



Position Paper: Sanctuary City Policy

Issue

Current municipal practices put migrants without immigration status and with precarious immigration status, particularly women fleeing abuse, at risk.

Summary

Cities should be inclusive, welcoming places where people's basic needs are met. Women who are accessing services to deal with the impacts of violence must not have to choose between their safety and their liberty. West Coast LEAF is calling on the City of Vancouver to become a "sanctuary city" in which everyone can access municipal services and police protection regardless of their immigration status, without fear of detention and deportation. This will require the implementation of "don't ask, don't tell" policies for municipal services and staff, including police and transit authorities.

Introduction

A "sanctuary city" is a city that chooses not to require people to show proof of immigration status in order to access municipal services, and ensures that police protection is available to all, regardless of their immigration status.¹ Sanctuary cities aim to create welcoming cities that are inclusive of all residents. While sanctuary city policies vary across cities, the intended outcomes are similar: to ensure undocumented migrants have access to municipal and policing services without fear of detention or deportation.

Frequently, migrants who do not have official immigration status may avoid accessing police or municipal services out of fear that their lack of legal status will be revealed and they will be separated

¹ Lynn Tramonte, "Debunking the Myth of 'Sanctuary Cities'" (April 2011), online: <http://www.immigrationpolicy.org/sites/default/files/docs/Community_Policing_Policies_Protect_American_042611_update.pdf>.

from their children, detained or deported.² This is a well-founded fear. There have been several instances of hospital billing departments passing on people's information to the Canada Border Services Agency (CBSA), and advocates report that people without legal status are increasingly afraid to go to hospitals for fear of being reported to immigration authorities.³

Using transit is also risky for people without immigration status. In December 2013, Lucia Vega Jiménez was picked up by transit police over an unpaid fare and turned over to immigration officials. After spending two weeks in detention, she committed suicide while awaiting deportation to Mexico, a country she had fled due to inadequate protection from domestic violence. In the aftermath of her death, it was revealed that transit police had turned over 328 migrants to the CBSA in 2013 alone.⁴

As reporter David Ball wrote in his four-part series on these issues, Ms. Jiménez's case "brought into sharp relief the greatest fear faced by thousands of undocumented migrants here in BC: being caught, imprisoned, often separated from families, and deported if they try to access public services most of us take for granted."⁵ This well-founded fear may prevent individuals from reporting crimes or accessing services that promote the health and safety of themselves, their families, and communities.

Women without official immigration status are particularly vulnerable. As detailed in West Coast LEAF's May 2012 *Position Paper on Violence against Women without Immigration Status*, women without status and with precarious immigration status⁶ are often forced to choose between remaining in an abusive relationship and living without access to critical social services or the ability to work on the one hand, and deportation on the other. Non-status women are particularly vulnerable when experiencing abuse because they are not able to work legally, nor are they able to access income assistance or many other social services if they leave their abusive partners.

In our 2012 Position Paper, West Coast LEAF called on the provincial government to ensure access to basic services and supports, including income assistance, housing, health care, and legal aid, for women without official immigration status who flee an abusive spouse. In this Position Paper, we broaden our call to municipal governments, specifically the City of Vancouver, to implement sanctuary city policies to

² Affiliation of Multicultural Societies and Services Agencies of BC "Sanctuary Cities' Infosheet' (21 March 2014), online: < [http://www.amssa.org/sites/default/files/kcfinder/files/AMSSA%20Info%20Sheet%20Issue%2013%20-%20Sanctuary%20Cities\(1\).pdf](http://www.amssa.org/sites/default/files/kcfinder/files/AMSSA%20Info%20Sheet%20Issue%2013%20-%20Sanctuary%20Cities(1).pdf)>.

³ Tara Carman, "Injured migrants fear being reported to CBSA by hospitals" *The Vancouver Sun* (17 December 2014), online: <<http://www.vancouversun.com/health/Injured+migrants+fear+being+reported+CBSA+hospitals/10661297/story.html>>.

⁴ David P. Ball, "Inside Vancouver's Sanctuary City Movement" *The Tyee* (8 July 2014) online: <<http://thetyee.ca/News/2014/07/08/Vancouver-Sanctuary-City/>>.

⁵ Ibid.

⁶ For the purposes of this paper, the terms "people without status" or "non-status people" refer to those who were born in a country outside of Canada and who are now in Canada with no official immigration status. They do not have permanent residence, citizenship or any other visa permitting them to legally live and work in Canada on a temporary or permanent basis.

ensure that everyone can access municipal services and supports without fear of detention or deportation.

