



## Rescaling the Sanctuary City:

Police and Non-Status Migrants in Ontario, Canada

Mia Hershkowitz  
Graham Hudson  
Harald Bauder

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John Shields

Ryerson Centre for Immigration & Settlement  
Ryerson University  
Jorgenson Hall, 627  
350 Victoria Street, Toronto, ON M5B2K3  
<http://www.ryerson.ca/rcis>

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## **Abstract**

*The sanctuary city movement is aimed at limiting the local enforcement of federal immigration law. Canadian cities have joined this movement by pledging a) to provide access to municipal services without regard to immigration status, and b) to not share information identifying non-status migrants with federal immigration authorities. Despite these promises, local police continue to cooperate with the Canada Border Services Agency (CBSA). Continued cooperation raises questions about the capacity of cities to honour these promises. This paper shares the results of a preliminary study of the policing of non-status migrants in the Canadian province of Ontario. Relying on interviews with high-ranking police officers in eight local jurisdictions, the authors analyze police perceptions regarding their role in the enforcement of federal immigration law as well as their obligations to honour the spirit and the substance of sanctuary city policies. The study reveals that many police officers believe they possess legal authority to report non-status migrants to federal authorities where, in fact, this authority does not exist. The authors argue that this belief rests on a host of misconceptions about the relationship between criminal law and immigration law, claims of jurisdictional immunity from municipal government, and distortions of the historic, foundational principles of policing in Canada. The authors argue that greater protection of the rights and privacy of non-status migrants requires at a minimum a rescaling of sanctuary policies to the provincial level, where policing may be subject to more stringent laws and regulations.*

**Keywords:** Sanctuary City; securitization of migration; crimmigration; non-status migrants; policing; scale; jurisdiction

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## Introduction

The sanctuary city movement is a heterogeneous, urban response to the social, political, and legal exclusion of non-status migrants. (Squire & Bagelman 2012; Faraday 2012; Bhuyan 2012; OCASI 2012; Ridgley 2010, 2008; Sawchuk & Kempf 2008). Already well underway in the United States, Europe, and other parts of the world, the movement is rapidly spreading across Canada. One index of this change are official city ordinances pledging support to non-status residents. Toronto was the first to officially adopt a sanctuary city policy in 2013, with Hamilton, Vancouver, Montreal, London, Ajax, and Edmonton following suit. While policies and practices vary (Bauder, 2016), three qualities are universal. The first is that cities promise to provide all residents of their cities access to most municipal services without regard to immigration status (or lack thereof). The second is a promise not to ask for information concerning one's status unless relevant to the provision of a service. Finally, cities promise not to share information identifying non-status residents with Federal authorities, including the Canada Border Services Agency (CBSA), unless clearly required to do so law.

A closer look at the implementation of these ordinances reveal uneven implementation of all three of these promises within and across cities. In the cases of Toronto and Vancouver, reports indicate service provision remains spotty and uneven (Hudson et al. 2017; FCJ 2015) while the collection and sharing of information continues unabated- most especially by local police services ((NOII, 2015; Sanctuary Health, 2018). Conscious of this fact, non-status migrants continue to hold a well-founded fear of local police and, indeed, local authorities generally (Hudson et al. 2017; NOII, 2015). The policing of non-status migrants is likely part and parcel of "urban securitization" - a process in which local state and non-state actors participate in the surveillance and social exclusion of persons deemed dangerous to state and citizen (Valverde 2011, 2008; Lippert & Walby, 2013).

Sanctuary cities in the United States have been comparatively more rigorous in challenging the local projection of federal immigration authority (Armacost, 2016; Kalhan, 2013). One notable difference is that sanctuary cities typically enjoy the formal support and even advocacy of local police, who seem to recognize that fear and distrust inhibits community-based policing and, ultimately, the investigation of crime. But sanctuary cities have also enjoyed the protection of binding state-level laws, such as the *California Values Act*, which explicitly prohibit the use of local and state resources to enforce federal immigration law and which prohibit the sharing of data except under clearly articulated conditions (Somin, 2019). Thus far, courts have on the balance upheld the legality of sanctuary policies against the Trump administration's varied attempts to punish or otherwise coerce sanctuary jurisdictions into abandoning their policies.

Canadian experiences have been markedly different. Unlike the Trump administration, the Federal government of Canada has not taken an official position on sanctuary cities, while cities have not pressed their authority to protect information pertaining to their residents. As a result, there is considerable uncertainty about the *legal* limits of police authority and even less clarity about what strategies we might employ to persuade local police to prioritize community-based policing above the enforcement of immigration law. The purpose of this paper is to explore these two questions. While very much interested in ongoing legal and policy debates, our primary aim is to relay the results of an empirical study into how local police in Ontario interpret the meaning, value, and place of sanctuary policies in day-to-day operations. In particular, we are curious about how police view their role in the enforcement of immigration law and in implementing sanctuary values. To this end, we relay our interpretation of interviews with 11 police officers drawn from 8 local police services in the province of Ontario, as well as

documentary research related to policing operations, policies, and oversight.

As we will argue, there seems to be a common, informal practice of reporting information to federal authorities, and a range of rationales for the practice. These rationales include perceived roles in the administration and/or enforcement of immigration law, interpretations of policing regulations that prioritize security above community-based policing models, and strong positions on the limited authority of municipal governments over police operations. While these findings will not surprise many (NOII 2015), our contribution is intended to a) reduce conjecture about police perceptions and b) suggest that a necessary (albeit insufficient) solution is to amend provincial laws and regulations to prohibit local police from sharing of information with federal authorities, except in a very narrow range of exceptional circumstances. This rescaling of sanctuary policies from the local to the provincial level would mirror the strategies employed in parts of the United States and, we argue, could usefully draw from recent legislative changes meant to address the problem of carding in Ontario (Tulloch, 2018). Indeed, the analog of carding provides a timely opportunity to reframe the nature and limits of policing of non-status migrants, both in Ontario, and in Canada generally.

In the first section of the paper, we provide an overview of the sanctuary city movement in Canada. Second, we explore the history of policing of non-status migrants in Toronto, cataloguing the process by which the Toronto Police Service adopted a formal “Don’t Ask” policy in 2006—the first of its kind in Canada. Third, we explore the impact of the broader sanctuary city policy adopted by municipal government in 2013, highlighting the tense interactions among municipal policy, police operations, police accountability mechanisms, and socio-political factors. Fourth, we outline the methodology of our research and then, fifth, we outline our findings. We end with a brief summary and discussion of our findings.

## **I. Sanctuary City Policies in Canada: An Overview**

Non-status migrants – also referred to as irregular, undocumented, or illegalized migrants (Bauder, 2014, Goldring *et al.* 2009; Lyon 2003-2004) – are persons who have entered or remain in Canada without the permission of the federal government. The definition and classification of “non-status” is contested, partly because the term by its nature lacks a referent in official legal orders and traditional conceptions of citizenship. Even official status can fluctuate between different degrees of contingent and precarious legalities and into the realm of non- or semi-legality (Goldring and Landolt, 2013; Düvell, 2011). Examples include asylum seekers whose refugee claims have been denied at a trial of first instance but await appeals, failed refugee claimants who have exhausted appeals, persons with expired temporary work permits, and those who have received or seek official status through humanitarian and compassionate grounds considerations (Nyers, 2010). Recent research suggests that temporary foreign workers in Canada whose permits have expired pursue official status through various administrative mechanisms (Nakache and Dixon-Perera, 2015); during this time, they are officially without status and yet they work from within the immigration law system, such as by filing refugee claims or Humanitarian and Compassionate applications.

Although there are no official statistics, academics have estimated there may be between 35,000 non-status migrants in Ontario and at least 500,000 in Canada, most of whom reside in Toronto (and the Greater Toronto Area), Vancouver, and Montreal (Hynie 2016; Magalhaes *et al.* 2011; Bou-Zeid 2007; Khandor 2004). The human rights implications of living without status are profound. Fear, anxiety, and a broad range of social determinants negatively affect mental and physical health which, when coupled with lack of access to health services, produces cascading, pernicious effects (City of Toronto 2013;

Barnes 2011; Ruiz-Casarez et al. 2010; Larchanche 2012). Non-status migrants also face barriers to education, shelter, labour rights, police protection, and other rights and services (Bihari 2011; Inghammar 2010; Goldring & Landolt 2013; Steering Committee 2013; West Coast LEAF, 2012; Maldonado 2013; Marrow 2012).

The concept of sanctuary is historically linked to ancient cities and religious groups that offered protection from “outside” political authorities (Bagelman 2016; Shoemaker 2013; Monforte & Dufour 2011; Villazor 2010; Basok 2009; Ridgley 2008; Lippert 2005). In the latter half of the 20<sup>th</sup> Century, churches in Denmark, France, Finland, Germany, Norway, Sweden, the United States, and elsewhere offered sanctuary to rejected refugee claimants, asylum seekers, and non-status migrants (Bauder, 2016; Caminero-Santangelo 2013; Loga *et al.* 2013; Millner 2013). A more civic, legal, and bureaucratic conception emerged in the United States, when San Francisco passed its “City of Refuge” resolution and ordinance in 1985 and 1989 respectively (Mancina, 2016, 2013; Ridgley 2008; Bau 1994). This model included formal directives against collecting and/or sharing identifying information with federal authorities. Many other American cities have since adopted similar “Don’t Ask, Don’t Tell” (DADT) policies, including New York, Boston, and Chicago, although they have struggled to realize their core objectives (Houston & Lawrence-Weilmann 2016; de Graauw, 2014; Kinney and Cohen, 2013; Walker and Leitner, 2011; Varsanyi, 2010, McBride, 2009).

