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CREATING ACCESS: AN EXAMINATION OF THE VIABILITY OF  
TORONTO'S DON'T ASK, DON'T TELL POLICY AS A TOOL OF ACCESS  
FOR UNDOCUMENTED RESIDENTS

By

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TORONTO'S DON'T ASK, DON'T TELL POLICY AS A TOOL OF ACCESS FOR  
UNDOCUMENTED RESIDENTS**

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**Master of Arts**

**Immigration and Settlement Studies**

**Ryerson University**

**Abstract**

In 2004, The Don't Ask, Don't Tell policy was proposed to community service organizations, police and school boards in Toronto, Canada as a strategy for providing undocumented residents with access to basic services and protections. Under this proposal, service organizations would implement policies against collecting status information from clients and would agree to refrain from reporting undocumented clients to immigration enforcement. While there has been some positive reception to DADT in the city, numerous challenges have threatened its long term viability. This study examines the problems involved in implementing this policy and explores how this initiative may be effective in providing undocumented residents with access to basic services.

**Key Words:** "Don't Ask, Don't Tell"; DADT; Undocumented rights; sanctuary cities;

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## **Chapter 1: Introduction**

On October 23, 2009 the Toronto Star ran a story entitled “Deported to her Death” regarding the murder of a 24 year old woman who returned to her native Mexico after her Canadian refugee claim was denied. The woman came to Canada in 2004 with her mother and sister seeking refuge from gang-affiliated drug traffickers who allegedly murdered her father and were now looking for them. The family’s claim was rejected by the Immigration and Refugee Board in 2005 on the grounds, the Board alleged, the family had made insufficient efforts to seek protection from Mexican authorities. The family appealed the decision but were again denied. With a deportation order against them, the family went into hiding. In 2008 the woman returned to Mexico where she was was beaten and raped, an attack that left her pregnant. She returned to Canada but was deported months later, despite the dangers that clearly existed for her. Three months after her deportation and 7 months into her pregnancy she was kidnapped. The child she was carrying was cut from her womb and she was murdered (Keung, 2009).

To the general population this is a sad story, a brief glimpse at the precarious existence of non-status people in Canada, about whom, little is generally heard. For those living in Canada without status however, this is a cautionary tale; the real-life manifestation of their deepest fears and anxieties. This is the kind of story that forces people living in Canada “illegally” to bury deeper into the underground existence they find themselves in. “Underground,” they are hidden below the radar of any state protection, rights, or assurances of safety; they are criminalized and hunted. Daily, non-status people endure a precarious existence full of indignities and injustice simply to avoid deportation and potentially the fate of the woman described above.

Canada is signatory to numerous international declarations regarding the rights of people, and as a nation, has drafted statements about its own beliefs concerning the rights and dignity of people within its national boundaries. Human rights are guaranteed to all people in Canada through the Charter of Rights and Freedoms and Human Rights Codes. For the most part, the rights provided in these documents are inalienable and not granted or denied based on the actions or choices of individuals. By virtue of the fact that they are not expressly excluded from these rights, it can be said that undocumented residents also have claim to the rights provided in these and other documents. However, multiple barriers to, and dangers in accessing these rights make the practical *reality* of these rights questionable. When accessing these rights is so closely tied to the threat of deportation, it is difficult to argue that irregular immigrants are able to make use of these entitlements. To some, including many within the government, this is fair: undocumented people do not have the right to be in the country in the first place so the hardships they endure are of their own making. Because they choose to remain in Canada “illegally” they should not expect to be covered by the protections and benefits of the legal system (Crosby, 2006; Contenta, 2009; Carrens, 2008).

Clearly there are numerous problems with this line of thinking, not the least of which the fact that human rights are intended to be universal. Canada cannot on one hand claim to take human rights seriously, while on the other, look blindly on the obvious absence of these rights for an entire group of people within its borders. Even proceeding on the lowest denominator argument that irregular migrants are criminals who have cheated their way into the country, it is impossible to justify why these “criminals” should receive fewer protections than those who have been tried, convicted and incarcerated for violations of Canada’s criminal code. Beyond rhetoric that labels irregular migrants “illegal,” “cue-jumpers” and “cheats” is the reality that a



complex set of factors drive irregular migration. In a country that purports to take human rights seriously it is vital to ensure that no one, regardless of any factor including status, is denied basic protections and entitlements. All people in Canada must be provided with viable pathways to access the services and supports consistent with their human rights. The overwhelming challenge to seeing this realized, however, lies in how to practically provide these pathways.

The Don't Ask, Don't Tell (DADT) campaign has emerged in Toronto as an important voice for non-status people and their rights in this country. Driven by advocacy groups such as *No One Is Illegal*, the DADT campaign has asked community level services like schools, police, shelters and food banks to institute policies against asking for the immigration status of clients and against reporting undocumented clients to the Canada Border Services Agency (CSBA). (Hobbs and Sauer, 2005; Keung, 2008; Bernstein et al. 2006; CBC, 2007). The Don't Ask Don't Tell Campaign is an important initiative because it offers practical pathways to support and services for undocumented people. Advocates driving the DADT campaign have sought to establish an awareness of the basic and essential rights of non-status people among the general population, while engaging Toronto community service providers in developing meaningfully ways to make these rights accessible. DADT is important as it is a local and practical response to a complex problem with the potential to effect real and timely change.

As a municipal initiative, however, the DADT campaign also faces significant challenges. In order to understand whether the kind of local level approach being promoted by DADT advocates could in fact serve as a successful strategy to meet the human rights needs of Toronto's undocumented population, this study will examine the history, successes and limitations of the Don't Ask, Don't Tell / sanctuary concept.

The first section of this paper will explore the debate regarding the rights of the undocumented from a number of angles. Non-status people in Canada already possess some legal rights, despite their lack of status, while some (nonbinding) international conventions outline additional rights non-status people should have. Though some support the existence of these basic entitlements for non-status residents, others believe Canada owes nothing to people who come or stay here “illegally.” Understanding the range of opinions on this issue can provide insight into how the proposed DADT policy may be received by the public and by social service decision makers with the capacity to put a DADT policy into practice.

The following section will examine who the title “non-status” refers to in the Canadian context. In order to proceed with a discussion of rights and access to services for this population it is important to understand who these individuals are, how they arrive in Canada, how they live their daily lives and what dangers they face in the absence of rights and protections. Part of understanding these elements involves unpacking commonly held views about who non-status residents are and what they are doing here. Based on an understanding of the issues and barriers faced by Canada’s undocumented population a standard set of rights will be proposed. This rights framework will serve as the definition of ‘basic rights’ when analyzing DADT’s viability.

The final section of this paper will focus on the sanctuary city / Don’t Ask, Don’t Tell concept and the idea of active municipal level involvement in addressing the rights and needs of non-status people. With primary focus on the Don’t Ask Don’t Tell campaign in Toronto and secondary consideration of similar firewall concepts in the US, this analysis will look at the potential for this model to provide undocumented people with access to services in Canada.

## **Chapter Two – The Rights Debate**

Canadian policies and public opinion of late reflect a growing trend towards criminalizing migration in North America. Despite the multiplicity of global, systemic and social factors driving migrants to become undocumented in Canada, their presence is frequently distilled to a simplistic indictment of illegality (Ridgley, 2008, Crosby, 2006, Cody, 2003). Part of what will determine the success or failure of a DADT policy in Toronto is the degree to which advocates are able to convince the public of its value. Considering this, it is important to understand the full range of current opinions regarding the entitlements undocumented people should have.

On one side of the debate is the argument that states have the legal authority to regulate immigration and may, therefore, justifiably determine the terms upon which an individual can remain on either a permanent or temporary basis. The state openly defines the terms upon which it will consider the validity of an individual's claim to reside here, either through the immigration admission determination system (the points system, refugee claim etc.), sponsorship (temporary work visas, eligible family sponsorship, etc), or study (student visas) and transparently follows these defined procedures to decide who will enter. In theory, the government's primary responsibility is to its citizens and its role is to protect the rule of law, interests and territory of the country. It is reasonable to argue that the government owes little to people who, given the opportunity to be considered for residency through predetermined and publicly disclosed processes, fail to meet these terms of eligibility and are subsequently asked to leave. Further, it stands to reason that the government owes nothing to people who have entered the country by circumventing these procedures. Their entry into the country is "illegal" because they have

bypassed the ‘legitimate’ processes for entry that are the country’s legal right to institute (Cody, 2003).

The primary argument against defining and defending rights for non-status individuals is that to do so would make it easier for them to stay and make it more inviting for others to come without status. Those who subscribe to this perspective argue that facilitating the stay of non-status people in Canada undermines the entire immigration system (Carrens, 2008). This line of thinking contends that socially, culturally and economically Canada can only absorb a set number of migrants each year and that, as a nation, it has the right to determine which migrants are the most appropriate fit for resettlement. Providing rights and protections to those who have not been “chosen” essentially provides migrants with a backdoor entrance to Canada. If migrants are able to settle and be assured legal protections despite their failure to comply with immigration procedures, others will be encouraged to do the same, particularly when the chances of their being granted residency through the official channels are unlikely (Portuguese Canadian National Congress, 2009; Carrens, 2008).

Closely related to this argument is the idea that non-status individuals take something from migrants who ‘wait their turn.’ The backlog of people wanting to immigrate to Canada consisted of nearly 620,000 people at the end of 2008, meaning applicants outside the country could wait up to six years before receiving a decision about whether they will be accepted for permanent residency in Canada (Office of the Auditor General, 2009). It is commonly argued that when people, particularly refugee claimants, enter Canada in ways other than through the regular immigration process, they are attempting to “jump the cue” and are somehow cheating their way into the country. When migrants do not qualify as refugees under the stipulations of the Geneva Convention as being *directly* in danger of personal persecution in their native country

they are blamed for creating a backlog that forces “legitimate” refugees to live in limbo while they wait for their cases to be heard (STATUS Campaign, 2004; McKie, 2009).