It is West Coast LEAF's position that everyone should be able to access essential services including housing, food, education, health care, transit, community centres, libraries, and emergency shelters and services, without fear of detention or deportation. In addition, everyone should be able to access the protection of police without fear that they will be detained or deported due to their immigration status.

As a city with a stated commitment to diversity and inclusiveness,⁷ the City of Vancouver should adopt a sanctuary city policy immediately as a key component of ensuring that the city is a safe and welcoming place for all. Vancouver has an opportunity to show leadership to the rest of the province and country by ensuring that everyone in Vancouver has access to important municipal services, and by encouraging other municipalities to do the same.

Legal Obligations

A sanctuary city policy that ensures access to basic and essential services without discrimination on the basis of immigration status is consistent with *Charter*-protected rights to equality and security of the person. While the question of whether immigration status is a protected ground under the equality provisions of the *Charter* remains undecided by the courts,⁸ there is no question that migrants—and migrant women in particular—are a politically vulnerable group that has suffered stereotyping and prejudice historically and in the present day. Migrant women who are additionally marginalized by their ethnicity, nationality, sexual orientation, disability, or other aspect of their identity, are particularly vulnerable. Access to essential services including health care, transportation, income assistance, police protection and housing are fundamental to the safety, security, and dignity of all people, and must be accessible to all, regardless of immigration status.

Ensuring that everyone has access to basic and essential services without discrimination on the basis of immigration status is also in accordance with international human right obligations set out in the UN Convention on the Elimination of All Forms of Racial Discrimination (CERD) and the UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). CERD obliges States Parties to respect, protect and fulfill the basic human rights of all people without distinction on the basis of national or ethnic origin, including the right of access to any place or service intended for use by the general public.⁹ The Committee overseeing states' compliance with CERD has emphasized that this obligation includes non-citizens,¹⁰ while the CEDAW Committee has observed that the international

⁷ City of Vancouver, "Diverse Communities and Multiculturalism" online: <<http://vancouver.ca/people-programs/diversity-and-multiculturalism.aspx>>.

⁸ See *Canadian Doctors for Refugee Care et al v Attorney General of Canada and Minister of Citizenship and Immigration*, 2014 FC 651.

⁹ Article 5.

¹⁰ Committee on the Elimination of Racial Discrimination General Recommendation XXX on discrimination against non-citizens (2004).

human rights obligations of States parties apply “without discrimination both to citizens and non-citizens, including refugees, asylum-seekers, migrant workers and stateless persons.”¹¹ The CEDAW Committee has also urged states to ensure that linguistically and culturally appropriate, gender-sensitive services are available to migrant women regardless of status, including health care services, police services, and emergency shelters.¹²

Key Components of an Effective Sanctuary City Policy

Access Without Fear

Access to basic and essential services should not depend on one’s immigration status. Official immigration status should not be a pre-requisite for accessing basic and essential municipal services. Health care, housing, and legal aid should also be available to all residents of Vancouver, regardless of status, as recommended in West Coast LEAF’s 2012 Position Paper.¹³

Non-status residents and migrant workers contribute to the Canadian economy in many ways: purchasing goods and services; paying sales tax; and performing much of Canada’s underpaid and unpopular labour.¹⁴ At the same time, it has been well-documented that migrant workers experience unequal treatment in their work places.¹⁵ Migrant workers are frequently working for low wages in poor and unsafe work conditions, and many lack access to basic protections against unfair dismissal, abuse, and exploitation by their employers.¹⁶ For non-status residents, the fear of disclosing one’s migration status prevents access to basic and essential services that could help, including food banks, community centres, shelters, transition houses, education opportunities, and basic health care.¹⁷ Lack of access to these supports puts already vulnerable members of our communities at even greater risk.

Everyone deserves to have access to these basic resources without fear that they will be turned over to immigration officials due to their lack of status.

¹¹ CEDAW General Recommendation No. 28 on the core obligations of States parties under article 2 of the Convention on the Elimination of All Forms of Discrimination against Women (2010).

¹² CEDAW General Recommendation No. 26 on women migrant workers (2008).

¹³ West Coast LEAF, “Position Paper on Violence against Women without Immigration Status” (May 2012). Online: <<http://www.westcoastleaf.org/userfiles/file/Position%20Statement%20-%20Women%20without%20Status%20in%20Canada.pdf>>.