The concept of sanctuary acquired a civic connotation in Canada in the mid-2000s, when community service organizations (CSOs), human rights advocates, professionals (e.g. teachers, doctors, lawyers), and migrants began mobilizing to secure access to education, health and police protections. Mobilization was especially concentrated in Toronto, leading to the introduction of a Don’t Ask (DA) policy within the Toronto Police Service in 2006 and the production of a more fulsome DADT policy in the Toronto District School Board and Toronto Catholic District School Board in 2007 (Hudson *et al.* 2017; Villegas, 2013; MacDonald, 2012; Nail *et al.* 2010). Continued mobilization led to a comprehensive, city-wide sanctuary city policy in Toronto in 2013, which applies to 21 service areas, including libraries, shelters, and Toronto Public Health. Now styled “Access T.O.,” the objective of Toronto’s policy is to provide non-status migrants with a safe space, engender civic engagement, reduce socio-economic marginalization, and prevent victimization and exploitation (Access T.O. motion 2013). Hamilton, Vancouver, London, Montreal, Ajax, and most recently Edmonton, have passed similar policies, although none uses the term “sanctuary city”.

The policies of these cities vary. For example, Vancouver’s Access Without Fear Policy does not apply to local police, the Park Board, or libraries. These differences relate to factors internal to cities, such as the statutory authority of City Councils, but also to jurisdictional factors rooted in federalism. In Canada, cities are creatures of provinces, lacking independent constitutional status; all authority is delegated by provincial governments and are contained within the four corners of enabling statutes of incorporation. Eligibility criteria for many services are set by provinces, even though they are administered by cities. Housing, social assistance, health care, and education fall within this category.

Formal sanctuary cities are located in four Canadian provinces (Ontario, Québec, British Columbia, and Alberta), each of which has distinctive relationships with the Federal government, policy positions on (irregular) migration, and approaches to the delegation of local authority. The precise scope, content, application, and aspirations bundled up in sanctuary city proclamations are conditional, not just on the internal dynamics of city politics, but on distinctive and shifting intergovernmental linkages.

One theme that unifies sanctuary city policies, not just in Canada, but the US and the UK as well, is that they have emerged in the context of harsh national and international treatment of migrants, and asylum seekers in particular (Dauvergne 2016, 2008; Squire &

Bagelman 2012,). The “uneasy” relationship between security and liberalism is one aspect of this treatment, where discourses of risk, danger, illegality, anxieties about resource implications and deceit intermingle with conceptions of deservingness, producing tensions related to social and political inclusion (Mancina, 2016; Garnder II, 2014; Bigo *et al.* 2010; De Genova & Peutz 2010; Stumpf, 2013, 2012, 2006; Pratt 2005). At the federal level in Canada, these discourses have combined to target irregular migrants *en masse* through the deployment of preventive and deterrent measures at and beyond the border, and the blockage of pathways to status for those resident in Canada (Atak *et al.* 2017; Bond *et al.* 2016; Ellis 2015; Atak & Crépeau 2014; Koser 2010). Far from being confined to the federal scale, bordering practices have shifted downwards to provincial and local scales, horizontally across institutions (some of which are not directly related to immigration) and across the public/private divide (Hudson, 2019; Lippert, 2006; Pratt, 2005). Local and provincial enforcement of federal immigration law occurs directly through the sharing of personal information with federal authorities, especially (but not exclusively) by local police (No-One is Illegal 2015; Hudson 2011, Côté-Boucher 2008), and indirectly through the denial of services by city staff and other authority figures (FCJ Audit Report 2015, City of Toronto, Staff Report 2014). Research shows that denial of services are shaped by a host of factors, including security and liberal logics of risk and cost, respectively, (P. Villegas 2015; Chauvin and Garcés-Mascreñas 2012; F. Villegas 2013; Houston & Lawrence-Weilmann 2016, Lippert 2005), as well as more fluid discretionary power linked to institutional culture, ideology, and bias (Hudson *et al.* 2017; Goldring & Landolt 2013; Landolt & Goldring 2015, 2013).

## II. Local Police Services and Non-Status Migrants in Toronto: Policies and Practices

The policing of non-status migrants in this broader context of securitization and criminalization catalyzed the sanctuary movement in Toronto. In November 2004, a complaint was filed against the Toronto Police Service (TPS), alleging that the service “has a practice of inquiring about the immigration status of persons seeking police services and of providing that information to immigration authorities” (Toronto Police Services Board, 2005, p. 6). The complainant stated further that:

this practice of asking for and reporting immigration status where people are seeking the protection of the police hinders public safety. If a person fears contacting the police for fear of deportation even when he or she may be the victim of or the witness to a serious crime, people who should be prosecuted for serious criminal offences will remain at large and remain a threat to the community” (Toronto Police Service Board, 2005, p. 6).

The TPS, Corporate Planning Division, conducted a review and concluded that there was no requirement to change the procedures or policies of the TPS (Toronto Police Services Board, 2005). Up until this time, there existed no formal policies regarding whether, when, or why an officer could inquire into the immigration status of a victim, witness, or other person, rendering this a matter of officer discretion (Deshman, 2009 p. 219). The TPS’s position was that because there was no official policy requiring reporting, one could conclude immigration status generally does not bear on the enforcement of criminal law; it did admit, though, that it was legally obligated to report immigration “irregularities” to the federal government (Deshman, 2009, p. 219; TPSB, 2005 p. 7-8). What does this mean? In the absence of clear policy, it could mean only one thing: each officer possesses broad discretion to participate in the enforcement of immigration law and the TPS was confident this discretion would be exercised with fastidious adherence to the

principles and purposes of policing, including the protection of victims.

The TPS did not elaborate on the statutory foundation for policing immigration “irregularities”, occluding the link between officer discretion and open, stable, and public legal rules. The foundations and boundaries of officer discretion were soon taken up by the Toronto Police Services Board (the “Board”): a provincially-created civilian oversight body mandated to produce policies for the “effective management” of the TPS, establish the overall objectives and priorities of the TPS (in partnership with the Chief of Police), and produce guidelines for the administration of public complaints against the TPS (Police Services Act, s. 31). We should note parenthetically that the Board does not have authority to make directions or orders regarding operational matters or to issue directions to persons other than the Chief of Police. However, policy directives may indirectly influence such matters.

A working group including the Chair of the Board Alok Mukherjee and the Chief of the TPS Bill Blair explored options for improving police operations with respect to immigration law. The Board ultimately passed a “Victims and Witnesses Without Legal Status” policy (TDSB, May 2006, p. 18). This policy had a “Don’t Ask” (DA) component, prohibiting inquiries into the status of victims and witnesses unless there are “*bona fide*” reasons to do so. *Bona fide* reasons include: when immigration information is necessary to prove elements of an offence, when a Crown prosecutor requests the information, or when “circumstances make it clear that it is essential” for the safety of officers or the public (TPSB, 2017, p. 223). The latter criterion is clearly discretionary. The Board also directed the Chief of Police to adopt policies designed to encourage victims and witnesses to come forward. Notably absent from the Board’s policy was a ‘Don’t Tell’ (DT) component, which would have restricted the conditions under which the TPS could share personal information with federal immigration and border services agencies. In March, 2007, the TPS produced its official *Victims and Witnesses without Legal Status* policy, which also excluded the ‘Don’t Tell’ component (TPSB, November 2008).

This omission was premised on the view of Chief Blair that police have a statutory responsibility to participate in the enforcement of immigration law under certain circumstances. In particular, Chief Blair argued the provincial *Police Service Act* (PSA) and an attendant *Disclosure of Personal Information Regulation* allows, and in some instances requires, information sharing. The conditions for sharing information include instances when an individual is under investigation for, has been charged with or convicted for an offence under any federal Act including the IRPA (TPSB 2006, pp. 4-5 ILC, 2008, p. 14). This position was contested in public hearings before the Board (TPSB, 2006, p. 147). Chief Blair buttressed his reading of the law by analogizing non-status migration with criminality- since non-status migrants reside in the country “illegally”, immigration irregularities fall within the purview of the TPS as a law-enforcement agency (TPSB 2006, p. 4; 2008, p. 55). The Chief considered it operationally necessary for officers to retain discretion with respect to collecting and sharing immigration-related information. By the end of the Board review of police practices, one could see the crystallization of a policy position on non-status migration within the TPS, but one that seemed to encourage rather than constrain cooperation with federal authorities in a nebulous range of circumstances.