The slippery slope argument has been applied to this issue with the implication that small official concessions recognizing rights will lead to further concessions and an overall erosion of the ‘legitimate’ immigration system. The right to an education for all school-aged children and youth regardless of status for example, is a right that has been won in law and to a small degree, in practice as well. Some argue against this right however, saying that public education should be for the tax-paying residents of the country who are the future of the nation (Carens, 2008). It has been suggested that because non-status individuals are neither intended to be part of the present or future of Canadian society, and because they are not financial contributors to the education system, they should not be entitled to attend school (Carens, 2008). Similarly, arguments for basic work-related rights for non-status individuals have been met with counter-arguments. Opponents of worker rights for undocumented people believe non-status individuals have no authorization to work in Canada, view their work as undercutting the value and compensation of ‘legitimate’ workers, and argue that their presence in the labour market steals work from legal residents. Consequently, they say, non-status residents should not have the protection of the state if they ‘choose’ to work here.

In May of 2007 the Government of Canada conducted a public opinion poll to gauge the general attitudes of Canadians towards non-status individuals. The results of this poll indicated that nearly two-thirds of respondents supported the policy of removing non-status residents from the country (Aubry, 2007). This study implies that the majority of Canadians view issues of undocumented migration in black and white terms: undocumented residents are not legally permitted in Canada so they should be removed. This line of thinking is similar to the beliefs of

those who think undocumented residents surrender their claims to rights by being in Canada “illegally.” While these positions oversimplify the reality of the undocumented situation, they tend to be the dominant viewpoint heard in discourse on this topic.

According to former UN High Commissioner and past Canadian Supreme Court Justice, Louise Arbour, “human rights are fundamentally a recognition of the rights of others” (Crosby, 2006). Arbour’s assessment implies the need for states and individuals to balance their own self interests with rights that ought to be provided to all people. In contrast to the arguments provided above, there is a strong coalition of advocates who support non-status residents, recognize the struggles they face and see the legitimacy of their claim to rights in Canada. Groups such as No One Is Illegal, The Ontario Coalition Against Poverty and the STATUS Campaign have been significant forces in the promotion of basic rights for non-status individuals.

The most compelling argument for guaranteeing a basic standard of rights for Canada’s non-status population is the fact that this is an issue of basic *human* rights. As a country that regularly boasts of its commitment to upholding human rights and regularly criticizes other states for their failures to respect such rights, it is imperative that Canada look at this issue self critically. As author of, and signatory to, numerous documents affirming a basic set of immutable rights for all people, Canada should guarantee these rights *regardless of any other condition*. Even those who most staunchly believe the arguments against guaranteeing these rights should find it difficult to rationalize why anyone residing in a free and resource rich country like Canada should face unlimited abuse and perpetual endangerment simply because they lack documents to make them ‘legal’ residents. On the contrary, *particularly* because Canada has the capacity to provide a high standard of basic rights to its population, the range of

social, cultural, economic and other entitlements integral to a holistic standard of human rights must be ensured for this population.

A few basic rights already exist for non-status residents in Canada and these rights have been guaranteed in laws that Canada is now legally bound to enforce. For example, undocumented children and youth have the legal right to a free public education. Undocumented residents, like all others in Canada, are entitled to equal treatment before the law. Advocates argue that the lack of access undocumented residents have to basic supports and services that facilitate these rights however, demonstrates a failure on the part of government to protect these rights (Bernhard et. al 2007, Bernstein et al. 2006, Doolittle, 2008). This is particularly true where barriers to accessing programs and services are erected by the government. For example, eligibility requirements for many social and community services supported by government funding require clients to present official evidence of legal status (Bernstein et al. 2006).

The absence of a functional set of rights for non-status persons contributes to the creation of a multi-tiered system of valid “personhood.” Citizens and permanent residents are ensured rights and the opportunity to grieve abuses of their rights without fear of retribution. Temporary residents are given rights, though significantly fewer, and have channels for complaint but may fear retribution for speaking out. Non-status individuals are guaranteed nothing. Few rights are provided to them in law and they gamble with deportation any time they attempt to exercise these rights. Effectively, this dynamic creates a situation in which people are set up for abuse. Not only do those who would exploit or abuse non-status residents realize their victims are vulnerable and without state protections, they also know the threat of reporting their victims to the CSBA will ensure their cooperation. Simply put, the high stakes of accessing help for undocumented residents facilitate opportunities for criminals, employers and others to take

advantage of them with impunity. Worst of all, Canada's policy of turning a blind eye makes it complicit in these abuses (Henry, 2006).

Clearly, there are ramifications for the wider society when a multi-tiered system of rights such as this is allowed to develop. Reluctant to go to police for fear of deportation, non-status individuals are more likely to fail to report crimes and suffer abuse directed at them and their families. Reluctant to (and largely barred from) accessing medical services, non status residents may not receive the care they need for illnesses that could spread to those around them and may not seek the medical care that is required for their children.

Beyond the human rights arguments, non-status residents contribute to the economy, pay sales taxes and fill labour shortages that are critical for Canada's economic growth. Their contributions should at least entitle them to basic rights to sustain what the United Nations has called a "minimum standard of living" (United Nations, 2006). Studies have demonstrated that regular immigrants to Canada are net contributors to the economy, meaning the taxes they contribute to the government exceed the costs of the services they make use of (Guo, 2006). Although no data is available on the contributions of non-status residents in particular, it is likely the same holds true for this population as well as they are generally prevented from accessing public services at all.

Advocates for non-status residents, like those involved with the No One is Illegal campaign, challenge common assumptions about Canada's immigration system and the nation's right to control migration. The critical flaw many of the arguments made by those who would deny non-status residents their rights is the assumption they make that undocumented migrants act on a free-market model of economic choice when they 'choose' to come to Canada. This



assumption neglects to acknowledge the dire conditions that push the majority of these people from their home countries. The search for economic opportunity is one of the most often cited reasons for why undocumented migrants enter Canada, but the economic conditions they leave are unlike anything average Canadians are able to relate to. Added to what is in many cases a desperate lack of employment opportunities and social security supports in their countries of origin are additional push factors such as political instability, environmental degradation, group persecution and corruption.

Studies concerning migration control show trade agreements increasingly facilitate the movement of goods and capital across borders, but make these same borders increasingly impermeable for people (Crosby, 2006). It has been argued that the actions and choices of the Canadian government have contributed to the environmental and political conditions in some countries that in turn have created out-migration movements to Canada. Examples that have been cited of this include the business practices of Canadian mining companies such as Glamis Gold's Marlin mine in Guatemala and Linear Gold Corp and Fronteer Development Group in Mexico which have resulted in the forced displacement of indigenous communities in those countries. Since NAFTA was established in 1994, over 15 million Mexicans have been displaced through land privatization measures for the specific use of foreign mining corporations, a substantial number of which are Canadian (Dhillon, 2007).

When Canada and other developed nations play this kind of direct role in the creation of migrant movements, advocates for non-status residents ask if it is justifiable for them to be so restrictive when it comes to admitting the people it helps to uproot. According to the argument, Canada's involvement in creating and sustaining these upheavals erodes the moral ground upon

which the Canadian government is able to label irregular migrants “illegal” and use their lack of status to justify their lack of rights.

Some have argued that Canada tolerates a non-status population as a source of cheap labour in sectors where there are frequent worker shortages. It has been argued that the government turns a blind eye to non-status workers when their presence will benefit the economy (Dhillon, 2007; Contenta, 2009). For example, farming which relies on subsidies for support can decrease expenses by employing cheap irregular labour to avoid the additional costs of benefits, vacation pay and insurance. Despite being in the midst of economic recession, construction continued to account for 5.2% of Ontario’s gross domestic product in the second quarter of 2009. In healthier economic times this percentage has been as high 10% (Ministry of Finance, 2009). The demand in this sector for workers has regularly exceeded the number of Canadian workers available, meaning the sector has long relied on migrant labour. This is particularly true in the city of Toronto where the construction sector is said to rely on thousands of undocumented workers (Jiminez 2003). Essentially, the labour needs in these sectors have helped to build a system of “rotat(ing) human capital...used and discarded with no hope (for) permanently legalizing one’s status” (Crosby, 2006).

The idea that Canada tolerates undocumented labour could be supported by 2008 findings of the Auditor General that reported the Canadian government had “lost” 41,000 documented non-status residents with removal orders (Brennan, 2008, Crosby, 2006). The increasingly racialized and class-biased changes made to the temporary worker program further support the idea that Canada is “creating” an undocumented work force and benefitting from the presence of these workers. Toronto immigration lawyer Amina Sherazee remarked that current policies were

“almost a deliberate attempt on the part of the government to keep a competitive workforce here who can be exploited cheaply to meet the needs of the market” (Contena, 2009).

Whether intentionally created or not, the undocumented workforce in Canada demonstrably contributes to the economy but is not fairly compensated for this work. While it is wrong to imply any group should need to earn their basic human rights, accessible essential services should be a minimum acknowledgement of the contributions non-status workers make to the country.

## **Chapter 3: Within But Outside:**

### **The Precarious Existence of Canada's Non-Status Residents**

In Canada, the issue of non-status residents has been neither a subject of great public concern nor extensively studied. As a result, Canadian awareness of “illegal migration” is often framed in the context of the American experience. With an estimated 11 to 12 million non-status residents in the United States, undocumented migration is a far more pervasive issue in that country. In Canada, estimates are a fraction of this total ranging between very conservative estimates of 20,000 to in the most extreme, 400, 000 (Lakoff and Porcello, 2007; Goldring et al. 2008; STATUS, 2007; Khandor, McDonald, Nyers and Wright, 2004). What this means is that, even using Canada's high-end estimates, there are 4 times as many non-status residents *per capita* in the United States than in Canada. To put this in perspective, the United States removed 359,000 undocumented residents in 2008 – nearly the high-end estimate of Canada's total non-status population ( Department of Homeland Security, 2009). Since half of Canada's total non-status population resides in Toronto, this issue is ‘off the radar’ in most Canadian cities, except when it is discussed in politicized contexts such as national security and employment.

The tendency to see the issue of irregular migration from the American perspective has contributed to a limited awareness of the differences between how irregular migrants arrive in these two countries. The United States shares a border with Mexico which acts as a portal for migration from Latin American countries. The proximity of the US to the Caribbean also makes it far easier for migrants to enter the United States than Canada. Because of these geographic realities, the US in fact, receives a significant number of undocumented migrants who cross borders covertly without authorization or documentation. This is very different from the

Canadian situation where it is rare for undocumented residents to enter initially without some form of status.