¹⁴ Hamilton Community Legal Clinic, “The Situation of Precarious Status Residents in the City of Hamilton, Ontario and Canada” (2013), online: <<http://hamiltonsanctuarycity.files.wordpress.com/2014/01/hclc-completed-report-1.pdf>>.

¹⁵ See, for example: *Balikama v Khaira Enterprises Ltd*, 2014 BCHRT 107; *Construction and Specialized Workers' Union Local 1611 v SELI Canada Inc*, 2008 BCHRT 436; *Chein v Tim Hortons Inc*, 2013 BCHRT 229.

¹⁶ Lilian Magalhaes, Christine Carrasco, and Denise Gastaldo, “Undocumented Migrants in Canada: A scope Literature Review on Health, Access to Services and Working Conditions.” (2010) 12 *Journal of Immigrant & Minority Health* 132 at 138.

¹⁷ Orde F. Kittrie, “Federalism, deportation, and crime victims afraid to call the police” (2005-6) 91 *Iowa L Rev* 1449 at 1480.

Don't Ask, Don't Tell

“Don't Ask, Don't Tell” refers to a policy that prevents service providers and law enforcement from asking about a person's immigration status and disclosing it to immigration officials. Don't Ask, Don't Tell policies have been implemented in many large American cities, including Los Angeles, Chicago, New York City, and San Francisco.¹⁸ In the US, sanctuary policies are viewed as a way of building trust and cooperation between migrant communities and the police. Police forces have acknowledged that the deportation of unauthorized migrants who report crimes to the police can harm those communities they seek to protect.

Under a Don't Ask, Don't Tell policy, information about an individual's immigration status is only required if it is directly relevant to a police investigation or if serious criminal charges are being laid against the individual. It is never relevant to alleged administrative or regulatory offences, like the unpaid transit fare that led to the arrest and detention of Lucia Vega Jiménez in 2013. Transit police should never have cause to ask about someone's immigration status.

Further, under a Don't Ask, Don't Tell policy, police are directed to ignore the immigration status of anyone who is a victim of crime or who is seeking police protection. Police are directed not to inquire about a victim's immigration status or access it in their databases. If the immigration status of a victim of crime or person seeking police protection does come to light, police are directed to ignore it, even if there is an immigration warrant out for the person. This approach empowers local police forces to focus their attention and resources on responding to criminal activity, rather than enforcing offences within the jurisdiction of federal immigration officials.¹⁹ No one should feel prevented from reaching out to police for protection and support because of their immigration status. Yet this is the reality, and women without status are particularly vulnerable. For example, women who have been sponsored by a spouse in Canada, but whose permanent resident status has not yet been confirmed, have a heightened vulnerability to abuse in the sponsorship relationship.²⁰ A woman who has been sponsored is dependent on her spouse for her immigration status; she is also likely to be economically dependent on her sponsor given the restrictions imposed on her ability to work or access income assistance described above. A woman who has been sponsored by an abusive spouse may live in fear that her spouse will either not follow through with the sponsorship application or, if the application has already been made, that it will

¹⁸ Laura Sullivan, “Enforcing Nonenforcement: Countering the Threat Posed to Sanctuary Laws by the Inclusion of Immigration Records in the National Crime Information Center Database” 97 California LR 567 at 574.

¹⁹ Ibid at 582.

²⁰ For example, see Sheryl Burns, “Single mothers without legal status: Caught in the intersection between immigration law and family law” (YWCA Vancouver, 2010) for reports of emotional, financial, physical, and sexual abuse faced by sponsored women, online: <http://www.ywcavan.org/sandbox/UserFiles/files/Women%20and%20Their%20Families/Legal%20Educator/MWLS%20Report_2010_web.pdf>. See also: “The Role of Canadian Immigration Laws and Policies in Relation to Women's Safety: A Lawyer's Compendium” published by the Safety of Immigration Refugee and Non-Status Women Project, online: <http://www.endingviolence.org/files/uploads/IWP_Lawyers_Compendium_May_13_Final.pdf and Canadian Council for Refugees: “Violence Against Non-Status, Refugee, Immigration Women” online: <http://ccrweb.ca/en/violence-against-women>>.

be withdrawn and she will be deported.²¹ It is well-documented that abusive sponsors prey upon the precarious immigration status of their partners to control their behaviour and stop them from reporting the violence or leaving the relationship.²² Women have reported being scared to call police in situations of violence for fear of being deported. The introduction of a two year conditional permanent residence period for sponsored spouses, during which they must remain in a conjugal relationship and cohabit with their sponsor spouse or face deportation, places abused women in an even more vulnerable situation.