This position was and remains subject to strong legally-informed criticism. A second working group was struck in early 2008, this time composed of lawyers, activists, and academics. This Immigration Legal Committee (ILC) parsed through available laws relating to police powers in the realm of immigration law, concluding in May that local police lack an identifiable obligation within provincial or common law to report to or cooperate with the CBSA; the only time police are obligated to cooperate is if expressly required to do so under federal immigration law (ILC 2008 p. 12). The second finding of the ILC is unassailable- any discretion to cooperate with federal authorities must be exercised in accordance with the principles and purposes of policing encoded in the PSA,

the *Charter*, and the common law- the only three sources of police powers in Canada. The ILC argued that discretionary cooperation with federal authorities runs counter to each of these laws, insofar as it instills fear and distrust within the non-status and migrant communities and arguably, rests on discriminatory practices, including racial profiling. At root, fear and distrust prevents victims and witnesses from contacting police. This undermines the primary roles of police to protect and be sensitive to victims, to enforce the criminal law, to investigate crimes, and to cultivate sound police-community relations (PSA, ss. 1, 4). To its credit, the Board considered the report of the ILC, but went ahead and adopted the *Victims and Witnesses without Legal Status* policy with no alterations. In the words of the Board, 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” (TPSB 2008, p. 56).

The TPS has implemented the policy through training courses, specifically in the “Sexual Assault Investigators” and “Domestic Violence Investigators” courses (TPSB 2017, pp. 224-225). The policy has also been formally included in the TPS’ Standards of Conduct and in its Service Procedures, again with specific reference to sexual assault and domestic violence investigations. This policy allows officers to inquire about status if there are *bona fide* reasons to do so.

### III. Municipal Sanctuary Policies and Policing in Toronto

With modest inroads made in policing, activists turned their attention to the production of city-wide sanctuary policy in the late 2000’s and early 2010’s. Groundswells of activity were notable in the context of labour and health, in which NGOs formally and informally aligned with City staff produced reports documenting the rights and policy implications of Toronto’s growing non-status population (City of Toronto, 2005(a)(b); Access Alliance, 2011). In October 2012, the Executive Director of Social Development, Finance and Administration submitted a report to the Community Development and Recreation Committee, titled *Undocumented Workers in Toronto* (City of Toronto, Social Development, Finance & Administration, 2012). On February 20, 2013 Toronto City Council acted on the report, reaffirming “its commitment to ensuring access to services without fear to immigrants without full status of without full status documents” (City of Toronto, City Council, 2013, para. 1). In 2014, the initiative was formally styled Access T.O., which aimed “to ensure that all residents are able to access municipal and police services, regardless of immigration status” (p. 2). The policy is formally binding on 21 City Divisions, Agencies, and Corporations, including Parks, Forestry, and Recreation, Children’s Services, and Public Health.

It is important to differentiate between Access T.O. and the TPS’ *Victims and Witnesses Without Legal Status*. Access T.O. falls under the municipal jurisdiction of the City of Toronto, which has no authority over the TPS – not even with respect to TPS policies. The regulation of policing is exclusively within the authority of the Province of Ontario, which directs its will through the PSA and associated regulations; by virtue of provincial law, the Board has a limited role in shaping policy. City Council can leverage influence on the Board and, in this way, indirectly influences the TPS. This influence is sourced in the power of City Council to appoint four members to the TPSB: two City Councillors, the Mayor of Toronto (or another councillor if the Mayor declines), and a layperson. The province appoints the remaining three members. These seven Board Members then elect a Chair. If the layperson sides with the City, and the Mayor and City representative are in alignment, then the City can have a majority of votes on matters that come before the Board.

City Council has made several attempts to leverage the TPS to comply with the spirit of Access T.O. In 2015, it requested the Board to investigate and then report back

on the following issues: 1) statistics on the number of undocumented/non-status community members reported by the Toronto Police Service to the CBSA, 2) agreements that exists between the Toronto Police Service and the CBSA, 3) practical implementation of the Access without Fear policy, and 4) and the possibility of amending the PSA to regulate that police officers only report immigration status to the CBSA when directed by the courts after a conviction has been registered (City of Toronto, City Council, 2015). This resolution followed on the heels of a widely-read “often Asking, Always Telling” report that documented the extents to which the TPS has been actively collecting and sharing information with the CBSA (NOII, 2015). The report documented how the police in the Greater Toronto Area made 4,392 calls to the CBSA’s Warrant Response Centre (WRC) between November 4<sup>th</sup>, 2014 and June 28<sup>th</sup>, 2015 (NOII, 2015, p. 21). The TPS made 75% (3,278) of those calls, which is a greater number ‘than the police services of Montreal, Quebec City, Ottawa, Calgary, Edmonton, and Vancouver combined (2,729)’ (NOII, 2015 p. 21). ‘Status checks’ were the most common reasons for calls – 83.35% in the case of the TPS as against a national average of 72% (NOII, 2015: 22). CBSA call centre procedures define status check as, among other things, when ‘law enforcement officers [...] call to verify the immigration status of a subject because they have a suspicion a subject may not have legal status in Canada and therefore may be of interest to CBSA’ or when they call ‘to confirm the status of a subject they have in custody’ (NOII, 2015: 22).

The sheer volume and circumstances of calls cannot be explained by reference to the *bona fide* reasons exception found within the TPS’ DA policy. Since many of the calls were status checks, officers would not have had any advance knowledge of immigration “irregularities” – just suspicions. The statistics also could not include instances of the TPS receiving specific requests for information from provincial or even federal Crown attorneys, since data would be sent directly between the TPS and these authorities- there would be no need to filter names through the immigration system. It is also noteworthy that since the WRC receives and stores the name and address of a person whose status is being checked, the unjustified act of “asking” about status would simultaneously be an unjustified act of “telling”.

To be clear, the CBSA does not have records of all persons lacking status in Canada, and so is not actively investigating a sizeable segment of the non-status migrant population in Toronto (Atak et. al, 2018). This is possibly because most non-status persons have over-stayed visas and so have not been subject to a deportation order. The CBSA depends on local police to identify and locate persons who lack status and others subject to deportation (TPSB, 2017, p. 240). When the TPS uses the WRC as a means of surreptitiously sharing information with the CBSA, one must conclude a) it lacks express statutory authority to do so in most cases and b) it contravenes its own DA policies.

Current Chief Mark Saunders has tried to defend the TPS by disputing the accuracy of and inference from the numbers reported by NOII. Reporting on its own, internal data, the TPS counted only 674 calls to the CBSA. It explains the discrepancy by insisting that the CBSA codes most initial calls as “status checks”, even though the TPS had other reasons for calling. It also suggested that subsequent calls regarding the same person means “one occurrence is statistically tracked by the C.B.S.A. as multiple calls” (TPSB 2018, p. 42.) However, in listing the reasons why officers may call, the TPS continued to employ the vague and overly broad *bona fide* reasons category of public and officer safety. Worse, it routinely made calls to the CBSA about “possible abuse of a foreign national”, economic exploitation, and to follow through on “immigration tips” (TPSB 2018 p. 43); ironically, these tips are most likely to be provided precisely by an abuser (Hudson et al. 2017). The TPS also regularly called the CBSA about boilerplate immigration matters that were actually unrelated to border control (e.g. general passport information, visa processing) but that could have resulted in the sharing of information

identifying non-status persons.

The position of the TPS remains one of broad discretion infused with a powerful securitization logic that constructs irregular migrants as a presumptively risky population. Provincial law is used to sidestep sanctuary policy whenever an officer so desires. According to Chief Saunders, the PSA and privacy legislation:

both provide authorization for police officers to *proactively* assist the C.B.S.A. with personal information about persons under investigation, charged and/or convicted of serious Criminal Code (C.C.) and Controlled Drugs and Substances Act (C.D.S.A.) violations. The (Immigration and Refugee protection Act)... directs when police officers are legally obliged to act as peace officers under this Act.(emphasis added, TPSB 2017 p. 236)

Of course, many persons lacking status are not under investigation nor have they been charged or convicted of an offence; if this occurs, it would be only *after* local police share information with the CBSA. Chief Saunders added that the TPS, “as a member of the law enforcement and public security community, respects and supports the mandate of other law enforcement agencies, like the C.B.S.A.” (TPSB, 2017 p. 238). This suggests that officer discretion may be shaped by a shared sense of obligation among a field of security professionals. This obligation, in turn, is influenced by a larger security discourse that permeates multiple scales of governance (Hudson, 2019; Bigo, 2002). But none of this informs a credible legal argument about information-sharing.

The TPS has steadfastly refused to change its practices, minimizing the number and negative impact of calls. This brings us full circle, suggesting that the production of formal policies, procedures, and codes of conduct have not had an appreciable impact on information-sharing between the TPS and the CBSA. This begs the questions of whether there is value in adopting such policies in other jurisdictions, what formal and informal factors affect the internalization of sanctuary-style values by local police, and how this process of internalization relates to countervailing security logics,

#### **IV. Methodology**

The empirical component of our study focuses on municipal police services in the Province of Ontario. Ontario’s provincial policing strategy, *Ontario’s Mobilization & Engagement Model of Community Policing*, is a community-based policing model. Principles of community policing such as partnership, engagement, and trust have become essential elements of evaluating service provision (Whitelaw and Parent, 2010). Police Services in different municipalities in Ontario, including in Toronto, have implemented programs to encourage community partnership. The community-based policing model, with its focus on community engagement and trust, pairs well with the principles of urban sanctuary.