Like the woman described at the beginning of this paper, many irregular migrants arrive in Canada as refugee claimants and are documented at entry. Prior to a hearing with the refugee determination board they are provided with limited services and protections and the opportunities to find work, attend school and begin establishing a new life (Bernhard et al. 2007; Berenstein et al. 2006). The significant backlog in processing refugee claims (62,000 claims as of December 2009) has meant that people can spend a lengthy period of time in Canada before they are called for a hearing to determine whether or not they will be permitted to remain here (McKie, 2009). For more than half of refugee claimants, their new lives in Canada are temporary. Once a claimant has failed their refugee claim and exhausted their avenues of appeal they are served with an order for removal from the country. For many unsuccessful claimants the threat of being returned to places they originally fled in fear or desperation is enough to drive them into hiding and non-status life.

The transition from refugee claimant to undocumented resident has been noticed by policy makers who have attempted to curb this trend by restricting Canada's intake of refugee claimants. Since September 11, 2001 a renewed focus on national security and the spectre of terrorism has resulted in significant changes to immigration and border control policies, particularly related to refugee claimants and asylum seekers. In the aftermath of the 9/11 attacks the Safe Third Country agreement was implemented as part of the 'Smart Border' agreement between Canada and the US (Ridgley, 2008). The intent of this agreement was to obligate would-be refugee claimants to make their claim in the first safe country they arrived in, or, to quote then Deputy Prime Minister John Manley, to prevent "the practice of asylum shopping by

refugees” (Thompson, 2003). The Safe Third Country agreement effectively gave Canadian border control officials the power to arbitrarily turn potential claimants away if they attempted to enter from the United States (Crosby, 2006).

When this agreement was implemented in 2005 it had an immediate and dramatic effect on the number of claims made. Overall, it resulted in a 50% reduction in the number of claims made at the border and the total number of claims on Canadian soil dropped to rates lower than they had been in almost 20 years (Crosby, 2006). What this meant for claimants from some countries was that their opportunity to claim refugee status was significantly decreased. In 2004 for example, Colombia was the largest source of refugee claims in Canada with an acceptance rate of 81%. Following the implementation of the Safe Third Country Agreement in 2005, claims from Colombian refugees decreased by 70% in Canada. During the same period in the United States only 45% of Colombian refugee claims were accepted (Canadian Council for Refugees, 2005). The significance of these policy changes is that, while they may be intended to reduce the claimant population, they may ultimately increase the undocumented population. Internal policies may change to keep people out but they do not change the factors pushing people to leave their countries of origin. If anything, these changes may lead to more people choosing to bypass the refugee determination system in the future.

In addition to failed refugee claimants, a significant number of Canada’s non-status people enter the country through temporary work agreements. According to the 2009 fall report of the Canadian Auditor General on Immigration, Canada admitted almost 370,000 temporary foreign workers in 2008 (Office of the Auditor General, 2009). People in this category include ✓ workers in the seasonal agricultural program, caregivers, and workers brought in to fill regionally specific high and low skill position shortages. While caregivers have a route to

permanent residency built into their program, agricultural and other low-skill temporary workers do not. However, both temporary workers and caregivers are at risk of losing their status as the result of contractual arrangements in the work programs that bring them to Canada.

Seasonal and other low skilled temporary workers are hired in Canada on employer specific agreements. This means that an employer and worker enter into a government approved agreement whereby a migrant works for one specific employer. If a breakdown occurs between these two parties and the sponsored worker is no longer employed by the contractual employer, the worker is required to transfer to another government-approved position immediately. Failing to do this could mean loss of status and authorization to be in the country (Goldring, Bernstein et.al, 2007; Crosby, 2006).

Temporary workers in the caregiver program face similar contractual arrangements to those in the Seasonal Agricultural and the Temporary Worker Programs, despite the opportunity that exist for them to gain permanent resident status. Caregivers (the overwhelming majority female) are also sponsored through specific arrangements with employers. In order for them to be eligible to apply for permanent residency under the conditions of their program, they are required to work (at minimum) 2 out of their first 3 years in the country as a caregiver (Standing Committee on Citizenship and Immigration, 2009). Failing to meet these criteria could result in the issuance of a removal order against them, even if the reasons for their failure to complete these requirements relate to health issues, being laid off by their employer, or the death of their employer.

Because people who enter Canada on these work arrangements are so closely bound to and dependent on their employers they are often subjected to abuse and mistreatment. Studies

that have examined the experiences of these workers have reported incidences of overwork, employers who underpay or do not pay the salary specified in the employment agreement and jobs that differ radically from the positions described in contracts. There have been reports of employers withholding the health cards, passports and other documents of their workers, threatening deportation and neglecting to seek medical help for their workers when they are injured on the job (Standing Committee on Citizenship and Immigration, 2009).

Considering that abuses of temporary workers in these categories are well documented it is not surprising that it sometimes becomes imperative for workers to leave their employers. Leaving, however, can leave workers without status, making them illegally resident in Canada. Worse still, some temporary workers endure these abuses to maintain their employment and status, but are sometimes terminated when they question poor working conditions or discrepancies between their contracts and assigned work (Bernstein et al. 2006).

Just as refugee claimants face increasingly restrictive policies, so too do Canada's low skill temporary workers. The faltering economy in 2008/2009 led Federal Minister Jason Kenney to propose significant changes to the Temporary Workers Program. Under the present system there is no limit to the number of times temporary foreign workers are permitted to return to Canada on seasonal work permits. Minister Kenney has suggested changes be made so that low-skill foreign workers only be permitted to return a cumulative total of four years before they are ineligible to return for six years (Citizenship and Immigration Canada, 2009, Akin, 2009).

It may be intuitive to assume that when Canadian residents are unavailable, the next best and efficient fit for positions in open sectors would be those individuals with experience and a proven ability to adapt to life in Canada. Since it is the same sectors (agriculture, construction,



manual labour and the garment industry) that consistently require and hire temporary foreign workers, it may also seem to make sense that those migrants coming to work in these sectors would be considered for permanent residency. Arguably, the proposed changes to the Temporary Workers Program are not as much about finding the best solutions for these labour shortages as they are about finding the quickest responses with the fewest financial responsibilities for the employer and the government. It has been argued that if these workers were given permanent residency, they would, like other Canadians, want better, safer, higher paying jobs, meaning these positions would remain unfilled. Maintaining the temporary nature of the program ensures these positions remain filled at the lowest possible cost to the employer. Kenney's proposed changes to the Temporary Foreign Worker program are not unlike changes that have been proposed in recent American bills that emphasize goals of a migrant workforce that is 'flexible' and 'temporary' (Crosby, 2006).

Avenues to permanent residency for temporary foreign workers such as the Canadian Experience Program, require applicants to have gained Canadian experience in skilled work. Workers whose positions are not included in the management, professional, skilled trade and technical National Occupation Classifications (NOC) are ineligible to apply for residency under this program (Citizenship and Immigration Canada, 2008). With little hope of ever becoming permanent residents through their temporary work arrangements, Kenney's proposed changes further limit the opportunities non-skilled workers have to stay in Canada, even on a temporary basis. With the fear of being denied future work in Canada and few job prospects to return home to, it is likely that an increasing number of temporary workers will join Canada's undocumented population in the coming years.

Another source of Canada's undocumented population is sponsored family members (generally women and children) of Canadian citizens who lose their status when sponsorship agreements between themselves and their sponsors break down (Bernstein et al. 2006, Paradis, Novac, Sarty and Hulchanski, 2008, Henry, 2006). Sponsored family members are particularly vulnerable to abuse because they are dependent on their sponsor for status until their own permanent residency becomes official (Henry, 2007). Service providers working with abused women have noted that some non-status women have abusive partners threaten to have them deported if they go to the police. In one report a woman recalled that her husband would drive her to the parking lot of the police station and dare her to report him after she threatened to report his abuse. His continued threats to have her sent home and to ensure their children remained with him consistently prevented her from reporting his abuse (Immigration Legal Committee, 2008).

As precarious as some sponsored individuals situations are their states become even more desperate if their sponsorship breaks down and they are left without status. This is particularly true in situations where women choose to leave their husbands to escape abuse and subsequently find themselves without status (STATUS, Campaign 2006). With limited social networks or knowledge of the Canadian system, these women are incredibly vulnerable. Fearing deportation, retribution from their sponsor and separation from their children these individuals may be easily dissuaded from seeking help and are thereby driven to become part of Canada's undocumented population.

Other sources also contribute to Canada's non-status population including international students whose study visas have expired, visitors who have overstayed the terms of their visas, and trafficked and smuggled persons never documented in Canada. Trafficked people are perhaps the most vulnerable of all because they arrive in Canada enslaved. In some cases

trafficked people arrive owing substantial debts to the criminal groups responsible for bringing them into the country, while others are brought in against their wills to work for people engaged in criminal activities. Trafficked individuals are likely to be exposed to threats, violence and abuse, are unlikely to have networks in Canada and will generally have few opportunities to access help (Shloenhardt, 2001, Mountz, 2004).

Examining the circumstances leading Canada's undocumented population to become "unauthorized" provides insight into how incredibly complex this issue is. The numerous routes taken to an undocumented life make it clear that no easy solutions exist for this problem. Moreover, the numerous factors around the world currently pushing migrants to seek safety and economic opportunity outside of their homeland suggest that Canada likely faces growth in its undocumented population in the foreseeable future. Canada's non-status population may enter the country through diverse means but once they are here and lack the documents that provide them with legal status they are similarly vulnerable to abuse and marginalization.

Undocumented residents work and pay taxes, but they do not have access to the services supported by these taxes. These individuals work, but have no recourse if they are injured at work, their employers fail to pay them, their work environments become hazardous or the conditions of their work are poor. Accessing anything from schooling for children to seeking police assistance if they are victims of a crime must be weighed against the danger of being discovered and reported to immigration. Virtually all areas of civic life, from renting an apartment to accessing health services, are linked to legal status and possession of a legal identity. Significantly lacking access to the basic services they require, undocumented people are forced to rely on others, are relegated to alternative means of obtaining what they need, or are forced to do without (Bernhard, Goldring et al. 2007).

