" is a grey area and depends on the particular situation. Agency staff may choose to cooperate with the CBSA but it is unclear to what extent, if any, agency staff are *legally* obligated to do so. This issue is not addressed in the *IRPA* or the accompanying *Regulations* and has not been before the courts.

However, in day to day terms, there is always a risk the police will be called if an agency doesn't cooperate with the CBSA. This could lead to potential criminal charges for staff members (e.g. obstruction of justice), a request from the police to search the premises or an issuance of a search warrant to search the premises (where the police have made the case that it is justified).

Q11. How can an agency authenticate a warrant? What do they look like?

Agencies should ask to see the warrant. The police are obligated to produce the warrant. If they do not, there is no obligation to allow them to enter the premises and they should be politely asked to leave.

#### Immigration warrants

Immigration warrants take the form of a “Notice of Arrest under s. 55 of the *IRPA*.” The form number at the bottom of the warrant reads IMM 1285B. Remember, warrants are not required to arrest or detain foreign nationals (immigrants) under the *IRPA* unless they are permanent residents or protected persons. In this case, the warrant must be signed and identify the person to be arrested.

#### Criminal arrest warrants

The form of a typical criminal arrest warrant is laid out in Form 7 of the *Criminal Code* (see <http://www.canlii.org/ca/sta/c-46/part326776.html> for a sample). The warrant will:

- name or describe the accused person
- briefly set out the offense they are charged with.
- be dated
- and bear the signature of the judge, Justice of the Peace or court clerk.

#### Search warrants

The form of a typical search warrant issued pursuant to the *Criminal Code* is laid out in Form 5 of the *Criminal Code* (see <http://www.canlii.org/ca/sta/c-46/part326762.html> for a sample). The search warrant will include:

- the specific items they are looking for.
- the offence that led to the search.
- the address of the premise to be searched.
- the specific times the police are authorized to conduct the search.
- the date.
- the signature of the judge, Justice of the Peace or court clerk.

Q12. What are summons and subpoenas?

A summons is a court or tribunal issued document compelling a person to attend and produce documents or other items.

A subpoena is a document compelling a person to appear before a court or tribunal to provide witness testimony.

Q13. What do summons and subpoenas look like?

The form of a summons and subpoena depends on the legislation it pertains to. The standard information included is the date, time and location where the person is required to appear.

Court-issued summons indicate the court file number, have the dated signature of a judge, Justice of the Peace or court clerk, and may be accompanied by a court seal. A criminal subpoena to a witness will also indicate the offense which the accused is charged with.

In immigration and refugee matters before the IRB, the various Divisions of the Board (i.e. the Refugee Protection Division, the Immigration Division and the Immigration Appeal Division) may also issue summons to appear as a witness on the request of a party (for e.g. the CBSA). However a summons will generally not be issued where the witness's testimony is not necessary for a full and proper hearing of the immigration matter at issue.

Q14. What are our legal obligations when served with a summons or subpoena?

Summons and subpoenas are typically personally served to the person being summoned or subpoenaed. A summons/subpoena imposes a legal obligation for the named person to appear before the court or tribunal. Failure to appear can result in an arrest warrant being issued. Arrest warrants for failure to obey an IRB-issued summons can only be issued if the person was paid or offered witness fees and travel expenses set out in Tariff A of the *Federal Court Rules* and the person's testimony is still required for a full and proper hearing.

If agency staff is issued a summons/subpoena in relation to their work, a lawyer should be consulted.

Q15. Why would an agency receive a summons or subpoena?

Though really rare, agency staff may be subject to a summons or subpoena if they have information relevant to a trial or hearing. Agencies should develop clear policies on what kinds of information they should collect and file management and closure. Immigration status is often not legally relevant to services provided by many social service agencies.

Q16. Do summons/subpoenas override a Client-Service Provider Confidentiality Agreement?

Yes. Summons/subpoenas are orders that impose legal obligations. A Client-Service Provider Confidentiality Agreement (and communications between agency staff and clients) are not legally privileged.

Q17. What are the legal obligations of a caseworker involved in a client's immigration claim?

Caseworkers involved in a client immigration case must not knowingly counsel, induce, aid or abet a client to misrepresent or withhold material facts relevant to their immigration matters.

Caseworkers however are under no obligation to share information with the CBSA or CIC.

Q18. If a caseworker is asked by their client to find out their status, immigration claim status, or if there is a removal order out for a client, what legal information should she/he know before proceeding?

If a caseworker is unsure of a client's immigration status or the status of an immigration application their client has pending, they can only make inquiries to CIC about this information with their client's express consent.

The easiest way to find out these details is through the client's legal representative (lawyer or immigration consultant) that handled the application. With your client's authorization, you can speak to their lawyer/immigration consultant to find out the required information.

CIC says the status of certain types of applications (for example, sponsorship applications or applications for permanent residence) can be checked online or by calling the CIC Call Centre at 1-888-242-2100. However, the information provided is often not up-to-date.