As noted, the TPS is the only police service in Ontario that has a formal DA directive on police operations towards non-status persons. We have also canvassed debates about the practical/legal and empirical implications of adopting formal policies in the case of Toronto. In light of these debates, we are interested in how police services that lack formal DA policies conceive of the nature, sources, and bounds of their authority to collect and share information about immigration status. By comparing perspectives of the TPS (as identified above) and police services that lack a formal DA policy, we would be better positioned to engage with localized questions of policy impact, bases on how police interpret provincial law, and the influence of securitization on police discretion.

We interviewed police officers in 8 municipalities in Ontario. Purposive sampling

(Guba and Lincoln, 1988) was used to recruit police officers who have a high rank within their police service, including, Chief, Superintendent, Staff Inspector, Inspector, or Staff Sergeant, and who are employed with police services from different municipalities in Ontario. For reasons of confidentiality, we do not disclose the names of municipalities or the participants' gender. We included high-ranking police officers in this research because of the hierarchical structure of decision-making authority, the nature of information dissemination, and the development of policies and directives through police services, which tend to follow a top-down approach.

The study required multiple levels of approval before participant recruitment was initiated, including our university's Research Ethics Board, the Ontario Association of Chiefs of Police, and the municipalities' Chief of Police. Of 13 Chiefs contacted, eight provided permission for their police services to take part in the study. Once this approval was received, the participant request was passed down the chain of command to determine who within the individual police services would be an appropriate participant. Contact information was provided for potential participants from each police service. The final step of recruitment included contacting these potential participants through email and phone. The final sample includes a total of 11 participants. The interviews were semi-structured and were an average of an hour in length. Interviews were recorded with the participants' consent. Participants were given their transcript for review as a method of ensuring the accuracy of the transcription.

## **V. Custom, Discretion, and Jurisdiction**

In this section, we review some of our key findings with respect to two overlapping themes we observed. The first concerns officers' perceptions of the utility of, need for, and statutory basis of a formal policy on non-status migrants, with specific reference to a DA policy akin to that adopted by the TPS. This theme yielded interesting, amorphous and at times internally inconsistent stances which we approach through the concepts of custom and discretion. The second theme concerned jurisdiction, where we tracked officer perceptions about the scope of police officer authority over matters that have immigration law dimensions. Also relevant within this category were officer perceptions concerning the limits of city council authority over operational matters – especially those that have federal dimensions.

### **a. Custom and Discretion**

As noted, the TPS is the only Ontario municipality that has an official policy regarding non-status migrants. We were interested in finding out whether there might be informal policies or customs within other local police services in Ontario that guide officer discretion over the collection and sharing of information. As we understand them, customs are stable interactional expectancies that arise within a discursive community, that have a binding or authoritative quality, and that guide discretionary decision-making. Custom is typically non-chirographic in form, being sourced in repeated behaviour, (self-)perceptions of behaviour as "lawful" or "authoritative", and discourses that reinforce these perceptions (Hudson and Alati, 2018; Fuller, 1977).

The theme of custom was not immediately evident, as all participants told us that their service does not have any informal policies regarding non-status migrants. One Inspector stated:

... we have no informal procedures, we have the formal ones for all the reasons that we clearly outlined and we follow them. There is no 'in

addition to the formal ones, we have secondary informal ones...’, we have none of those (Participant 1).

A Chief of Police stated the same but confirmed the existence of organizational culture that is suggestive of custom:

When you are talking informal policies, I don’t think there is any such thing as informal policies, you may have culture and attitude. Culture and attitude, which as you’ve referred to, the informal policies, and it’s a very real area that we have to be concerned about, because how you build culture, then depends how the conduct is from our officers. You know, I have been in [municipality] for 14 years now, and I can honestly say, I don’t see an attitude, a predominant attitude, in the front line or even support staff or anyone else dealing with, immigration issues (Participant 2).

This statement does not support the participant’s intended claim that there are no customs – only that there are no “predominant” customs in place. This of course leaves room for the co-existence of multiple interactional expectancies. As we will soon see, multiple bodies of custom are evident, each informed by distinctive institutional values as well as by ambient rationalities.

An Inspector also invoked the concept of attitude when discussing informal policies, but focused more on individual officers than culture:

No, there is no unofficial or subversive, policies we don’t have anything like that, and I think any opinions are probably not specific to police, I think it would be just peoples general, societal opinion of things. I think ultimately, I don’t think there is a strong underlying feeling amongst any of our officers, I think if anything it may vary from person to person, just based on their non-policing background, their own experiences (Participant 3).

Notice here that “societal attitudes” are seen to influence discretion. But notice also the consistent sense in which informality or custom is viewed pejoratively, as being “subversive”, or perhaps, “arbitrary” i.e. hard to control and potentially inconsistent with formal policy and desirable policing culture. At this point, we have not seen a clear indication of whether, how, or why sanctuary or security may constitute some of these societal attitudes.

In this respect, it was interesting to note that participants commonly believed that formal DA policies are unnecessary because municipal police services do not have a role in the enforcement of immigration laws. A Chief of Police stated: “Within an organization that deals with community safety, our mandate is not to protect our border, that’s the RCMP’s or CBSA’s responsibility” (Participant 2). A Senior Officer further raised the concern that a formal policy would be confusing and perhaps even viewed as illegitimate by front-line officers:

I think it would be difficult because I think the police service here, as a whole would be sort of, “why do we need this”, when we are already doing, we are already policing everyone and providing service to everyone. So, you know, why are we making another directive, there is a lot of directives that we have, so that would certainly be one where its, “okay here’s another one”, when we’ve never policed like that, so why do we need it (Participant 4).

This perspective conveys again the theme of custom, this time by way of

institutional values related to community-based policing and bias-free policing. Many officers believe that their police service operates according to core values that already do the work of ensuring service provision to all persons, including non-status migrants. Codifying these values under the rubric of a DA policy that prioritizes the interests of non-status migrants would only cause confusion or, worse, some degree of resistance insofar as it suggests that officers are being asked to tread into the field of immigration. This suggests that, contrary to the literal statements of the participants, there are customs in place the value of which lie precisely in their hidden or informal nature. Indeed, in the views of many participants, customs and institutional values obviate the need for formal policies.

Some participants saw merit in adopting a distinct and formal DA policy:

The last thing that you want is somebody that doesn't want to call 911 because they are afraid that they are going to have to leave the country. Certainly if that is an issue, that is something that we need to be aware of, and we do need to make policy if that is an issue, because that's the last thing that you want, something terrible happening to somebody just because of their fear of the unknown (Participant 6).

This position was an outlier, but it raises a question that was often lurking in the background- what values, assumptions, logics, and priorities inform the content of customs and guide discretion.

A closer analysis of the content of customs shows there are two relevant sets of value: security and a loose ordering of diversity, inclusion and bias-free policing. Between the two, security has been far more influential operationally. Some participants explained that if a police officer discovers someone lacks status, the procedure (but, we were told, not the policy) is to contact the Canadian Border Services Agency (CBSA). As explained by a Senior Officer:

They just walk in, they come to us, or we come upon them, and they ask us for help. So this directive indicates our responsibilities, and it is basically about us making a lot of phone calls to Canada Border Services, and putting them in communication with them, and they [Canada Border Services] would totally deal with that (Participant 4).

The same Senior Officer explained further that this procedure is not related to service provision:

So all it is, is what we do, so we need to call the CBSA and just follow these steps basically. It doesn't have anything to do though with service, all these directives are just indicating, no matter what the person's status is, if the person has a certain status, here is what you have to do (Participant 4).

A Superintendent described immigration as a "secondary" issue:

We have procedures in place, that speak to immigration, although that plays a secondary role in this, because if we deal with that type of matter, we immediately call Canadian Boarder Services and hand off the investigation. So we do have a procedure in place that speaks to that, but not specifically to sanctuary city policy. So any time we get anything to do with immigration, we hand it off (Participant 5).

These propositions rest on the stark claim that police services are not in the

business of enforcing immigration law - a familiar theme. But they convey the implicit claim that sharing information with federal authorities does not constitute enforcing immigration law. It goes without saying that this latter claim is highly contestable if not clearly false; the reality is the CBSA depends on the assistance of local police to identify persons who would otherwise elude attention. If the identification of non-status migrants would not occur nearly as often but for the help of police, then police play a causal, functional role in border enforcement. No matter how one chooses to classify this relationship jurisdictionally, it runs counter to the basic principles of the PSA just the same and, in this manner of speaking, can be regarded as extra-legal.

On occasion, participants saw how cooperating with the CBSA is to play a role in border enforcement. An Inspector stated that the CBSA is a law enforcement partner and as such there are instances when they will work together:

For example enforcement of warrants or arrests, or requests, for example CBSA, working with them, we are expected of course through legislation to work with CBSA and execute immigration warrants (Participant 3).

A Superintendent also indicated that cooperation is mandated by the PSA:

The biggest challenge is that we have taken an oath to uphold the laws and it's all about the Police Services Act and I don't think there is any policy or procedure that we could put in place that would allow us to turn a blind eye or not fulfill our oath, in a nut shell (Participant 5).