## **Chapter 4: Defining a Standard Set of Rights**

Many advocates argue the best response to the undocumented issue in Canada is a full program of regularization. On the other hand, opponents see any action by government or communities to legitimize the presence of undocumented residents as an affront to the legal and formal processes of immigration to this country. Advocates for a standard set of basic rights for non-status residents face a major challenge in that their arguments are based on macro-level perspectives of Canadian moral obligation to people who are ultimately considered outsiders. The trouble with these kinds of arguments is that they ask people to see beyond rhetoric that emphasizes illegality and threatens ‘hoards’ of incoming migrants consuming Canadian resources and eroding culture and national values. It must be emphasized that providing and ensuring a basic standard of human rights in Canada for undocumented residents is not equivalent to legal validation of their right to be in the country – that is another debate. Simply put, Canada has a legal and moral obligation to ensure human rights are accessible for all people within its borders.

Considering the range of opinions and stakeholders involved in this issue it is unlikely that a full regularization program is imminent. As a more expedient response, advocates have looked to actions such as Don’t Ask, Don’t Tell to be implemented at the local level. Short of regularization it could be possible to define and establish a basic standard of rights and avenues of access to those rights through local level organizations and agencies. DADT policies in cities like Toronto could help to provide this access. In order to assess the capacity of policies like this it is important to define what a basic set of rights would include.

For the purposes of this study, it is useful to understand the rights that have been proposed for non-status residents as part of four main categories. Rights in the first category relate to basic rights of protection, freedom from abuse and equal access to the law. The second category in this analysis relates to education rights; particularly the rights of children to attend school. The third category of rights relates to worker entitlements to things like a safe work environment and payment for work done. Rights in the final category include general entitlements to services that ensure well-being and a basic standard of life. This includes rights related to adequate housing, food, emergency medical care and access to information.

### *1. Rights to Protection, Personal Security and Equality Before the Law*

Many basic entitlements to safety, legal protection and freedom from undue hardship can be defended using current Canadian laws. In 1985 a Supreme Court case, *Singh vs. The Minister of Employment and Immigration*, found that Charter rights (except where they are specifically designated to citizens or permanent residents) belong to *all* people resident in Canada (Singh v. Minister of Employment and Immigration, 1985). This ruling is crucial as a starting point to determining a basic set of legal entitlements for non-status residents because it means that many Charter rights have already been specifically determined to belong to them. For example, Section 7 of the Canadian Charter of Rights and Freedoms contains provisions that affirm the right of all people to “life, liberty and security of person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.” (Canadian Charter of Rights and Freedoms, 1982). Other rights contained within the Charter that are also applicable to irregular migrants include Section (12) which provides the right to freedom from cruel and unusual treatment or punishment, and Section (15) that states that “all people are equal before the law”

with the “right to equal protection and equal benefit of the law without discrimination.”

(Canadian Charter of Rights and Freedoms, 1982).

Under the Ontario Human Rights Code, there are some rights that are defined as belonging only to citizens or permanent residents. Section 16 of the Code provides clear directions regarding cases where citizenship can be validly used to exclude individuals from eligibility, including cases where “Canadian citizenship is a requirement, qualification, or consideration imposed or authorized by law”(Canadian Human Rights Code, Sec. 18, 1990). Where these limits are not specified, it is reasonable to argue that the remaining rights pertain to everyone. In fact, numerous rights are described within the code as belonging to all people, *regardless of citizenship*. For example, Section 3 discusses the right of all people with legal capacity (regardless of citizenship) to enter into contracts on equal terms and Section 6 provides rights to all people to enter into trade unions and other vocational associations. Section 8 which makes clear that every person has the right to claim and enforce his or her rights without reprisal is also not specific as a right belonging only to lawfully present residents of Canada. (Guide to the Human Rights Code, 1999).

Internationally, a number of Conventions and documents define rights that should apply to non-citizens. *The International Convention on the Elimination of All Forms of Racial Discrimination* (which Canada has ratified) defines a number of relevant rights recommendations for non-citizens including the need for states to “ensure non-citizens enjoy equal protection and recognition before the law.” The United Nations *Declaration on the Elimination of Violence Against Women* argues that women have the right to a safe home and the right to be assisted if they are no longer safe in their home. This document directs states to “exercise due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against

women, whether those acts are perpetrated by the State or by private persons (United Nations General Assembly, 1994).

As international declarations, these documents urge nations to view the rights described within them as universal standards and work towards their realization. In many ways they echo the Canadian Charter and Human Rights Code in calling for all people to be free from torture, abuse and undue hardship, for all people to be treated equally before the law and for all people to be provided with protection under the law. What is significant about these documents is that they are explicit in saying these rights also belong to non-status residents.

## *2. Education Rights*

The right of non-status children to an education is arguably the most clearly defined right undocumented residents have in Canada. Section 49.1 of Ontario's Education Act provides that "a person who is otherwise entitled to be admitted to a school and who is less than eighteen years of age shall not be refused admission because the person or the person's parent or guardian is unlawfully in Canada" (Ontario Education Act Sec.49.1, 1993, Sidhu, 2008). This clear and unequivocal provision of education rights to undocumented children is based on the legally binding United Nations Convention on the Rights of the Child of 1989. This document mandates that states "make primary education compulsory and available free to all" and compels signatories to "make higher education accessible to all on the basis of capacity by every appropriate means" (Office of the UNHCR, 1989 Sec. 28 (1)). While a very clear mandate exists for these rights to be provided to undocumented children it is still incumbent on local school boards to create enrolment policies to allow undocumented children to make use of this right.

### 3. *Workers' Rights*

In theory, Ontario's Employment Standards Act covers undocumented workers. Section 3 parts 4 and 5 exhaustively list all workers in Ontario who are not covered by the ESA: undocumented workers are not on this list. (Employment Standards Act, 2000). Entitlements under this Act include the right to payment for work done within a set pay period (Sec. 5.11), rights regarding reasonable hours of work (Sec 7.17), and the right to a minimum standard of pay (Sec. 9.23). In every sector, particularly in those where there are typically higher concentrations of undocumented workers (ie. construction), employers are legally responsible to ensure a safe work environment for their workers. The Occupational Health and Safety Act states that workers have the right to refuse hazardous work and the right to report employers who fail to meet the standards of an acceptable work environment (Occupational Health and Safety Act, 1990. Sec. 5.43).

Neither the OHSA nor the ESA exclude undocumented workers, but they do not implicitly include them either. There is no mention in either law of non-status workers or of how rights described in these legislations may pertain to them. International conventions that Canada has not (yet) ratified and other UN declarations have strongly urged nations to develop specific work rights for migrant and irregular workers. The United Nations' *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families* lists several rights considered to be fundamental for all workers, regardless of status and location in the world. Some important rights in this document include the right to emergency medical care, equality of treatment between nationals and migrant workers in work conditions and pay, and the right of all workers to participate in trade unions (United Nations, 2006). The Universal



Declaration on Human Rights also echoes many of these rights (Universal Declaration of Human Rights, 1948 Sec. 23).

#### 4. *Standard of Living Rights*

The final category of rights to be included in this basic framework relate to the general well being of non-status residents and their entitlement to a basic standard of life. Article 25 of the Universal Declaration of Human Rights provides a useful summary of what basic quality of life rights should entail:

Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control (Universal Declaration of Human Rights, 1948. A.25 (1))

Canada respects this standard through social policies that fund services such as shelters, housing supports, public health clinics, food banks and social assistance, but undocumented residents remain largely excluded from these supports. ←

It is critical to note that the rights championed in these four categories are based on existent legal and quasi legal grounds. Given this, it could be argued to the benefit of DADT advocates that it is not so much that undocumented residents lack rights, but rather barriers prevent them from accessing these rights. Advocates of a municipal DADT policy say DADT could help to create access for non-status residents in all four rights areas. The primary basis to this claim is that undocumented residents are unaware of who they can trust for help and DADT policies would help them know when it is safe to seek help. If undocumented residents could access and be served by police, schools, workplace rights organizations and community services

without fear of being reported to the CBSA, they would essentially have the basic entitlements identified in the four rights categories.

## **Chapter 5 – Don't Ask, Don't Tell Toronto**

The DADT campaign in Toronto which is organized by No One Is Illegal and has been supported by a community coalition of service partners and non-status residents has two main objectives (Bernhard et al. 2007, Bernstein et al. 2006, Ontario Coalition Against Poverty, 2004). The first goal of the campaign is to ensure municipal service providers do not ask for the immigration status of the people they serve ('Don't Ask'). The second objective of the campaign is to have community partners establish internal policies to prevent staff from reporting to CBSA if they do learn a client is without status ('Don't Tell'). Since its launch in 2004, the Don't Ask, Don't Tell campaign has experienced a range of successes and failures in each of the four rights categories.

The DADT Campaign initially made noticeable advances with Toronto Police Services when in 2004 their board adopted a Don't Ask policy in family abuse cases, then extended the policy to include witnesses and victims of crimes (Cowan, 2006). The Toronto Police Board also formed a sub-committee to evaluate a proposal for a comprehensive DADT policy and considered recommendations by the Immigration Legal Committee from the Law Union of Ontario concerning possible legal grounds for this policy (Immigration Legal Committee, 2008).

Despite an initially positive response to DADT, the Toronto Police Services Board eventually announced they would not adopt the 'Don't Tell' component of the proposed policy (Doolittle, 2008). The Police Services Board also determined they would not extend the 'Don't Ask' component of the policy beyond victims and witnesses of crime and abuse. Effectively, this has meant that even when non-status residents are pulled over in routine roadside checks they may be asked to demonstrate proof of their status. When announcing this decision, the chair of

the Toronto Police Services Board stated belief that the ‘Don’t Tell’ policy was sufficient to provide victims of crime and abuse with access to the police (Doolittle, 2008). Among the reasons given by Toronto Police for their decision to opt out of the ‘don’t tell’ portion of the policy was the argument that they could not ‘turn a blind eye’ to crime and would not stand in the way of other branches of law enforcement in their efforts to carry out their responsibilities.