A Don't Ask, Don't Tell policy would reduce the likelihood of a non-status resident being deported after reporting violence or seeking police protection. If it is well publicized and understood in migrant communities, the policy will encourage abused newcomer women to flee situations of violence and abuse, secure in the knowledge that they will not be detained, deported, or separated from their children for doing so.

A Don't Ask, Don't Tell policy would allow the Vancouver Police to focus police resources on upholding public safety and prioritizing the needs of the community, and would ensure that municipal resources are used to address issues that are directly within the City's jurisdiction, which the enforcement of immigration offences is not.²³

The City of Vancouver has a history of innovation and leadership in implementing solutions that recognize and support the needs of its vulnerable residents. In 2013, the Vancouver Police Department (VPD) initiated the *Sex Work Enforcement Guidelines*, providing direction for police officers in their interactions with sex workers. In 2014, the VPD demonstrated a community-focused approach to effective law enforcement again, when it announced a 'priority-based' approach to the enforcement of federal laws regulating marijuana. Both of these approaches demonstrate that the VPD, while mandated to uphold federal laws, has the discretionary capacity to best enforce laws according to the local social and cultural context and available resources.²⁴

A Don't Ask, Don't Tell policy is consistent with the principles outlined in the *Sex Work Enforcement Guidelines* and the VPD's approach to marijuana law enforcement. In both of these cases, the VPD has recognized the importance of focusing law enforcement resources on criminal activity over regulatory

²¹ The exemptions for spouses experiencing abuse or neglect by their sponsor are not sufficient to remedy the vulnerabilities and power imbalance inherent in the sponsor/spouse relationship and exacerbated by this policy change. For more information, see Ontario Council of Agencies Serving Immigrants, "Comments on proposed Conditional Permanent Residence" (2012), online <<http://www.ocasi.org/comments-proposed-conditional-permanent-residence-cpr>>.

²² Burns, supra note 20.

²³ Sullivan, supra note 18 at 582.

²⁴ Vancouver Police Department, "Sex Work Enforcement Guidelines" (January 2013) at 2. Online: <<http://vancouver.ca/police/assets/pdf/reports-policies/sex-enforcement-guidelines.pdf>> [VPD]

offences,²⁵ as well as implementing law enforcement practices that are proportional to the risk presented, and which use the least intrusive method possible to manage a problem.²⁶ In the *Sex Work Enforcement Guidelines*, the VPD further acknowledges that indiscriminate enforcement of federal laws can undermine relationships between police and marginalized communities and decrease community members' ability to reach out to police for help.²⁷

Like the *Sex Work Enforcement Guidelines*, a Don't Ask, Don't Tell policy would allow vulnerable individuals to report criminal activity, as well as call on the police for assistance in emergency situations, without fear of reprisal.

Successfully Implementing a Sanctuary City Policy in Vancouver

A sanctuary city policy must be more than just words. For Vancouver to be a sanctuary city in practice, the City must ensure that the policy is understood and implemented by all municipal employees, including police. The policy must be mandatory, rather than permitting employees to use discretion in reporting immigration infractions. Training must be provided to all municipal employees, and accountability for failure to follow the policy must also be put in place.

The City must also use its influence on the Mayors' Council on Regional Transportation to ensure that entities operating within Vancouver but which are not within its exclusive jurisdiction, such as transit police, act in accordance with the sanctuary city policy.

The increasing use of networked databases among service providers and law enforcement entities presents added difficulty. Municipal agencies using networked databases must have the infrastructure to ensure that information about a person's immigration status is not improperly collected or communicated to other agencies and service providers.

Training for Municipal Staff

Studies on the efficacy of sanctuary city policies have highlighted that appropriate and adequate training is essential to implementing the policies effectively.²⁸ Without adequate training, non-cooperation and

²⁵ *Ibid* at 6. See also: Vancouver Police Department, Media Release, "VPD to Feds: We will enforce new pot laws where warranted" (5 March 2014). Online: <<http://mediareleases.vpd.ca/2014/03/05/vpd-to-feds-we-will-enforce-new-pot-laws-where-warranted>>.