Despite the overall tendency to report non-status persons to the CBSA, then, we see different rationales for the practice. Some participants assert a legislative role in the enforcement of immigration law, while others see information-sharing as mere bureaucratic shuffling of data from one institution to another. These two perspectives touch down with principles of community-based policing in complex and often contradictory ways. The same Inspector that claimed a role in border enforcement stated:

We provide service to all members of the community regardless of their status, their Immigration status. So there would be a variety of policies that would be in existence, for example our Diversity policy" (Participant 3).

Other participants explained that while their police services' may not have a formal DA policy, they have analogous policies and directives oriented to bias-free policing and the cultivation of diversity and inclusion. A Chief of Police remarked:

We have standards that talk about biased policing, biased police profiling, it is continually being taught to them once or twice a year, about how to avoid the traps and the pitfalls of being involved or engaging in biased police. We pay strict attention to what our standards say about bias in our job. Including relating to hiring, we have a directive that says, 'You shall be proportionate to the makeup of the communities race and ethnicity' and we take that seriously (Participant 2).

Similarly, a Superintendent said:

We have procedures in place for victims and witnesses and I honestly believe we have things in place that assist victims and witnesses especially in the diverse communities (Participant 5).

This position highlights internal contradictions among customs concerning diversity/ community-based policing and information-sharing. Clearly, these two values cannot easily be harmonized in principle much less practice. This relationship is rendered even more complex when one sees that information-sharing is informed by security either directly/overtly or indirectly. Incongruities are at best obscured by rationalizations of information-sharing as being a merely bureaucratic exercise. In other instances, appeal is made to legislation, but as we will argue, the interpretation of legislation is driven by ambient “societal attitudes”, with securitization processes being by far the most relevant.

### **b. Jurisdiction**

One of the primary themes that helps explain the perceived disutility of formal policy is jurisdiction. The majority of participants suggested that the issues raised by irregular migration transcend policing and municipal governance, resting with the provincial and federal governments. When asked about the perceived utility or authority of sanctuary city policies, officers regularly noted that municipal governments have no jurisdiction over police services. This issue represents the most commonly identified challenge to the development and implementation of sanctuary city policy from a police-services perspective. For example, a Chief of Police explained:

They can declare it, but are we going to enforce it? How much time are we going to spend enforcing it? We may run across sanctuary issues from time to time, but trust me we are not creating a special task force to go out there and deal with the issue. If it's an issue for them, they try to make it an issue for us, and as I said, it is driven by their ability to enact a bylaw, that tells them under the Municipal Act that they can do this. It could pose problems if it gets down to actually effecting, or attempting to effect police operations because they have no jurisdiction there. It would border on obstructing justice, or causing someone to do something they would not normally do by way of a by-law, and again I think, you have head of councils telling you to do something, definitely that is counter to the Police Services Act. Even the Board Chair can't direct a police officer to do something (Participant 2).

A Superintendent explained further:

For policing the issue is that we are bound to respond to statute violations related to the criminal code, any other federal statute, along with any other statute at the provincial level, we don't have the luxury of being able to turn to a municipality and say, 'okay we are going to adopt your philosophies and your principles', because our practices are not dictated by the municipality, it is exclusively the realm of the province. The province decides what we will and will not do. As a result, the province has decided that we will enforce federal and provincial statutes, now there are some federal statutes that we assign to other policing agencies to deal with, such as immigration, and immigration takes care of that. There are also lots of different financial crimes that we hand over to the RCMP to investigate, so it's not that we will or won't do anything that the municipality asks for, they don't have the jurisdiction to tell us what to do (Participant 5).

Similarly, an Inspector said:

It's important to be aware of that, municipalities, again, don't have any say or jurisdiction in terms of how police services are delivered as defined by the Police Services Act. It is actually spelled out quite clearly that municipalities cannot impact operations of the police, they cannot. So for example if a municipality said that 'we feel this is an issue and we would like the police service to actually do X,Y, & Z, because we as a council have decided that this is a priority for us', that's prohibited. Not because the police say so, because the Police Services Act says so. Police Service Boards, municipalities, cannot give direction in terms of operations, that's what it would be described as, if they said, 'we would like you to do X,Y, & Z, in terms of this enforcement or not', that's an operational issue, that is prohibited by legislation. I think it's important for that to be pointed out, and it's the same legislation that dictates what we do under certain circumstances. So if there was a change to legislation, then of course then we would follow it, because that's our service delivery model, and what we do, that's how it's impacted (Participant 1).

The theme of jurisdiction intersects with that of institutional value by exposing the presence of a custom of cooperation that is grounded, loosely, in interpretations of the PSA. These interpretations are in some instances constructed out of the roles, responsibilities, expectations, interests, and understandings which local police services seem to share with federal authorities; this is laid bare in the first but especially the second quote, where the CBSA is referred to as one of several "policing agencies" in Canada. These two quotes paint a picture of latent and at times manifest tension between municipal governments and police services. But these tensions are a function of philosophical disagreements about the content, and not the scope, of sanctuary policies; surely such a strong reaction against municipal "obstruction" in police operations would not be elicited by City Council taking a public stance on the harms of gun violence or gang activity. It is the content of sanctuary policies that matters, which jibes with a conception of irregular migration as a legitimate matter of policing and, more narrowly, criminal law. To be clear, this is at root a claim about jurisdiction, as that which organizes, among other things, who gets to govern what events, relationships, and people. On the one hand, participants claim the authority to police irregular migration and, therefore, borders. On the other, they claim immunity from the authority of municipal governments.

But the third quote suggests a less conflictual or problematic relationship between municipalities and police services, and a call for provincial involvement. Here, the problem is seen to be one of legal uncertainty and inconsistency at the provincial scale, not of competition between locally-situated institutions with incongruous values. The most effective solution to the problem would be to have the provincial government amend the PSA and associated regulations, clarifying the official policies, practices and procedures which all police services must adopt. A Chief of Police explained:

I don't think it's something that a city, could or should be able to opt into or opt out of. It's a larger political decision at a higher level than a city. It's national, or very best it has to be provincial, so there has to be legislation covering it across the province, it would be even better, if it was federal because you would have a consistency of purpose then. Right now you have one city saying this is how we are going to do it, next door says that's how we're going to do it, it creates confusion (Participant 1).

A Staff Sergeant corroborates this view: "I think there needs to be some clarity at the Ministry level, to say okay, 'this is what you shall do', and those are the rules that we

follow” (Participant 6).

These views suggest that some local police services are prepared to accept the principles underpinning sanctuary city policies, but will not do so until there has been a clear shift in provincial law and policy. While relatively heartening, this position is subject to criticisms. We should recall that provincial law already authorizes a DA policy as the case of the TPS demonstrates. Provincial law also permits a qualified DT policy and, according to some, it actually requires non-cooperation insofar as cooperation prioritizes the exigencies of immigration law over the investigation, reduction, and prevention of crime. However, it is important to recognize that the reluctance of some police services to adopt formal policies could be assuaged through provincial leadership in this area. This is to say that some police services would see value in, and may endorse, sanctuary policies, but genuinely feel constrained by existing law. More time could be invested in debating how to interpret the law differently, but a more direct approach would be to leave less room for debate by clarifying the rights of non-status persons and the responsibilities of police.

## VI. Discussion

The above findings emphasize that a diversity of opinions on sanctuary city policies and practices exist among municipal police services in Ontario. There is no unified voice from police services on the issue of sanctuary city policing. Nevertheless, our findings also point to a number of overarching themes. One is that of scale and jurisdiction, with all participants expressing the view that provincial legislation overrides municipal sanctuary policies and constrains the discretion of front-line officers; some suggested legal certainty would be welcomed, while others seemed content to maintain the *status quo*. Another theme is that of securitization, which supplies the assumptions, values, and interests that frame interpretations of what provincial legislation permits or, indeed, requires. Interspersed here are a blend of mutually inconsistent customs. One set of customs draws from community-based policing models and supports values of diversity and access for all. The other set of customs inform beliefs about a) the role of police in the enforcement of immigration law and, b) the nature of information-sharing as merely bureaucratic.

These themes intermingle in complex if not paradoxical ways, relating to scholarly debates around the scale of citizenship and jurisdiction, and securitization. The concept of “urban citizenship” (Holston and Appadurai, 1996; Purcell 2003) suggests that belonging should not be framed at the national but urban scale. This concept is closely linked to the idea of urban sanctuary (Bauder 2017). According to Isin (2008), “even in its modern form, where belonging to the city does not confer any formal rights or status to the citizen (as belonging to the state does), belonging to the city confers substantive rights by virtue of being a space with a special government and legal jurisdiction” (parenthesis in original, p. 271). The concept of urban citizenship challenges the national scale of citizenship, which confers certain protections and rights within the nation-state through legal status (Staeheli, 2003) and serves not only to define membership of the national policy but also as a mechanism of exclusion that renders many migrants unprotected and vulnerable (Bauder 2006). The city is a site where local claims to belonging collide with localized border and immigration policy enforcement through municipal police forces (Nyers, 2010; Lebuhn, 2013).