Toronto Police decided on their current position despite numerous arguments presented to them by the Immigration Legal Committee (ILC) advising of lawful grounds they could use to validate a DADT stance. The ILC reasoned that the law did not require police to report undocumented residents unless they were the subject of a warrant. Furthermore, the ILC warned that a policy of reporting status could actually conflict with an officers responsibilities under the Police Services Act to maintain confidential information unless a person is “under investigation, charged with, convicted or found guilty of an offence” (Immigration Legal Committee, 2008, PSA s. 42(1)). Despite these arguments and support from the Police Services for the *objectives* of the DADT campaign, the policy was not approved by the Board leaving only a limited Don’t Ask policy in effect (Immigration Legal Committee, 2008).

While Toronto Police experienced difficulty accepting arguments in support of a complete DADT policy, Toronto’s school boards had the benefit of the legal mandate in the Ontario Education Act when they considered their own DADT policy. Following a high profile incident in 2006 when two undocumented youth were apprehended from their Toronto high school and used as bait to lure their undocumented parents, both the Toronto District and Toronto District Catholic School boards reviewed their enrolment policies (Sidhu, 2008).

From a policy perspective, the Toronto District School Board has made greater progress towards a Don't Ask, Don't Tell Policy in their schools than has the Catholic Board. In 2007 the Toronto District School Board unanimously amended its admission policies to include two important clauses:

3.1 All children who are qualified to be resident pupils of the Board, including those who are without immigration status in Canada, shall be entitled to admission to school

3.2 All children shall be welcomed, regardless of immigration status, and information about them or their families shall not be shared with Immigration authorities

(Toronto District School Board Policy, 2007)

The TDSB followed this amendment with a specific Don't Ask, Don't Tell policy and committed to circulating annual memos to school administrators reminding them of the legal rights of all students to enrol in schools. The resolution to institute an official board wide Don't Ask Don't Tell policy included directions to administrators to ensure their staffs receive training about the policy and that enrolment forms be amended to exclude questions of immigration status. It was agreed that all inquiries related to the immigration status of students would be directed to the Director of Education. (Toronto District School Board Policy, 2007). Meanwhile, the enrolment policy of the TCDSB was also amended to recognize the legal right of non-status students to enrol in their schools. However, the TCDSB currently maintains a policy of cooperation with immigration enforcement and has yet to implement a DADT policy (Sidhu, 2008).

Although the TDSB has created and implemented a formal DADT policy, there have been some critical problems with the implementation of this policy. Numerous studies have reported that TDSB schools continue to ask students about their status as they require the information to claim ESL expenses and to determine if incoming students should pay

international student fees (Sindhu, 2008). A new documentary film entitled *Education, Not Deportation* also shows that many school board staff members remain unaware of the DADT policy. The film, as well as a report from the Community Social Planning Council, highlight the fact that students continue to be turned away at registration when they do not have the residence status documents requested of them (Sidhu, 2008, No One Is Illegal, 2009).

Advocates of the DADT policy in Toronto have had difficulty establishing connections with services that support workers. Although community agencies such as the Workers Action Centre serve undocumented residents in Toronto, the majority of workplace rights enforcement is handled at the provincial level. Enforcement of both the OHSA and ESA are provincially managed, as is WSIB, the main source of worker protection in the case of work related injury. Similarly, Employment Insurance is a federal program that undocumented workers are barred from accessing. Because all of these facets of employee protection are managed beyond the scope of municipal authority, it has been difficult for the DADT campaign to bring partners on board who have the capacity to deliver work-related assistance to non-status residents.

Where the DADT campaign has perhaps been successful in Toronto so far with regards to workers rights is in raising the profile of this issue. In a meeting of the House of Commons Standing Committee on Citizenship and Immigration mention was made of initiatives by some unions to provide workplace safety training to undocumented workers in the city. Unions have used various promotional strategies to let undocumented workers know they will not report anyone who comes forward to receive workplace safety training (Standing Committee on Citizenship and Immigration, 2008). The Canadian Autoworkers Union has been involved in encouraging its members to support undocumented workers and has aligned itself with campaigns such as *Status for All* in support of rights for undocumented workers. Legal clinics in

Toronto have been involved in organizing efforts to make undocumented workers aware of their rights and activists have assisted workers in organizing to draw attention to their contributions to the workforce.

Within Toronto there are numerous social programs providing city residents with services pertaining to their “basic quality of life” rights. Many of these organizations have provided unofficial services to undocumented residents, but since 2004, the DADT campaign has urged these organizations to formalize and publicize this service. To enhance efforts of community agencies to serve non-status residents the Working Women’s Community Centre and Portuguese Canadian National Conference received \$75,000 from the Metcalf Foundation to explore ways to make the community service sector more accessible to undocumented residents. A major focus of this project has been on helping community service organizations to consider and implement DADT policies (Portuguese Canadian National Congress, 2009). Efforts undertaken by this project to date involve a bibliography of resources, a community summit to identify best practices and, with the assistance of immigration lawyers, a legal FAQ sheet for agencies and staff working with non-status residents (Bernstein et al. 2006). Deliverables from this project, such as their template for creating policies for working with non-status residents, are intended to assist community service organizations to become more accessible. These deliverables have been geared to helping organizations adopt DADT policies, and where this is not possible, to helping them to implement alternative measures to protect non-status clients. (Portuguese Canadian National Congress, 2009).

Other organizations, such as the Social Planning Council and Davenport Perth Neighbourhood Centre have created resources to be used by non-status residents themselves. The Toronto Community Services Resource Guide lists various community service organizations that

have full or partial services available for non-status residents with notes about their policies regarding requesting and reporting client status. Not only is a listing such as this one valuable for non-status residents seeking support, it is also helpful for service providers wanting to make safe referrals for clients to other organizations that will maintain confidentiality about client status.

The emergence of activities such as the Moving Towards Visibility Community Forum and the Social Planning Council's Community Services Resource Guide are positive indications that the DADT campaign is having some positive impact in Toronto. These projects demonstrate a heightened awareness of and receptivity to undocumented issues within the community sector and a growing willingness in community services to engage in advocating for non-status rights. Despite increasing awareness of the issues of undocumented residents in Toronto however, actual implementation of DADT policies in this city has been limited.

When the DADT policy was initially announced in 2004, Mayor David Miller commented that it was the "general policy of (the city's) administration that, unless legally obliged, city workers do not ask about immigration status." In April 2006, instructions were given at a City of Toronto Community Services Committee meeting for a Don't Ask Don't Tell policy to be drafted for city services (Toronto City Council, 2006). Some city services such as Parks and Recreation, libraries and WheelTrans have DADT *practices* in place, but to date the City of Toronto does not have an official Don't Ask, Don't Tell policy in effect (Langan, 2006, City of Toronto, 2009).

Many private not-for-profit community organizations similarly provide unofficial service to undocumented residents, but officially articulated DADT policies are still rare. Numerous settlement agencies, shelters, community health clinics, food banks and others operate with



unofficial DADT practices. Making the transition to official DADT policies for many of these services has been problematic as funding arrangements with provincial and federal governments limit who is to be eligible for these services. Because enacting official policies against checking status may invite closer scrutiny from funders and may jeopardize funding entirely, many of these services have been unable to formalize policies of service for undocumented residents.

## **Chapter 6: Lessons From America's Sanctuary Cities**

Because Don't Ask, Don't Tell is a new policy in Toronto in its initial stages of implementation, it is difficult to anticipate what the long term impact of this policy might be in Canada. The public response to this policy and the role it will play in assisting undocumented residents in the future can only be hypothesized at this point. Examples from the US where similar policies have been in place for much longer may contribute to an understanding of the future challenges and potential of this policy in Canada.

In the United States over 50 cities and districts have enacted DADT policies and sanctuary city ordinances (Bernstein, 2006). This fact is encouraging for Canadian advocates and is often cited to justify a similar policy in Toronto. In some US cities, these policies have been long established; San Francisco, for example has had a City of Refuge policy in place since 1989 (San Francisco Government, 2009).

The Sanctuary City movement in the United States emerged during the 1980s in response to the significant number of people entering the US in search of refuge from conflicts in El Salvador and Guatemala (Ridgley, 2008). As the United States was involved in supporting the governments of these countries and had only recently amended its refugee policy to accept claims from non-communist countries, it was difficult for people from these countries to obtain refugee status in the US. As a result, many Guatemalans and Salvadorans arrived and stayed in the US without documentation. In response, churches, faith groups and human rights advocates developed sanctuaries in churches where these people were sheltered and fed (Ridgley, 2008). Building on this idea, some cities later declared themselves "safe havens," meaning among other things, that they would not inquire about citizenship when providing services (Villazor, 2008).

Since this time numerous cities have enacted similar policies that, to varying degrees, create a firewall between city services and the Immigration and Naturalization Service (INS). American cities with sanctuary ordinances include New York City, Miami, Los Angeles, Houston, Chicago and Baltimore.

The American sanctuary city model has its roots in providing basic quality of life rights but has grown into a movement to ensure the personal security rights of undocumented residents as well. As the policy has expanded in the United States it has attracted attention and debate.

In the United States, the issue of irregular immigration is politically charged and labelling a city a Sanctuary City can draw significant backlash from people within and outside of that city. In New York for example, former mayor Rudy Giuliani faced significant opposition to his city's policies of providing services to non-status residents, particularly police services. During the 2007 Republican Leadership Candidates Debate Giuliani was accused by his opponents of harbouring illegal criminals under his city wide sanctuary policy. These statements were in reference to the fact that, while Giuliani was mayor, the NYPD acted under an Executive Order ( E.O. 124), which prevented front line officers from communicating directly with the INS about non-status residents. During the debate, Giuliani stated that 400,000 illegal immigrants lived in New York while he was mayor and when he began his term the city was the crime capital of America. He argued the sensible policy had been to encourage non-status residents to approach police and, in cases where they were not involved in criminal activity themselves, be assured that they would not be punished for coming forward. Referencing the incredible and rapid decrease in crime during his term he gave substantial credit for this to his policies related to access to municipal services for undocumented residents (Wooley and Peters, 2009). And yet, so politically charged are the ideas of the sanctuary policy and illegal immigration in America that

Giuliani refused to acknowledge that his city was in fact a ‘sanctuary city’ (Wooley and Peters, 2009, Luo, 2007).