Also, it is not always in the client's best interest to contact CIC. If it turns out an immigration warrant has been issued for the client's arrest, contacting the CBSA/CIC puts them at greater risk of arrest, detention and removal. Any inquiries to the CBSA or CIC on behalf of a client should be made by the lawyer/immigration consultant retained to handle the client's application.

A lawyer can further assist the client in trying to access her immigration information. Though unlikely, direct contact with the CBSA or CIC for example, may result in agency staff being summoned at some future point. A lawyer is much less likely to be summoned and can fight it.

## Next Steps: How can your organization prepare itself?

In conversations with many social service agencies, the above circumstances are rare and have mainly affected those in the housing and shelter sector. Even so, it is highly advisable that organizations serving non-status people develop policies and plans of action.

Refer to the guideline template in this report. Also, organizations who adopt a *Don't Ask Don't Tell* policy or a policy with a similar spirit ensure that immigration information is not collected. That is, no one shall be asked their immigration status upon accessing services (“don’t ask”), and if and where lack of immigration status becomes known to the organization, it will not be disclosed to the police or the CBSA (“don’t tell”).

# APPENDIX 1 - Moving Towards Visibility: A Forum on Creating Guidelines to Serve Non-Status Peoples in the Housing, Health, Settlement and Legal Sectors

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## **FORUM SUMMARY PROCEEDINGS**

July 10<sup>th</sup>, 2008

12 - 4:30 pm

St. Christopher's House, Community Hall,  
248 Ossington Avenue, Toronto

## **INTRODUCTION**

The aims of the forum were to:

- a) Provided an opportunity for participants in the social service sector to share best practices and build knowledge to improve service delivery to non-status immigrants;
- b) Inform the creation of a guideline template that outlines policy gaps in serving non-status immigrants.

The forum was organization by staff at the Portuguese-Canadian National Congress' Undocumented Support Network Project in partnership with Mahassen Mahmoud, Chantal Bombardier and Darshan Ambalavanar at St. Christopher House, with Lindsay Angelow at Access Alliance Multicultural Health and Community Services and with Priya Kissoon, CERIS Visiting Scholar from the University of British Columbia.

## FORUM AGENDA

- 12:00 pm    Registration and Lunch
- 12:30 pm    Welcome  
Debbie Pacheco, Portuguese-Canadian National Congress
- 12:40 pm    Speakers Panel
- Moderator: Armine Yalnizyan, Canadian Centre for Policy Alternatives
- Speakers: Axelle Janczur, Access Alliance Multicultural Health and  
Community Services; Carolina Gajardo, COSTI North York Housing  
Help; Keith McNair, Davenport Perth Neighbourhood Centre; Giovanni  
Rico Bolanos, FCJ Refugee Centre
- 2:00 pm    Question Period
- 2:30 pm    Break
- 2:40 pm    Group Sessions
- 3:30 pm    Report Back
- 4:15 pm    Next Steps and Evaluation



# PROCEEDINGS

## Speakers Panel

### A. Climate

- Dismal political environment in terms of addressing the issue of non-status immigrants.
- In each sector, there is a wide disparity regarding the level of knowledge on this issue. Attitudes within the sector also hinder the issue from moving forward systemically.
- At the same time, more organizations are getting on board and recognizing this is an important political issue.
- Programming that is focused on non-status people is especially challenging because of the lack of options and huge barriers for service non status immigrants face.
- Positive advocacy examples include gaining access to Canada's universal healthcare for babies born in Canada to non-status parents. There is also some headway with *Don't Ask Don't Tell* Campaign municipally.
- It seems the numbers of non-status people asking for help has increased.
- It is difficult for community organizations that can help this population meet the demand and many are feeling overwhelmed.
- Frontline workers are resourceful in helping non-status people and the most important thing is creating trust between the client and the worker.

### B. Funding

- Funding is a major issue. It is hard to get funds to work with non status people.
- Despite strong advocacy, many funders are slow in recognizing the need to service non-status peoples, particularly at the federal level.
- Citizenship and Immigration Canada's funding guidelines are very restrictive in terms of who can receive services and do not recognize the service needs of non-status people. Ministry response is that they know about the issue but there is nothing they can do to ease restrictive guidelines.

- Provincial funding is less restrictive and serves uninsured people because guidelines don't restrict it (NSP- Ministry of Health CHC criteria for funding not linked to status of clients) but discussing the issue is also touchy at this level.
- Municipal funding is more flexible.
- At DPNC, we have a settlement staff person dedicated part-time to non-status clients funded by United Way.

### **C. Non-status Policy**

- Making a decision that the organization has a commitment to non status immigrants is important as it is a decision to systemically work with non-status people.
- Being clear with the funder that status is not distinguished at the organization.
- Currently, we have a social action committee that speaks on behalf of the organization on social policy issues.
- Also, we have a newcomer non-status action committee where there is a staff from every part of the organization.
- We need a policy statement that says we will help non-status people without being reprimanded for it.
- Strategic planning is an opportunity to address this issue.
- Different policies have been implemented but most of them are based on human rights.
- Need to be committed to systemic change and not being afraid of putting resources forward.
- Senior management has the capacity to make changes to better support the organization's capacity – it's a collaborative effort.
- Staff is given supportive resources in making sure that discretion is used.
- This issue isn't just about service needs but about the need for advocacy. This is hard to expect too because the majority of staff are underpaid and overworked.