One reason for the necessity of sanctuary city policies is that non-status community members are unable to access police services without fear of deportation (Ridgley, 2008). There are some customs that resonate with these principles, which relate to community-based policing models as well as values of diversity, access, and bias-free policing. We should recall that these customs draw from and reinforce statutory norms,

including the principles, purposes and functions of policing outlined in the PSA. But there are also customs that compete with values of urban citizenship. Although – as our participants explained – it is not the role of municipal police services to enforce immigration law, in the case where lack of status becomes known, the procedure is to contact the CBSA. Our data suggest that the dichotomy between national and urban scales of citizenship is too limited to capture the barriers to implementing sanctuary city policies. This finding corroborates research that discusses sanctuary city policies at the scale of counties, states, and provinces (Visser and Simpson forthcoming; Newton 2018; Hannan and Bauder 2015). When it comes to municipal policing practices in Ontario, in particular, provincial legislation and policy emerges as a crucial field of contestation.

The problem is an unresolved jurisdictional clash between the urban scale, at which urban sanctuary policies are articulated, the provincial scale that helps regulate policing, and the federal scale responsible for border and immigration policy. Although sanctuary city policies – including ensuring access to basic rights such as education, health care, and police services --would improve the quality of life of non-status community members, there are significant jurisdictional challenges from the perspective of police services to implement such policies. All respondents emphasized that municipal governments have no authority over operational matters, and have indirect and highly circumscribed influence through accountability and oversight bodies. The silence of the province leaves too much room to interpret policing law and regulations in prohibitive ways.

To be clear, we do not accept the view that the PSA as currently written permits, much less requires, cooperation between local police and the CBSA to the degree we witness in Toronto or elsewhere; in our view, cooperation is only permitted in the relatively rare instance of facilitating an active or pre-existing investigation, including the execution of federal arrest warrants. Even here, there are occasions when countervailing principles may well weigh in favour of non-cooperation. At the very least, sharing information that identifies non-status victims or witnesses outside of these circumstances contravenes the basic principles and purposes of the PSA. To be clearer, we are under no illusion that written law is the only or even the most important barrier to the internalization of sanctuary values by local police, or that amending the PSA would solve the problems we have outlined. But the absence of a clear and official provincial (or, for that matter, federal) position on sanctuary leaves too much room for debate about the rights of non-status persons and the responsibilities of police.

We should pause to note that there is a recent analogue to the issues. In 2017, the Government of Ontario amended the PSA regulations to prohibit street checks or “carding”. This change was made in response to public opposition to the random stopping and carding of typically racialized minorities. In 2018, the Honourable Michael H. Tulloch completed a review of this law and its impact on policing and communities, and recommended even clearer restrictions on the powers of police to collect personal information outside of the context of investigations into criminal activity (Tulloch, 2018). These restrictions included the outright prohibition of asking for information for arbitrary reasons. Further, when there are lawful or non-arbitrary grounds to inquire, provincial law requires officers to inform persons that they are under no obligation to provide identifying information and to keep detailed records of interactions.

The Report reinforced the point that random street checks undermine sound community-police relations and in this respect contravene the basic principle of community-base policing adapted in Canada. This not only undermines equality as well as the right against unreasonable search and seizure (and in many cases arbitrary arrest or detention), it also inhibits police-community relations and, accordingly, the investigation of crime. In our view, the issue of street checks and the policing of non-status migrants are analogous, especially in light of inferences that policing of non-status migrants is

intertwined with racial profiling (NOII 2015). It should be noted, though, that there may be times when officers may lawfully request or even demand information that identifies persons as non-status, insofar as this information is necessary to enforce regulatory (e.g. traffic laws, transit laws) or criminal laws and investigations; information may become known incidentally as well. In these cases, it would be useful to have clear provisional laws outlining that the information may not be shared with federal authorities, except to facilitate an *active* immigration investigation. Processes for inquiring into whether there are active investigations should also be designed such that the very act of inquiring does not require or result in the sharing of identifying information with the CBSA, as is currently the case with the WRC. It would be beneficial to reduce interoperability of police and immigration databases and to devise ways for local police to access lists of active warrants without inputting identifying information to immigration databases or otherwise communicating the information to immigration officers.

This leads us to securitization which, in our view, drives problematic interpretations of provincial law (Buzan & Wæver 2003). Danger and fear are systematically engrained in immigration discourse and policy (Bauder 2011), perpetuating the securitization of immigration policy. Coleman and Kocher (2011) argue that as a result of securitization, immigration policing has been expanded to non-federal law enforcement agencies. The result is that immigration enforcement increasingly takes place in “non-border spaces” (Coleman and Kocher, 2011, p. 228). In the context of sanctuary policies, securitization discourses permeate multiple local, provincial, and national scales leading to similar enforcement practices at all these scales (Hudson 2019). In this way, securitization theory provides a framework to understand the involvement of municipal police services’ in the enforcement of immigration law (Rygiel, 2008). From this perspective, security threats justify the use of disproportionately harsh measures by local, provincial, and national scales of governance (Watson, 2012), including the enhanced role of municipal police services in immigration control (Ridgley, 2008; Hudson, 2019).

A key element of securitization, and of policing in particular, is discretion. Police officers have considerable discretion with respect to the exercise of the authorities granted to them through positive law which, in Canada includes statute, common law, and constitutional rights doctrine. As Wortley (2003) explains, notwithstanding vast bodies of such law, “police have the ability to act as more or less autonomous agents” (p. 538). Municipal police officer authority and discretionary power are granted under the *Police Services Act* as well as by common law powers bestowed by courts. The sanctuary city movement in Toronto rested exactly on this point: the absence of formal policies and the existence of untrammelled discretion with respect to collecting and sharing immigration information; the Chief of TPS and even the TPSB defended the merits of broad discretion as a function of responsive policing. In their views, officers could be trusted to make the right judgment i.e. balance the competing interest that coalesce in the nexus of criminal and immigration law.

Strangely, many of our respondents suggested that front-line police offices have little discretion in the context of irregular migration; the understanding was that officers are bound to share information with the CBSA either because of the terms of the PSA or because of internal practices i.e. customs. One participant explained that if the Provincial government expressly supported sanctuary values in the PSA, then local police services would be required to comply and adjust procedures accordingly. But we should be clear that our findings support a parallel mode of authority, which is that of custom and, more specifically, a shared understanding of irregular migration as a phenomenon that falls within the purview of policing; this more than the content of the PSA drives police perspectives. Indeed, it is a conception of irregular migration as matter of policing, and an affinity for the CBSA as a partner in the policing community, that explains why police interpret the PSA as they do. The PSA is utterly silent on this issue, but advocates point

out that reporting non-status migrants is inconsistent with the primary responsibilities of police as laid out in the PSA. Habitual information sharing is for the most part a function of custom and not legislation.

Since the PSA does not direct local police to share information with the CBSA as a matter of course, front-line officers in truth retain considerable discretion. While it is beyond the scope of this paper, the fact that same customs inhere in most local police services across the province suggests that they are part and parcel of a broader securitizing logic that constructs irregular migration as a security threat; customs are tethered to a national and global securitization process. We cannot predict how amendments to provincial legislation would interact with securitizing logics, but see clarity in law as a valuable and necessary step in rendering these logics less legitimate.

## **Conclusion**

Sanctuary city policies aim to provide municipal and police services to all inhabitants, regardless of immigration status. Such policies direct municipal officials not to deny service on the basis of immigration status, not to collect immigration and citizenship information unless necessary, and not to share such information with federal authorities except if expressly required to do so by law. This article explores the barriers to implementing sanctuary values within local police services by exploring, first and foremost, the perspectives of high-ranking representatives of municipal police services in Ontario. Our aim was to identify how officers view the relevance of sanctuary policy to local policing and, conversely, what they understand their role to be in the enforcement of immigration law. Underpinning these topics were questions related to the scope of officer discretion vis-a-vis statutory law and the customs of particular police services. Our findings show that there are considerable variances in the self-understanding of participants and, unsurprisingly, across the eight jurisdictions we explored. At root, we uncovered several, at times paradoxical conceptions of the role of policing in complex scalar and jurisdictional contexts.

Jurisdictional uncertainty lies in perceived inconsistencies among police operations, provincial law, and municipal policies. In our view, the driving force for these inconsistencies is securitization, which characterizes irregular migration as a legitimate object of policing and which infuses the custom of sharing information beyond what formal law expressly requires and, in our view, what it allows. Scale and jurisdiction play a vital role in maintaining functional and conceptual connections between local police and federal authorities. All participants considered police and the CBSA as partners in the law-enforcement community while insisting that municipal sanctuary city policies have no place in the dynamics of police operations. Yet, other customs were visible. Many participants accepted the underlying value of sanctuary city policies, which in their view aligns with values of diversity, inclusion and bias-free policing. The problem is that this set of values is overborn by securitization. Even participants who supported adopting internal sanctuary policies insisted that their hands were bound by provincial law.