Owing to the political nature of this issue, sanctuary city policies in the United States vary significantly from city to city. There is no set definition for the term ‘sanctuary city’ and not all of the policies in place relate adequately to the kind of policy being championed in Toronto. Many of these cities’ ordinances are too limited in scope to be considered appropriate responses to the barriers faced by non-status residents. In many cases, the policy only refers to directives to police officers to avoid certain questions about status when speaking with people who are not involved in criminal activity (Luo, 2007). As the American city with the most established sanctuary policy, San Francisco provides a good case model for Canadian advocates to examine.

Chapter 12H of the San Francisco Administrative Code is comprehensive in its description of the city’s position on dealing with its non-status residents. With regards to using municipal funds for immigration enforcement the code says the following:

No department, agency, commission, officer or employee of the City and County of San Francisco shall use any City funds or resources to assist in the enforcement of federal immigration law or to gather or disseminate information regarding the immigration status of individuals in the City and County of San Francisco unless such assistance is required by federal or State statute, regulation or court decision (City and County of San Francisco, 1989).

The Code continues to specify that city staff are not permitted to assist the INS in their investigations, detentions or arrest procedures and may not request or disseminate information about the immigration status of any individual they encounter in their professional capacity or include such a request for status information on any intake or application form, except where it is required by federal or state law (San Francisco Government, 1989). Finally, sections 12

addresses the need for the City of Refuge Ordinance to be circulated and understood by all San Francisco city employees and states that compliance with this code will be monitored by the San Francisco Human Rights Commission.

In San Francisco the Don't Ask Don't Tell policy extends to city services, police, schools, public health clinics and community services – in essence there is at least some coverage of all of the four rights areas discussed earlier in this paper. For example, the San Francisco Department of Public Health operates a Newcomer Health Program that includes undocumented people (San Francisco Department of Public Health, 2009). The program collaborates with other clinics and community services to provide public health education, information and referrals specifically for newcomer populations. The San Francisco Immigrant Legal and Education Network provides free legal immigration advice for non-status residents and organizes within the community to make non-status residents aware of their rights (SFILN, 2009).

In April 2008, San Francisco announced that it would launch an \$83,000 ad campaign featuring signs, billboards, radio commercials and pamphlets to promote awareness of its sanctuary city policy. These materials, with versions in English, Spanish, Russian, Chinese and Vietnamese were created not only to reach non-status individuals unaware of the policy, but to increase awareness among other city residents of the purpose of this ordinance (Vega, 2008). Despite the long term existence of this policy in San Francisco, it is important to note that the city continues to recognize the importance of constantly advertising the policy.

San Francisco has been a leader in implementing firewall strategies between city services and the INS for non-status residents. Those in favour of the policy argue it has made it possible

for non-status residents to approach police and report crime in that city. Although academic studies or statistics are not available to verify whether or not this policy has actually made the city safer or rights more accessible to undocumented residents, city council and many community services have stood firmly behind it (Ridgley, 2008, McKinley, 2009).

While San Francisco's sanctuary supporters and advocates have managed to keep the policy active for 20 years it still faces severe opposition, criticism and legal challenges. The chief arguments against the city's sanctuary policy have been that it harbours people present in the country without authorization, stands in the way of the work of the INS in carrying out federal law, provides opportunities for criminals to hide and continue with criminal activity, and allows people without status to make use of services designated for legal residents. Currently, the city of San Francisco is facing three civil and federal criminal investigations of its City of Refuge Ordinance in the courts. In a leaked legal memo to the mayor, legal counsel advised of the potential for these cases to provoke further investigation that could find that federal laws preempt the city's ordinance (Office of the City Attorney, 2009).

One of the primary challenges San Francisco and other American cities have faced in their efforts to institute sanctuary models is the need for them to establish a reasonable legal basis for the policy that does not contravene federal law. In the United States, the federal government has sole authority over matters related to immigration (Shih, 2009). Sanctuary city policies have been permitted to continue in the United States because the common element to most of them is the 'don't ask' policy whereby employees remain unaware of a client's status. Because city officials cannot be accountable for sharing information they do not have, 'don't ask' portions of sanctuary policies generally do not conflict with immigration laws.

The difficulty with the ‘don’t tell’ portion of these policies is that it is common for city employees, particularly police and community workers, to learn about an individual’s legal status in ways other than by simply asking. Workers may become aware of an individual’s legal status through the course of a conversation or from others affiliated with the individual. What city employers do with this information once they have it is the point at which the policy becomes contentious.

The Border Protection, Antiterrorism, and Illegal Immigration Control Act is but one example of legal challenge made to the American sanctuary model. In 1996, the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) which became law, clearly stipulated that "[s]tates and localities may not adopt policies, formally or informally, that prohibit employees from communicating with DHS (Department of Homeland Security) regarding the immigration status of individuals" (IIRIRA Sec. 642 1996, Ridgley, 2008). This law is what opponents of the sanctuary model often draw on to challenge the legality of the sanctuary movement. This law could no doubt be damaging to sanctuary cities needing to defend their policies in court.

In December 2005 a bill entitled HR 4437, The Border Protection, Antiterrorism, and Illegal Immigration Control Act of 2005 was passed by the House of Representatives (Ridgley, 2008). Because of its serious repercussions for non-status residents, advocates launched protests across the country against this bill. Among other items, HR 4437 proposed making illegal residence in the United States a criminal offence (Section 203) and called for a withdrawal of some funding assistance from those states and local municipalities who prohibit local law enforcement officials from assisting or cooperating with federal immigration enforcement (Section 225). Although the bill was never debated in the Senate and consequently failed to become law, it is significant to consider what this bill proposed and the support it did attract. The two sections highlighted here

directly relate to cities with sanctuary policies. Section 203 calls for the legal criminalization of unauthorized presence in the US. Not only would such a law give legal weight to the increasingly common trend of criminalizing migrants, it could also have consequences for those who assist non-status residents. Section 225 speaks about punitive measures to be taken against cities with sanctuary ordinances and the employees who uphold these policies (Ridgley, 2008). If such a policy were to take effect on the national level, cities would be unable to (legally) require frontline workers to uphold sanctuary policies.

Those who favour strict policies of immigration enforcement argue that if someone paid with tax money, particularly someone working in law enforcement, encounters a person who is illegally present, it is incumbent upon them to uphold the law and report. This argument has been used by opponents of American sanctuary policies who argue that it is wrong to encourage public employees to be uncooperative in measures to enforce the law. Clearly those who drafted The Border Protection, Antiterrorism, and Illegal Immigration Control Act and included Section 225 agreed with this point of view. Considering this bill initially passed in the House, it is reasonable to assume significant political support generally exists for this line of thinking.



## **Chapter 7: Challenges to the Viability of DADT in Toronto**

Examining the histories of the DADT and sanctuary city policies it is clear that there are some major challenges jeopardizing this policy. Broadly speaking, there are four main challenges that threaten the DADT initiative. These include:

1. Legal limitations
2. Barriers to accessing undocumented residents
3. Service provider funding restrictions
4. Limited powers and services at the municipal level

It is important to look closely at each of these challenges to evaluate whether a municipal DADT policy can be effective despite these obstacles.

### *Legal Limitations*

The American example demonstrates the legal risk municipal services can face when they enact firewall policies. Since immigration and border control laws exist to protect a country and its citizens, opponents have effectively argued that a city government cannot enact policies to flout these laws. Anti-terrorism measures in the US have been geared to minimizing illegal entry into the country and sanctuary models have been accused of undermining these efforts by harbouring people whose presence is unknown and unauthorized. Moreover, sanctuary city policies have faced criticism when undocumented individuals protected under these ordinances have been arrested on criminal grounds (McKinley, 2006, Office of the City Attorney, 2009).

Opponents have claimed that sanctuary practices put the rights of unauthorized people before the rights of citizens and help people to break the law. As a result, cities like San Francisco have been forced to invest time and money defending their policies in the courts and laws against sanctuary ordinances have been established. It has been fortunate for supporters of the sanctuary model that, in the United States, present laws against these policies are seldom enforced given that, technically speaking, sanctuary policies are presently illegal (IIRIRA, Sec. 642 1996, Ridgley, 2008). One of the most significant threats to the sanctuary model is that continued discussion of this issue in the courts will lead to stronger enforcement measures against cities implementing these policies.

In Canada, the government is responsible for ensuring that immigration is regulated and it relies of various branches of the law to support the enforcement of immigration policies. As has been the case in Toronto, it can be difficult for local police forces to implement a complete DADT policy because such a policy can be viewed as contrary to the mandate of local police to cooperate with other branches of law enforcement.

The current policy of Toronto Police is to refrain from asking the status of abuse victims and witnesses of crime. Under this policy, police officers do not acquire information about status through direct questioning that they may later be responsible to disclose. However, the accompanying implication to this policy is that if officers do become aware of an individual's lack of status through other means they will report their findings. When this policy was enacted in 2006, police Chief Bill Blair maintained that "police officers have a statutory obligation to report information should they become aware of it" (Cowan, 2006). In practice, it is likely that investigating officers sometimes come to learn a victim or witness is undocumented without specifically asking and it is likely that some officers choose not to report this information.

However, when status information is currently withheld from the CBSA it is a discretionary choice on the part of an officer, not an active policy of the force. What is problematic for police about enacting official DADT policies in Canada is the likelihood that this could open their practices in dealing with undocumented residents to scrutiny and legal challenge. It is possible that legal challenge to DADT policies could result in the definitive legal prohibition of such practices and punitive action against non-complying police officers. Were this to become the situation in Toronto it would be even more difficult for undocumented residents to receive local level assistance than it currently is.

From a legal perspective, it is difficult to determine what is best for the goals of the DADT campaign as this movement grows in Toronto. Formally articulated DADT policies would help to create more open and uniform practices with regards to serving undocumented residents, but would likely expose the policy to public and legal scrutiny that could jeopardize what limited capacity police and other services presently have to assist. On the other hand, informal DADT practices give community level services the means to provide undocumented residents with assistance, but the inconsistent and secretive nature of these services make the system unreliable and inaccessible for the majority of these residents.