²⁶ *Ibid* at 3. The *Sex Work Enforcement Guidelines* outline that, where there are regulatory, or 'nuisance related', complaints against survival sex workers, alternative measures and assistance must be considered. Enforcement actions are to be taken only as a last resort in 'high risk' situations, or those that involve sexually exploited children/youth, gangs/organized crime, exploitation, sexual abuse, violence, and human trafficking.

²⁷ *Ibid* at 2 & 3.

²⁸ The Solidarity City Network, "Towards a Sanctuary city: Assessment and recommendations on municipal service provision to undocumented residents in Toronto" (December 2013) at 16. online: <<http://solidaritycity.net/learn/report-towards-a-sanctuary-city>>. See also Sullivan, *supra* note 23 at p 598.

ignorance on the part of municipal officials, staff, and support workers will seriously undermine the safety and confidence of non-status residents.²⁹

The most effective training includes three elements: an explanation of the reasons for the sanctuary city policy, instructions on how to understand immigration information, and directions concerning how and when to act on this information.³⁰ Long-standing sanctuary cities, such as San Francisco, have developed trainings specifically for different municipal departments – different training is offered to emergency housing providers versus law enforcement departments, for example. Training for implementing a sanctuary city policy in Vancouver could be modeled on such programs.

Accountability for Implementation

An effective sanctuary city policy will also include mechanisms for Vancouver residents to report any issues, including potential breaches, of the policy.³¹ Ongoing feedback will enable the City of Vancouver to make programming adaptations to improve compliance.³² A reporting and accountability process will also show that the City of Vancouver is committed to ensuring a safe and accessible community for all residents.

Data Sharing Considerations

Municipal police forces in British Columbia have access to two key information databases. The Canadian Police Information Centre (CPIC) is an RCMP database that includes information about summary and indictable criminal convictions. The PRIME database is an information system that connects every municipal police department and RCMP detachment throughout British Columbia.³³ Information recorded in these databases includes warrants for arrest, peace bonds or restraining orders, charges approved by Crown Counsel that do not result in convictions, and information about apprehensions under the *Mental Health Act*.³⁴ The PRIME database also hosts information about an individual who has been a witness to, or a victim of, an incident.

An effective sanctuary city policy can be implemented despite these networked databases, provided that police are directed to ignore any available information about a person's immigration status when it is not directly relevant to a criminal investigation, as recommended above. Ideally, however, networked databases should be designed in such a way that information about a person's immigration status is not made available other than in situations where it is directly relevant to a criminal investigation or the person is being charged with a serious criminal offence. The City should work with Vancouver police, RCMP, and relevant government ministries to adapt police databases to reflect this important goal.

Recommendations to the City of Vancouver

²⁹ *Ibid* at 15.

³⁰ Sullivan, *supra* note 18 at 598.

³¹ Solidarity City Network, *supra* note 28 at 22.

³² *Ibid*.

1. Pass a sanctuary city policy that guarantees all residents access to city services without fear and promises that municipal staff will never ask about a person's immigration status or, if a person's immigration status comes to light, that it will never be disclosed to immigration authorities.
2. As part of the sanctuary city policy, direct Vancouver police not to ask residents about their immigration status unless it is directly relevant to a criminal investigation (such as a prosecution for human trafficking) or the person is being charged with a serious criminal offence.
3. Ensure that no one who is seeking police protection from violence is detained or deported due to their immigration status, even when there is an immigration warrant for their arrest. Direct Vancouver police not to enforce immigration warrants against victims of crime while they are in the process of seeking the protection of police and the justice system, and to ignore information regarding a victim's immigration status in any police databases they are accessing.
4. Designate a lead staff person to oversee the implementation of the sanctuary city policy in Vancouver, with capacity to receive reports on the implementation of the program and investigate any instances of non-compliance.
5. Provide mandatory training to municipal workers, police officers and city staff regarding the policy, its purposes and requirements.
6. Ensure that any networked databases used by municipal employees do not retain information on immigration status and do not communicate such information with immigration officials.
7. Lobby the Mayors' Council on Regional Transportation to terminate the Memorandum of Understanding between Transit Police and CBSA and implement a directive prohibiting Transit Police from requesting immigration documentation in their interactions with transit users.
8. Lobby the Provincial government to review its policies for all provincially funded programs, including income assistance and social housing, to include residents of BC without status.
9. Make it clear to the federal government that no municipal resources, including police resources, will be used to enforce federal immigration rules.
10. Work with the municipal governments of other cities, particularly Metro Vancouver cities, to advocate for sanctuary city policies in their jurisdictions.