We have argued that provincial law can easily be read in such a way as to support robust sanctuary policies within local police services. Still, greater clarity in provincial law would impose interpretive and normative constraints on the discretion of front line officers and the rationales of higher level officers. While we hold no illusions that legal and policy change will lead to wholesale shifts in operations (as the case of Toronto attests), we believe that stronger provincial laws are a necessary ingredient in the quest to implement sanctuary policies policy in the context of municipal policing.

## References

- Aleinikoff, A. (1991). A Case for Race- Consciousness. *Columbia Law Review*, 91(5), 1060-1125. Retrieved from <http://www.jstor.org/stable/1122845>
- Armacost, Barbara E., 'Sanctuary' Laws: The New Immigration Federalism (August 15, 2016). Virginia Public Law and Legal Theory Research Paper No. 2016-45.
- Armenta, A., & Alvarez, I. (2016). Policing immigrants or policing immigration? Understanding local law enforcement participation in immigration control. *Sociology Compass*, 11(2), e12453-n/a. doi:10.1111/soc4.12453
- Balzacq, T., & Guzzini, S. (2015). Introduction: 'What kind of theory – if any- is securitization?' *International Relations*, 29(1), 97-102. doi: 10.1177/0047117814526606a
- Basch, L., Glick Schiller, N., & Szanton Blanc, C. (2003). *Nations unbounded: transnational projects, postcolonial predicaments, and deterritorialized nation-states*. London: Routledge.
- Bauder, H. (2006). *Labor Movement: How Migration Regulates Labor Markets*. New York: Oxford University Press.
- Bauder, H. (2008). Immigration debate in Canada: How newspapers reported, 1996–2004. *Journal of International Migration and Integration*, 9(3), 289-310. doi:10.1007/s12134-008-0062-z
- Bauder, H. (2011). *Immigration Dialectic: Imagining Communities, Economy and Nation*. Toronto: University of Toronto Press.
- Bauder, H. (2014). Why we should use the term 'Illegalized' refugee or immigrant: A commentary. *International Journal of Refugee Law*, 26(3), 327-332. doi:10.1093/ijrl/eeu032
- Bauder, H. (2016). Sanctuary cities: Policies and practices in international perspectives. *International Migration*, 12, 1-14. doi:10.1111/imig.12308
- Bauder, H. (2017). *Migration Borders Freedom*. New York, NY: Routledge.
- Burman, J. (2010). Suspects in the city: Browning the 'not-quite' Canadian citizen. *Cultural Studies*, 24(2), 200-213. doi: 10.1080/09502380903541647
- Buzan, B., & Wæver, O. (2003). *Regions and powers: The structure of international security*. New York, US: Cambridge University Press.
- Buzan, B., Wæver, O., and de Wilde, J. (1998). *Security: A New Framework of Analysis*. Colorado, US: Lynne Rienner Publishers, Inc.
- Government of Canada. Securing an Open Society: Canada's National Security Policy (Queens Printer. 2004).
- City of Toronto, City Council. (2013, February 20). *Undocumented Workers in Toronto*. Ref no. CD18.5. Retrieved from <http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2013.CD18.5>
- City of Toronto, City Council. (2015, June 10). *Toronto Police Service: Service Governance Pertaining to the Access to Police Services for Undocumented Torontonians*. Retrieved from <http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2015.CD4.2>
- City of Toronto, Social Development, Finance & Administration. (2012, October 22). *Undocumented Workers in Toronto*. Ref no. AFS# 15467. Retrieved from <http://www.toronto.ca/legdocs/mmis/2013/cd/bgrd/backgroundfile-55291.pdf>
- City of Toronto, Social Development, Finance & Administration. (2014, May 7). *Access to City Services for Undocumented Torontonians*. Ref no. 18943. Retrieved from <https://www.toronto.ca/legdocs/mmis/2014/cd/bgrd/backgroundfile-69193.pdf>
- Cole, D. (2002). Enemy aliens. *Stanford Law Review*, 54(5), 953-1004. Retrieved from <https://www-jstor-org.ezproxy.lib.ryerson.ca/stable/1229690?pq->

- origsite=summon&seq=1#page\_scan\_tab\_contents
- Coleman, M., and Kocher, A. (2011). Detention, deportation, devolution and immigrant incapacitation in the US, post 9/11. *The Geographical Journal*, 177(3), 228-237. 10.1111/j.1475-4959.2011.00424.x
- Deshman, A. (2009). To serve some and protect fewer: The Toronto Police Services' policy on non-status victims and witnesses of crime. *Journal of Law and Social Policy*, 22(8), 209-235. Retrieved from <http://digitalcommons.osgoode.yorku.ca/jlsp/vol22/iss1/8>
- Düvell, F. (2011). "Paths into irregularity: the legal and political construction of irregular migration." *European Journal of Migration and Law*, 13(3): 275-295.
- Ellis, B. D. (2015). The production of irregular migration in Canada. *Canadian Ethnic Studies*, 47(2), 93-112. Retrieved from <http://ezproxy.lib.ryerson.ca/login?url=http://search.proquest.com/docview/1685997076?accountid=13631>
- FCJ Refugee Centre 2015. Audit report Access T.O. initiative. Retrieved at <http://www.fcjrefugeecentre.org/wp-content/uploads/2016/02/AUDIT-REPORT-ACCESS-T.O.-INITIATIVE.pdf>
- Fuller, L.L. (1969) Human Interaction and the Law. *American Journal of Jurisprudence* 14: 1-36.
- Gaucher, M. (2016). Monogamous Canadian citizenship, constructing foreignness and the limits of harm discourse. *Canadian Journal of Political Science*, 49(3), 519-538. doi: 10.1017/S0008423916000810
- Goldring, L., Berinstein, C., & Bernhard, K. J. (2009). Institutionalizing precarious migratory status in Canada. *Citizenship Studies*, 13(3), 239-265. Retrieved from <https://yorkspace.library.yorku.ca/xmlui/handle/10315/10022>
- Goldring, L., and Landolt, P. (2013). "Introduction. The Conditionality of Legal Status and Rights: Conceptualizing Precarious Non-Citizenship in Canada." In L. Goldring & P. Landolt, (Eds.), In *Producing and Negotiating Non-Citizenship: Precarious Legal Status in Canada*, 3–27. Toronto: University of Toronto Press.
- Guba, E. G., & Lincoln, Y. S. (1988). Do Inquiry Paradigms Imply Inquiry Methodologies? In *Qualitative Approaches to Evaluation in Education: The Silent Scientific Revolution* (pp. 89-115). New York: Praeger Publishers.
- Hannan, C.-A. and Bauder, H. (2015) Towards a Sanctuary Province: Policies, Programs, and Services for Illegalized Immigrants' Equitable Employment, Social Participation, and Economic Development. *RCIS Working Paper 2015/3*, 24 pp. [[http://www.ryerson.ca/content/dam/rcis/documents/RCIS\\_WP\\_Hannan\\_Bauder\\_No\\_2015\\_3.pdf](http://www.ryerson.ca/content/dam/rcis/documents/RCIS_WP_Hannan_Bauder_No_2015_3.pdf)]
- Holston, J., and Appadurai, A. (1996). Cities and citizenship. *Public Culture: Bulletin of the Project for Transnational Cultural Studies*, 8(2), 187-204. Retrieved from <https://read-dukeupress-edu.ezproxy.lib.ryerson.ca/public-culture/article/8/2/187-204/32194>
- Houston, S. and Lawrence-Weilmann (2016). The Model Migrant and Multiculturalism: Analyzing Neoliberal Logics in US Sanctuary Legislation. In Harald Bauder and Christian Matheis (ed.) *Migration Policy and Practice: Interventions and Solutions*. London: Palgrave.
- Hudson, G., Atak, I., Manocchi, M., Hannan, C.A. (2017, February). (No)Access T.O.: A Pilot Study on Sanctuary City Policy in Toronto, Canada. RCIS Working Paper. Retrieved from [http://www.ryerson.ca/content/dam/rcis/documents/RCIS%20Working%20Paper%202017\\_1GHudsonFinal%20.pdf](http://www.ryerson.ca/content/dam/rcis/documents/RCIS%20Working%20Paper%202017_1GHudsonFinal%20.pdf)
- Hudson, G. and Alati, D. (2018) Behind Closed Doors: Secret Law and the Special Advocate]. System in Canada. *Queen's Law Journal* 44(1): 1.