### *Barriers to Accessing Undocumented Residents*

A main argument for DADT has always been that it would help provide undocumented residents with access to assistance by letting them know which organizations they can safely contact for help. While in theory this is reasonable, the second major challenge threatening the practical effectiveness of this policy is the fact that the undocumented population is actually very difficult to reach. The barriers to accessing this population, particularly the most vulnerable

among them, suggest an official DADT policy may stall because of the challenge of transmitting the purpose and limitations of this policy to the people it is intended to serve.

Significant barriers exist in publicizing the DADT policy. Language barriers, low English (or even first language) literacy skills among the target population, a lack of funding for public and community agencies to publicize this kind of message and a primary reliance among this population on word of mouth information pose problems for spreading the word about this policy (Bernstein et al. 2006).

It is significant to note that the vast majority of service providers assisting undocumented residents have no dedicated funding or human resources for helping this population in particular. In the majority of cases, serving undocumented residents is done in addition to serving the people these services are actually funded to assist (Bernstein, McDonald et al. 2006). This is problematic because it means that there are, in most cases, absolutely no funds available to create specialized publicity materials to inform undocumented residents of their rights and the options they have for obtaining assistance. Similarly, there is no money for outreach activities targeting the undocumented population, no money to develop translated materials to promote the DADT policy and no money to obtain interpreters to assist in the process of helping undocumented residents in the languages they understand. Even using volunteers to assist in these areas requires that service providers commit significant amounts of time and staff resources for recruitment, training and support.

Frontline reports from those working with undocumented residents repeatedly indicate that non-status residents lack awareness of their rights in Canada and usually believe there are no services to support them (Sidhu, 2008, Bernstein et al. 2006, Immigration Legal Committee,

2008). Given the perceived risk of asking for help, most undocumented residents are reluctant to approach organizations with services. Therein is the real struggle for accessing the undocumented population. For the DADT policy to be effective, service providers must communicate that:

1. Undocumented residents have rights in Canada
2. There are services available to assist in accessing these rights
3. Service providers will not disclose status to immigration enforcement

To further complicate this challenge, these messages must be conveyed to a population that is highly mobile, ever changing, often disconnected from the mainstream community and is frequently non-English speaking. If this message cannot be effectively transmitted to this population it defeats the purpose of DADT and threatens to make the policy impotent.

#### *Service Provider Funding Restrictions*

- Limitations established by funders present significant challenges to reaching and communicating with the undocumented population. Budgetary limitations are but a small part of the much larger problem funding restrictions present as a third major threat to the viability of the DADT proposal.

Although some services have city or private financial resources to draw from, a substantial number of community service organizations considered essential to meeting the basic rights and needs discussed earlier rely on provincial and federal funds. Government branches at these levels including the Ministry of Health and Long-term Care, Citizenship and Immigration Canada (CIC), the Ministry of Community and Social Services and Human Resources and Skills Development Canada (HRSDC) provide the bulk of funding for these relevant services, but

usually with strict eligibility requirements. In most cases, programs funded by these departments and ministries stipulate that services are to be provided to citizens and permanent residents of Canada, effectively shutting undocumented residents out.

Where community agencies face such service restrictions it is difficult to implement official Don't Ask, Don't Tell policies, even if informal and unofficial policies of this nature in fact exist. Choosing to formalize DADT policies can put community level services in conflict with their funders who may question how the DADT policy can function when they are providing funds for services for particular client groups. Funded agencies may fear that a formalized DADT policy will draw criticism and scrutiny from funders, attract unwanted attention to clients from the CSBA, and jeopardize opportunities for their organizations to receive funding in the future. In particular, where it is up to individual agencies to decide whether or not to adopt DADT policies (as opposed to there being a city wide initiative like in San Francisco), the competitive nature of funding contracts may make funders more likely to choose organizations who will commit to provide service to eligible clients over DADT organizations. Considering these powerful disincentives, it can be difficult for community services to move from informal to formal DADT policies.

In some cases, provincial and federal funding requirements may not preclude organizations from serving undocumented residents; this is true for services like school boards and some emergency shelters. However, because these kinds of service providers are often required to determine other eligibility criteria (ie. residency within a particular geographic boundary) to meet funding requirements, institutionalizing a functional DADT policy can be similarly difficult (Goldring et al. 2007). For example, the Toronto District School Board has a DADT policy in place, but the functionality of this policy has been limited in practice by the

various ways the Board has been required to continue requesting identification from students for various other purposes. In order for the Board to claim expenses to the Ministry of Education related to ESL expenses, school personnel continue to request the immigration documents of newcomer students requiring this support (Sidhu, 2008). In addition, supplementary student support programs such as Youth HOST and ISAP run through the TDSB to support newcomer students also require landing and residency information as a condition of their funding for this program with CIC (Canadian Newcomer Magazine 2009). Because the Board still regularly requests identification that betrays undocumented students' lack of status, the 'Don't Ask' portion of their policy is certainly questionable.

Although a lack of status may not specifically disqualify undocumented residents from making use of their services, shelters, food banks, and health clinics in Toronto are also generally required to request some form of identification from clients as a condition of their funding. Official forms of ID are only available to documented residents of Canadian society which effectively makes requesting ID akin to requesting confirmation of status. Considering these requirements, it has been and will continue to be difficult for local level services to enact DADT policies capable of living up to what they promise.

### *Limited Powers and Services at the Municipal Level*

The limited power and reach of community level services presents a final major challenge to DADT and the DADT campaign. Many services and safeguards critical to ensuring the rights of undocumented residents are handled beyond the city level. For example, DADT has had little impact in the area of legal rights for undocumented workers since the launch of the campaign in 2004. DADT policies may exist at worker rights centres, legal aid clinics and other

community services that provide invaluable help to make undocumented workers aware of their rights, but these institutions cannot provide these individuals with access to safe working conditions, fair terms of work or recourse when employers fail to pay. These are critical rights areas that DADT cannot address.

As enforcement of worker rights occurs beyond municipal jurisdiction and is carried out by agencies of the federal and provincial government, protection of these rights lies beyond the scope of the DADT campaign. Undocumented workers may learn about rights they have to report unsafe work conditions through local DADT services but they also understand the personal dangers they face by making a report when they have no legal protection (Standing Committee on Immigration, 2008). As dangerous as their work may be, most of these workers will not risk losing their jobs to report their employers, nor will they risk being discovered by government officials investigating their workplace. Though workplace rights protections safeguard workers from being fired for filing a report, it is not realistic for undocumented workers with no access to the money, time and legal counsel required, to grieve an unfair dismissal. In addition to enforcement services, the vast majority of other protections and supports for workers from Employment Insurance to workplace injury compensation are also managed beyond the city level. Considering these realities, it is clear that only a narrow capacity exists for municipal DADT policies to assist undocumented workers with access to their rights.

The challenges threatening the capacity of the DADT policy are significant. Barriers to reaching undocumented residents suggest DADT could be rendered more a formality for service providers than a tool of access for undocumented residents. Meanwhile, challenges to the legality of the DADT concept threaten the potential for this policy to take root in Canada. The numerous positive aspects of the DADT concept suggest a role for DADT in Toronto, but realistic



expectations of the potential and limitations of this policy need to be defined for DADT to have real impact.

## **Chapter 8: Moving Forward: Recognizing Where DADT is Useful**

As a policy of access, DADT is not equally viable in all of the four rights categories discussed earlier. For reasons previously mentioned, workers rights are least likely to be facilitated through this model. It is highly unlikely that undocumented workers will ever qualify for worker benefits like EI and, because workplace safety and rights enforcement is beyond the scope of municipal jurisdiction, it is likely that accessing these rights will remain impossible through city level initiatives.

Unions present a possible ally for DADT advocates to pursue in facilitating worker rights. It is conceivable that if unions were to accept undocumented members and were to adopt DADT policies to attract them some of the issues that currently confront these workers could be addressed. Obviously there are numerous issues that threaten the capacity and will of unions to make this kind of move, but the willingness some unions have already shown to assist the undocumented indicate this may be possible in the future.

In terms of legal and personal security rights, the DADT campaign in Toronto is presently locked in stalemate. Clearly the most important allies for ensuring the legal protections of undocumented residents at the city level are the police. Advocates have presented Toronto's police force with an exhaustive list of arguments for of a full DADT policy with legal reasoning to justify such a move. Despite these arguments, the Toronto police force has agreed only to a limited 'don't ask' policy. The 'don't tell' portion of the policy has been abandoned, and for many DADT advocates, this nullifies the effectiveness of what remains of the policy.

Although basic rights in the other three categories, (education, quality of life and workers rights) are essential, they are generally not matters of life and death. Legal and personal security

rights on the other hand, often are. Consequently, DADT advocates need to work within the present limits provided by the police while fighting for a broader policy for the future. Ultimately, a police DADT policy is essential if undocumented residents are to have appropriate and equitable protection under the law (Immigration Legal Committee, 2008).

In order for advocates to advance their case with Toronto police they will need to demonstrate that DADT can provide benefits to the community that justify withholding information about status. Advocates have the advantage of referring to American sanctuary cities where many police forces have implemented similar policies. One key step to advancing this issue with police could lie in academic and statistical research regarding the effect these policies have had on these communities. Anecdotal evidence of the benefits of DADT is available; Rudolph Giuliani's claim that New York's policies contributed to a decrease in that city's crime rate is but one example. However, actual evidence and focused studies on the benefits of sanctuary models are sorely lacking. Without this kind of documentation and study there is little proof that DADT policies contribute to increases in the numbers of undocumented residents approaching police, increases in the number of crimes reported or that they lead to more victims of abuse escaping violence. These are the kinds of results that may contribute to a shift in the policy of Toronto police.