## **QUESTION PERIOD TO SPEAKERS**

### **QUESTION:**

*Organizations are weary about stating they service non-status people because of the potential negative attention from funders and more discriminate policies, or it increases risks for clients by potentially attracting immigration authorities. Can the panelists speak on the issue of funding and servicing non status people?*

### **RESPONSES:**

1. We don't get federal funds but we also don't advertise that we aid people without status. The board needs to take a leadership position about serving all clients regardless of funding.
2. Our organization has begun to show the funder how many non-status people we service so that there is an understanding of how much this group of people needs help. It's a dirty little secret no one wants to talk about. If nobody puts it in the open that they are servicing non-status people, non-status people become another level of criminality. Servicing non-status people needs to come out of the closet because Canada has active human rights treaties through which non-status people are covered.
3. Government funding is a problem for us because of our vocal stand on serving non-status people.
4. The closeted days are over because we have organizations that clearly state they help non-status people. We have started with children and education through the human rights lingo. We need to push those boundaries to get better services.

### **QUESTION:**

*Although we recognize there are wonderful agencies, we are concerned that organizations servicing non status people need to create a clear common agenda to reinforce the level of interagency agreements and protocols. How can we be effective to change things in the macro perspective? How can we work together for these people? If we work together, we can get positive outcomes for these people.*

## RESPONSES:

1. I don't think it's fair to ask every organization to go through the same path. It's impossible for any network or coalition to come with a done deal list of things.
2. It's challenging on many fronts because we cannot all stand up. Today is about sharing ideas to go back to our organizations and see what fits there and be committed to that plan.
3. Diversity is what makes these organizations great. We just need to be aware of what organization does what.

## QUESTION:

*One thing that didn't come up in the presentation was that the vast majority of people living without status are people of non-European descent. Both the Ministry of Health and Education are in close-door fashion developing equity plans. There is an opportunity to get word in. Do you know about that and are you involved? There is a current campaign regarding all persons, including landed immigrants, being able to vote, can we include non-status people? Also, Canada being the follower and never the leader in regards to regularization, is there an opportunity there and how do we take it?*

## RESPONSES:

1. Regarding health equity issues, we are involved in two of their focus groups and have spoken of this issue. Although, I have not yet seen the report which is supposed to come out next weekend. From our view point, they are the ones with the money. We need to learn how to work with those guys and create a new relationship with them.

## QUESTION:

*We have been campaigning in Toronto and during our organizing, many people are undocumented. During our campaign, we see many employers who harass the undocumented. From a legal perspective, how can we put some of the onus on the employer? Also, is there any work being done around permits?*

## RESPONSES:

1. Permits after overstaying are difficult because in order to apply for permits, you have to reapply outside of Canada. If you overstayed in Canada once, it is likely you will overstay again therefore this becomes a problem. Lobbying the government on this issue should be done because if someone has come here, has the ability to work and the employer needs them to work, it is a real problem if they can't stay. This is not a good situation for anybody. When you have undocumented workers, who are not allowed to legalize themselves, it becomes a situation where abuse is likely. Under the Immigration Refugee Protection Act (IRPA), it is still an offense for the employer to employ an "illegal." Under labor laws, the problem is the reporting aspect. Temporary resident permits are available for criminals, so why are they not available for "illegal" immigrants? If people can apply for this and also then have the RCMP and the labor laws enforced against the employer, it's a way to enforce labor status relationship between employer and employee.

## **Working Groups Report Back**

### **Health Sector Group Session:**

- Policies that exist in health sector: anti-oppression policies, privacy policies, advocacy policies, regularization support, uninsured client policy, mission statement with access to all, CIC funding pre-natal programs.
- It became a strategic priority in the organization to develop these policies by review committees pushing for policies, having committed staff members, and an active equity and diversity committee.
- Funding constraints are combated through looking for less strict funders.

### **Housing Sector Group:**

- We work with and want to help non-status people.
- Want a script of a template to speak to board members regarding non-status people and access to services.

### **Settlement Sector Group Session:**

- Working around constraints.
- Seeing that sponsors are beginning to recognize the need to service non status.
- Employing a mixed funding model (though available funds very limited). Finding funders that do not have restrictions on non status people.

### **Employment / Legal Sector Group Session:**

- A lot informal policies are out there, a sort of unwritten rule.
- Challenges around funding can be solved by arranging a wide array of funders.
- Need information on how to speak to funders so you can get funding from flexible funders.

### **Next Steps:**

An announcement was made regarding next steps of the *Undocumented Support Network Project* and its aim of creating a policy template identifying the policy and information gaps in the sector when working with non-status immigrations.

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