- Hudson, G., (2019) "City of hope, city of fear: sanctuary and security in Toronto, Canada" In Jonathan Darling and Harald Bauder (ed.) *Sanctuary cities and Urban Struggles: Rescaling Migration, Citizenship, and Rights* (Manchester University Press). 77-104.(Forthcoming)
- Immigration Legal Committee (2008) 'Police services: safe access for all. Legal arguments for a complete "Don't Ask, Don't Tell" policy', a report by the Immigration Legal Committee, presented to the Toronto Police Services Board (November 2008).
- Isin, E. (2008). The city as the site of the social. In E. F. Isin (Ed.), *Recasting the Social in Citizenship* (pp.261-280). Toronto, ON: University of Toronto Press.
- Isin, E., Brodie, J., Juteau, D., and Stasiulis, D. (2008). Recasting the social in citizenship. In E. F. Isin (Ed.), *Recasting the Social in Citizenship* (pp.3-19). Toronto, ON: University of Toronto Press.
- Jackson, P., Crang, P., & Dwyer, C. (2004). *Transnational Spaces*. London: Routledge.
- Kalhan, Anil, Immigration Policing and Federalism Through the Lens of Technology, Surveillance, and Privacy (August 6, 2013). Ohio State Law Journal, Vol. 74, 2013; Drexel University School of Law Research Paper No. 2013-A-05.
- Lebuhn, H. (2013). Local border practices and urban citizenship in Europe: Exploring urban borderlands. *City*, 17(1), 37-51. 10.1080/13604813.2012.734072
- Lennox, P. (2007). From golden straitjacket to Kevlar Vest: Canada's Transformation to a Security State. *Canadian Journal of Political Science*, 40(4), 1017-1038. doi: 10.1017/S0008423907071119
- Lippert, R. and Walby, K. (2013). *Policing Cities: Urban Securitization and Regulation in a 21st Century World*. Routledge.
- Magalhaes, L., Carrasco, C., & Gastaldo, D. (2010). Undocumented migrants in Canada: A scope literature review on health, access to services, and working conditions. *Journal of Immigrant and Minority Health*, 12(1), 132-151. doi: 10.1007/s10903-009-9280-5
- Meng, Y. (2017). Profiling minorities: Police stop and search practices in Toronto, Canada. *Human Geographies*, 11(1), 5-23. doi:10.5719/hgeo.2017.111.1
- Messina, A. M. (2014). Securitizing immigration in the age of terror. *World Politics*, 66(3), 530-559. doi: 10.1017/S0043887114000148
- Muller, B. J. (2004). (dis)qualified bodies: Securitization, citizenship and 'identity management'. *Citizenship Studies*, 8(3), 279-294. doi:10.1080/1362102042000257005
- Nakache, D., and L. Dixon-Perera (2015) 'Temporary or transitional? Migrant workers' experiences with permanent residence in Canada', IRPP Study, 55, 1-55, <http://irpp.org/wp-content/uploads/2015/10/study-no55.pdf> (accessed 5 December 2018).
- Neuman, L., & Robson, K. (2012). Quantitative and Qualitative Measurement. In *Basics of Social Research: Qualitative and Quantitative Approaches (2<sup>nd</sup> Canadian ed.)* (pp. 101-118). Toronto: Pearson.
- Newton, Lina. 2018. Immigration politics by proxy: state agency in an ear of national reluctance. *Journal of Ethnic and Migration Studies* 44(12): 2086-2105.
- NOII (No One Is Illegal) (2015) 'Often asking, always telling: the Toronto Police Service and the sanctuary city policy', [http://rabble.ca/sites/rabble/files/often\\_asking\\_always\\_telling\\_-\\_kredits\\_dec\\_1.pdf](http://rabble.ca/sites/rabble/files/often_asking_always_telling_-_kredits_dec_1.pdf) (accessed 9 November 2018).
- Nyers, P. (2010). No one is illegal between city and nation. *Studies in Social Justice*, 4(2), 127-143. Retrieved from [http://journals2.scholarsportal.info.ezproxy.lib.ryerson.ca/details/19114788/v04i0002/102\\_noiibcan.xml](http://journals2.scholarsportal.info.ezproxy.lib.ryerson.ca/details/19114788/v04i0002/102_noiibcan.xml)

- Nyers, P., and Rygiel, K. (2012). Citizenship, migrant activism and the politics of movement. In P. Nyers and K. Rygiel (Eds.), *Citizenship, Migrant Activism and the Politics of Movement* (pp. 1-19). New York, NY: Routledge.
- Ontario Association of Chiefs of Police. (2010). Ontario's Mobilization & Engagement Model of Community Policing. Retrieved from <http://www.oacp.on.ca/Userfiles/Files/NewAndEvents/CrimePreventionCampaign/COMMUNITY%20POLICING%20WHEEL-2.pdf>
- Police Services Act*, RSO 1990, c P.15
- Polkinghorne, D. (2007). Validity issues in narrative research. *Qualitative Inquiry*, 13 (4), 471-780.
- Pratt, A., & Thompson, S. K. (2008). Chivalry, 'race' and discretion at the Canadian border. *The British Journal of Criminology*, 48(5), 620-640. doi:10.1093/bjc/azn048
- Pries, L. (2009). Transnationalisation and the challenge of differentiated concepts of space. *Tijdschrift Voor Economische En Sociale Geografie*, 100(5), 587-597. doi:10.1111/j.1467-9663.2009.00566.x
- Provine, D. M., & Doty, R. L. (2011). The criminalization of immigrants as a racial project. *Journal of Contemporary Criminal Justice*, 27(3), 261-277. doi:10.1177/1043986211412559
- Purcell, M. (2003). Citizenship and the right to the global city: Reimagining the capitalist world order. *International Journal of Urban and Regional Research*, 27(3), 564-590. doi:10.1111/1468-2427.00467
- Ridgley, J. (2008). Cities of refuge: Immigration enforcement, police, and the insurgent genealogies of citizenship in U.S. sanctuary cities. *Urban Geography*, 29(1), 53-77. doi:10.2747/0272-3638.29.1.53
- Rygiel, K.(2008). The securitized citizen. In E. F. Isin (Ed.), *Recasting the Social in Citizenship* (pp.211-238). Toronto, ON: University of Toronto Press.
- Schulenberg, J. L. (2012). Systematic social observation of police decision-making: the process, logistics, and challenges in a Canadian context. *Quality & Quantity*, 48(1), 297-315. doi: 10.1007/s11135-012-9769-1
- Somin, Ilya, Making Federalism Great Again: How the Trump Administration's Attack on Sanctuary Cities Unintentionally Strengthened Judicial Protection for State Autonomy (March 5, 2019). Texas Law Review (Symposium on "Reclaiming—and Restoring—Constitutional Norms"), Forthcoming; George Mason Legal Studies Research Paper No. LS 19-02.
- Staeheli, L., A. (2003). Cities and citizenship. *Urban Geography*, 24(2), 97-102. doi: 10.2747/0272-3638.24.2.97
- Sweeney, M. A. (2014). Shadow immigration enforcement and its constitutional dangers. *The Journal of Criminal Law and Criminology (1973-)*, 104(2), 227-282.
- The Immigration Legal Committee. (2008, May). *Police Services: Safe Access for All Legal Arguments for a Complete "Don't Ask, Don't Tell" Policy*. Retrieved from <http://toronto.nooneisillegal.org/sites/default/files/Immigration%20Legal%20Committee%20Report%20Re%20Toronto%20Police%20November%202008.pdf>
- Toronto Police Service. (n.d). *Victims and Witnesses Without Legal Status*. Retrieved from [http://www.torontopolice.on.ca/publications/files/victims\\_and\\_witnesses\\_without\\_legal\\_status.pdf](http://www.torontopolice.on.ca/publications/files/victims_and_witnesses_without_legal_status.pdf)
- Toronto Police Services Board. (2005, August 11). *Minutes of the Toronto Police Services Board*. Retrieved from <http://www.tpsb.ca/component/jdownloads/send/18-2005/294-05aug11pmm>
- Toronto Police Services Board. (2006, May 18). *Minutes of the Toronto Police Services Board*. Retrieved from <http://www.tpsb.ca/component/jdownloads/send/19-2006/300-06may18pmm>

- Toronto Police Services Board. (2008, November 20). *Minutes of the Toronto Police Services Board*. Retrieved from <http://www.tpsb.ca/component/jdownloads/send/21-2008/338-minutes-nov-20-public>
- Toronto Police Services Board (March 23, 2017). *Minutes of the Toronto Police Services Board*. Retrieved from <http://www.tpsb.ca/component/jdownloads/send/42-2017/557-march-23>.
- Toronto Police Services Board (November 22, 2018). *Minutes of the Toronto Police Services Board* Retrieved from <http://www.tpsb.ca/component/jdownloads/send/49-2018/603-december-18>
- Tulloch, Michael H. (2019) *Independent Street Checks Review* (Queen's Printer for Ontario)
- Visser, Anne M. and Sheryl-Ann Simpson. (forthcoming) Understanding local government's engagement in immigrant policymaking in the US. In *Sanctuary Cities and Urban Struggles: Rescaling Migration, Citizenship, and Rights*. Jonathan Darling and Harald Bauder (eds.) Manchester: Manchester University Press.
- Villegas, P. E. (2015). Fishing for precarious status migrants: Surveillant assemblages of migrant illegalization in Toronto, Canada. *Journal of Law and Society*, 42(2), 230-252. doi:10.1111/j.1467-6478.2015.00706.x
- Watson, S. D. (2012). 'Framing' the Copenhagen School: Integrating the literature on threat construction. *Millennium: Journal of International Studies*, 40(2), 279-301. doi: 10.1177/0305829811425889
- Whitelaw, B., & Parent, R. B. (2010). *Community-Based Strategic Policing in Canada* (3<sup>rd</sup> ed.). Toronto, ON: Nelson Education Ltd
- Wortley, R. K. Measuring Police Attitudes Towards Discretion. *Criminal Justice and Behavior*, 10(5), 538-558. doi: 10.1177/0093854803254805