With the cooperation of advocates the current police policy of not asking for evidence of status may still become a useful tool of access for undocumented residents. The commitment of police to not ask for evidence of status in cases where someone is reporting a crime or abuse is a valuable starting point for justifying a broader DADT policy. Advocates are able to play a valuable role informing undocumented residents about the benefits and limitations of this policy. At the same time, advocates with access to undocumented residents can convey the experiences

of this population as they access the police. It is possible that the real stories of undocumented residents may force debate on the sufficiency of a 'Don't Ask' policy alone.

There are varying degrees of potential for the DADT policy amongst community level organizations involved in providing basic quality of life rights. Formalized DADT policies are not feasible for many of these services because agreements with funders make legal status a qualifying condition of service (Portuguese Canadian National Congress, 2009). This is the case in many service areas including most settlement services and housing supports. Practically speaking, organizations providing these services cannot enact formal DADT policies. To do so could jeopardize their funding and their future opportunities to serve any client in the community. Where funding restrictions are so closely linked to legal status, it may be more practical to compel these organizations to continue with or to adopt informal DADT procedures. In the short term at least, these kinds of services may only be available to undocumented people informally and the emphasis of advocates with community services in this category should be on linking them to organizations in their communities that are able to receive undocumented clients.

Other community level services such as shelters, food banks, family resource centres and community health clinics may not have specific status requirements, but do often require identification from clients. DADT policies are similarly difficult to implement with these kinds of organizations because requesting identification from undocumented residents can be one in the same as asking for status. To address this challenge it is possible that DADT needs to be combined with other measures in order to be successful. For example, in the city of New Haven Connecticut municipal government has provided all city residents with Elm City Resident Cards, regardless of their status in the country. This card has enabled undocumented city residents to open bank accounts, use city services, and most importantly, have some form of acceptable

government-issue photo identification to use (Asmougha, 2009). Although implementing a similar concept in Toronto could pose a plethora of additional challenges, as a compliment to the DADT policy it could be effective.

Certainly any move to institute identity cards would require the full support and leadership of the municipal government. Garnering the support of the City of Toronto is another critical way standard of life services may become more accessible through a DADT framework. One of the primary reasons San Francisco's sanctuary policy has become as comprehensive as it has is the fact that the development of this policy has been led by the city government. With a municipal ordinance backing the DADT concept in that city, municipally run services have become accessible to undocumented residents. Because the San Francisco city government promotes and defends its DADT policy there is a system of support in place for community organizations to adopt similar policies. Because many different services operate within the city under DADT policies, these organizations have a wide referral network and leverage for defending their policies. As a community level initiative this kind of policy relies on coalition building and organizational networks. Having municipal government take the lead in facilitating this network has had powerful influence on the establishment of an effective and durable policy.

In Toronto, DADT policies have been sporadically implemented with little in place to unite one DADT organization with another. It could be particularly useful for DADT advocates to focus attention on having the City of Toronto government adopt a sanctuary policy. If Toronto's municipal government were to take on this policy numerous services operated by the city would become immediately accessible for undocumented immigrants. Moreover, endorsement of the policy at the municipal level would likely facilitate the expansion of it to non-governmental community services as well.

The most promising area in which DADT is likely to be successful is in providing access to education rights for undocumented children and youth. In Canada it is exceedingly rare for rights to be specifically provided to undocumented residents. In the majority of cases where rights can be said to belong to this population on the basis on Canadian law it is because undocumented residents are not specifically excluded from eligibility. Education rights are different however, because they have been expressly determined to belong to undocumented resident minors. The explicit provision of these rights to this group provides school boards with legal grounds on which to defend DADT policies. Establishing schools as safe zones is logical to ensuring Ontario's education regulations that all youth under 18 years of age attend school.

School boards enacting DADT policies also have the advantage of providing their services to children and youth who are more difficult for the public to fault for being in Canada without authorization. Years of education lost during childhood and adolescents can arguably never be regained (Carrens, 2008). Most people would agree that children should not be made to suffer for the choices of their parents and it is universally understood that education is vital to success in adulthood. Adding to these factors is the reality that some 'undocumented' children are actually Canadian citizens, born in Canada to parents without status. Given all of these factors school boards have substantial grounds on which to defend implementing DADT policies.

It is encouraging that the Toronto District School Board has enacted a DADT policy. This step by the Board is arguably the most significant achievement of the DADT campaign to date because it offers a very public example of how an organization can be actively involved in ensuring the access of undocumented residents to basic rights. Because the policy is now in place, advocates can work with the Board to determine strategies to overcome the numerous

challenges that have arisen to this point. Presently, the effectiveness of DADT in the TDSB has been compromised by factors such as the ongoing practice of requesting identification and health insurance information from students, the challenges in publicizing the policy to the undocumented population and the difficulties that have been involved in making all school personnel aware of and involved in implementing the policy. These challenges are certainly not insurmountable but they do suggest DADT needs to become a more active policy. Schools need to be active in promoting the policy in their neighbourhoods, school officials need to be proactive in making their staff observe the policy and ongoing monitoring needs to occur to ensure schools are in fact equitably accessible to undocumented students. If these measures were to occur it is reasonable to believe DADT could be effective as a pathway for undocumented minor residents to their educational rights.

## **Chapter 9: Conclusions and Recommendations**

At first glance, DADT appears a simple policy of passive resistance. Organizations that want to or need to assist undocumented residents can simply elect to refrain from collecting information about the status of those they serve. If service providers discover the status of their clients they can simply neglect to pass this information on to the CSBA. In reality, DADT is far from a simple policy. A decision of organizations to formalize policies that may expose them to legal challenge, public scrutiny and possible losses in funding cannot be made lightly.

Undoubtedly, issues regarding undocumented residents are complex. Proposed solutions for providing assistance to this group in Canada have unfailingly presented new problems for the government and communities to address. Because of this reality, very few policies, laws, or services have been established specifically for undocumented people. This lack of definitive policy has both helped and hurt this population. Because there are few specific references to the rights of undocumented residents in law, this population has long lived with the assumption that they have no rights. Their invisibility in law and social policy has caused them significant harm by pushing them to the margins of society and subjecting them to abuse and victimization. On the other hand, it is plausible that Canada could do a great deal more to remove undocumented residents from the country if it had the political will to do so. While America's undocumented population is largely unknown to the government, the majority of Canada's non-status residents enter the country on work and student visas and refugee claims. This means the Canadian government has, in fact, a means of identifying who its undocumented residents are. With the information it has about the majority of people who enter Canada temporarily, the government could conceivably enact much stricter measures to remove its undocumented population. Canada's lack of exit controls and reluctance to establish stricter policies regarding the removal



of failed claimants and people remaining in the country with expired visas have at least helped undocumented residents to remain in the country undetected.

It is worthwhile to draw attention to this point because it suggests Canadian specific publicity will play an important role in how this issue will be addressed in the future. It is important to recognize that not all strategies to assist undocumented residents are helpful. Solutions that are poorly planned or unable to achieve intended goals could actually be harmful to efforts to assist undocumented residents. Considering this, it is important to state that DADT is not a one-size fits all solution to the problem of undocumented residents' access to services. It is clear that DADT does not provide equally viable solutions in each of the four rights areas and so it is important that advocates concentrate their efforts where DADT is likely to be successful. Resources currently being used to recruit community organizations that cannot enact these policies, (or are better off maintaining unofficial DADT policies) could be used instead to strengthen the capacity of viable DADT service providers, such as school boards. Meanwhile, it is useful to engage organizations that cannot enact DADT policies in the process of devising alternative approaches to assisting undocumented residents. The community summit organized by the Portuguese National Conference and the Working Women's Community Centre discussed above is an example of this kind of alternative.

Despite the numerous limitations of the policy, DADT does offer a practical and viable framework for undocumented residents to access some of their rights. Some community services such as health clinics and shelters have enacted DADT policies that allow them to effectively assist undocumented clients. The TDSB has shown the will to make its schools more accessible through a formal DADT policy and it is now in the process of determining how this policy can be practically implemented. As these organizations establish their policies, they will be able to

share their models and experiences with similar community services who may subsequently adopt similar policies.

Moving forward, it is important for DADT advocates to determine the priorities of their campaign. It is critical for advocates of the DADT policy to engage with DADT service providers, American sanctuary cities and academics to promote study of the issues and rights of undocumented residents and the capacity of DADT to facilitate these rights. So little exists in study of this topic that it is difficult to validate the claims DADT advocates make about the utility of this policy. While there are important differences between the American and Canadian situations, the US sanctuary model can provide relevant data to support the claims of this model's capacity to effect change. And yet, this issue cannot be reduced simply to statistics, there is more to judging the validity and utility of this policy than numbers alone. Considering this, advocates and community partners in Canada can play a crucial role in documenting this policy by bringing the stories and experiences of undocumented residents to light.

Emphasis must be put on recruiting the most viable allies in the community and working with them to establish functional DADT policies. The benefits to this approach are numerous. First, strong and demonstrably useful DADT policies can generate documentable results to support the policy and can provide a policy model for other organizations to follow. Moreover, some community services hesitant to jeopardize their funding or spark public scrutiny by providing services to undocumented residents may be reluctant to adopt DADT policies. Seeing others successfully enact these policies, however, may make these organizations more at ease to move in this direction.

Finally, community mobilization must be a vital part of the strategy of DADT advocates. Sympathetic organizations unable to implement DADT policies of their own might be recruited to support alternative community strategies to compliment what DADT organizations are able to do. A diverse representation of advocates from numerous sectors can strengthen the DADT campaign and help to raise the public profile of this issue.

The Don't Ask, Don't Tell Campaign in Toronto is an example of a local response to the global challenge of providing rights to non-status residents. While it is not without flaws and limitations, it may in fact provide organizations with the means to provide some essential rights and services to undocumented residents. The brief history of DADT in Toronto and the growth of American sanctuary cities suggest support for this policy exists. If this support is harnessed, positive change is possible. As Jennifer Ridgley writes, "the history of sanctuary policies reveals that openings exist within the institutional and legal frameworks of local governments to challenge the criminalization of migration and to support alternative visions of citizenship." (Ridgley, 2008, p72). Indeed, access to services without fear is about communities redefining who belongs and who does not. Although it cannot be considered a comprehensive or even permanent response, the Don't Ask, Don't Tell framework allows community organizations to include and provide services to those members of society most often excluded.

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